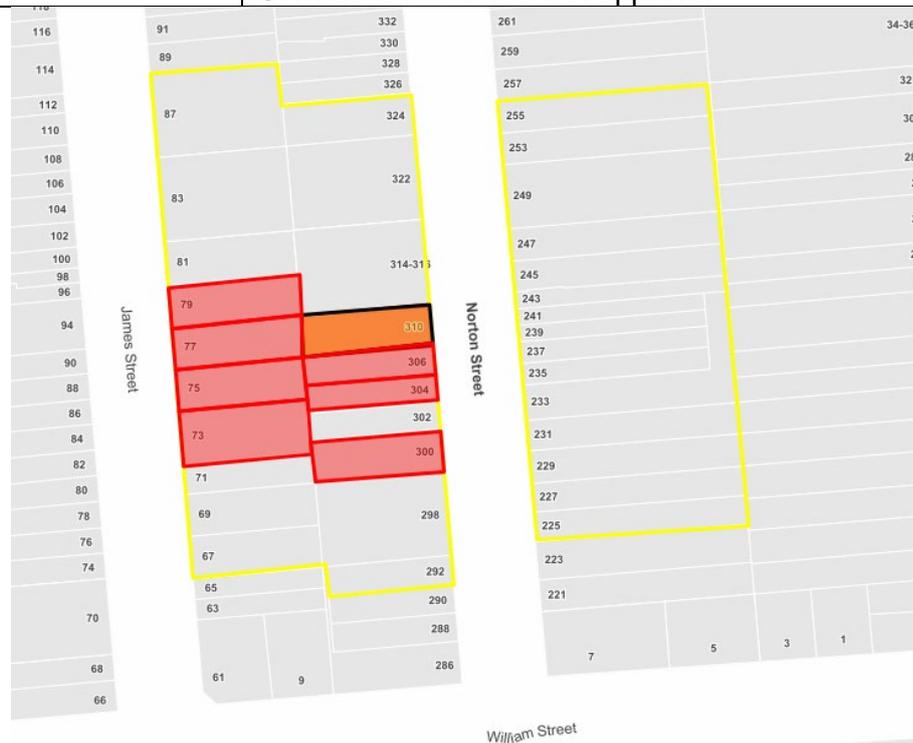


# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2022/0228
<b>Address</b>	310 Norton Street LEICHHARDT NSW 2040
<b>Proposal</b>	Demolition of existing 1-storey building and proposed new 4-storey shop top development with basement parking with 6 residential units and commercial space at ground floor.
<b>Date of Lodgement</b>	30 March 2022
<b>Applicant</b>	Tracee Lim
<b>Owner</b>	Welker Glass Blocks Constructions Pty Ltd
<b>Number of Submissions</b>	Initial: 8
<b>Value of works</b>	\$3,275,040.00
<b>Reason for determination at Planning Panel</b>	SEPP 65, FSR variation
<b>Main Issues</b>	FSR variation, zone requirements, urban design
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Reasons for refusal
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Conditions in the event of approval



### 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 the demolition of an existing single storey building and construction of a four storey shop top development with basement parking with 6 residential apartments and a commercial space at ground floor, at 310 Norton Street, Leichhardt. The application was notified to surrounding properties and 8 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Variation to FSR development standard;
- Inconsistent with the zone objectives;
- Poor urban design outcomes;
- Adverse visual bulk and amenity impacts to adjoining properties;
- Poor internal amenity for the residential units;
- Inconsistent with the desired future character of the area

The non-compliances are not acceptable and therefore the application is recommended for refusal.

## 2. Proposal

The proposal seeks consent for the the demolition of the existing single storey building and construction of a four storey shop top development with basement parking with 6 residential units and commercial space at ground floor. Specifically the works are as follows:

