

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0120
Address	99 & 99A Louisa Road BIRCHGROVE
Proposal	Alterations and additions to the existing dwelling house, new garage with car stacker, swimming pool and roof terrace, and associated works at 99 Louisa Road, Birchgrove
Date of Lodgement	3 March 2022
Applicant	Benson McCormack Pty Ltd
Owner	Mrs Kristine L Jackson Mr Tibor PR Singer
Number of Submissions	Initial: Five (5) After Renotification: Two (2)
Value of works	\$850,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Site Coverage, Landscaped Area, FSR; Streetscape / Heritage, Parking; Solar Access, Views; and Privacy
Recommendation	Deferred commencement approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance of Heritage Conservation Area
	
LOCALITY MAP	
Subject Site 	Objectors   N
Notified Area 	Supporters 
Note: Due to scale of map, not all objectors could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the existing dwelling house, new garage with car stacker, swimming pool and roof terrace, and associated works at 99 Louisa Road Birchgrove.

The application was notified to surrounding properties and five (5) submissions were received in response to the initial notification. Two (2) submissions were received in response to renotification of the application.

The main issues that have arisen from the application include:

- Site Coverage;
- Landscaped Area;
- FSR;
- Streetscape character/Heritage;
- Loss of on-street parking;
- Solar Access and overshadowing;
- Access to views; and
- Privacy.

The non-compliances with the controls are considered acceptable given the existing form of development on the site, the relationship of the proposed works to neighbouring properties and the existing form of development in the wider streetscape. Therefore, the application is recommended for approval.

Note that this application relies on the subdivision proposed under DA/2022/121 at No. 99A Louisa Street, Birchgrove, which is being assessed concurrently with this application. As this proposal cannot proceed without the subdivision proposed under DA/2022/121 being approved, a Deferred Commencement condition is included in the recommendation requiring that this application can only be made operational with evidence demonstrating that the proposed subdivision under DA/2022/121 has been approved.

2. Proposal

The proposal seeks consent for alterations and additions to the existing dwelling house, new garage with car stacker, swimming pool and roof terrace, and associated works at 99 Louisa Road, Birchgrove

A detailed summary of the proposed works is provided below:

Demolition

- The demolition sought is detailed within the demolition plans which encapsulates the existing carport, access/entry pathway, the internal walls to the existing dwelling and part of the deck on Upper Snails Bay Level.

Snails Bay Level

- Internal layout reconfiguration to facilitate three (3) bedrooms, including a master bedroom with a walk-in-robe and study area, two with ensuites and one general bathroom. • Existing terrace is retained on Snails Bay side.
- Existing courtyard modified adjacent to the study area.

Upper Snails Bay Level

- Internal layout reconfiguration of the existing building envelope to facilitate a new open plan living and kitchen area, separate formal dining, laundry, butler's pantry and study.
- The majority of the existing deck along the eastern external side of the dwelling will be retained with modifications to revise the BBQ and create clothes drying area. The vergola will be extended over a new void over the Snails Bay level terrace.
- A new bridge connected to an underground corridor is proposed off the kitchen area. The corridor leads to the bin storage area, a lift and stairs enabling access to the street level, and an underground plunge pool with adjoining pool plant area.

Lower Ground Level

- The lower ground is a transitional level comprising a house comms/plant room. Ground Floor.
- The entry door remains generally in the same location, with an enclosed gallery leading to the lift and stairs.
- A single garage is proposed as a car stacker, enabling car parking for 2 vehicles. First Floor.
- The lift enables access to a roof terrace with southerly oriented views.

General

- The new garage door and car stacker overrun will be constructed of dark metal cladding.
- Modification to gable end to create a recess.
- The lift shaft will be off-form concrete finish.
- New on-structure planting is proposed around the car stacker overrun.
- Excavation is sought for the car stacker, plunge pool, and for part of the drying court.

Easements

- The development application will extinguish all existing easements as identified on the survey plan, with the exception of the easement for sewage purposes over the existing line of pipes (D.P. 878548) and an easement to drain water variable width (D.P. 878548). The easement to drain water will be adjusted to suit the boundary realignment.
- The development will introduce the following easements:
 - Proposed easement over Lot 101 above RL +11.94 for access to roof top terrace from Lot 102.
 - Proposed easement over Lot 101 for the swimming pool of Lot 102 as it encroaches into the allotment underneath the separately proposed new dwelling.

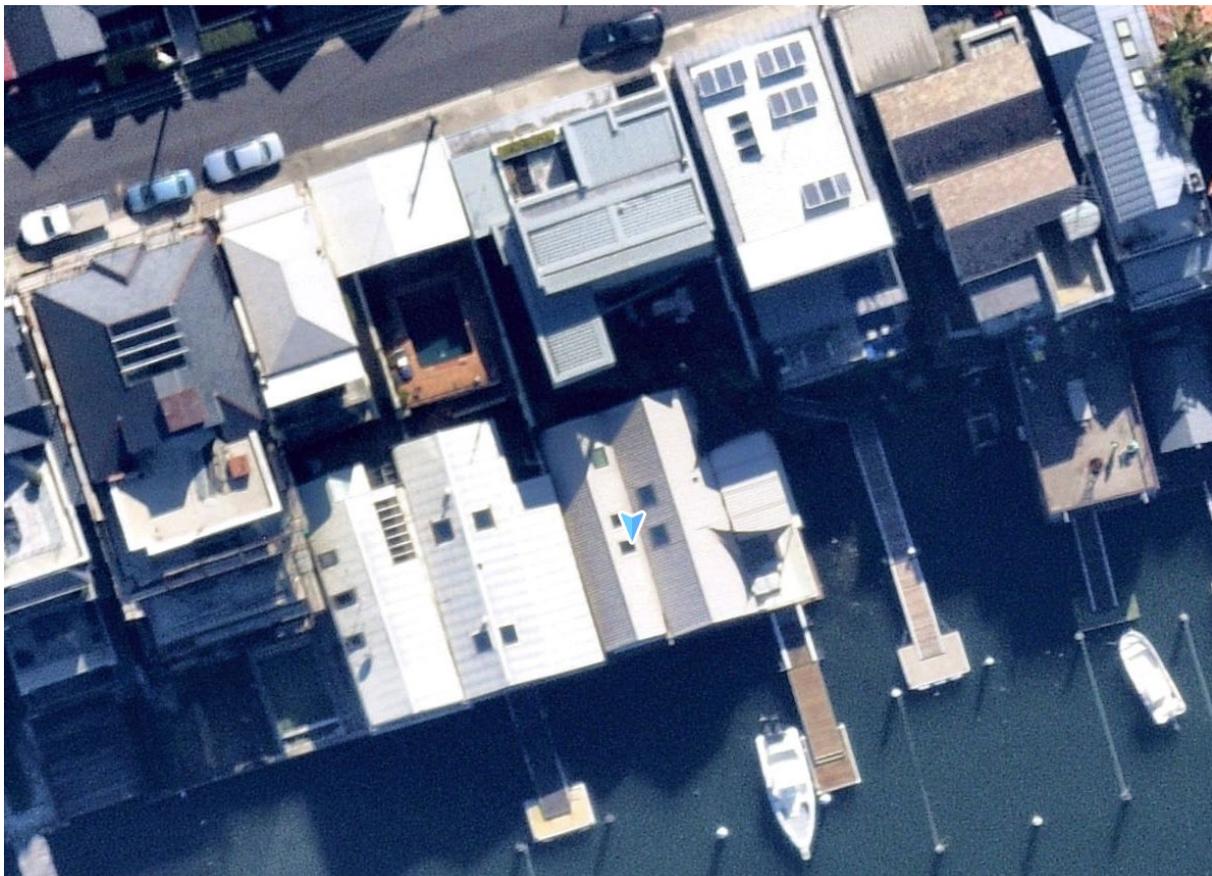
3. Site Description

The subject site is located on the southern side of Louisa Street, between Deloitte Avenue and Yerroulbin Street.

The subject site is commonly known as 99 Louisa Road, Birchgrove, and is legally defined as Lot 102 in Deposited Plan 878548. The site is a battle-axe allotment located on the southern side of Louisa Road, along the peninsula. The site is highly irregular in its shape with a frontage of 2.505m to Louisa Road. The western side boundary measures 22.035m and 10.83m with a 35mm step. The rear boundary measures 13.72m. The eastern side boundary is stepped numerous times as it interfaces with 99A Louisa Road. The site is subject to a notable slope along the pedestrian-only access handle from Louisa Road to the house located at the rear. The carport FL is 9.12m, whereas the existing rear tiled patio is RL 1.17m, a level difference of 7.95m

The overall site area is 246.8m² in its existing form. The site is subject to a number of easements, including overhangs, and encroachments, to drain water, car parking, support and sewage purposes.

Currently on the site is an existing two storey dwelling house with metal roof. The site as it presents to Louisa Road comprises a carport with an adjacent pedestrian entry door. Access to the dwelling is via a tiled pathway with steps along the access handle to the entry. The existing dwelling improvements include a terrace along the eastern side of the dwelling at the first floor and a tiled patio and timber ramp and pontoon into Snails Bay.



The site is located within a residential area and is bounded by dwelling houses. The immediate neighbour to the north-east is 99A Louisa Road, an existing part two, part three storey

rendered dwelling with single garage. The next eastern neighbour at 101 Louisa Road is a two storey rendered dwelling house with metal roof. The western neighbour is at 97A Louisa Road contains a two storey rendered dwelling with the dwelling located at the rear, garage to the street and swimming pool centrally. Development opposite is generally comprised of two storey dwellings stepped down the slope of the peninsula with the majority of the presentation being double garages, such as those directly opposite at Nos. 94 and 96.

The subject site is not listed as a heritage item. The property is located within a Heritage Conservation Area. The property is identified as a foreshore inundation lot.



4. Background

4(a) Site history

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

Subject Site and No. 99A Louisa Road

Application	Proposal	Decision & Date
BC/2001/452	Whole	18/01/2002 Issued
D/2005/475	Alterations and additions to existing dwelling, including new terrace.	19/04/2006 Approved
BC/2017/23	Unauthorised works- extension of timber decking and new timber decking to the first floor.	07/11/2017 Approved
PDA/2020/0117	Alterations and additions to existing dwelling house and garage to provide car stacker and bulk excavation at No. 99 Louisa Road	18/05/2020 Advice Issued
PDA/2020/0418	Alterations and additions to No. 99A Louisa Road	26/11/2020 Advice Issued
DA/2022/0121	Demolition of the existing dwelling, boundary realignment and construction of a new dwelling	Under assessment – being assessed concurrently with this application

Surrounding properties**97 Louisa Road**

Application	Proposal	Decision & Date
BA/1993/529	Alterations and additions to dwell	30/11/1993 Approved

101 Louisa Road

Application	Proposal	Decision & Date
D/2005/443	Alterations and additions to an existing dwelling.	12/09/2006 Approved
M/2007/124	Section 96 modification of development consent DA/2005/443 which approved alterations and additions to an existing dwelling. Modification seeks to rectify a typographical error in condition 23 of the consent.	31/05/2007 Approved
M/2007/210	Section 96 modification of development consent D/2005/443 which approved alterations and additions to an existing dwelling. Modification seeks to amend the wording of Condition 3(a) of the consent to clarify the required internal depth of the garage rather than its width	13/08/2007 Approved

4(b) Application history

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

Date	Discussion / Letter / Additional Information
25-27 July 2022	<p>Amended plans provided consisting of the following amendments:</p> <ol style="list-style-type: none"> 1. Parking - Changed from single car garage to single 2-stacker garage 2. Amendment of Roof Top Terrace for 99 Louisa Road to maintain view corridor to the Sydney Harbour, deleted the overhead vergola and privacy screening to maintain the view corridor back to Sydney Harbour. 3. Amendments to the Boundary Realignment Drawing, as a result of the amended parking arrangement for both properties. 4. Amended Shadow Diagrams have been provided to reflect the Architectural changes. <p>Additional information was also provided:</p> <ul style="list-style-type: none"> - Updated Statement of Environment Effects - Updated Traffic report - Updated Stormwater plans - Updated Clause 4.6 exceptions - Updated Foreshore Risk Management Plan
17/08/2022 - 31/08/2022	Application renotified
12/09/2022	Updated survey provided.

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 (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Leichhardt Local Environmental Plan 2013 (Leichhardt LEP 2013)*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal management

The SEPP aims to ensure that future coastal development is appropriate and sensitive to its coastal location and category.

The site is categorised as a coastal use area.

The proposed development will not adversely affect any coastal processes or values.

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.”*

The applicant has provided a report (Preliminary Site Investigation, 99 Louisa Road, Birchgrove NSW, report no. E25408.E01_002_Revl prepared by EI Australia) that concludes:

“The site identified as 99 Louisa Road, Birchgrove NSW was the subject of a PSI, the main objective being to appraise the potential for contamination. The key findings of this PSI were as follows:

- The site (224 m² in total area) was occupied by a two storey, residential building, car parking garage and timber decking.*
- The site had been used for residential purposes since 1943, at least. There was no evidence of a major excavation, or filling activity, taking place, or of manufacturing or other potentially contaminating activity at the site or in the general area.*
- The surrounding areas consisted of a mixture of commercial and residential properties, with various boat launch and builder/repairer businesses in operation during the surveyed period.*
- The site was free of statutory notices and licensing agreements issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997. The site was not on the List of NSW Contaminated Sites Notified to the EPA.*
- No visual evidences of infrastructure associated with underground storage tanks (UST) were observed on the site. No above ground storage tanks (AST) were present.*

- *Based on geological and soil landscape maps, as well as EI's project database, the sub-surface is expected to be a layer of filling (<0.5 m thickness), overlying sandstone bedrock.*
- *The site is situated within an area of No Known Occurrence, with respect to acid sulfate soils (ASS). No visual or olfactory evidence of actual and potential acid sulfates was encountered during the site inspection. The potential for the presence of ASS on the site was considered to be low.*
- *The conceptual site model (CSM) was prepared and established that the potential for contamination to be present on the site is low and that the risks associated with any (possible) site contamination can be considered to be negligible with respect to the identified sensitive receptors.*

Based on the findings of this PSI, and with consideration of EI's Statement of Limitations (Section 7), it was concluded that the potential for contamination to exist on the site is low. The site was deemed suitable for the proposed (low density residential) redevelopment, in accordance with State Environmental Planning Policy 55 - Remediation of Land.

On the basis of this report, the consent authority can be satisfied that the land will be suitable for the proposed use.

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 (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days.

The following comments were provided by Ausgrid:

“Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.”

A condition to this effect is included in the recommendation.

5(a)(iv) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 10 Sydney Harbour Catchment

The SEPP provides planning principles, development controls and matters for consideration which apply to the subject development proposal.

It is considered that the carrying out of the proposed development is generally consistent with the objectives of this part and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities for the following reasons:

- The appearance of the development as viewed from the harbour is compatible with surrounding development;
- The development does not further restrict access to foreshore land and will protect existing views from Louisa Road to the water.

*5(a)(v) Local Environmental Plans**Leichhardt Local Environment Plan 2013*

The application was assessed against the following relevant sections of *the Leichhardt Local Environmental Plan 2013 (Leichhardt LEP 2013)*:

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.5 - Additional permitted uses for land
- Section 2.6 - Subdivision
- Section 2.7 - Demolition
- Section 4.1 - Minimum subdivision lot size
- Section 4.3A - Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor Space Ratio
- Section 4.4A - Exception to maximum floor space ratio for active street frontages
- Section 4.5 - Calculation of floor space ratio and site area
- Section 4.6 - Exceptions to development standards
- Section 5.7 - Development below mean high water mark
- Section 5.10 - Heritage Conservation
- Section 5.21 - Flood Planning
- Section 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management
- Section 6.5 - Limited development on foreshore area
- Section 6.6 - Development on foreshore must ensure access

Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *Leichhardt LEP 2013*. The *Leichhardt LEP 2013* defines the development as:

“semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

The objectives of the R1 zone are as follows:

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

The development will continue to provide for a variety of housing types and for the housing needs of the community within a low-density residential environment. Further, subject to recommended conditions, the proposal will be compatible with the character, style and pattern of surrounding buildings, will result in acceptable on-site amenity outcomes, and will not result in any undue adverse amenity impacts on adjoining properties or the locality in general.

Given the above, the proposal, as conditioned, is considered to be consistent with the zone objectives.

Section 4 Principal Development Standards

It is noted that subdivision is not proposed as part of this application and the application relies on the proposed subdivision under DA/2022/0121 which is concurrently assessed. The calculations below are based on the original site area of 246.8 sqm.

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

Standard	Proposal	Non compliance	Complies
Minimum subdivision lot size <i>Minimum: 200sqm</i>	Subdivision not proposed as part of this application. Relies on the proposed subdivision under DA/2022/212 which is concurrently assessed.		
Landscape Area* <i>Minimum permissible: 20% or 55.7 sqm</i>	0	0	No
Site Coverage <i>Maximum permissible: 60% or 167 sqm</i>	92% or 229.3sqm	80 sqm or 53.6%	No
Floor Space Ratio (proposed site area under DA/2022/121: 278.6 sqm) <i>Maximum permissible: 0.8:1 or 250.7 sqm</i>	1.43:1 or 358 sqm	134 sqm or 59.9%	No

- **Note: There is currently no existing or proposed landscaping that could be included in the area calculation of Landscaped Area. Therefore, there is no reduction of landscaped compared to the existing setting.**
- Furthermore as a result of the subdivision proposed in DA/2022/121, the site area will increase the site area of No. 99 Louisa Road to 278.6 sqm (and thus reducing the amount of variation). The proposed variations under the new site area of 278.6sqm will be Site Coverage – 62 sqm (37%) and Floor Space Ratio – 107 sqm (43%)

Section 4.6 Exceptions to Development Standards

Clause 4.3A(3)(b) - Landscaped areas for residential accommodation in Zone R1 - Site Coverage

The applicant seeks variation to the Site Coverage development standard under Clause 4.3A of the *Leichhardt LEP 2013* by 53.6% (80sqm). As previously noted, the proposal does not reduce or change / affect the existing Landscaped Area provision.

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

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

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

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

- The proposed alterations and additions will enhance the internal and external amenity of the existing dwelling house, ensuring the site continues to provide for the housing needs of the community to a high standard.
- The proposed dwelling house will enhance the existing dwelling and enable the continued provision of a variety of housing types and densities within the community.
- The proposal is for a residential land use and does not prohibit other sites from providing facilities or services to meet the day to day needs of residents.
- The internal alterations facilitate a dedicated study room, improving the opportunities to work from home.
- The proposed alterations and additions generally retain the same building envelope and presentation both from the street and from Snail Bay. The form will remain compatible with the area.
- The overall provision of Landscaped Areas across the site will be enhanced for the use and enjoyment of existing and future residents.
- The boundary realignment sought under a separate, concurrent application does create a minimum lot size variation, however, the realignment creates a more regular shape over existing and is generally more compatible with the character, style, orientation and pattern of the surrounding area.
- The proposal serves to enhance the amenity of the existing and future residents of the site, while also protecting the amenity of those adjoining.

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

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

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

It is considered the development is in the public interest because, subject to recommended conditions, it is consistent with the objectives of the standards, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt LEP 2013* for the following reasons:

- The site is constrained in its ability to provide an adequate Landscaped Area for the use and enjoyment of existing and future residents, primarily due to the site's topography.
- Whilst the proposed private open space is not counted towards Landscaped Area, this area does not result in any undue adverse on-site amenity impacts or to adjoining properties;
- Given the site's constraints with respect to lot size, orientation and topography, the proposal provides a suitable balance between private open space and built form.

The objectives of the R1 zone have been identified above under Section 2.1 of the *Leichhardt LEP 2013*.

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

- The development, as proposed and conditioned, provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes and Site Coverage.
- The proposed non-compliances will not result in any undue adverse amenity impacts on adjoining sites and improved on-site amenity outcomes.
- The additional Site Coverage is generally contained in areas that are not visible from the harbour and subject to conditions, will not have adverse impacts to the heritage conservation area it is located in.
- The increase in Site Coverage does not result in a reduction of existing landscaped area.

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 LEP 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Landscaped Area and Site Coverage development standards and it is recommended the Clause 4.6 exception be granted.

Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the *Leichhardt LEP 2013* by 134 sqm or 59.9%.

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

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

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

- The proposed alterations and additions to the actual dwelling house, located downslope at the rear of the site, generally occur within the existing building envelope. The sole additional GFA area directly visible to the dwelling is the construction of the bridge connecting the Upper Snails Bay level and the pedestrian entry gallery.
- The revised pedestrian entry and garage presentation to Louisa Road generally resemble the existing presentation with the existing pedestrian entry being expanded in size to create a more visible and legible entry and the garage adjusted accordingly. Despite the technical additional GFA created by both aspects to 99 Louisa Road, neither aspect creates bulk and scale impacts to the street or adjoining properties.
- The lower car space within the car stacker will not be visible as it is belowground.
- The car stacker lift overrun, the lift shaft and roof terrace are modest additions above the existing single storey presentation to Louisa Road. The lift overrun remains below the existing roof height (RL 14.74) of the dwelling on 99A Louisa Road, which is retained in the proposal for the new dwelling submitted as a separate, concurrently application.
- The roof terrace is unroofed to limit additional bulk and view lines.
- The overall form and scale of development visible to Louisa Road is compatible with the desired future character of the Louisa Road locality in terms of its massing and materials and finishes.
- The majority of the revised entry pathway and the entirety of the plunge pool area and connecting corridor occur within an excavated area that will not be visible to adjoining properties.

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

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

- The proposal provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The increase in gross floor area does not impede the site's ability to provide adequate private open space area that is consistent with the surrounding developments.
- The proposal protects and enhances the amenity of the existing and future residents, along with the broader neighbourhood.

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

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

It is considered that the development is in the public interest because, subject to recommended conditions, 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:

- Subject to conditions, the proposal is compatible with the desired future character of the area.
- A significant amount of additional floor area is contained in levels below the natural ground level at Louisa Road and are not visible from Louisa Road or from the Sydney Harbour.
- The additional floor area does not result in the loss of any available landscaped area.
- Subject to conditions, the proposed bulk and scale is considered to be acceptable.

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

Section 5.10 – Heritage Conservation

As discussed in more detail in a later section of the report, the proposal is generally acceptable from a heritage perspective as it will not detract from the heritage significance of the Birchgrove and Ballast Point Road Heritage Conservation Area subject to the following design changes below to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the *Leichhardt LEP 2013* and the relevant objectives.

X. *Design change:*

- a. *The height of the lift overrun must be reduced by 630mm to RL15.04. The lift design must be amended to function within the reduced height limit of the lift overrun.*
- b. *Standing seam metal cladding (MC2) proposed to the north (front) elevation to the car stacker must be replaced with off form concrete (CN1) or FC sheeting in the north elevation and the Finishes Legend.*

Subject to the imposition of these conditions, the proposal is considered to be satisfactory in this regard.

Section 6.2 – Earthworks

The proposal includes a significant amount of excavation and a Geotechnical assessment report, prepared by Geotechnics Pty Limited (STS) and dated February 2022 was submitted with the application providing recommendations to mitigate adverse impacts on existing and adjoining properties and structures. The report was reviewed by Council's Development Engineer, and the proposed earthworks are considered to be acceptable subject to the following condition:

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

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

- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and*
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.*

Subject to the above condition being imposed, a condition relating to dilapidation reporting with respect to adjoining properties and the Geotechnical Report being referenced in any consent granted, the proposed earthworks are not anticipated to result in any undue adverse impacts on adjoining land or the locality.

Section 6.5 - Limited development on foreshore area

The following clauses is applicable to the development:

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—

- (a) the alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)*

Comment: Satisfactory - the existing dwelling is already partly located within the foreshore building line and the application consists of alterations to this existing dwelling.

(f) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore

Comment: As discussed in more detail in other sections of the report, the proposal is considered to have satisfactory aesthetic impacts to the Heritage Conservation Area and the foreshore subject to conditions to reduce the height of the lift overrun and material finishes. Subject to these conditions, the proposal is considered to have satisfactory on the amenity and aesthetic appearance of the foreshore.

(g) sea level rise or change of flooding patterns as a result of climate change has been considered.

Comment: A Foreshore Risk Management Plan prepared by SGC (Rev B) and dated 27 July 2022 was submitted to support this application. The Foreshore Risk Management Plan was reviewed by Council's Development Engineer who raised no objections to the proposal proceeding in this regard subject to standard flooding conditions which will be imposed as part of any consent granted. The Flood Risk Management Plan will also be referenced in any consent granted.

Section 6.6 – Development on the foreshore must ensure access

The existing development currently existing on site does not provide public access to the foreshore and the proposed development does not alter this existing situation.

Inner West Local Environmental Plan 2022

The *Inner West Local Environment Plan 2022 (IWLEP 2022)* was gazetted on the 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject 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 Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 03/03/2022, on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

Notwithstanding this, the amended provisions of the draft EPI do not alter the outcome of the assessment of the subject application.

5(c) Draft Environmental Planning Instruments

NA

5(d) Development Control Plans

The application has been assessed against the following relevant Development Control Plans:

- Leichhardt Development Control Plan 2013; and
- Sydney Harbour Foreshores Area Development Control Plan 2005

[Leichhardt Development Control Plan 2013](#)

The following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

Leichhardt DCP 2013	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	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes

Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes, as conditioned – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	Yes, as conditioned – see discussion
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	N/A
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	Yes
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes – see discussion
C1.20 Foreshore Land	Yes
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.2.6 – Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Satisfactory – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes – see discussion
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	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	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	N/A
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	Yes
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C1.3 Alterations and additions, C1.4 Heritage Conservation Areas and Heritage Items, C1.6: Subdivision, C1.11: Parking, C1.19: Rock faces, rocky outcrops, cliff faces, steep slopes and rock walls and C2.2.2.6 – Birchgrove Distinctive Neighbourhood

Heritage Listing:

The subject property at 99 Louisa Road, Birchgrove, is located within the Birchgrove and Ballast Point Road Heritage Conservation Area (C8 in Schedule 5 of the Leichhardt LEP 2013).

Heritage Comments:

Clause 5.10: Heritage Conservation from the Leichhardt LEP 2013 and *Parts C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C1.6: Subdivision, C1.11: Parking, C1.19: Rock faces, rocky outcrops, cliff faces, steep slopes and rock walls, C.2.2.2.6: Birchgrove Distinctive Neighbourhood* and *C2.2.2.6(a) Louisa Road Sub Area* from the Leichhardt DCP 2013 applies to the proposal.

The proposal has been considered by Council's Heritage Specialist who provided the following streetscape and heritage assessment:

... C1 a. and b. of Part C1.19 of the DCP requires that development in proximity to rock faces is to minimise on-site disturbance and locate buildings where the rock features are not located. The extent of excavation does not achieve this. C2 b. of Part C1.19 of the DCP states that the excavation of rock faces may only be granted development consent in the following circumstances where excavation will not adversely affect the setting of the landscape element, including when viewed from the Harbour or from areas of the public domain such as public reserves and the street environment. Given the location of the excavation and the proposed garage and car stacker above, it will not be visible from the public domain and is acceptable in this instance as it will not impact on the significance of the Birchgrove and Ballast Point Road HCA.

The front façade includes an angled façade in front of the car stacker in the north (front) elevation. This is not desirable as it is not characteristic of detail in the streetscape. Horizontal elements would be preferred. However, given the southern elide of Louisa Road is heavily modified from the character of the core building period that contributes to the HCA, the angled façade is acceptable in this instance. The angled portion of the roof with the skylights are also not desirable, but are acceptable for the same reasons above.

It is important that development does not overwhelm its context and is consistent with the predominant scale of development in the vicinity, including height, relationship of floor to ceiling heights, dominant ridge line and massing (building volume and size), roof form, three dimensional modelling of neighbouring properties and fenestration patterns. The height of the lift overrun must be reduced by 630mm, from RL15.67 to RL15.04 to ensure that its height is the same as the height of the alterations to the front façade and the façade of the proposed dwelling adjoining at No. 99A. The proposal is to include a lift design that can function within the reduced height limit of the lift overrun...

Materials, finishes, textures and colours must be complementary to the colour schemes of contributory dwellings within the streetscape. Standing seam metal cladding (MC2) is proposed to the north (front) elevation to the car stacker. This must be replaced with off form concrete (CN1) or FC sheeting.

Recommendation

The proposal is generally acceptable from a heritage perspective as it will not detract from the heritage significance of the Birchgrove and Ballast Point Road Heritage Conservation Area subject to the following design changes below to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.

Acceptable with the following conditions of consent:

Design change:

- b. The height of the lift overrun must be reduced by 630mm to RL15.04. The lift design must be amended to function within the reduced height limit of the lift overrun.*
- c. Standing seam metal cladding (MC2) proposed to the north (front) elevation to the car stacker must be replaced with off form concrete (CN1) or FC sheeting in the north elevation and the Finishes Legend.*

Having regard to the above the proposal is acceptable from a heritage perspective subject to the imposition of conditions which are included in the recommendation.

C1.11 Parking

The originally lodged application included provision for 1 car space on the concurrent DA (i.e. DA/2022/0121) on the adjoining property at 99A Louisa Road but included 4 spaces in a car stacker arrangement under this application. While the provision of 1 car space for a dwelling on the adjoining site complies with the numerical requirements of the DCP, the provision of 4 spaces for a dwelling within 99 Louisa Road does not comply with maximum on-site parking provision limit of 2 spaces under the DCP.

Furthermore, this arrangement included a wider footway crossing resulting in the loss of an existing on-street parking space. Consequently, the amended plans the subject of this report include provision within the subject site for a vertical mechanical car-stacker to provide on-site parking of 2 cars for the subject dwelling and the adjoining dwelling at 99A Louisa Road. This provision of 2 car spaces for a dwelling complies with the numerical requirements of the DCP.

The originally submitted proposal included the provision of a wider vehicular crossing to serve the proposed on-site parking for both the subject site and the development at 99 Louisa Road. However, that design would have resulted in a reduction in the existing distance between the crossover serving the site and the crossover serving 101 Louisa Road. Although the distance is currently less than called for by the Australian Standard, evidence exists by way of both site inspections and aerial photos which demonstrates that two on-street vehicles are routinely parked between the two crossovers. As a consequence, the applicant was requested to redesign the proposal so as to retain the existing distance between the two crossovers.

The amended plans the subject of this report include an altered façade design which serves to maintain the existing distance between the two vehicular crossovers thereby retaining the existing on-street parking capacity for two vehicles between the vehicular crossover of the subject site and that of 101 Louisa Road. This design has been reviewed and considered satisfactory.

C3.2 Site Layout and Building Design

The proposed works will not alter the existing Building Envelope; however, the rear ground floor and first-floor additions will alter the existing Building Location Zone (BLZ) and Side Boundary Setback Control Graph. See below for a further assessment:

Building Location Zone (BLZ):

As the property at No.97 Louisa Road to the west does not have a lower ground floor level or a first floor level, a new Building location Zone is seeking to be established at these levels. As the existing building structures on the corresponding Upper Snail Bay and Snail Bay levels at No. 97 Louisa Road are located at the rear of the site, the proposal will also seek a variation to the front alignment at these levels.

Pursuant to Control C6 of this part of the Leichhardt DCP 2013, to gain support for the proposed additions, various requirements need to be demonstrated to be met. An assessment of the proposal against these tests is carried out below:

- *The proposed building is consistent with the pattern of development in the immediate locality.*

Comment: The front setbacks at the Upper Snail Bay and Snail Bay levels are not out of character with the varied front setback characteristic of adjoining buildings and in the street. The proposed new building location zones on the first floor and lower ground floor levels are also considered to be consistent with the pattern of development in the locality.

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

Comment: As outlined in other parts of this report, the development has no undue adverse impacts on existing view corridors and is satisfactory with respect to solar access and visual privacy controls of the Leichhardt DCP 2013 (see below for a detailed assessment).

- *The proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development.*

Comment: As discussed in an earlier section of the report, the proposal is considered compatible with the existing streetscape and scale of surrounding development.

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

Comment: Due to the topography, achieving solar access to private open spaces on the adjoining site is very difficult as the private open spaces are south-facing. As the proposal provides sufficient private open spaces that can be used for recreation purposes, the proposal is considered to be satisfactory.

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

Comment: No significant or prescribed trees will be adversely affected. Due to the topography of the site, significant vegetation is unable to be provided on site and the proposed private open spaces are considered to be satisfactory.

- *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: On the lower ground floor, the upper Snail Bay and Snail Bay levels, the additional floor area is mostly located in areas created via excavation and therefore will not be visible. On the first floor level, the proposed structures are located at the front of the site and will not result in any visual bulk and scale impacts when viewed from the private open spaces of the adjoining properties.

Given the above, the proposal is considered to satisfy the above tests, and as such, the proposed BLZ is supported in this instance.

Side Setback

The following table provides an assessment of the proposal’s compliance or otherwise with the Side Setback Control Graph:

Dwelling-House – Louisa Road level				
Elevation	Proposed Wall Height (m)	Required Setback (m)	Proposed Setback (m)	Complies Y/N
West	4.4 - 7.5	0.92-2.7	0 - 0.25	No
East	3.0-4.9	0.12-1.21	0	No

Dwelling-House – Snail Bay level				
Elevation	Proposed Wall Height (m)	Required Setback (m)	Proposed Setback (m)	Complies Y/N
West	6.5 – 6.7	2.1 – 2.25	2	No
East	6.5 – 6.7	2.1 – 2.25	1.95 – 3.1	Partly No

Pursuant to Clause C3.2 of the Leichhardt DCP 2013, where a proposal seeks a variation of the Side Setback Control 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: Subject to conditions regarding material finishes and reduction of lift overrun, the proposal is a satisfactory response to the Building Typology Statements and streetscape and desired future character controls of the Leichhardt DCP 2013.

- *The pattern of development is not adversely compromised.*

Comment: The side wall setbacks and heights of the proposed works will not be out of character with the existing pattern of development on the site, in the street and / or wider area.

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

Comment: The proposed non-compliances for side setbacks are in relation to the proposed garage structure and lift structure at the front of the site, the proposed galleries and plant areas and a link/hallway. As discussed in more detail in the Heritage Conservation assessment above, the proposed garage is considered to be compatible with the Heritage Conservation Area, and subject to a condition to reduce the height of the lift overrun, is considered to be acceptable.

The proposed ground floor gallery has a floor to ceiling height of 2.37 metres, and the plant room level has a floor to ceiling height of approximately 2.3 metres, and therefore, the bulk and scale of these levels are considered minimal. The proposed link/hallway at the upper Snail Bay level has floor-to-ceiling height of approximately 2.5 metres and is considered to be acceptable given its location.

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

Comment: The proposal is acceptable in regard to the solar access and visual privacy controls and will not result in any undue adverse view loss implications (as discussed below).

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

Comment: Satisfactory, the additions will be setback from adjoining building walls at No.97 Louisa Road and will not create a maintenance issue 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 following solar access controls under C3.9 apply to the proposal in relation to impacts to glazing on the surrounding sites.

Impact to main living room glazing

- *C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice.*
- *C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

As the main living room glazing of the adjoining properties at No. 97 and No. 99A are south-facing, there are no adverse impacts to the main living room glazing.

Impact to private open space

- *C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*
- *C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

The submitted shadow diagrams indicates that the any additional shadows will fall within the existing shadows cast at the private open space at 99A Louisa Road.

However, there are potential impacts to the Central courtyard of No. 97 Louisa Road which is approximately 60 sqm in size and will receive / retain solar access as outlined below post development:

Time	Existing %	Proposed %	% Retained
9am	0.2 sqm (0%)	0%	0%
10am	10.8 sqm (18%)	3.8 sqm (6%)	35%
11am	16.5 sqm (27.5%)	11 sqm (18%)	67%
12 noon	15.5 sqm (25.8%)	15 sqm (25%)	97%
1pm	19 sqm (32%)	19 sqm (32%)	100%
2pm	2.5 sqm (4%)	2.5 sqm (4%)	100%
3pm	0.4 sqm (0%)	0sqm (0%)	0%

As the proposed development does not comply with the abovementioned controls, consideration of the objectives of the control are as follows:

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

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

- The reasonableness of the development overall, in terms of compliance with other standards and controls concerned with the control of building bulk and having regard to the general form of surrounding development.*

Comment: As previously discussed in this report, the proposed works are appropriately located, and in locations where additions and extensions are generally anticipated/ permitted to be carried out. While the proposal does not achieve compliance with Council's Principal Development Standards, the proposal is considered reasonable and will have acceptable bulk and scale impacts given the existing pattern of development and topography of the subject and surrounding sites. It is considered that the proposed bulk and scale respects the existing mixed pattern of development in the street and area.

b. *Site orientation;*

Comment: The subject site and its adjoining neighbours have north-south orientation with centrally located open space. Due to the site orientations and the topography of the site where the site slopes significantly towards the rear of the site, any additions or extensions located at the front of the property will have some form of impact to the centrally located private open space at 97 Louisa Road in terms of overshadowing in mid-winter, and the affected private open space will be already significantly overshadowed by its own structures and the existing structures at 95 Louisa Road. Given that the affected private open space is largely consisting of a pool and is not directly connected to the main living room of No. 97 Louisa Road, the proposed impacts are considered to be acceptable given the orientation and topography of the site.

c. *The relative levels at which the dwellings are constructed.*

Comment: As the site slopes down significantly to the rear of the site, any proposed additions located at the front of the property are more prone to create overshadowing due to the lower natural ground level of the centrally located private open space at No.97 Louisa Road.

d. *The degree of skill employed in the design to minimise impact and whether reasonably available alternative design solutions would produce a superior result.*

Comment: The proposal is considered to be sensitively designed, where the floor to ceiling heights are generally minimised, and the proposed garage is of a form that is acceptable and noting that a condition will be recommended to reduce the height of the lift overrun.

As demonstrated in the table above, No. 97 Louisa Road does not technically achieve solar access to 50% of its private open space, and the proposal will result in some additional overshadowing of the site. However, as discussed above, due to the orientation and topography of the subject and adjoining sites and the central location of the affected private open space, some additional overshadowing is considered unavoidable.

Given that the affected private open space is largely consisting of a pool and is not directly connected to the main living room of No. 97 Louisa Road, the proposed impacts are considered to be acceptable given the orientation and topography of the site.

C3.10 View

A submission was received regarding the neighbour's at 95 Louisa concerns of view loss of the Sydney Harbour Bridge and water views.

Council has considered the relevant steps in the assessment of reasonable view sharing. The images below indicate the existing views available from No. 95 Louisa Road's rear Balcony and the western window in the living. The below images were taken by Council during a site inspection of the property.

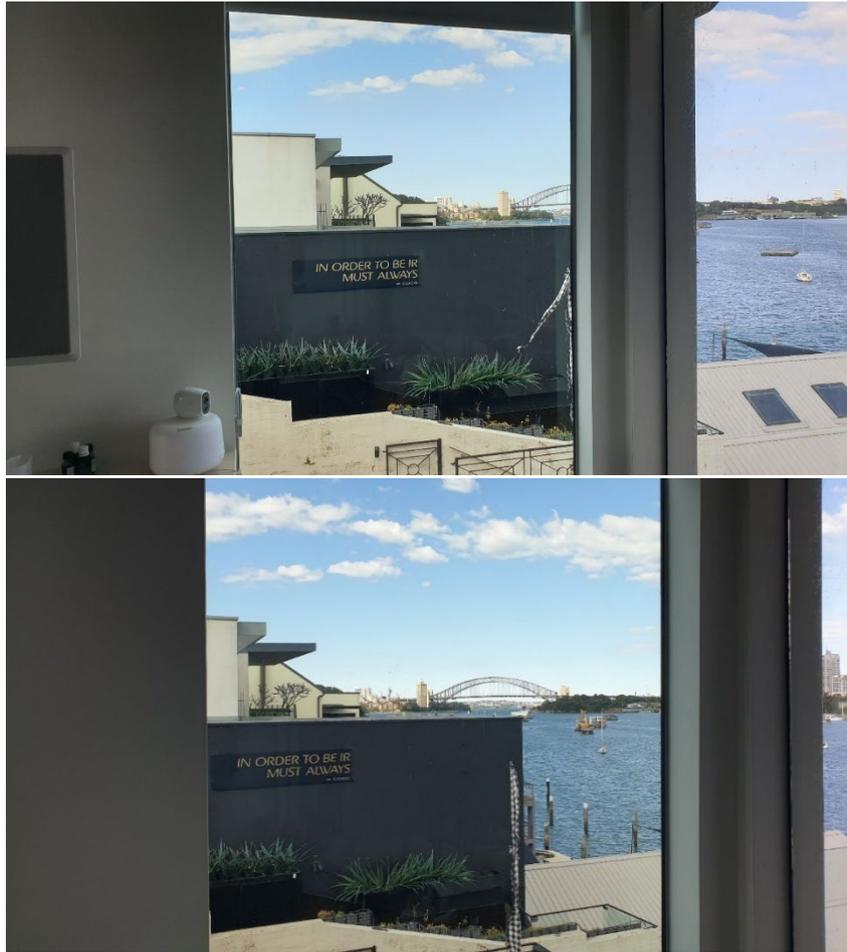


Figure A - Existing views from No. 95 Louisa Road's Living room





Figure B - Existing views from No. 95 Louisa Road's Rear Balcony

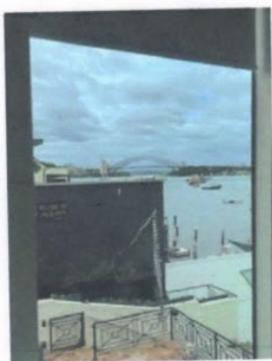
Council considers the *following factors in the assessment of reasonable view sharing*:

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

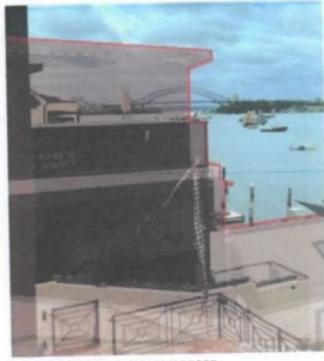
The property at 95 Louisa Road currently enjoys views of the Sydney Harbour, Sydney Harbour Bridge and water views. While the views from the balcony are unlikely be affected by the proposed works, the view of the Sydney Harbour Bridge may be partially obstructed by the original design when viewed from the western window of No. 95 Louisa Road as the original proposal includes a privacy screen at on the western side of the roof terrace which is likely to obstruct the view to the Sydney Harbour Bridge. It should be noted however that the view is achieved across side boundaries which is more difficult to protect.