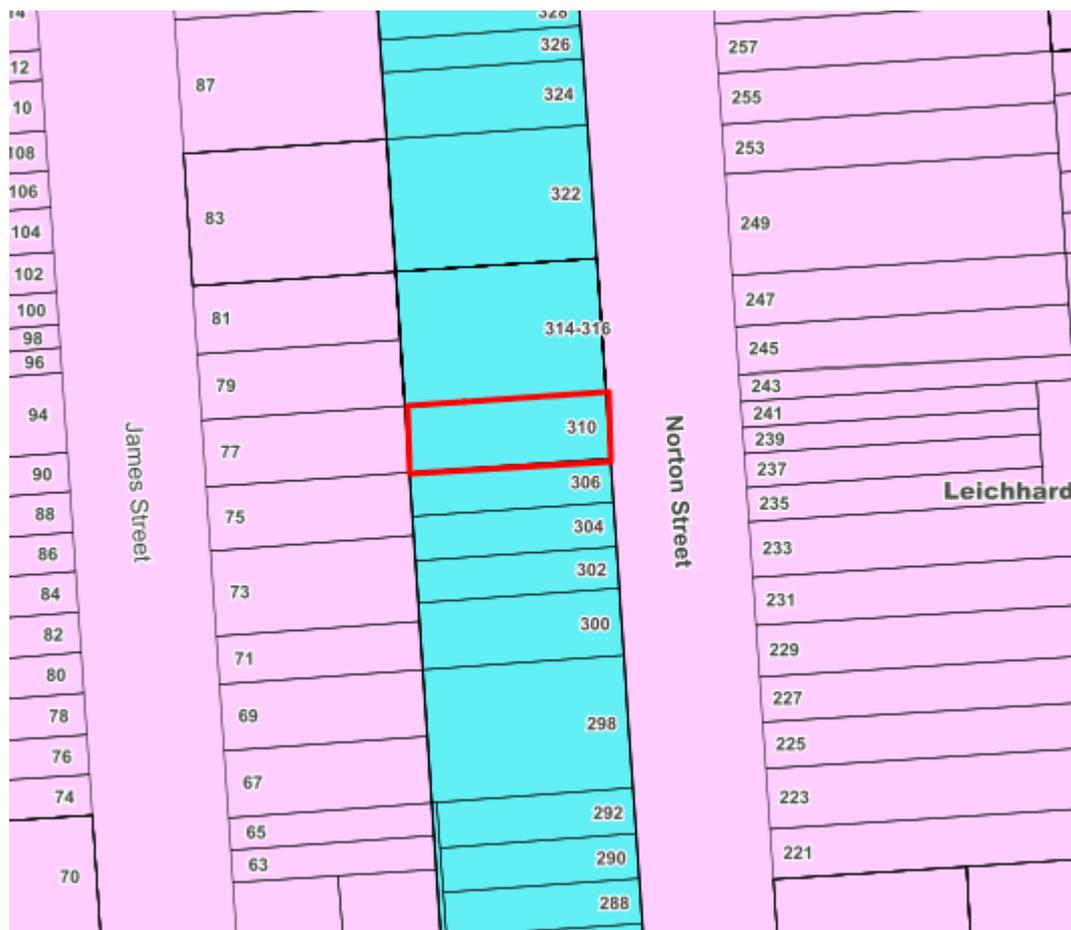
- Basement carparking for 6 x car spaces including two car stacker systems, 4 x bicycle parking, bin storage area, service room and storage areas for the residential units;
- Ground floor to comprise of retail space, accessible toilet and studio unit;
- Level one to comprise of 2 x 2 bedroom units;
- Level two to comprise of 1 x 2 bedroom unit and 1 x 1 bedroom unit
- Level 3 to comprised of 1 x 3 bedroom unit
- Landscaping and communal open space area is to be located within the rear setback.

## 3. Site Description

The subject site is located on the western side of Norton Street, between William Street and City West Link. The site consists of a single allotment and is generally rectilinear in shape with a total area of 306.6sqm.

The site has a frontage to Norton Street of 10.06 metres and a depth of 30.48m and an approximate fall of 1.35m from the front to the rear of the site. The subject site supports a single storey commercial building with a driveway contained within the southern side setback.

The adjoining properties to the north of the site consist of three storey mixed use developments whilst to the south and west of the site are single storey detached residential dwellings.



Land zoning map (subject site outlined in red)

#### 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.

##### **Surrounding properties**

314 Norton Street, Leichhardt

Application	Proposal	Decision & Date
D/2002/179	Demolition of an existing building and erection of a new four storey building containing commercial at ground floor level with two residential dwellings above and basement carparking.	Approved 16/10/2002
D/2006/247	Demolition of all structures on site and construction of three-storey mixed use commercial residential building including four commercial tenancies, six residential units and basement carparking for eleven vehicles.	Approved, 16/07/2007
M/2007/192	Section 96 modification of development consent D/2006/247 which approved demolition of all structures on site and construction of three-storey mixed use commercial residential building including four commercial tenancies, six residential units and	Approved, 3/08/2007