The submission lodged on behalf of the property of No. 95 Louisa Road suggests that a solution has been reached between the owners of 95 and 99 Louisa Road (refer to extract of submission below):

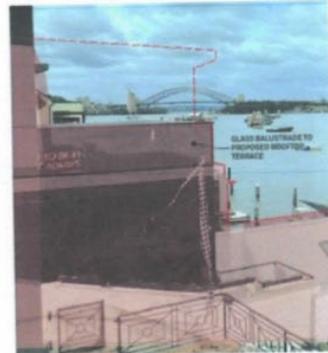
It was agreed between the parties that these view impacts would be fully ameliorated through specific design amendments to the design of upper storey including deletion of the pergola structure and blade privacy screen wall visible in the image below, and its replacement with a clear glass balustrade.



ORIGINAL PHOTO OF CURRENT VIEW FROM LIVING AREA OF 95 LOUISA ROAD



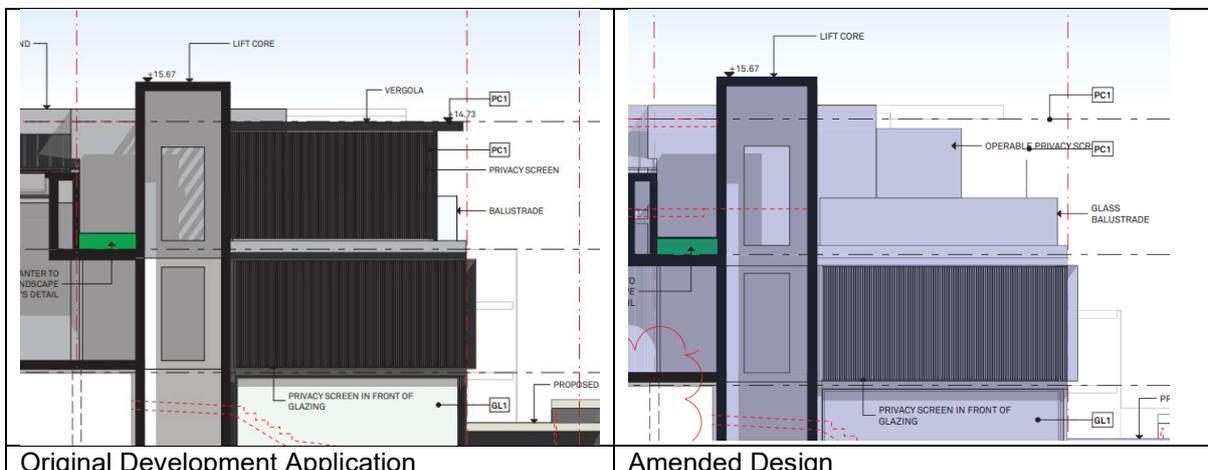
EXISTING BUILDING WITH PROPOSED DESIGN OVERLAYED



PROPOSED DESIGN WITH PRIVACY SCREEN AND PERGOLA STRUCTURE REMOVED (SHOWN DASHED), AS AGREED

The owner of 95 Louisa Road Birchgrove confirms that he does not object to the DA on the basis that Council allows the applicant to submit amended plans which reinstate and retain the existing views from 95 Louisa Road Birchgrove, as depicted above by making those amendments.

The amended proposal (refer to images below)-has removed the proposed privacy screen that is proposed to be erected on the western side of the roof terrace and replaced by a Glass Balustrade. Note that the operable privacy screen shown on the amended elevations is part of the proposed works at No. 99A Louisa Road (DA/2022/121) and does not form as part of this application.



Original Development Application

Amended Design

Therefore, the proposal will not result in any undue adverse impacts to views when viewed from the rear balcony of No. 95 Louisa Road. The view from the living room is achieved across side boundaries which is more difficult to protect. Notwithstanding this, the amended design has removed the privacy screen on the western side of the roof terrace and replaced it with a glass balustrade, which in turn, will preserve a significant view to the Sydney Harbour Bridge.

Therefore, it is considered that the proposal, as amended, responds appropriately to the principle of view sharing and will not result in any unreasonable view loss.

C3.11 Visual Privacy

The following controls are applicable in C3.11 Visual Privacy:

- *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.*
- *C4 Roof terraces will be considered where they do not result in adverse privacy impacts to surrounding properties. This will largely depend on the:*
 - *Design of the terrace;*
 - *The existing privacy of the surrounding residential properties;*
 - *Pre-existing pattern of development in the vicinity; and*
 - *The overlooking opportunities from the roof terrace.*
- *C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).*
- *C9 Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.*
- *C10 Living areas are to be provided at ground floor level to minimise opportunities for overlooking of surrounding residential properties.*

New windows

The proposed new windows are not associated with living rooms and privacy screens are proposed on the western windows associated with the Gallery at the ground level. There are no other proposed new windows that will be within the 9 metre and 45 degrees sightlines of other windows on the adjoining properties and therefore is considered to be acceptable.

Roof Terrace

As per control C4, consideration of proposed roof terraces will depend on the existing privacy the surrounding properties as well as the pre-existing pattern of the development in the vicinity. As indicated on the photomontage below, the surrounding properties at 95 and 101 Louisa Road have first floor balconies that significantly exceeds the 1.2 m x 2m balcony size specified under C9.



It is noted that privacy screening was originally proposed on the western side of the proposed terrace, but was removed in the amended plans to address view loss concerns. While the proposed roof terrace will result in additional sightlines to 97 and 99A Louisa Road, there are already existing sightlines into their private open spaces from the first floor balconies of 95 and 101 Louisa Road respectively.

As the proposed roof terrace will be similar in nature in terms of privacy impacts to the existing first floor balconies at 95 and 101 Louisa Road, the proposed terrace is also considered to be consistent with the pre-existing pattern of development. It is considered that on balance, the proposed roof terrace is acceptable in this context.

Therefore, the amended proposal is considered acceptable with respect to visual privacy.

[Sydney Harbour Foreshores Area Development Control Plan 2005](#)

The Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005 prescribes design guidelines and, particularly, visual impact assessment and criteria for natural resource protection. The proposed development is classified as land-based development. The proposal satisfies the aims and performance criteria for this landscape and development type, including the following considerations:

- As discussed above, the proposal form is considered to be acceptable in terms of its impacts on the Heritage Conservation Area and the foreshore, subject to conditions to lower the height of the lift overrun and with respect to materials. Therefore, the proposal, as conditioned, will not adversely impact on the scenic qualities of the foreshore;
- The proposed works will not result in any adverse impacts in terms of access to the foreshore or coastal processes;
- Natural elements along the foreshore are preserved;
- Impacts on views and vistas from and to public landmarks are minimised;
- The proposed works within the foreshore area are permitted; and
- The existing site does not provide public foreshore access and the proposal does not alter this situation.

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.

- 5 submissions were received in response to the initial notification.
- 2 submissions were received in response to renotification of the application.

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

- Loss of views from 95 Louisa Road
- Loss of on-street parking
- Excess onsite parking provision
- Bulk, scale & character of the development/streetscape presentation/impact to heritage conservation area
- Breaches of FSR, Landscaped Area, Site Cover and Lot size development standards

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

Issue: Provide a view corridor through the site.

Comment: The existing development on the site extends across the full frontage. The proposal does not alter this situation, adopting a similar bulk to the existing dwelling and retaining one existing side boundary wall. Given the layout of the existing lot boundaries and those proposed, there is little opportunity to provide a view corridor through the existing or proposed site without significant alteration to the physical form of development, this would involve a separation between built forms on both the subject site and 99 Louisa Road, which is considered unwarranted in the circumstance of the case.

Issue: Dilapidation report should be provided.

Comment: Conditions are included in the recommendation requiring the preparation of dilapidation reports for adjoining properties (i.e. 97 and 101 Louisa Road).

Issue: Construction management.

Comment: Any approval would include conditions relating to construction management.

Issue: Issues in relation to flood risk management

Comment: The applicant has provided an updated Foreshore Risk Management Plan which was reviewed by Council's engineering section and concluded that the application is acceptable subject to conditions in this regard.

Issue: Issues in relation to passive surveillance

Comment: By virtue of its location, the existing development at 99 Louisa Road does not currently provide passive surveillance, therefore the proposed development is considered acceptable in this regard.

Issue: Issues in relation to the proposed lift core and overrun

Comment: The design of the proposed lift core was reviewed by Council's heritage section who consider the design to be acceptable subject a condition that reduces the height of the lift overrun by 630mm. This is included as a recommended condition of consent.

Issue: The two DA's at 99 and 99 A Louisa Road are intertwined. One cannot be approved without the other. This is recognised in the Statement of Environmental Effects (SEE) for both applications. The DA for 99A Louisa Road must be approved first because it includes the application for "boundary readjustment". Without the approval of the proposed 'boundary readjustment and demolition of the building at 99A Louisa Road, the proposed redevelopment of the adjoining land at 99 Louisa Road cannot proceed.

Comment: This is correct. While the applications are assessed concurrently, this application cannot proceed unless the DA for 99A Louisa Road (DA/2022/121) as this application relies on the subdivision proposed under DA/2022/121. A Deferred Commencement condition will be imposed that this application can only be made operational with evidence demonstrating that the proposed subdivision under DA/2022/121 has been approved.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage
- Urban Forest
- Development Engineering
- Health Compliance

6(b) External

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

- Ausgrid

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$8,500 would be required for the development under *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 *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

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

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

9. Recommendation

- A. The applicant has made written requests pursuant to Clause 4.6 of *Leichhardt Local Environmental Plan 2013* with respect to Clause 4.3A(3)(b) - Landscaped areas for residential accommodation in Zone R1 - Site Coverage and Clause 4.4 – Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant Deferred Commencement Approval to Development Application No. DA/2022/0120 for alterations and additions to the existing dwelling, new garage with car stacker, swimming pool and roof terrace, and associated works at 99 Louisa Road at 99 & 99A Louisa Road, Birchgrove subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

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

The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

1. Confirmation that proposed subdivision under DA/2022/121 had been approved

Documentary evidence is to be provided confirming that the proposed subdivision under DA/2022/121 is approved and consistent with the approved plans in DA/2022/120.

If the applicant fails to satisfy Council as to the above matters within 2 years from the date of determination this consent will lapse.

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

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA-0006, Rev. C	EXISTING SITE PLAN	3/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0007, Rev. C	PROPOSED BOUNDARY REALIGNMENT AND EASEMENT PLAN	3/07/2022	BENSON McCORMACK ARCHITECTURE

DA-0101, Rev. B	DEMOLITION PLAN - SNAILS BAY	3/03/2022	BENSON McCORMACK ARC HITECTURE
DA-0103, Rev. B	DEMOLITION PLAN - UPPER SNAILS BAY	3/03/2022	BENSON McCORMACK ARC HITECTURE
DA-0105, Rev. B	DEMOLITION PLAN - GROUND	3/03/2022	BENSON McCORMACK ARC HITECTURE
DA-0110, Rev. C	PROPOSED PLAN - SNAILS BAY	13/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0111, Rev. C	PROPOSED PLAN - UPPER SNAILS BAY	13/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0112, Rev. D	PROPOSED PLAN - LOWER GROUND	26/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0113, Rev. D	PROPOSED PLAN - GROUND	26/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0114, Rev. C	PROPOSED PLAN - FIRST FLOOR	13/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0115, Rev. D	PROPOSED PLAN - ROOF	26/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0116, Rev. C	EXISTING AND PROPOSED PARKING CONDITION	26/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0200, Rev. D	ELEVATIONS - NORTH ELEVATION	26/07/2022	BENSON McCORMACK ARC HITECTURE
DA-0201, Rev. C	ELEVATIONS - SOUTH ELEVATION	13/07/2022	BENSON McCORMACK ARC HITECTURE

DA-0202, Rev. C	ELEVATIONS - EAST ELEVATION	13/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0203, Rev. C	ELEVATIONS - WEST ELEVATION	13/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0300, Rev. C	SECTIONS - SECTION AA	13/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0301, Rev. B	SECTIONS - SECTION BB	3/03/2022	BENSON McCORMACK ARCHITECTURE
DA-0302, Rev. B	SECTIONS - SECTION CC	3/03/2022	BENSON McCORMACK ARCHITECTURE
DA-0303, Rev. C	SECTIONS - SECTION DD & EE	13/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0910, Rev. A	WINDOW/GLAZED DOOR SCHEDULE - SHEET 1	13/12/2021	BENSON McCORMACK ARCHITECTURE
DA-0911, Rev. C	WINDOW/GLAZED DOOR SCHEDULE - SHEET 2	13/07/2022	BENSON McCORMACK ARCHITECTURE
DA-0960, Rev. C	MATERIALS & FINISHES SCHEDULE	13/07/2022	BENSON McCORMACK ARCHITECTURE
LP01, Issue: B	Landscape Plan 01	13.07.22	Matthew Higginson Landscape Architecture Pty Ltd
LP02, Issue: B	Landscape Plan 02	13.07.22	Matthew Higginson Landscape Architecture Pty Ltd
LP03, Issue: B	Sections + Images	13.07.22	Matthew Higginson Landscape Architecture Pty Ltd

SW100B, SW200B, SW201B, SW202B, SW203B, and SW400B (Rev B).	Stormwater Drainage Concept plan	27/7/22	SGC
Issue B	Foreshore Risk Management Plan	27.07.2022	SGC
Report No: 22/0562	GEOTECHNICAL ASSESSMENT	February 2022	Geotechnics Pty Limited (STS)
A434590_02	BASIX Certificate	22 July 2022	GAT & Associates

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. The height of the lift overrun must reduced by 630mm to RL15.04. The lift design must be amended to function within the reduced height limit of the lift overrun.
- b. Standing seam metal cladding (MC2) proposed to the north (front) elevation to the car stacker must be replaced with off form concrete (CN1) or FC sheeting in the north elevation and the Finishes Legend.

FEES

3. Security Deposit - Custom

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

Security Deposit:	\$8,500.00
Inspection Fee:	\$350.00

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.

4. 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*:

\$8,500

*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.

5. Long Service Levy

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

GENERAL CONDITIONS

6. 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.

7. Hazardous Materials Survey

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

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

8. 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.

9. Waste Management Plan

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

10. Erosion and Sediment Control

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

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

12. 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.

13. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties at 97 and 101 Louisa Road 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.

14. 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.

15. 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

16. Structural and Geotechnical Report

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

- a. The basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;

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

17. Engineering Design - Structural Engineer Plans and Certification

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that incorporate the following recommendations of the Foreshore Risk Management Plan prepared by SGC (Rev B) and dated 27 July 2022.

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

- a. Structural integrity of all structures from immersion; and
- b. Waterproofing works, where applicable.

18. Amended Architectural Plans to Reflect Foreshore Risk Management Plan

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

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

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

19. 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.

20. 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 design must generally be in accordance with the Stormwater Drainage Concept plan on Drawing Nos. SW100B, SW200B, SW201B, SW202B, SW203B, and SW400B (Rev B) prepared by SGC and dated 27/7/22, as 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 Snails Bay;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Comply with all of the requirements of Roads and Waterways - Transport NSW with regard to connections to Snails Bay;
- e. 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;
- f. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- g. 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;
- h. All existing overland flowpaths must be preserved;
- i. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Clause 3.1.3.3 of the Building Code of Australia for Class 1 buildings;
- j. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;

- k. No nuisance or concentration of flows to other properties;
- l. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- m. 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;
- n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site; and
- p. No impact to street tree(s).

21. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. Details of any alterations to the existing vehicles crossing(s). Any proposed alterations shall not increase the width of the crossing at the kerb;
- b. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations; and
- c. Installation of a stormwater outlet to the kerb and gutter.

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

22. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a. The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;

- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. The garage must have internal dimensions of 6000 x 3000 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- d. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- e. The external form and height of the approved structures must not be altered from the approved plans.

23. Foreshore Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:

- a. The plan must be generally in accordance with the recommendations of the Foreshore Risk Management Plan prepared by SGC (Rev B) and dated 27 July 2022;
- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
 - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris;
 - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections;
 - iii. Flood warning signs/depth indicators for areas that may be inundated;
 - iv. A flood evacuation strategy; and
 - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below:
 - i. Building Code of Australia;

- ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level;
- iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and
- iv. Flood hazard level (FHL) Flood Planning Level (FPL).

24. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

25. 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.

26. Sydney Water – Tap In

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

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

DURING DEMOLITION AND CONSTRUCTION

27. Contamination – New Evidence

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

28. Imported Fill Materials

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

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

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

29. 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.

PRIOR TO OCCUPATION CERTIFICATE**30. Foreshore Risk Management Plan - Certification**

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

31. Public Domain Works

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

- a. The width of the existing vehicle crossing(s) at the kerb has not been altered;
- b. All damage to public infrastructure resulting from the works has been repaired; and
- c. Other works subject to the *Roads Act 1993* approval.

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

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. Contamination – Disposal of Soil

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

ON-GOING

34. Foreshore Risk Management Plan

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

35. Noise General

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

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.

Public Domain and Vehicular Crossings

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

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

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

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

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

Asbestos Removal

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

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

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

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

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.

Other works

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

Obtaining Relevant Certification

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

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;

- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Swimming Pools

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

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

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

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.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

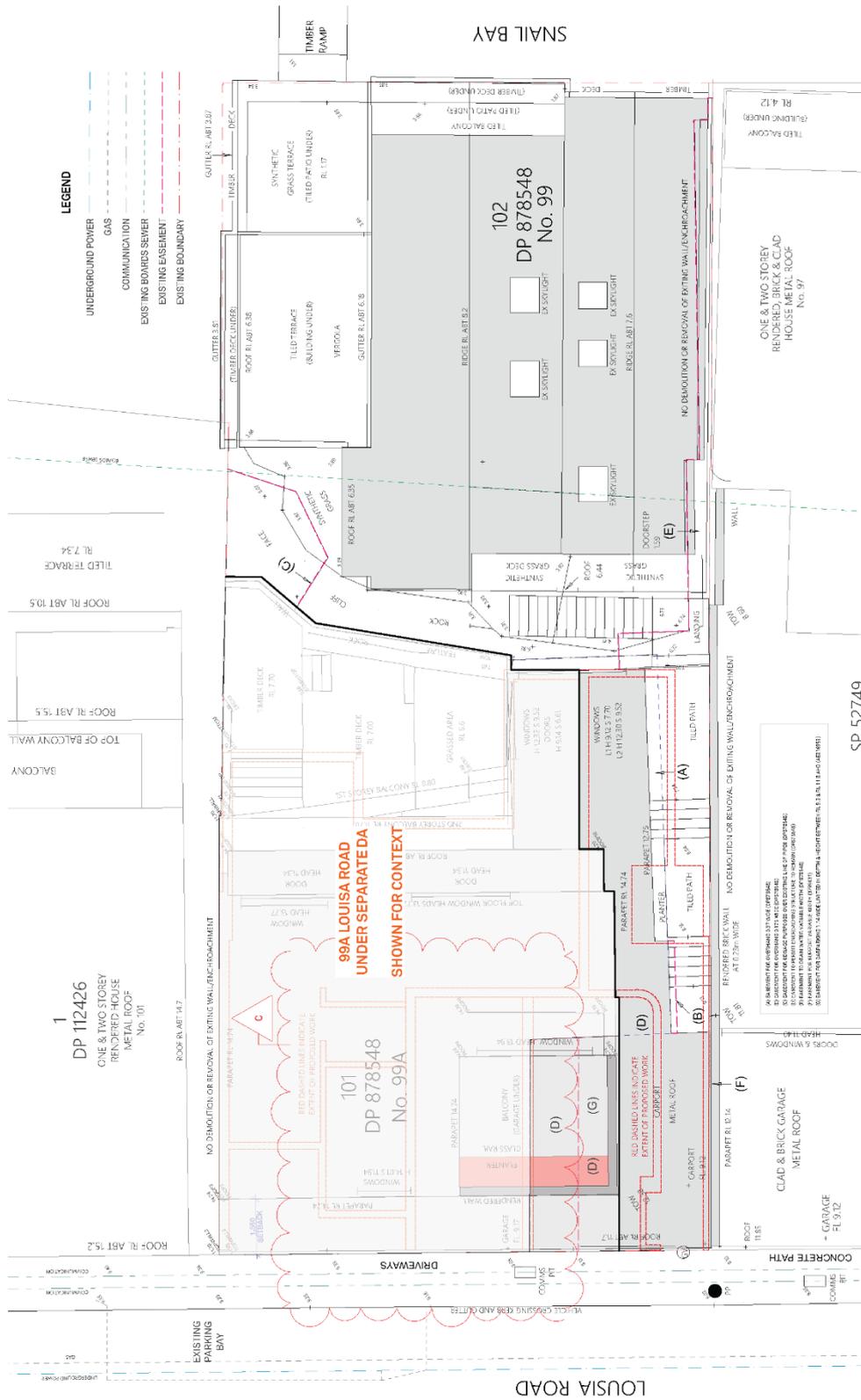
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies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

Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - 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.

Attachment B – Plans of proposed development



ALL WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

99 LOUISA ROAD

BENSON MCCORMACK ARCHITECTURE

STUDIO 5, 605 BALLAN RD
 ANU RD, 23 102 285
 NSW 1538
 P. +61 2 9618 0777
 F. +61 2 9618 0778
 E. info@bensonmccormack.com.au
 W. www.bensonmccormack.com.au

APPROVED	NORTH
DB	REV
DP	DA-0006
DA	C

SCALE	1:100
STATUS	DA
PROJECT No	2007A
DRAWING No	DA-0006

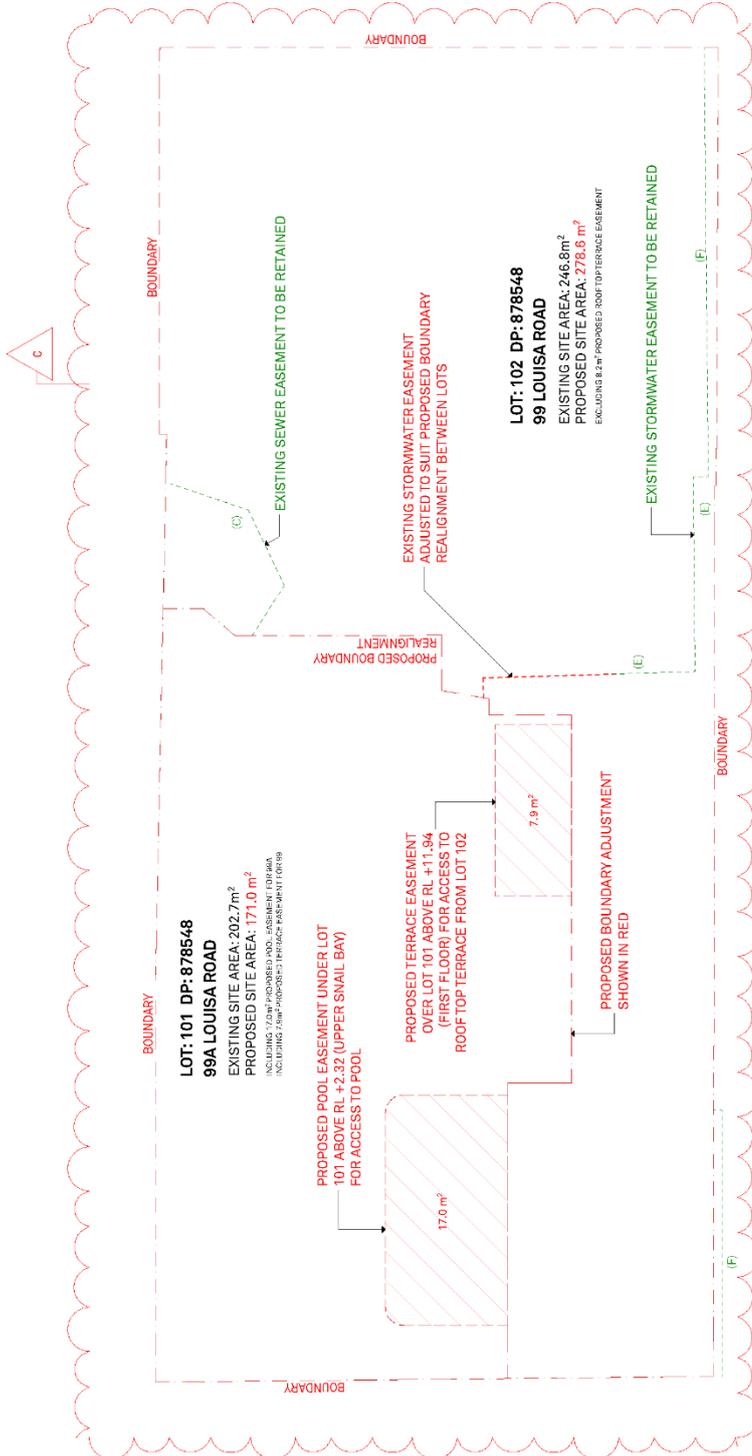
PROJECT DETAILS	DRAWING TITLE
99 LOUISA ROAD, BIRCHGROVE, NSW 2041	SITE PLAN
CLIENT	PAULSINGER
72 GLENDOWER GLEAD NSW 2590	HT RETIREMENT

LEGEND	DESCRIPTION
Orange	EXISTING CONCRETE DRIVEWAY
Red	EXISTING DRIVEWAY
Blue	EXISTING DRIVEWAY
Green	EXISTING DRIVEWAY
Grey	EXISTING DRIVEWAY
Black	EXISTING DRIVEWAY

REVISION	DATE	DESCRIPTION
1	14/03/2019	ISSUED FOR PERMIT
2	14/03/2019	ISSUED FOR PERMIT
3	14/03/2019	ISSUED FOR PERMIT

REVISION	DATE	DESCRIPTION
1	14/03/2019	ISSUED FOR PERMIT
2	14/03/2019	ISSUED FOR PERMIT
3	14/03/2019	ISSUED FOR PERMIT

REVISION	DATE	DESCRIPTION
1	14/03/2019	ISSUED FOR PERMIT
2	14/03/2019	ISSUED FOR PERMIT
3	14/03/2019	ISSUED FOR PERMIT



PROPOSED BOUNDARY REALIGNMENT AND EASEMENT PLAN
1:100

99 LOUISA ROAD

**BENSON
McCORMACK**
ARCHITECTURE

STUDIO 5, 502 BALMAIN RD
ASHFORD NSW 2120
PH: 7538
PA: 011 7 88 80 0778
FAX: 011 7 88 80 0778
WWW: www.bensonmccormack.com

APPROVED NORTH
DB
DRAWN BY DP
DRAWING NO. DA-0007
PROJECT NO. 2007A
SCALE 1:100
STATUS DA
PROJECT C

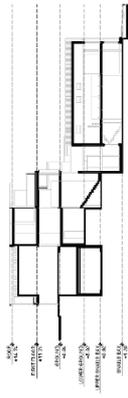
PROJECT DETAILS
99 LOUISA ROAD,
BIRCHGROVE, NSW
2061

DRAWN/TITLE
PROPOSED
BOUNDARY
REALIGNMENT PLAN

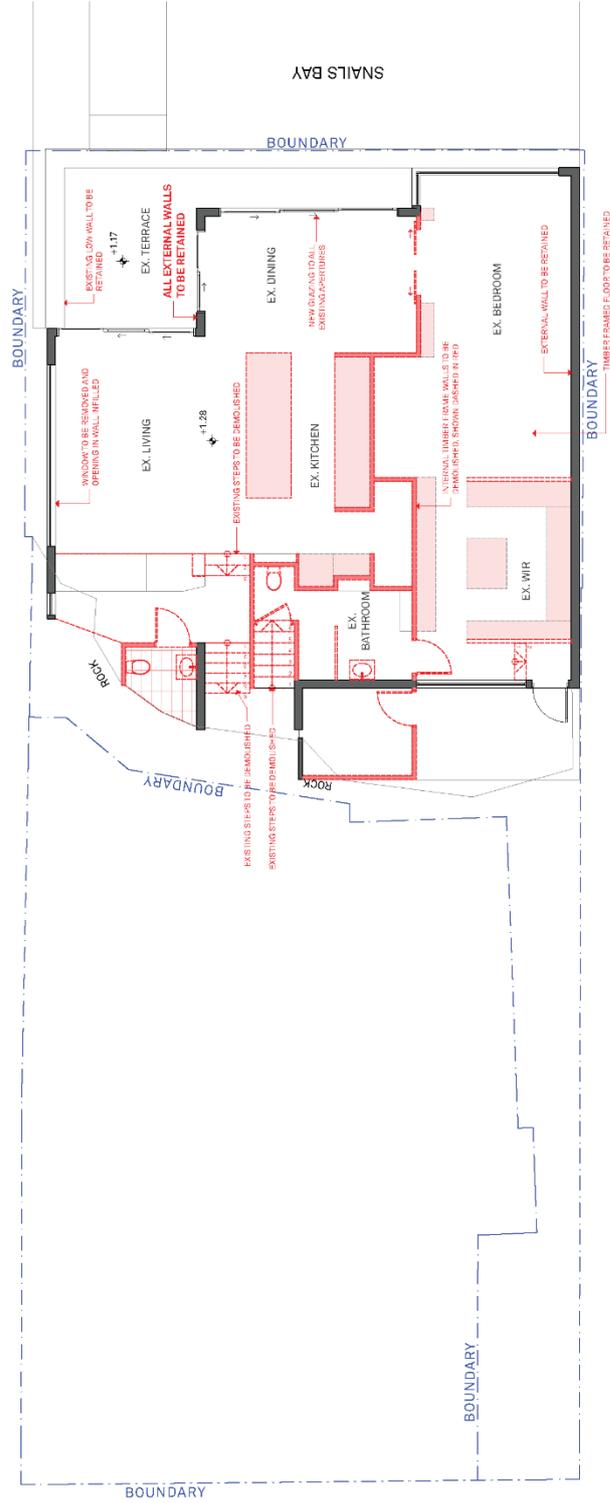
CLIENT
PAUL SINGER
HT RETIREMENT
72 GLENDOVER
GILEAD NSW 2560

Storage
Structural
Roof
Floor
Wall
Foundation
Retaining Wall
Slope
Drainage
Erosion Control
Lightning Protection
Security
Accessibility
Other

Import Level
Level 1 to 1.2 m
Level 1.2 to 1.5 m
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KEY SECTION



ALL DEMOLITION WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

DEMOLITION FLOOR PLAN - SNAILS BAY LEVEL
1:100

■ RETAINED EXISTING WALLS
[] TO BE DEMOLISHED



99 LOUISA ROAD
**BENSON
MCCORMACK**
ARCHITECTURE

STUDIO 5, 502 BALMAIN RD
ASHFORD NSW 2122
PH: 7538
PA: 02 9888 0778
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APPROVED NORTH
DB
DRAWN BY DP
DRAWING NO. DA-0101
PROJECT NO. 2007A

SCALE 1:100
STATUS DA
PROJECT NO. 2007A

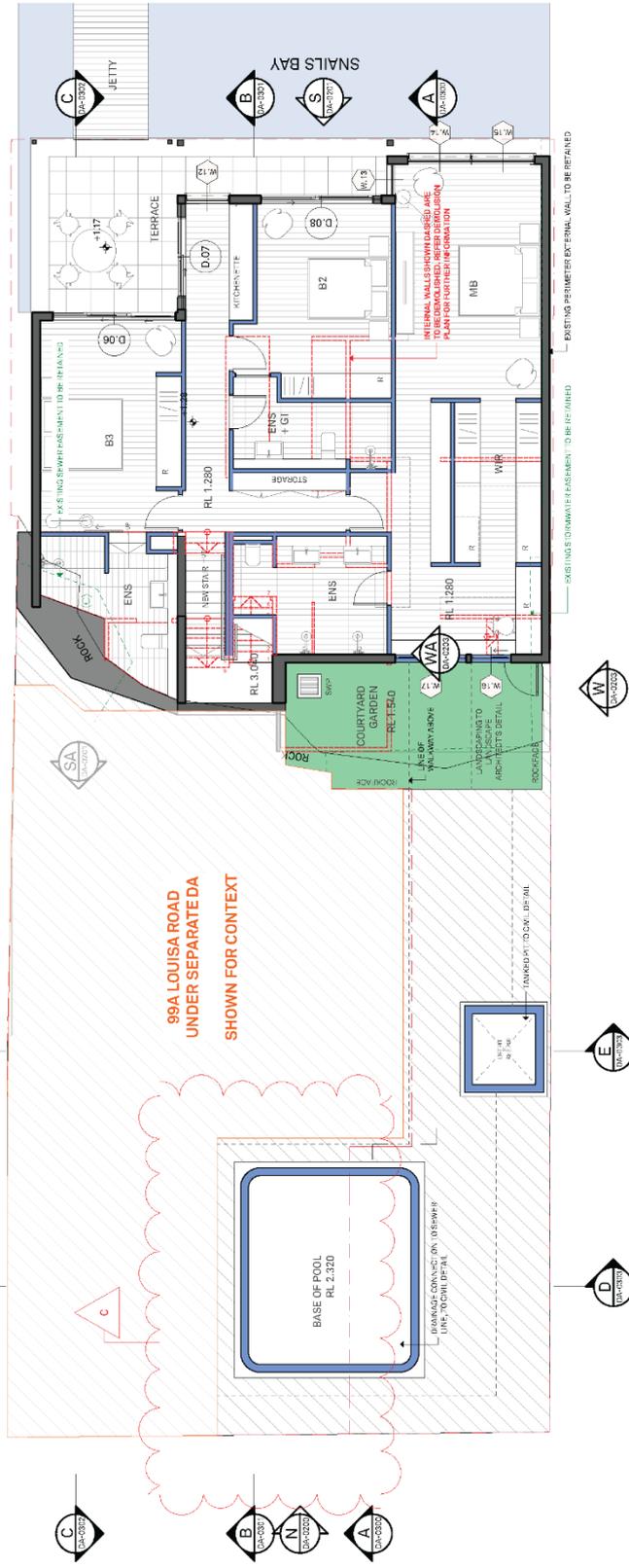
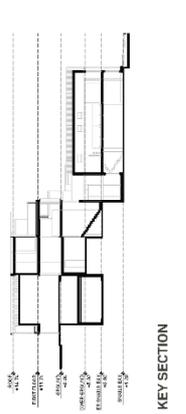
PROJECT DETAILS
99 LOUISA ROAD,
BRIDGEVILLE, NSW
2041

CLIENT
PAUL SINGER
HT RETIREMENT
72 GLENDOVER
GILEAD NSW 2560

Storage
Structural
Roof
Floor
Wall
Window
Door
Stair
Ramp
Elevator
Mechanical
Electrical
Plumbing
HVAC
Fire
Security
Other

REVISION	DATE	DESCRIPTION	BY
01	10/11/2011	ISSUED FOR PERMIT	DP
02	10/11/2011	ISSUED FOR PERMIT	DP
03	10/11/2011	ISSUED FOR PERMIT	DP

This report is prepared for the client and is not to be used for any other purpose. It is the client's responsibility to ensure that the information provided is accurate and complete. All works shown on this plan are to be carried out in accordance with the relevant building codes and standards. The client is advised that the demolition of any structure may affect the structural integrity of the remaining structure and that appropriate engineering advice should be sought.



ALL WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

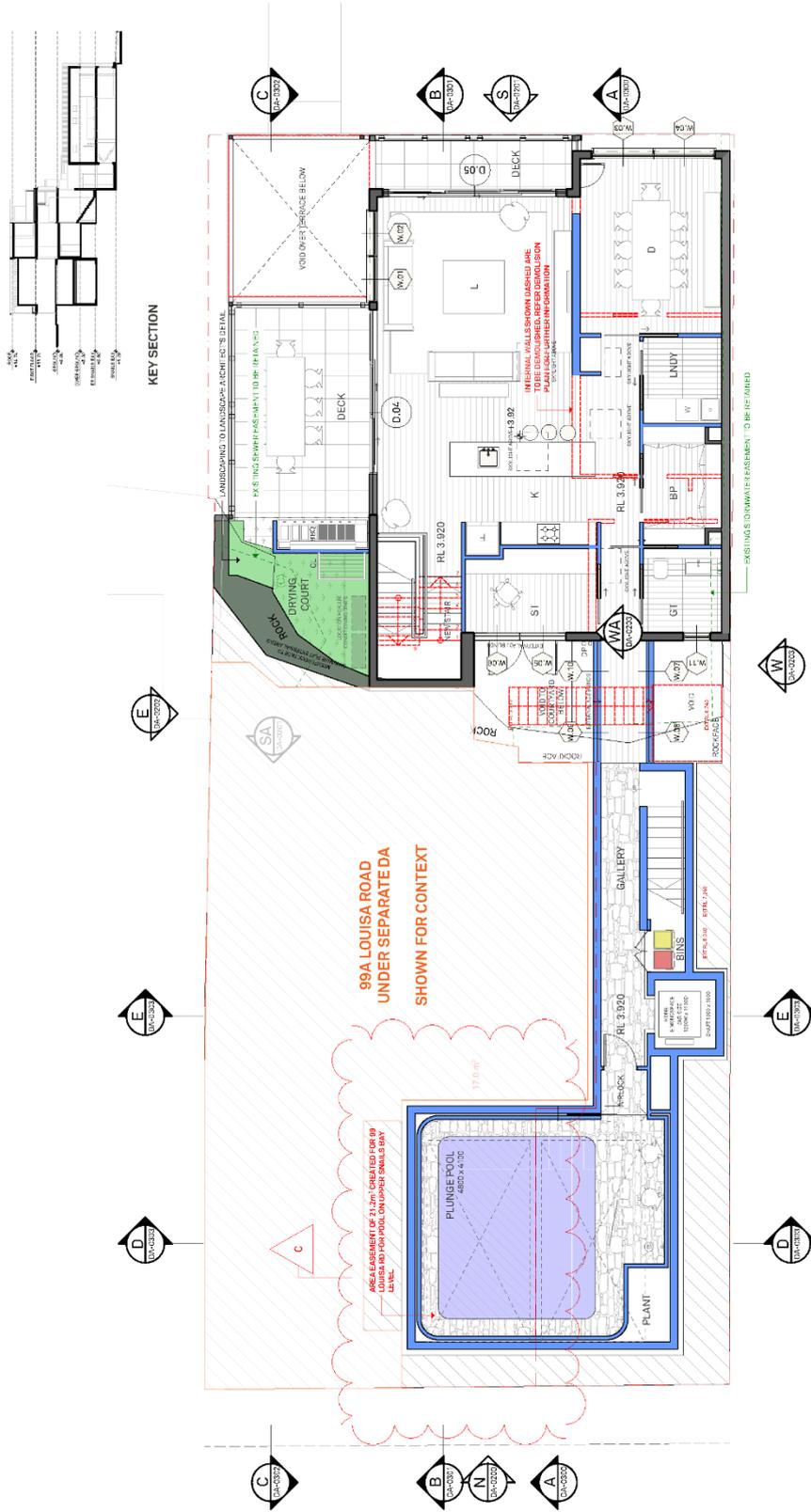
PROPOSED FLOOR PLAN - SNAILS BAY LEVEL
1:100