Application	Proposal	Decision & Date
	basement carparking for eleven vehicles. Modification seeks to change Condition 11 to reduce amount of footpath bond required.	
M/2008/114	Section 96 modification to development consent D/2006/247 which approved the construction of three-storey mixed-use development. The modification seeks to delete an opening on the northern elevation, adjacent to the driveway.	Refused, 9/07/2008
M/2009/20	Section 96 modification to development consent D/2006/247 which approved the construction of three-storey mixed-use development. The modification seeks to delete an opening on the northern elevation, adjacent to the driveway.	Approved, 196/03/2009

#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
12/08/2022	Request for additional information sent to the applicant requesting design amendments and additional information to address the outstanding FSR variation, zone requirements, urban design, design verification statement, vehicular access, tree root mapping and submissions.
15/09/2022	Additional information provided by the applicant including SEPP 65 design report, revised plans and arborist report.

### 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 (EPA 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 No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

In considering the above, there is evidence of contamination on the site.

The applicant has prepared a preliminary site investigation, detailed site investigation and remedial action plan. The remedial action plan provided with the application concludes:

*“Based on the assessment undertaken by Alliance of site history information, fieldwork observations and data, and laboratory analytical data, in the context of the proposed land use scenario and objectives of this project, Alliance considers that the remediation objective can be achieved, and the site made suitable for the proposed mixed-use (residential and commercial) land use scenario, subject to the implementation of the following remediation works, detailed below:*

- *Stage 1 - Notification and Planning Requirements.*
- *Stage 2 - Site Preparation.*
- *Stage 3 - Data gap closure investigations relating to groundwater and soils within the building footprint.*
- *Stage 4 - Remedial excavation and validation of contamination points.*
- *Stage 5 - Waste classification: In-situ and stockpile waste classification.*
- *Stage 6 - Offsite disposal of contaminated soils and remaining soils.*
- *Stage 7 - Validation Report preparation.”*

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

5(a)(ii) *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*

*Apartment Design Guide*

The development is subject to the requirements of SEPP 65, which prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is not acceptable having regard to the nine design quality principles. The comments from the Architectural Excellence Design Review Panel have been provided below and have been considered as part of the assessment of the application:

*Principle 1 – Context and Neighbourhood Character*

*“Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area’s existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.”*

- a) *The Panel notes limited activation achieved for the Norton Street frontage as a majority of lot width is occupied by a vehicular driveway and a pedestrian entry foyer.*
- b) *The Panel discussed zoning requirements and notes that residential use is permissible at the rear portion on the ground floor. However, it is the Panel’s view that removal of the rear studio apartment (though removing an accessible apartment) and reconfiguration of ground floor planning would allow a more generous lobby and a more viable commercial/retail area on the ground floor, perhaps sharing a view to the rear garden.*

*Principle 2 – Built Form and Scale*

*“Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.”*

- a) *The Panel notes that the proposed built form has not been established through urban design analysis of the existing context, in particular its lack of consideration of recently approved mixed use proposals along Norton Street (around the subject site). The Panel does not support the 4 storey height and bulk as the built form appears visually imposing on the Norton Street public domain.*
- b) *The Panel also had concern regarding visual and amenity impacts created by a 4 storey unarticulated built form on the single storey cottage to the immediate south. The proposal would also block the sub-floor ventilation to that cottage and remove access for maintenance.*

- c) *The Panel recommends that the proposed built form should comprise a 2 storey building base with an upper level setback for the third level. This upper floor could only be supported if the visual and overshadowing impacts on the public domain and the adjoining cottage to the south are successfully resolved. Consideration could also be given to setting back from the south boundary to reduce amenity impacts on the adjacent cottage and for light and ventilation.*
- d) *The Panel notes that the basement carpark is open and connected to the lightwell serving the residential apartments above. The proposed open configuration is likely to create problematic fire isolation, air quality and acoustic amenity issues.*
- e) *The potential NCC compliance issues with openings in the lightwell abutting the southern boundary need to be reviewed by/with a suitably qualified certifier. Compliance may mean these openings would not provide the necessary light and ventilation*
- f) *The amenity and quality of the ground floor will be further compromised after incorporating realistically sized building services requirements, for example – mailboxes, fire hydrant booster valve, pump room, fire indicator panel, meters panel, main switch board, communications, etc.*