- RETAINED EXISTING WALLS
- NEW WALLS/CONSTRUCTION
- - - TO BE DEMOLISHED

99 LOUISIA ROAD

**BENSON
MCCORMACK**
ARCHITECTURE

REVISION	DATE	DESCRIPTION	BY	CHK
1	19/02/2017	Initial Design	DA	DA
2	19/02/2017	Revised Design	DA	DA
3	19/02/2017	Final Design	DA	DA
4	19/02/2017	Final Design	DA	DA
5	19/02/2017	Final Design	DA	DA
6	19/02/2017	Final Design	DA	DA
7	19/02/2017	Final Design	DA	DA
8	19/02/2017	Final Design	DA	DA
9	19/02/2017	Final Design	DA	DA
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98	19/02/2017	Final Design	DA	DA
99	19/02/2017	Final Design	DA	DA
100	19/02/2017	Final Design	DA	DA



PROPOSED FLOOR PLAN - UPPER SNAILS BAY LEVEL
1:100

ALL WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

- RETAINED EXISTING WALLS
- NEW WALLS/CONSTRUCTION
- TO BE DEMOLISHED

99 LOUISA ROAD

**BENSON
McCORMACK**
ARCHITECTURE

STUDIO 5, 502 BALMAIN RD
ASHFORD NSW 2212
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FAX: 02 9888 0778
WWW.BENSONMCCORMACK.COM

REVISION	DATE	DESCRIPTION	BY	CHKD
A	19/02/2017	ISSUED FOR PERMIT	PAUL SINGER	PAUL SINGER
B	02/03/2017	ISSUED FOR PERMIT	PAUL SINGER	PAUL SINGER
C	19/02/2017	ISSUED FOR PERMIT	PAUL SINGER	PAUL SINGER

LEGEND	DESCRIPTION	BY	CHKD
RETAINED EXISTING WALLS	RETAINED EXISTING WALLS	PAUL SINGER	PAUL SINGER
NEW WALLS/CONSTRUCTION	NEW WALLS/CONSTRUCTION	PAUL SINGER	PAUL SINGER
TO BE DEMOLISHED	TO BE DEMOLISHED	PAUL SINGER	PAUL SINGER

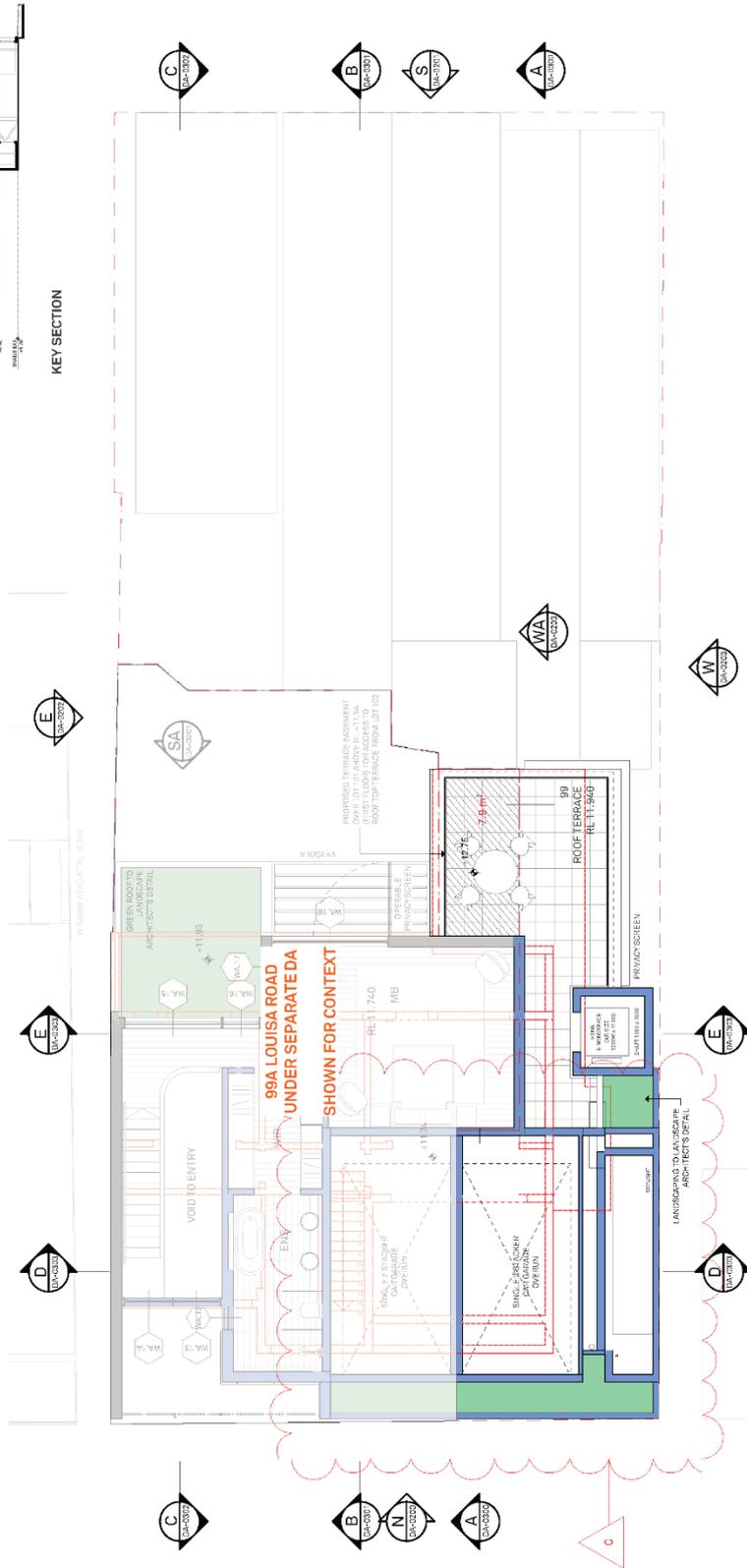
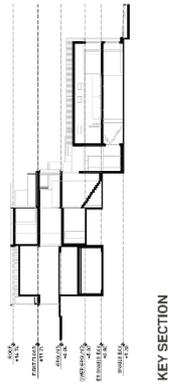
PROJECT DETAILS	PROJECT NAME	PROJECT NO.
99 LOUISA ROAD, BIRCHGROVE, NSW 2061	2007A	DA-0111

CLIENT	PROJECT NO.	DATE
PAUL SINGER	2007A	19/02/2017

SCALE	STATUS	DATE
1:100	DA	19/02/2017

APPROVED	DATE	BY
DA-0111	19/02/2017	PAUL SINGER

PROJECT NO.	DATE	BY
2007A	19/02/2017	PAUL SINGER



ALL WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

PROPOSED FLOOR PLAN - FIRST FLOOR LEVEL
1:100

- RETAINED EXISTING WALLS
- NEW WALLS/CONSTRUCTION
- - - TO BE DEMOLISHED

99 LOUISIA ROAD

BENSON MCCORMACK ARCHITECTURE

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ASHFORD NSW 2133
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WWW: www.bensonmccormack.com

PROJECT DETAILS
99 LOUISIA ROAD, BIRCHGROVE, NSW 2041

CLIENT
PAUL SINGER
72 GLENDOWER
GILEAD NSW 2560

SCALE
1:100

STATUS
DA

PROJECT No
2007A

APPROVED
DB

DRAWN BY
DP

DRAWING No
DA-0114

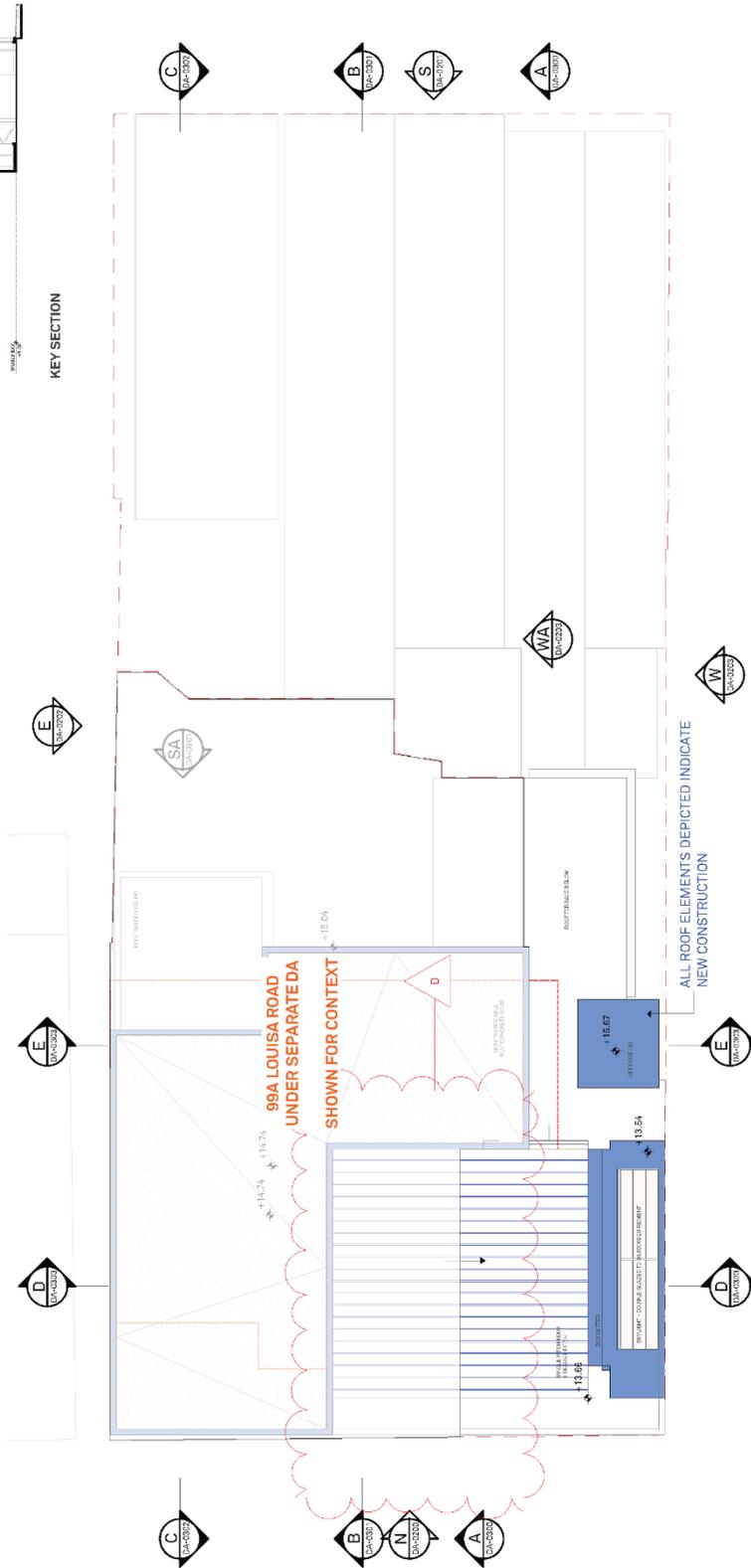
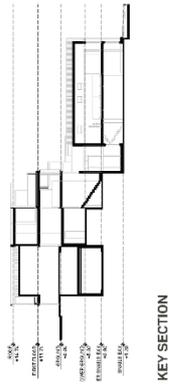
NORTH

LEGEND

REVISION	DATE	DESCRIPTION
1	19/02/2017	Initial Design
2	08/03/2017	Revised Design
3	15/03/2017	Final Design

LEGEND

SYMBOL	DESCRIPTION
■	RETAINED EXISTING WALLS
■	NEW WALLS/CONSTRUCTION
- - -	TO BE DEMOLISHED



ALL WORKS ARE CONTAINED WHOLLY WITHIN THE PROPERTY BOUNDARIES OF THE SITE

PROPOSED FLOOR PLAN - ROOF LEVEL
1:100

- RETAINED EXISTING WALLS
- NEW WALLS/CONSTRUCTION
- - - TO BE DEMOLISHED

REVISION

REV	DATE	DESCRIPTION
0	18/02/2023	As Issued

LEGEND

SYMBOL	DESCRIPTION
■	RETAINED EXISTING WALLS
■	NEW WALLS/CONSTRUCTION
- - -	TO BE DEMOLISHED

PROJECT DETAILS

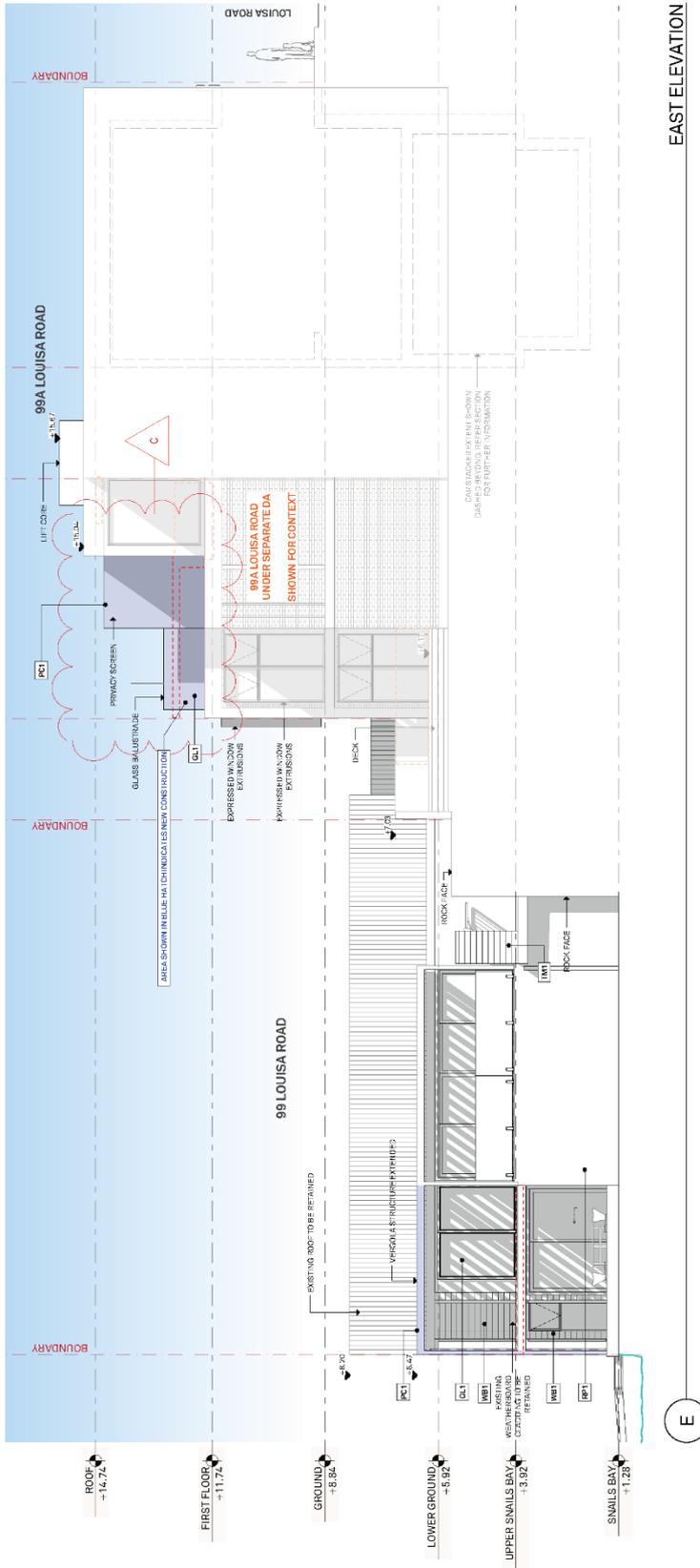
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CLIENT	PAUL SINGER HT RETIREMENT 72 GLENDOVER GILEAD NSW 2560
SCALE	1:100
STATUS	DA
PROJECT No	2007A
APPROVED	DB
DRAWN BY	DP
DRAWING No	DA-0115
REV	D

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ASHFORD NSW 2017
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FAX: 01 7 99 88 0778
WWW: www.bensonmccormack.com

BENSON MCCORMACK ARCHITECTURE

99 LOUISIA ROAD

BENSON MCCORMACK ARCHITECTURE



FINISHES LEGEND

- CN1 - OFF FORM CONCRETE, NATURAL FINISH
- CF1 - POLISHED CONCRETE
- FB1 - FACE BRICK FINISH
- MCI - METAL CLADDING
- MC2 - METAL CLADDING
- TM1 - TIMBER CLADDING
- MR1 - METAL ROOF SHEETING
- MR2 - METAL ROOF SHEETING
- PT1 - PAINT FINISH
- PP1 - RENDERED PAINT FINISH
- WB1 - WEATHERBOARD CLADDING

99 LOUISA ROAD
BENSON
McCORMACK
 ARCHITECTURE

STUDIO 5, 502 BALMAIN RD
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 RM 7538
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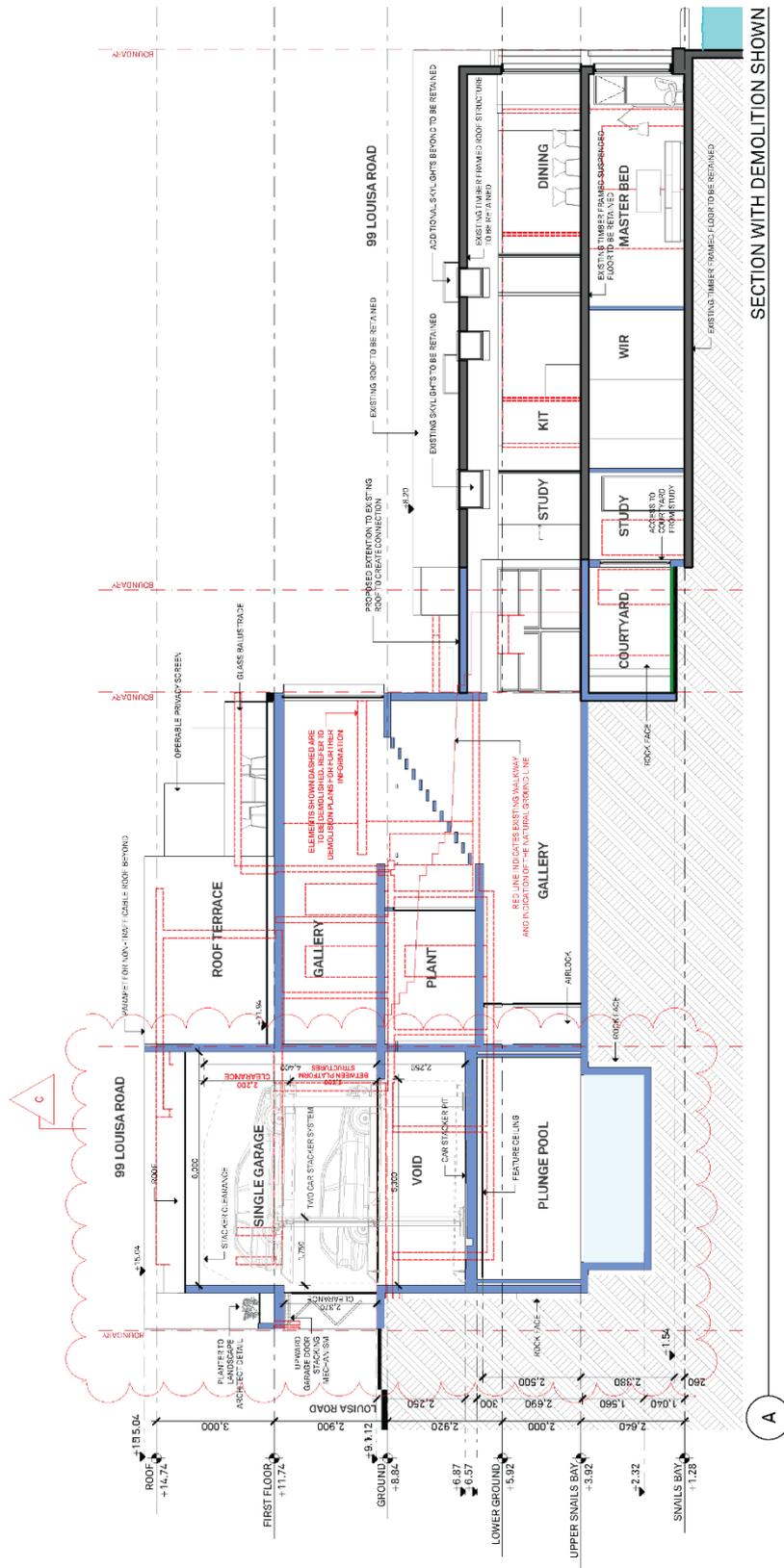
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DRAWN BY	DP	STATUS	DA
DRAWING No	REY	PROJECT No	2007A
	DA-0202		C

PROJECT DETAILS	99 LOUISA ROAD, BIRCHGROVE, NSW 2041
CLIENT	PAUL SINGER
HT RETIREMENT	72 GLENDEOWER GLEAD NSW 2560

Storage	Structural	Roof Level
Structural	Roof Level	Roof Level
Roof Level	Roof Level	Roof Level
Roof Level	Roof Level	Roof Level
Roof Level	Roof Level	Roof Level

REVISION	REV	DATE	DESCRIPTION
A	1	19/02/2017	DA SUBMIT
B	2	08/02/2017	REVISIONS
C	3	19/02/2017	REVISIONS

[- -] TO BE DEMOLISHED



SECTION WITH DEMOLITION SHOWN

- RETAINED EXISTING WALLS
- NEW WALLS/CONSTRUCTION
- TO BE DEMOLISHED

99 LOUISA ROAD

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ARCHITECTURE**

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APPROVED NORTH

SCALE 1:100

STATUS DA

PROJECT No 2007A

DA-0300 C

PROJECT DETAILS

99 LOUISA ROAD,
BIRCHGROVE, NSW
2061

CLIENT

PAUL SINGER
HT RETIREMENT
72 GLENDEWER
GILEAD NSW 2560

Storage

Site Structure

Site Services

Site Works

Site Plant

Site Fencing

Site Security

Site Access

Site Erosion

Site Drainage

Site Stormwater

Site Fire

Site Noise

Site Vibration

Site Air Quality

Site Light

Site Visual

Site Cultural

Site Heritage

Site Archaeology

Site Palaeontology

Site Geology

Site Hydrology

Site Meteorology

Site Climatology

Site Oceanography

Site Space

Site Planning

Site Design

Site Construction

Site Operation

Site Maintenance

Site Decommissioning

Legend

RETAINED EXISTING WALLS

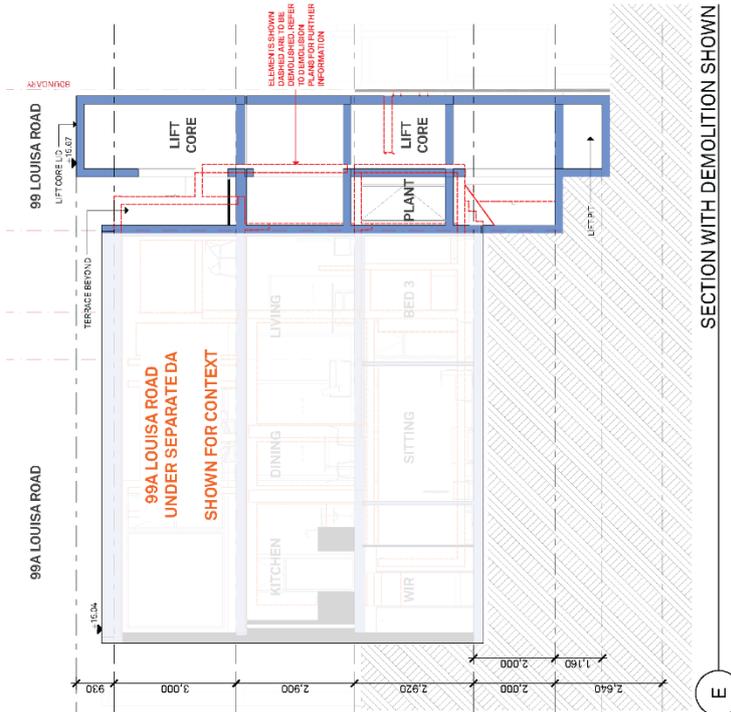
NEW WALLS/CONSTRUCTION

TO BE DEMOLISHED

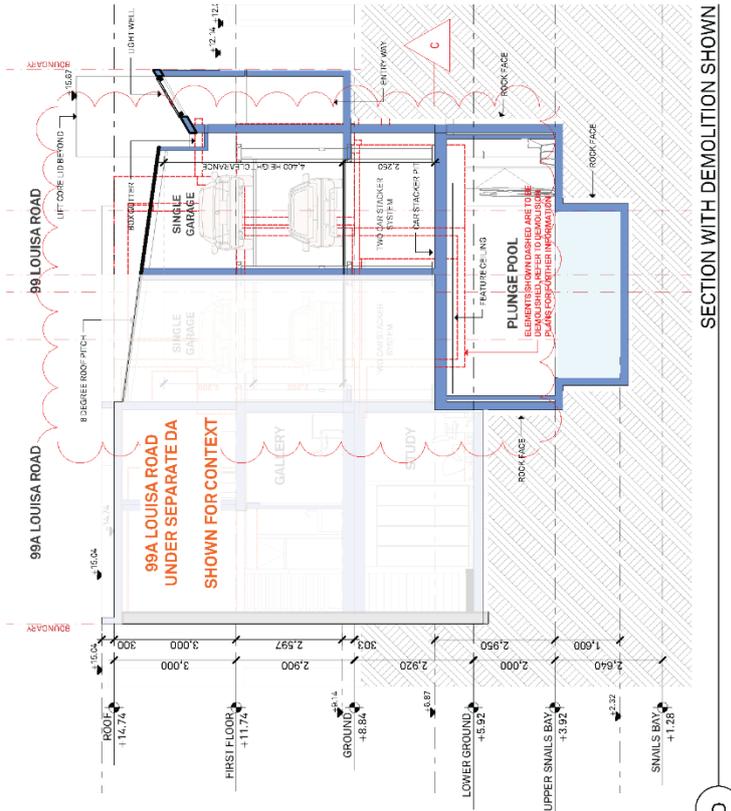
REVISION

REV	DATE	DESCRIPTION
A	19/02/2017	DA SUBMIT
B	02/03/2017	REVISED
C	19/02/2017	REVISED

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E



D

RETAINED EXISTING WALLS
 NEW WALLS/CONSTRUCTION
 TO BE DEMOLISHED

STUDIO 5, 502 BALMAIN RD
 ABRN/70/2013/2/295
 RM/753B
 PA - 61 7 88 80 0778
 PF - 61 7 88 80 0778
 E - www.bensonmccormack.com
 W - www.bensonmccormack.com

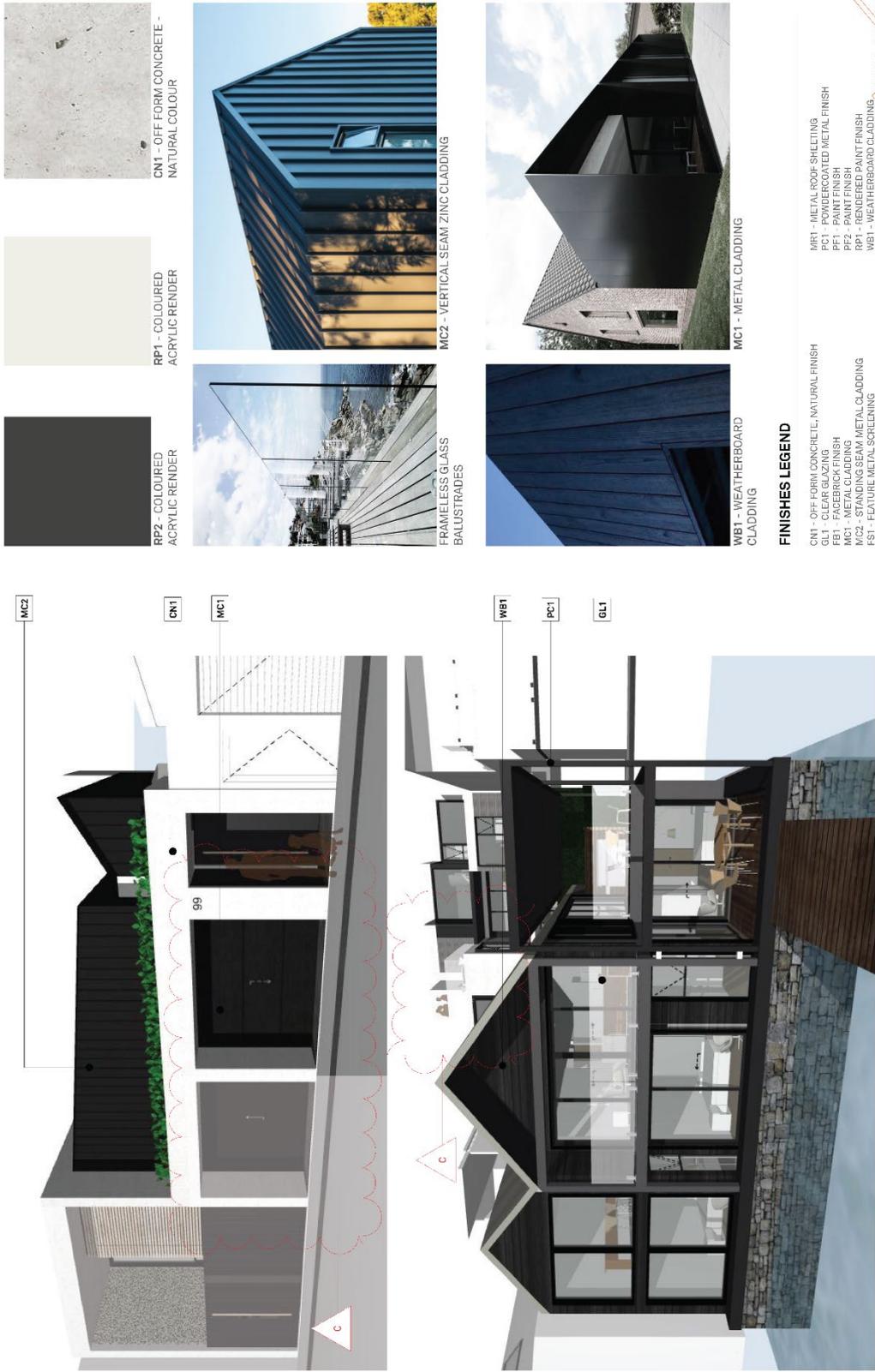
**BENSON
McCORMACK**
 ARCHITECTURE

PROJECT DETAILS

PROJECT	99 LOUISIA ROAD, BIRCHGROVE, NSW 2061
SCALE	1:100
STATUS	DA
PROJECT No	2007A
APPROVED	NORTH
DRAWN BY	DP
DRAWING No	DA-0303
REV	C

CLIENT	PAUL SINGER HT RETIREMENT
CL ELEV	72 GLENDOWER GILEAD NSW 2560
Storage	Structural, Risc Level
Structural	Structural, Risc Level
Roofing	Roofing, Risc Level
Interior	Interior, Risc Level
Exterior	Exterior, Risc Level
Site	Site, Risc Level
Other	Other, Risc Level

REVISION	REV	DATE	DESCRIPTION
A	1	15/02/2017	Initial Design
B	2	15/02/2017	Revised Design
C	3	15/02/2017	Final Design



FINISHES LEGEND

- MC1 - OFF FORM CONCRETE, NATURAL COLOUR
- RP1 - COLOURED ACRYLIC RENDER
- RP2 - COLOURED ACRYLIC RENDER
- MC2 - VERTICAL SEAM ZINC CLADDING
- WB1 - WEATHERBOARD CLADDING
- GL1 - CLEAR GLAZING
- WB1 - WEATHERBOARD CLADDING
- MC1 - METAL CLADDING
- MC1 - METAL ROOF SHEETING
- PC1 - POWDER COATED METAL FINISH
- PC2 - PAINT FINISH
- PC3 - RENDERED PAINT FINISH
- WB1 - WEATHERBOARD CLADDING
- WB1 - WEATHERBOARD CLADDING

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**BENSON
 MCCORMACK
 ARCHITECTURE**

PROJECT DETAILS	DRAWING TITLE	SCALE	APPROVED	NORTH
99 LOUISA ROAD, BIRCHGROVE, NSW Z041	MATERIALS & FINISHES SCHEDULE	DA	DB	
CLIENT PAUL SINGER HT RETIREMENT 72 GLENDOWER 115 GLENDOWER GLEAD NSW 2580 www.retirement.com.au	STATUS	DA	DP	REV
Project Level L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, L11, L12, L13, L14, L15, L16, L17, L18, L19, L20, L21, L22, L23, L24, L25, L26, L27, L28, L29, L30, L31, L32, L33, L34, L35, L36, L37, L38, L39, L40, L41, L42, L43, L44, L45, L46, L47, L48, L49, L50, L51, L52, L53, L54, L55, L56, L57, L58, L59, L60, L61, L62, L63, L64, L65, L66, L67, L68, L69, L70, L71, L72, L73, L74, L75, L76, L77, L78, L79, L80, L81, L82, L83, L84, L85, L86, L87, L88, L89, L90, L91, L92, L93, L94, L95, L96, L97, L98, L99, L100, L101, L102, L103, L104, L105, L106, L107, L108, L109, L110, L111, L112, L113, L114, L115, L116, L117, L118, L119, L120, L121, L122, L123, L124, L125, L126, L127, L128, L129, L130, L131, L132, L133, L134, L135, L136, L137, L138, L139, L140, L141, L142, L143, L144, L145, L146, L147, L148, L149, L150, L151, L152, L153, L154, L155, L156, L157, L158, L159, L160, L161, L162, L163, L164, L165, L166, L167, L168, L169, L170, L171, L172, L173, L174, L175, L176, L177, L178, L179, L180, L181, L182, 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Attachment C- Section 4.6 Exception to Development Standards



CLAUSE 4.6 VARIATION TO CLAUSE 4.3A – LANDSCAPED AREAS FOR RESIDENTIAL ACCOMMODATION IN ZONE R1 OF THE LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

99 LOUISA ROAD, BIRCHGROVE

Amended July 2022

1. Introduction

This submission seeks a variation to Clause 4.3A of the Leichhardt Local Environmental Plan 2013, which relates to Landscaped areas for residential accommodation in Zone R1.

This submission has been prepared in relation to a development application for the alterations and additions to the existing dwelling house on 99 Louisa Road. The alterations and additions generally involve internal works to the dwelling and excavation to create a revised entry, a two car garage via car stacker and an underground plunge pool. This application is concurrently lodged with a development application for the demolition of the existing dwelling, boundary realignment and construction of a new dwelling house at 99A Louisa Road.

As detailed in this written request for a variation to Clause 4.3A, being a development standard under the Leichhardt Local Environmental Plan 2013, the development meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

2. Site Background

The subject site is commonly known as 99 Louisa Road, Birchgrove, and is legally defined as Lot 102 in Deposited Plan 878548. The site is a battle-axe allotment located on the southern side of Louisa Road, along the peninsula.

The site is highly irregular in its shape with a frontage of 2.505m to Louisa Road. The western side boundary measures 22.035m and 10.83m with a 35mm step. The rear boundary measures 13.72m. The eastern side boundary is stepped numerous times as it interfaces with 99A Louisa Road. Reference should be made to the survey plan prepared by John M. Daly & Associates and submitted under separate cover. The overall site area is 246.8m² in its existing form.

The site is subject to a number of easements, including overhangs, and encroachments, to drain water, car parking, support and sewage purposes. Further details are provided under Section 3.0 of the Statement of Environmental Effects.

The site is subject to a notable slope along the pedestrian only access handle from Louisa Road to the house located at the rear. The carport FL is 9.12m, whereas the existing rear tiled patio is RL 1.17m, a level difference of 7.95m. The area of the dwelling generally has a level difference of 2m. Refer to Figure 1 Site Location Map and Figure 2 Site Aerial.

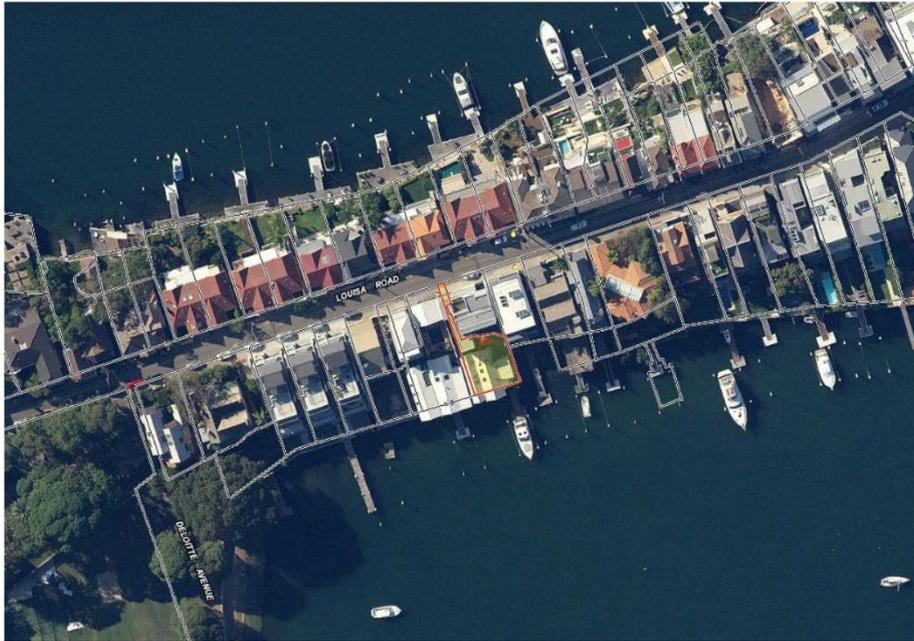


Figure 1: Site Location Map
Source: <https://maps.six.nsw.gov.au/>



Figure 2: Site Aerial
Source: <https://maps.six.nsw.gov.au/>



Currently on the site is an existing two storey dwelling house with metal roof. The site as it presents to Louisa Road comprises a carport with an adjacent pedestrian entry door. Access to the dwelling is via a tiled pathway with steps along the access handle to the entry. Reference should be made to the architectural plans prepared by Benson McCormack Architecture, particularly Drawing Nos. DA-0008 to DA-0010.

The existing dwelling improvements include a terrace along the eastern side of the dwelling on the first floor and a tiled patio and timber ramp and pontoon into Snails Bay.

The site is located within a residential area and is bounded by dwelling houses. The immediate neighbour to the north-east is 99A Louisa Road, an existing partial three storey rendered dwelling with single garage. The next eastern neighbour at 101 Louisa Road is a two storey rendered dwelling house with metal roof. The western neighbour is at 97A Louisa Road is two storey rendered dwelling with the dwelling located at the rear, garage to the street and swimming pool centrally. Development opposite generally comprises of two storey dwellings stepped down the slope of the peninsula with the majority of the presentation being double garages, such as those directly opposite at 94 and 96.

The peninsula is notably within the Birchgrove and Ballast Point Road Heritage Conservation Area under the Leichhardt Local Environmental Plan 2013.

The site is proximate to the Birchgrove Ferry Wharf (290m) and bus stops along Grove Street (400m), providing public transportation access. The site is also located near Birchgrove Oval (90m) and Yurulbin Park (300m) as areas of public open space.

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential dwelling is permissible with consent in the zone.

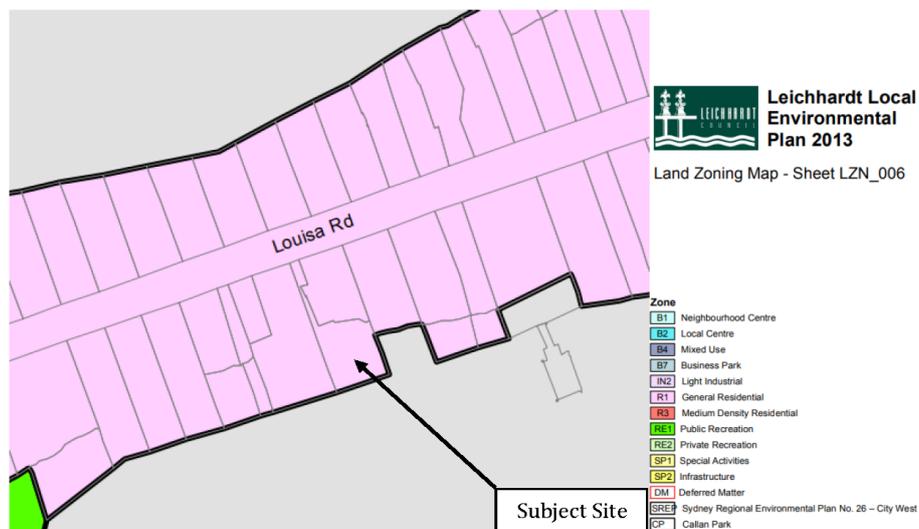


Figure 3: Land Zoning Map

Source: NSW Legislation, LLEP13, map 6.



3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Director-General has been obtained.**
- (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*
 - (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.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**



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

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4."

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five No 1*)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (*Four2Five No 2*)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (*Four2Five No 3*)
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.



The Environmental Planning Instrument to which this variation relates is the Leichhardt LEP 2013.