#### Principle 3 – Density

*“Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.”*

- a) *The Panel notes that a maximum permissible floor space ratio of 1:1 applies to the site. An additional 0.5:1 would be offered by Council if the proposal achieves urban design and street activation required by the controls. The Panel further discussed that given the extent of built form recommendations offered in this AEDRP Report, the potential 1.5:1 floor space ratio is unlikely to be achievable on this site.*
- b) *The Panel recommends that to achieve the available FSR, the applicant should investigate an alternative redevelopment strategy based on lot amalgamation with the adjoining property/properties to the south. This could offer potential to satisfy Councils requirements.*

#### Principle 4 – Sustainability

*“Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.”*

- a) *The Panel expects that key targets established within the ADG for solar access and natural cross ventilation are met by the proposal. The scheme submitted does not in the panel's view achieve adequate cross ventilation and solar access. Similarly, the Panel encourages commitment to further sustainability targets for water, energy and waste efficiency.*
- b) *The Panel notes that the proposal benefits from an east-west orientation to achieve direct midwinter solar access to all apartments from the morning and afternoon sun. However, the Panel notes that in its current configuration, direct solar access to living areas is compromised since the living areas are located behind the balconies. A suggested strategy for maximising solar access is to extend the living areas out to the building perimeter. In this suggested configuration the balconies would be located in front of bedrooms and adjacent to the living rooms. This suggested staggered arrangement would enable direct solar access to both – living areas and balconies, to meet the ADG criteria 4A-1.*
- c) *The Panel is unconvinced that compliant natural cross ventilation is achieved, as the plan relies on opening bedroom windows into the light well and few living spaces are cross ventilated. Ventilation from small lightwells should be limited to bathrooms and non-habitable spaces. Consideration could be given for specifically designed ventilation stacks and solar chimneys.*
- d) *The Panel encourages provision of ceiling fans to all habitable areas. Floor-to-floor and floor-to ceiling heights should be both ADG compliant and adjusted to allow the use of ceiling fans.*
- e) *The applicant is encouraged to include a rooftop photovoltaic system for environmental benefits, including power/lighting to common areas.*
- f) *Provision of a rainwater tank should be considered to allow collection, storage and reuse within the site.*

#### Principle 5 – Landscape

*“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.”*

- a) *The communal open space should include a garden with an appropriately sized canopy tree species and shrubs, to improve the interface with the adjoining low density residential sites to the west and to improve the amenity of the ground floor uses. The panel notes no deep soil planting is provided - the rear garden is over the underground car parking.*

Principle 6 – Amenity

*“Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.”*

- a) *The Panel discussed internal residential amenity issues arising from the shape and configuration of the combined living, dining and kitchen areas of most apartments. These spaces need to be re-planned to improve efficiency and flexibility of layouts, and adequate circulation space for the residents. Furniture must be drawn to scale on the plans.*
- b) *The Panel notes the disproportionate size of the balcony areas between the 1 and 2 Bed units on Level 1 and recommends the planning on this level be reviewed.*

Principle 7 – Safety

*“Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.”*

*No discussion*

Principle 8 – Housing Diversity and Social Interaction

*“Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.”*

*No discussion*

Principle 9 – Aesthetics

*“Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.”*

- a) *The face bricks used in the street elevation should continue around the side walls to ensure that a more robust material with an integral finish is considered for these walls which will be visible from the surrounding public domain. The Panel considers that rendered and painted surfaces should be avoided due to the anticipated longevity and life-cycle costs and the limited access for maintenance. The panel notes that the use of bricks as an applied finish as proposed, rather than in a traditional form, is inconsistent with the character of the area and the nature of the material.*

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Section 6A of the SEPP certain requirements contained within LDGP2013 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space (COS) has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Comment: The subject site requires 76.4sqm of COS, the proposal includes 79sqm (27.7%) COS contained within the rear setback. The COS receives adequate solar access in compliance with the requirements under this part.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7%

Comment: The subject site requires 21.5sqm of deep soil planting, the proposal provides 15.7sqm (5.1%) of deep soil planting within the south west corner of the site. The shortfall in deep soil zones is acceptable given the subject site is located within a business zone and the COS provided includes low level planting.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

Comment: The site is in a B2 land use zone with R1 zoned land located to the west. Therefore, in accordance with the provisions under this part “*at the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m*”. With this considered, a 9m setback from the boundary is required. Details of the proposed setbacks to the rear boundary and adjoining dwelling (77 James Street, Leichhardt).