The development standard to which this variation relates is to Clause 4.3A – Landscaped areas for residential accommodation in Zone R1, which reads as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
 - (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
 - (c) *to ensure that development promotes the desired future character of the neighbourhood,*
 - (d) *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
 - (e) *to control site density,*
 - (f) *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*
- (2) *This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.*
- (3) *Development consent must not be granted to development to which this clause applies unless—*
 - (a) *the development includes landscaped area that comprises at least—*
 - (i) *where the lot size is equal to or less than 235 square metres—15% of the site area, or*
 - (ii) *where the lot size is greater than 235 square metres—20% of the site area, and*
 - (b) *the site coverage does not exceed 60% of the site area.*
- (4) *For the purposes of subclause (3)—*
 - (a) *the site area is to be calculated under clause 4.5 (3), and*
 - (b) *any area that—*
 - (i) *has a length or a width of less than 1 metre, or*
 - (ii) *is greater than 500mm above ground level (existing),**is not to be included in calculating the proportion of landscaped area, and*
 - (c) *any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if—*
 - (i) *it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or*
 - (ii) *the finished floor level is 500mm or less above ground level (existing).*

Based on the site area following the boundary realignment sought under the concurrently lodged development application on 99 Louisa Road of 278.6m², the minimum landscaped area required is 20% of the site area and the maximum site coverage is 60%.

The provided landscaped area will be 19.94m², or 7.1% of the site area.

Further, the proposed site coverage is 229.25m², or 82.3% of the site area.

A written justification is therefore required for the proposed variation to the development standard in accordance with Clause 4.6 of the Leichhardt LEP 2013.



4. Extent of Non-Compliance

As noted above, Clause 4.3A of the Leichardt LEP 2013 prescribes a minimum landscaped area of 20% and site coverage of 60% of the site area.

The existing dwelling provides for 9.6m² (3.2%) of the site as landscaped area. Under the proposed development, the amount of landscaped area will increase by 10.34m² to a total of 19.94m² (7.1%). A variation of 64.2% is proposed.

The existing dwelling provides for a site coverage of 182.02m² which is increased to 229.25m², or 82.3% of the site area, a variation of 37.1%.

It is our submission that the breach to both the landscaped area and site coverage aspects of the development standard will not unreasonably impact the amenity of the development, adjoining properties or the character of the area. Compliance with the development standard is unreasonable in this instance.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49]

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents</i>



	<i>departing from the standard and hence compliance with the standard is unnecessary and unreasonable (not applicable).</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the site coverage standard, the first method is invoked.

The objectives supporting the landscaped areas for residential accommodation in Zone R1 standard identified in Clause 4.3A are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3A.

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

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

The existing dwelling is limited in the degree of landscaped area to a small portion of the site located effectively “underneath” the entry stairwell, off the master bedroom walk-in-robe. The stairwell is unenclosed and open to the sky and has existing vegetation along the exposed rock walls. Refer to Figure 4.



Figure 4: Existing landscaped area

There is artificial turf over this space currently, however it sits atop soil and can accommodate landscaping.

The proposed alterations and additions include an expansion of this space by the demolition of the adjacent storage room, increasing the overall provision of landscaped area to 7.1% of the site area (19.94m²), inclusive of the boundary realignment increasing the site area by 31.8m². A net improvement is proposed.

While a variation remains, the improvement overall facilitates a landscaped area that enables use and enjoyment of residents and facilitates plant growth including the potential for tree growth. Consequently, the objective is considered to be achieved.

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

The proposed alterations and additions will enhance the landscaping on the site in the locations of existing landscaping, resulting in an overall improvement of landscaped corridors between properties.

Additional on-structure planting is provided as contributory landscaping to soften the built form and assist in contributing to a landscaped corridor between adjoining properties.

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



The proposed alterations and additions to the dwelling itself are generally internal or not visible as viewed from the foreshore. The dwelling itself is not visible from Louisa Road.

The remainder of the works that are visible to the public domain or foreshore (i.e., revised street façade the garage and pedestrian entry, the car stacker overrun, lift shaft, roof terrace) are designed to integrate into the combined developments over 99 and 99A Louisa Road architecturally and in terms of materials and finishes. The revised street façade of a garage and enhanced pedestrian entry fits within the established character of the Louisa Road locality and the existing relationship to the street. The car stacker overrun has been designed with a pitched roof form to align with the prevailing mix of flat and pitched roofs. The overrun is also recessed from the street. Notably, the character of the locality is dominantly two storey developments to Louisa Road to which this remains generally single storey in presentation. The lift shaft protrudes marginally over the existing and proposed roof heights of the concurrent development application on 99A Louisa Road, which is a modest form, coloured white to be visually recessive, and aligns with the BLZ controls. Lastly, the roof terrace is integrated into the design of 99A Louisa Road and is located below the existing and proposed roof height of that dwelling.

Notwithstanding the Clause 4.6 variation, all the new built form elements are compatible with the existing and desired future character of the area in terms of bulk and scale, appearance and siting of the form.

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

An overall increase in landscaped area is proposed, enhancing the potential retention and absorption of surface drainage water on site. A net improvement for alterations and additions is considered acceptable.

The stormwater plans prepared by SGC Consultants demonstrate a stormwater management regime that has addressed Council's policies.

...(e) to control site density,

As acknowledged above, the landscaped area is an overall improvement. Given the constrained nature of the site, additional landscaped area is limited in feasibility.

A variation is also sought to the site coverage and FSR development standards. In both instances, the majority of the new additions in site coverage and FSR are driven by the new garage parking, the revised and now enclosed pedestrian access to the dwelling and the enclosed plunge pool, all of which contribute to both FSR and site coverage. The actual visibility of new site coverage and FSR is limited to non-existent when taken as a comparison between the existing and proposed built forms across both 99 and 99A Louisa Road.

The overall site density, therefore, while technically non-compliant, is of limited consequence in terms of adding bulk and scale and additional impacts. The density of development on the site is acceptable.

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

An improved landscaped area outcome is created, with an overall increase of 10.34m², more than doubling the existing provision. The landscaped area can be used for private open space, however the primary area in the form of a deck on the Upper Snails Bay level exceeds the minimum size requirements. The additional site coverage has no consequence on the provision of either landscaped area or private open space.



In view of the above comments, the variation meets the objectives of Clause 4.3A in the Leichhardt LEP 2013.

6. Are there Sufficient Environmental Planning Grounds?

The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

As required by Clause 4.6 (3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Inclusive of the boundary realignment, an overall increase in site coverage is created by proposed alterations and additions, increasing the existing non-compliance. However, the new elements introduced to site coverage occur from the boundary realignment, increase pedestrian entry/garage and enclosure of the pedestrian entry gallery. The garage already is an area of site coverage, however now effectively transferred from 99A to 99 Louisa Road. The enclosure and revision to the entry process into the dwelling resolves a poor access arrangement with an enclosed set of stairs and walkway that are unsafe in wet weather.

In either instance, there is no consequence to the additional site coverage in terms of bulk and scale or amenity impacts. There is an improvement to landscaped area, and the site coverage non-compliance does not occur in any area that would facilitate additional landscaped area to achieve compliance.

Where deviations have occurred in Council's policies, they do not affect or compromise the overall development or adjoining properties.

The proposal addresses the site constraints, streetscape characteristics and relevant objectives of both the standards and the zone. The proposal provides a respectful response to the general character of the locality and the existing built form.

In this case, strict compliance with the development standard for landscaped area and site coverage standards in the Leichhardt LEP 2013 is unnecessary and unreasonable as the development is an appropriate scale for the site, promotes an enhanced residential use and does not cause any negative consequences.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 6 of this written request.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3A.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development.

The objectives of the zone and comments in response are as follows:

Zone R1 General Residential

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 following comments are provided in response to the objectives:

- The proposed alterations and additions will enhance the internal and external amenity of the existing dwelling house, ensuring the site continues to provide for the housing needs of the community to a high standard.
- The proposed dwelling house will enhance the existing dwelling and enable the continued provision of a variety of housing types and densities within the community.
- The proposal is for a residential land use and does not prohibit other sites from providing facilities or services to meet the day to day needs of residents.
- The internal alterations facilitate a dedicated study room, improving the opportunities to work from home.
- The proposed alterations and additions generally retain the same building envelope and presentation both from the street and from Snail Bay. The form will remain compatible with the area.
- The overall provision of landscaped areas across the site will be enhanced for the use and enjoyment of existing and future residents.
- The boundary realignment sought under separate, concurrent application does create a minimum lot size variation, however, the realignment creates a more regular shape over existing and is generally more compatible with the character, style, orientation and pattern of the surrounding area.
- The proposal serves to enhance the amenity of the existing and future residents of the site, while also protecting the amenity of those adjoining.

The proposed development therefore meets the objectives of the zone. The landscaped area and site coverage variations have not precluded consistency with any of the objectives.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.



8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The site coverage variation has not resulted in a diminished outcome for the development of the site through further non-compliances with landscaped area, a diminished actualised plantings outcome, or consequences to neighbouring properties through a perceived overabundance of built-upon area.

An improved overall dwelling is provided by way of the development application. The scale and density of the form as expressed from vantage points are not notably altered from the existing dwelling. The new dwelling is designed in keeping with the diverse character of the Louisa Road streetscape.

The built form on the site has been designed to be compatible with the streetscape, ensuring a positive development outcome for the site and the existing and desired future character of the area. The proposal provides for the orderly and economic development of the site.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

It is considered that the public is not impacted in any way by maintaining the standard.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5 to 7 of this written request. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the LLEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied (landscaped area in zone R1), as well as the objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the residential character of the area.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:



- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (c) **Note.** When this Plan was made it did not include all of these zones.

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

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

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

Comment:

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was prepared as part of the development application.

The development is not affected by Clause 5.4.

9. Conclusion

The proposal does not strictly comply with the minimum landscaped area and maximum site coverage standard as prescribed by Clause 4.3A of the Leichhardt LEP 2013. Having evaluated the likely effects arising from the non-compliances, we are satisfied that the objectives of Clause 4.6 of the Leichhardt LEP 2013 are satisfied as the breach of the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of the Leichhardt LEP 2013 to vary this development control is appropriate in the context of the case.

Based on the above, it is sensible to conclude that strict compliance with the minimum landscaped area is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Darren Laybutt
Town Planner
GAT & Associates
Plan 4122



**CLAUSE 4.6 VARIATION TO CLAUSE 4.4 – FLOOR SPACE RATIO
OF THE LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013**

99 LOUISA ROAD, BIRCHGROVE

Amended July 2022

1. Introduction

This submission seeks a variation to Clause 4.4 of the Leichhardt Local Environmental Plan 2013, which relates to floor space ratio.

This submission has been prepared in relation to a development application for the alterations and additions to the existing dwelling house on 99 Louisa Road. The alterations and additions generally involve internal works to the dwelling and excavation to create a revised entry, two car garage via car stacker and underground plunge pool. This application is concurrently lodged with a development application for the demolition of the existing dwelling, boundary realignment and construction of a new dwelling house at 99A Louisa Road.

As detailed in this written request for a variation to Clause 4.4, being a development standard under the Leichhardt Local Environmental Plan 2013, the development meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

2. Site Background

The subject site is commonly known as 99 Louisa Road, Birchgrove, and is legally defined as Lot 102 in Deposited Plan 878548. The site is a battle-axe allotment located on the southern side of Louisa Road, along the peninsula.

The site is highly irregular in its shape with a frontage of 2.505m to Louisa Road. The western side boundary measures 22.035m and 10.83m with a 35mm step. The rear boundary measures 13.72m. The eastern side boundary is stepped numerous times as it interfaces with 99A Louisa Road. Reference should be made to the survey plan prepared by John M. Daly & Associates and submitted under separate cover. The overall site area is 246.8m² in its existing form.

The site is subject to a number of easements, including overhangs, and encroachments, to drain water, car parking, support and sewage purposes. Further details are provided under Section 3.0 of the Statement of Environmental Effects.

The site is subject to a notable slope along the pedestrian only access handle from Louisa Road to the house located at the rear. The carport FL is 9.12m, whereas the existing rear tiled patio is RL 1.17m, a level difference of 7.95m. The area of the dwelling generally has a level difference of 2m. Refer to Figure 1 Site Location Map and Figure 2 Site Aerial.

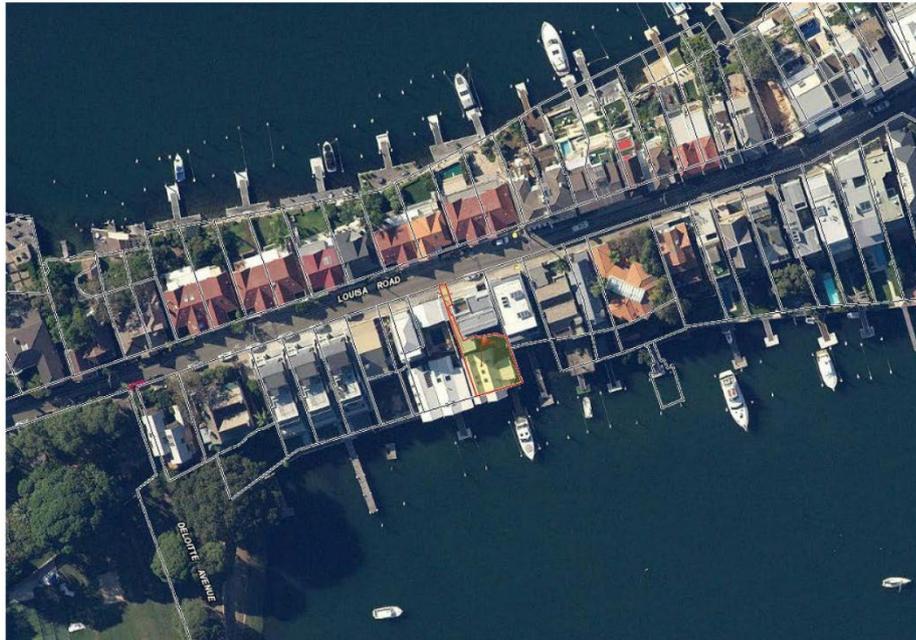


Figure 1: Site Location Map
Source: <https://maps.six.nsw.gov.au/>

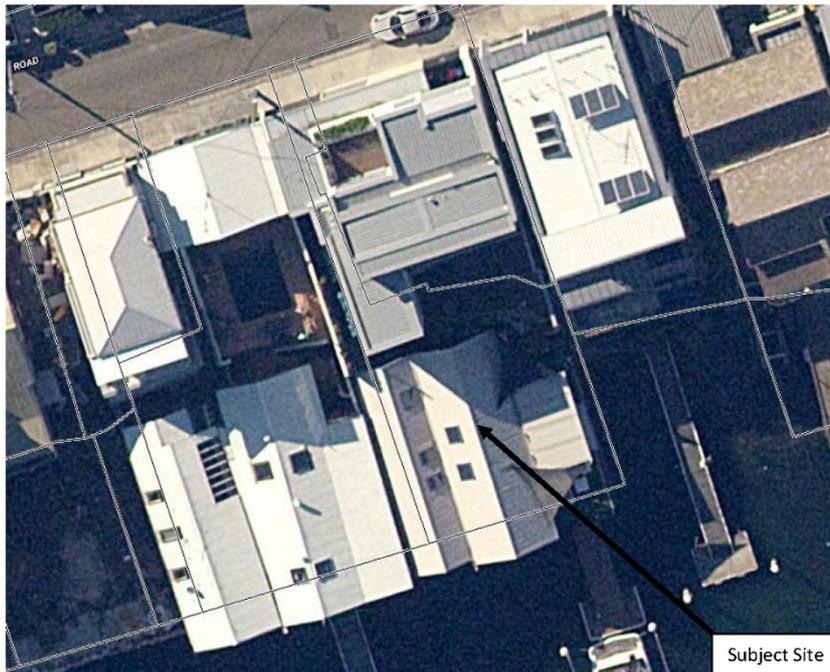


Figure 2: Site Aerial
Source: <https://maps.six.nsw.gov.au/>

Currently on the site is an existing two storey dwelling house with metal roof. The site as it presents to Louisa Road comprises a carport with an adjacent pedestrian entry door. Access to the dwelling is via a tiled pathway with steps along the access handle to the entry. Reference should be made to the architectural plans prepared by Benson McCormack Architecture, particularly Drawing Nos. DA-0008 to DA-0010.

The existing dwelling improvements include a terrace along the eastern side of the dwelling on the first floor and a tiled patio and timber ramp and pontoon into Snails Bay.

The site is located within a residential area and is bounded by dwelling houses. The immediate neighbour to the north-east is 99A Louisa Road, an existing partial three storey rendered dwelling with single garage. The next eastern neighbour at 101 Louisa Road is a two storey rendered dwelling house with metal roof. The western neighbour is at 97A Louisa Road is two storey rendered dwelling with the dwelling located at the rear, garage to the street and swimming pool centrally. Development opposite generally comprises of two storey dwellings stepped down the slope of the peninsula with the majority of the presentation being double garages, such as those directly opposite at 94 and 96.

The peninsula is notably within the Birchgrove and Ballast Point Road Heritage Conservation Area under the Leichhardt Local Environmental Plan 2013.

The site is proximate to the Birchgrove Ferry Wharf (290m) and bus stops along Grove Street (400m), providing public transportation access. The site is also located near Birchgrove Oval (90m) and Yurulbin Park (300m) as areas of public open space.

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential dwelling is permissible with consent in the zone.

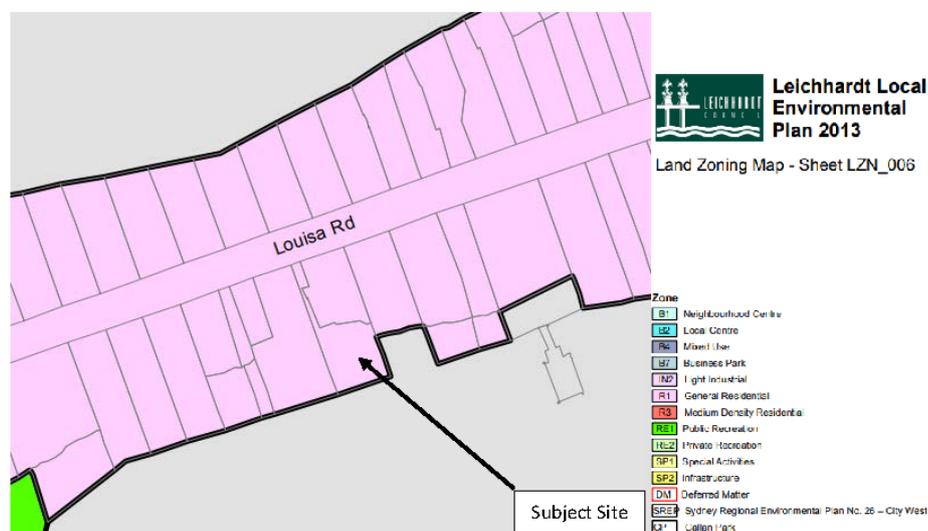


Figure 3: Land Zoning Map

Source: NSW Legislation, LLEP13, map 6.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Director-General has been obtained.**
- (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*
 - (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.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

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

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4."*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which these variations relate to is the Leichhardt LEP 2013.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio which reads as follows:

- (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.*
- (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](#).*
- (2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*
- (2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation—*
 - (a) *on land shown edged black or pink 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—0.9:1, 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—0.8:1, 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—0.7:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.6:1, or*
 - (b) *on land shown edged red or green 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—1.0:1, 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—0.9:1, 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—0.8:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.7:1, or*
 - (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*
 - (d) *on land shown edged yellow 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—0.9:1, 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—0.8:1, or
- (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

The subject site is identified on the Floor Space Ratio Map as being within Area 4. Refer to Figure 4.

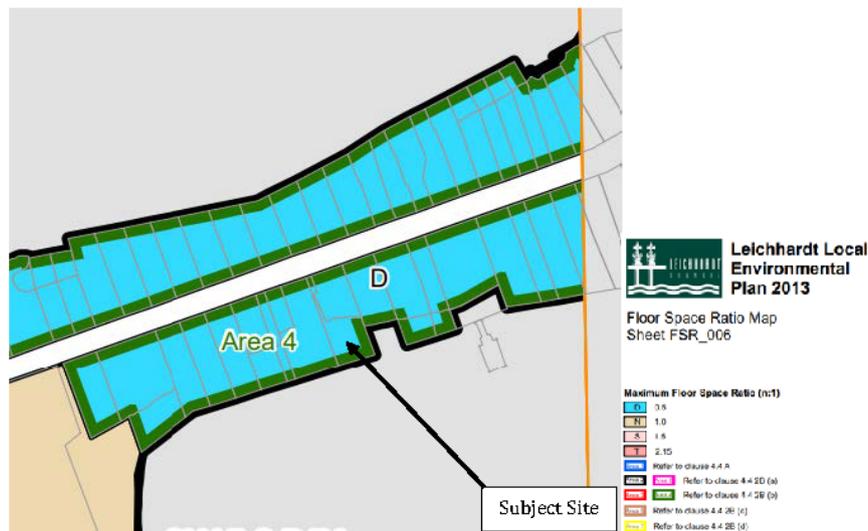


Figure 4: Floor Space Ratio Map

Source: NSW Legislation, LLEP13, map 6.