Floor	Setback distance from rear boundary		Setback distance to rear dwelling	
	Balcony	Room	Balcony	Room
Ground	5.7m	8m	11.7m	14m
First	7m	8m	13m	14m
Second	7m	9m	13m	15m
Third	8m	9.5m	17m	15.5m

As detailed in the table above, all units located at the rear of the building do not comply with the numerical requirements under this part. This has the potential to result in adverse impacts to adjoining development by way of overlooking and the excessive bulk presenting to adjoining properties is unsatisfactory.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Comment: By virtue of the proposed design, whilst the balconies are likely to comply with the prescribed criteria, as noted by Council’s Architectural Excellence and Design Review Panel “...that in its current configuration, direct solar access to living areas is compromised since the living areas are located behind the balconies.” The proposal has the ability to be designed in a manner which maximises solar access to the units but in its current form fails to do so.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

Comment: In accordance with the design guidance under Objective 4B - *Light wells are not the primary air source for habitable rooms*. The units on the ground and first floor are reliant on the centrally located void at the southern boundary of the subject site. With the desired future character and zoning considered, it is likely that the adjoining properties to the south will be redeveloped into mixed use developments similar to that north of the subject site. With this considered, the void will in effect become a light well, resulting in a poor ventilation for the majority of the units. The proposal’s reliance on the side boundary to provide ventilation/amenity to the units on the first and second floor results in a poor amenity outcome and is not supported.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

Comment: The ceiling heights comply under the provisions of this part.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m <sup>2</sup>
1 Bedroom apartments	50m <sup>2</sup>
2 Bedroom apartments	70m <sup>2</sup>
3 Bedroom apartments	90m <sup>2</sup>

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
  - 3.6 metres for studio and 1 bedroom apartments.
  - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Comment: The apartment sizes, dimensions and floor to ceiling heights comply with the provisions of this part.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3 metres.

Comment: All units except for Unit 6 (3 bedroom) comply with the minimum balcony size requirements prescribed. Unit 6 includes three balconies comprising of a total combined area of 30sqm, the minimum depth proposed for the rear, central and front balcony are 1.6m, 800mm and 1.3m respectively. Whilst the total area provided for Unit 6 exceeds the minimum requirement, the depths proposed are less than the minimum required and do not provide sufficient depth to allow for reasonable amenity to service the unit.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Comment: The common circulation and spaces comply under the provisions of this part.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m <sup>3</sup>
1 Bedroom apartments	6m <sup>3</sup>
2 Bedroom apartments	8m <sup>3</sup>
3+ Bedroom apartments	10m <sup>3</sup>

Note: At least 50% of the required storage is to be located within the apartment.

Comment: The storage facilities included as part of the proposal comply under the provisions of this part.

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

A BASIX Certificate was submitted with the application.

*5(a)(iv) Local Environmental Plans*

Inner West Local Environmental Plan 2022

The *Inner West Local Environmental Plan 2022 (IWLEP 2022)* was gazetted on 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 *EPA 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 30 March 2022, on this date, the draft *IWLEP 2020* had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Changes to the aims of the plan;
- Changes to the objectives of the zone

The development is considered unacceptable having regard to the provisions of the Draft EPI for the following reasons:

- The proposal is contrary to Clause 1.2(2)(h) - Aims of Plan – as the proposal fails to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain. The form, height, bulk and scale are out of character having regard to adjoining development and the proposal results in adverse impacts on adjoining development.

### *Leichhardt Local Environmental Plan 2013 (LLEP 2013)*

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

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.7 - Demolition
- 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 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management
- Section 6.8 - Development in areas subject to aircraft noise
- Section 6.13 - Diverse housing
- Section 6.11 Residential accommodation in Zone B1 and Zone B2

### Section 1.2 Aims of the Plan

Due to the concerns raised elsewhere in this report with respect to poor urban design and architectural outcomes, adverse visual bulk and scale impacts, overshadowing, extensive FSR variance and incompatibility with the desired future character, the proposal does not comply, and has not demonstrated compliance, with the following provisions of Clause 1.2(2) of the LLEP 2013:

- *(b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
- *(d) to promote a high standard of urban design in the public and private domains,*
- *(e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- *(f) to maintain and enhance Leichhardt's urban environment,*
- *(l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*

### Section 2.3 Land Use Table and Zone Objectives

The site is zoned B2 Local Centre under the *LLEP 2011*. The *LLEP 2013* defines the development as:

*“mixed use development means a building or place comprising 2 or more different land uses.”*

Specifically, the proposal comprises of the following permissible uses:

- **Residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.
- **Commercial premises** means any of the following—
  - (a) business premises,
  - (b) office premises,
  - (c) retail premises.