The subject site following the boundary realignment is 278.6m² and therefore, in accordance with Clause 4.4 (2B)(b)(i), the maximum permitted FSR is 0.9:1.

The proposed GFA is 358.13m², a FSR of 1.28:1. A variation of 42.8% is proposed.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt LEP 2013.

4. Extent of Non-Compliance

As noted above, in accordance with Clause 4.4 of the Leichhardt LEP 2013 a maximum FSR of 0.8:1 is prescribed to the subject site.

The existing dwelling has a total GFA of 272.67m². Based on the existing site area of 246.8m², the existing FSR is 1.1:1, a 22.76% (50.55m²) variation from the standard.

On the basis of the amended site area of 278.6m², the maximum permissible GFA is 250.7m².

The proposed alterations and additions will result in a total GFA of 358.13m², a FSR of 1.28:1. A variation of 42.8% (107.43m²) is proposed to the standard.

Whilst a variation is sought, the majority of additional floor space sought occurs around the conversion of a single enclosed carport to a two-car car stacker, the enclosure and full revision of the pedestrian entry process to remove the somewhat unsafe, exposed access arrangement currently, and the creation of an underground plunge pool. This accounts for 92m² of the increased floor area, only leaving 15.43m² attributable elsewhere. These works are positioned and located generally without impact on surrounding properties and the broader locality. Further, the scale and density of the form that is created by these abovementioned works is not out of character with the area.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents</i>

	<i>departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (applicable)</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the floor space ratio standard, the first and fourth methods are invoked.

Fourth Method

The application of the FSR development standard along the Louisa Road peninsula has been flexible to the extent that the standard has been virtually abandoned. While part of this can be attributed to the historic development in the area that predates the Leichhardt LEP, this has not precluded numerous consents being issued that have variations to the standard through both alteration and addition or new dwelling applications.

Below is a list of development applications that have been granted variations to the FSR standard under the Leichhardt LEP 2013.

Address	DA Number	Approved FSR	Extent of Variation
80-82 Louisa Road	MOD/2020/0112	1.172:1	67.4%/221.3m ²
81 Louisa Road	D/2014/714	0.98:1	40.03%
91 Louisa Road	M/2014/37	1.08:1	54.3%
93 Louisa Road	M/2019/84	1.076:1	34%/115.2m ²
2/109 Louisa Road	D/2015/199	1.25:1	78%/124.36m ²
109A Louisa Road	MOD/2021/0191	1.09:1	21.1%
111D Louisa Road	M/2020/1093	0.74:1	5.2%/18.82m ²
130 Louisa Road	D/2014/300	1.17:1	67.5%/64.6m ²

The above demonstrates departures from the standard have been granted to numerous properties, from the modest (5.2%) to the significant (67.4%-78%). The proposed variation of 42.8% comfortably sits within the range of variations that have been granted.

It is acknowledged that all development applications must be assessed on their individual merits. The proposed departure from the FSR standard is deemed to be contextually reasonable for the following reasons:

- The proposed alterations and additions to the actual dwelling house, located downslope at the rear of the site, generally occur within the existing building envelope. The sole additional GFA area directly visible to the dwelling is the construction of the bridge connecting the Upper Snails Bay level and the pedestrian entry gallery.
- The revised pedestrian entry and garage presentation to Louisa Road generally resemble the existing presentation with the existing pedestrian entry being expanded in size to create a more visible and legible entry and the garage adjusted accordingly. Despite the technical additional GFA created by both aspects to 99 Louisa Road, neither aspect creates bulk and scale impacts to the street or adjoining properties.
- The lower car space within the car stacker will not be visible as it is belowground.

- The car stacker lift overrun, the lift shaft and roof terrace are modest additions above the existing single storey presentation to Louisa Road. The lift overrun remains below the existing roof height (RL 14.74) of the dwelling on 99A Louisa Road, which is retained in the proposal for the new dwelling submitted as a separate, concurrently application.
- The roof terrace is unroofed to limit additional bulk and view lines.
- The overall form and scale of development visible to Louisa Road is compatible with the desired future character of the Louisa Road locality in terms of its massing and materials and finishes.
- The majority of the revised entry pathway and the entirety of the plunge pool area and connecting corridor occur within an excavated area that will not be visible to adjoining properties.
- An overall increase in landscaped area occurs as a result of the application.

Consequently, it is considered that there is cause to support the position that the FSR standard has been virtually abandoned along the Louisa Road peninsula and that the proposed built form, which remains compatible with the existing dwelling and as it visually presents to the public domain, is acceptable.

It is also submitted that the proposed development satisfies the first method, as discussed below.

First Method

The objectives supporting the floor space ratio development standard identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

(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

As detailed in the previous section, the new elements introduced in the alterations and additions application are partly belowground and comparatively minor elements are introduced aboveground, with the latter being the car stacker overrun, lift shaft and roof terrace. The resultant impacts of these elements are minor, and no unacceptable environmental impacts occur. Further, the bulk, form and scale of these structures remain compatible with the streetscape presentation of Louisa Road.

The material and finishes for these elements contextually fit within the streetscape.

The proposal is compatible with the desired future character of the area.

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

The existing dwelling provides for 3.2% (9.6m²) of the site as landscaped area, which is increased by 10.34m² to 19.94m² (7.1%) following the boundary realignment sought under the separate but concurrent development application across 99A Louisa Road. While remaining a technical variation to the standard, the proposed alterations and additions enhance the provision of landscaped area on a site in a highly constrained context in terms of its capability to provide landscaped area.

The proposal provides for the required private open space area in the form of an existing first floor deck on the eastern side of the dwelling. It also provides for additional spaces in the Snails

Bay level terrace and the proposed roof terrace, ensuring adequate availability and provision of private open space.

Much of the additional floor area occurs in areas already occupied structures such as the garaging/car parking and the pedestrian entry, while the entry gallery and plunge pool are excavated. These have no consequence on the overall balance between landscaped area and the built form in that their absence would not positively affect this balance.

Between the above factors, there is a suitable balance between landscaped area and the built form.

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

The variation to the FSR standard occurs without notable environmental impacts on surrounding properties, or the site itself.

The lift shaft and roof terrace contribute to a marginal additional overshadowing of an overshadowed, south facing swimming pool area on 97 Louisa Road to the west of the site. This impact occurs at 10am-11am as detailed in the shadow diagrams in Drawing No. DA-1001-1002. Retention of solar access still occurs in this space though it is generally overshadowed in its current form.

It is considered the lift shaft, roof terrace and car stacker overrun contribute minimal bulk and scale consequence, based on their location, treatment and the available views toward them.

Notwithstanding a technical variation, the development has minimised 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 proposed development is residential in nature. This objective is not relevant to this application.

The proposal aligns with the objectives of the clause.

In view of the above, it is submitted that compliance with the standard is both unreasonable and unnecessary as the variation and development meet the objectives of the standard.

6. Are there Sufficient Environmental Planning Grounds?

As required by Clause 4.6 (3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

As established in the previous section, it is a relevant consideration that Council has approved numerous departures from the FSR standard during the current Leichhardt LEP 2013. The proposal aligns with those departures in terms of proportion of variation. Moreover, the FSR variation occurs without any unacceptable environmental impacts and will maintain the integrity of the amenity of adjacent and nearby properties. Further, it is of a form and scale that is compatible with the existing and desired future character of the area.

The overall development individually and collectively taken with the concurrently lodged development application for 99A Louisa Road creates an improved outcome for both properties, resulting in enhanced amenity and landscaped area outcome. The enclosure and revision to the entry process into the dwelling resolves a poor access arrangement with an enclosed set of stairs and walkway that are unsafe in wet weather.

In view of the above, the proposal has addressed the site constraints, streetscape character, and architectural and aesthetic characteristics, and is consistent with the objectives of the development standard.

The proposal results in a development that provides for an orderly and economic use of the land. This provides for sufficient environmental planning grounds to vary the development standard. In this case, strict compliance with the FSR development standard in the Leichhardt LEP 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

As established in Part 5 of this submission, the development is consistent with the objectives of the standard.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard as detailed within the submission generally and under Part 6.

Furthermore, the development is considered to be consistent with the objectives of the R1 General Residential zone, which are as follows:

Zone R1 General Residential

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 following comments are provided in response to the objectives:

- The proposed alterations and additions will enhance the internal and external amenity of the existing dwelling house, ensuring the site continues to provide for the housing needs of the community to a high standard.
- The proposed dwelling house will enhance the existing dwelling and enable the continued provision of a variety of housing types and densities within the community.
- The proposal is for a residential land use and does not prohibit other sites from providing facilities or services to meet the day to day needs of residents.
- The internal alterations facilitate a dedicated study room, improving the opportunities to work from home.

- The proposed alterations and additions generally retain the same building envelope and presentation both from the street and from Snails Bay. The form will remain compatible with the area.
- The overall provision of landscaped areas across the site will be enhanced for the use and enjoyment of existing and future residents.
- The boundary realignment sought under separate, concurrent application does create a minimum lot size variation, however, the realignment creates a more regular shape over existing and is generally more compatible with the character, style, orientation and pattern of the surrounding area.
- The proposal serves to enhance the amenity of the existing and future residents of the site, while also protecting the amenity of those adjoining.

The proposal consequently satisfies the objectives of the zone. The departure from the standard has not precluded consistency with any of the above objectives.

In view of the above, it is submitted that the variation is in the public interest and should be supported.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The variation to FSR has not resulted in a diminished outcome for the development or creation of unacceptable environmental impacts to adjacent and surrounding properties. The variation has not created a form and scale of development that is out of character with Louisa Road, the site or existing dwelling or the site's suitability or capacity to accommodate the development.

The proposal provides for the orderly and economic development of the site.

An improved overall dwelling is provided by way of the development application. The scale and density of the additions as expressed from vantage points are not significant.

The built form has been designed to be compatible with the streetscape architecturally and in terms of materials and finishes, ensuring a positive development outcome for the site and the existing and desired future character of the area.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

It is considered that the public is not impacted in any way by maintaining the standard.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5 and 6 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R1 General Residential zoning of the land;

- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

***Note.** When this plan was made it did not include all these zones.*

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

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

(a) a development standard for complying development,

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

(c) clause 5.4,”

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate is required for this application.

Clause 5.4 does not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with floor space ratio development standard as prescribed by Clause 4.4 of the Leichhardt LEP 2013. Having evaluated the likely effects arising from this non-

compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt LEP 2013 are satisfied as the breach of the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of the Leichhardt LEP 2013 to vary this development control is appropriate in the context of the case.

Based on the above, it is sensible to conclude that strict compliance with the floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

Darren Laybutt
Town Planner
GAT & Associates
Plan 4122

Attachment D – Statement of Heritage Significance

Godden Mackay Logan

Area 14 Birchgrove and Ballast Point Road

Landform

Birchgrove Point is a rugged narrow neck of sandstone called Yurulbin (swift running waters) by the Aboriginals because of the change in water movement around the point where the bays of the river to the west are protected from the open waters of the harbour to the east. Very deep water frontage along both sides of the point.

There are swamps and mudflats within the still waters of Snails Bay with another high, rocky headland on the southern side, and Ballast Point at its most easterly end. Views either northeast to the harbour, and/or south over Morts Dock can be achieved from most allotments along the Ballast Point headland.

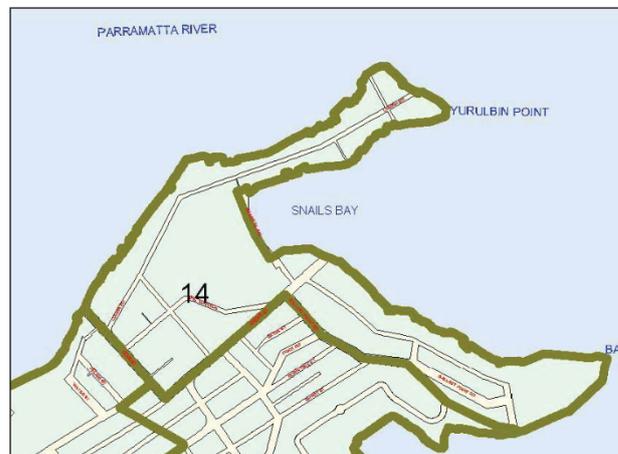


Figure 14.1 Birchgrove and Ballast Point Road Conservation Area Map.

History

The Birchgrove and Ballast Point Conservation Area covers the area of the George Whitfield's 30-acre grant of 1796 (Birchgrove) and sections of John Gilchrist's Balmain Estate (Ballast Point).

Birch acquired Whitfield's grant in 1810 and built Birch Grove house (at 67 Louisa Road, demolished 1967). In 1860 the estate was purchased by Didier Joubert of Hunters Hill and the Parramatta Ferry Service. He commissioned Surveyor Brownrigg to subdivide the land into villa allotments, and despite later small resubdivisions, Brownrigg's layout provides the backbone for Birchgrove today. The streets were named for Joubert's wife (Louisa), children (Numa and Rose) and nephew (Ferdinand) with (Iron) Cove Road, and (Birch) Grove Road defining the grant boundaries. Louisa Road followed the ridge, except for the sharp bend to avoid Birch Grove House, giving access to a single row of steep allotments, all with deepwater frontage. The land around the bay was divided to provide the greatest number of allotments at 50-70ft x 150ft approximately, above high water mark, with The Terrace forming the drive to Birch Grove House.

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The 1860 sale was premature. Within six years Joubert had only sold seven allotments. Stonemasons and quarrymen were among the first purchasers. The estate was eventually mortgaged to the Bank of New South Wales. By 1878, only twenty-three lots had been sold. These early residents were Sydney professionals, who travelled to town by ferry, and small speculators or builders, who quarried the land for buildings elsewhere. In 1886 twenty-four houses, eighteen built of weatherboard, remained from those first eighteen years. Today only fifteen remain.

A new consortium of McLean, McGregor and Threlkeld commissioned Surveyor Reuss Junior to re-examine the Brownrigg plan, and make some amendments around the head of the bay and along the steepest part of Louisa Road to create more allotments or more useable allotments. The estate was again put up for sale in 1878. Sydney's boom period of the 1880s saw many more allotments taken up and villas in stone or rendered brick were built. This dramatic tongue of sandstone at the western end of the harbour also attracted industries dependent on water (shipbuilding and repair) or on water for the transport of its raw materials (timber yards, a cooperage, a coalyard, an oil refinery). Birchgrove was also the site of a power cable tunnel to the north side of the harbour 1913-1926.

The mud flats, by then the repository of garbage and effluent from an increasingly industrialised and urbanised harbour, were designated in the plan as 'proposed park'. A trust was established to fill the area in 1887 for shrubberies and a cricket pitch. The present configuration was completed in 1897.

The garden of Birch Grove House was subdivided twice, in 1900 fourteen brick houses were built between 1902 and 1922 (twelve remain), and again in 1911 when four brick houses built between 1912 and 1926 (all remain). A thick plantation of trees in Birchgrove Park marks the eastern edge of the Birch Grove House garden, and shields the 1967 flats which replaced it, from view. By 1941 when Storey and Keers shipwrights were established on an apron below a narrow cliff edge in Louisa Road, all land in Birchgrove had been taken up. In the 1970s change in industrial operations and the nature of maritime industry in particular left the former small industrial sites of Birchgrove available for new residential development.

Along Ballast Point to the east of Birchgrove Park, land was released for subdivision and sale in 1852. It was part of John Gilchrist's 550-acre Balmain Estate, and subdivisional activities across the whole estate had been suspended in 1841 because of disputes about his will. Once resolved, Surveyor Charles Langley was responsible for subdividing the remaining acres into 46/47 sections, using existing contour-aligned routes such as Darling Street, Birchgrove Road and Ballast Point Road to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

Speculators Joshua Josephson, Didier Joubert, Charles Smith, William Cover and George Thorne bought up the land on both sides of Ballast Point Road in 1853. This marine location, with most allotments possessing water frontages, attracted some keen bidding.

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By 1891 the whole process of building up Ballast Point Road, Wharf Road, Yeend, Ronald and Lemm Streets was largely complete. There were marine villas on generous parcels of land along Wharf Road. They were sited well up from the waterfront for a stylish setting and for views, with their backs to the road. Large terraces and villas occupied the high ground along Ballast Point Road.

Cooper, who had already received twenty-three acres in Morts Bay (later part of Mort's Town of Waterview) also owned Ballast Point itself. The Point was purchased and used by Caltex Oil Co for oil storage purposes until the 1980s.

Sources

Jeffery, P 1986, Birchgrove 1796-1985 – the Suburbanisation of the 'Birch Grove' Estate, *Leichhardt Historical Journal*, No. 15.

History of the Ballast Point area provided by Max Solling.

Significant Characteristics

- Close relationship between landform and the road pattern, park, siting of buildings (particularly the nineteenth-century marine villas).
- Wide main access roads.
- Narrow minor streets.
- Sandstone a major element – in retaining walls and sea walls, cut stone fences and walls, as outcrops in streetscape, in steps for pedestrian access, kerbs and gutters, piers to palisade fences, in buildings – terraces and villas.
- Generally a sense of elevation.
- Buildings sited close to street alignment.
- Setbacks can vary, particularly on waterfront sites.
- Views between buildings to harbour from public roads and footpaths.
- Villas often sited with backs to street and front elevation to water.
- Villas sometimes single-storey to street, with two to three stories to waterfront.
- Variety of building types:
 - some early cottages of timber/stone/brick remain;
 - Victorian boom villas of stone or rendered brick;
 - dark brown or blue face brick buildings of early twentieth century; and
 - last subdivisions of the Birch Grove House garden occupied by dark brown face brick houses (some unfortunately painted recently).
- Slate roofs particularly noticeable. Also terracotta tiles and iron roof claddings.
- Some original fences remain – iron palisade fences with sandstone piers and bases from 1880s; brick fences from 1920s/1930s.

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- Prominence of large trees, particularly fig trees, around site of Birch Grove House, in Birchgrove Park and along Ballast Point; some notable palm trees.
- Tree planting schemes of jacaranda and melaleuca along Dock Road and Ballast Point Road.
- Grassed verges in wide streets – Grove Street and Ballast Point Road.
- Loss of many original face brick surfaces to plaster and painting.

Note: The location of former waterfront industries indicated by new dwellings/town houses.

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

Management of Heritage Values

Generally

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

Retain

- All residential or commercial industrial structures developed up to 1941 belonging to the period of the growth of the Birchgrove and Ballast Point area.
- All weatherboard buildings – rare and typical of early development.
- All sandstone structures – cottages, villas, wharves/slipways, uninterrupted kerbs and gutters, walls, bases to fences.

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- All plaster finishes to external walls – reconstruct where necessary.
- All original external architectural detail where evidence is available.
- Views between buildings from public places, especially views to the harbour.
- Open undeveloped setting between waterfront and marine villas.

Avoid

- Demolition of any pre-1940s building unless the building has been so compromised that it can no longer explain its history or its role in the history of the area.
- Alteration to the form (scale and massing) of these buildings, especially the roof, including additional stories above the roofline.
- Removal of any plaster or decorative mouldings to external walls.
- Painting or plastering of any sandstone or face brick walls.
- Loss of any trees.
- Widening of Louisa Road or Wharf Road.

Notes

Because this area comprises high headlands and tall tree canopies prominent within the harbour, and visible also from the land behind, special care is needed in dealing with changes which might alter the skyline of those headlands in any way – new buildings, additions at the rear of existing buildings. Further, the apron to these headlands – the trees and remaining open land, usually private garden, between building and waterfront – is vital to the protection of the harbour and its foreshores as the most important visible open space asset in Sydney. These foreshore gardens/open areas need to be protected from encroachment of buildings or large moorings.

Care is needed for applications for change to any building or the tree canopy in these areas. There are a number of very early buildings that remain here, overlaid with later works, and restoration to reveal the original building could be possible in many cases.

Industrial archaeology is an important issue – remnants of wharves, slipways, remains of former buildings (especially small cottages later taken over for industry), tunnel entrance, and the proper process for their assessment is essential before any new works can be considered. For any remaining redundant industrial structures careful archaeological work would be needed prior to consideration of demolition or recycling.