The development is permitted with consent within the land use table. However, the development is not consistent with the objectives of the B2 zone. The proposal does not comply, or has not demonstrated compliance, with the following provisions of Clause 2.1 of the *LLEP 2013*:

- *To ensure that development is appropriately designed to minimise amenity impacts.*

### Section 4 Principal Development Standards and Section 4.4A - Exception to maximum floor space ratio for active street frontages

The proposal seeks approval for a mixed-use development with an active street frontage at the ground floor, as such the floor space incentive provisions contained within Clause 4.4A of the *LLEP 2013* apply to the site if the following provisions have been demonstrated:

*“(3) Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is 1.5:1 if the consent authority is satisfied that—  
(a) the building will have an active street frontage, and  
(b) the building comprises mixed use development, including residential accommodation, and  
(c) the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.”*

The amended proposal has not demonstrated the requirements of 4.3A(3)(c) have been met as it is not compatible with the desired future character, results in adverse visual bulk impacts to the streetscape and adjoining properties and is disproportionate in form and scale to adjoining developments along Norton Street. These matters have been discussed in further detail within this assessment report.

Given that the proposal has not demonstrated all the requirements of Clause 4.3A of the *LLEP 2013*, the additional floor space provisions cannot be applied in this instance.

With this considered, the maximum FSR permitted for the site in accordance with Clause 4.4 of the *LLEP 2013* is 1:1 (306.6sqm). Council has calculated that the proposal will result in a FSR of 1.5:1 (459sqm) this being a variation of 49.7% (152.4sqm) to the development standard. A formal request for an exception under the provisions of Clause 4.6 of the *LLEP 2013* has not been provided and as such Council cannot consider the variation.

Section 6.11 Residential accommodation in Zone B1 and Zone B2

The proposal seeks approval for a mixed-use development with an active street frontage at the ground floor within the B2 Local Centre Zone, as such the floor space incentive provisions contained within Clause 4.4A of the LLEP 2013 apply to the site if the following provisions have been demonstrated:

- (1) *The objective of this clause is to promote residential accommodation as part of mixed use developments in business zones to support the vitality of neighbourhood and local centres.*
- (2) *This clause applies to land in Zone B1 Neighbourhood Centre and Zone B2 Local Centre.*
- (3) *Development consent must not be granted to development for the purpose of residential accommodation on land to which this clause applies unless the consent authority is satisfied that—*
  - (a) *the building comprises mixed use development, including residential accommodation, and*
  - (b) *the building will have an active street frontage, and*
  - (c) *the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.*
- (4) *In this clause, a building has an active street frontage if all floor space on the ground floor of the building on the primary street frontage is used for a purpose other than residential accommodation (with the exception of areas for access or service purposes).*

The amended proposal has not demonstrated the requirements of 6.11(c) have been met as it is not compatible with the desired future character, results in adverse visual bulk impacts to the streetscape and adjoining properties and is disproportionate in form and scale to adjoining developments along Norton Street

5(d) Development Control Plans

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

LDCP2013	Compliance
<b>Part C</b>	
C1.1 Site and Context Analysis	No – see discussion
C1.2 Demolition	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Yes

<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.2.5(d) Norton Street - Residential Sub Area- Distinctive Neighbourhood	No – see discussion
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	No – see discussion
C4.2 Site Layout and Building Design	No – see discussion
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	No – see discussion
C4.6 Shopfronts	Yes
C4.15 Mixed Use	No – see discussion
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	Yes
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.3 Stormwater Drainage Concept Plan	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
E1.3 Hazard Management	Yes

The following provides discussion of the relevant issues:

#### C1.0 Site Context and Analysis

The proposed development not been appropriately designed with respect to the site context, scale, built form and desired future character. Specifically, the proposal is inconsistent with the following objectives:

- *a. existing site conditions on the site and adjacent and nearby properties;*
- *b. the development potential of adjoining and nearby sites and the likely impacts on the site itself and its neighbours if those properties are developed to their maximum potential;*
- *c. known future development proposals and development trends in the vicinity of the site;*
- *d. the potential for amenity impacts such as overshadowing, loss of privacy, views or solar access;*
- *f. the special qualities of the site and its context including urban design, streetscape and heritage considerations; and*

The proposal fails to follow the cues of the already constructed development to the north at 310-314 Norton which provides for greater rear setbacks than what is proposed. The reduced rear setbacks are considered to result in the potential for adverse amenity impacts to adjoining development by way of solar access, visual privacy as well as impact of bulk to the rear yard of the adjoining low density residential development to the west and south of the site. Furthermore the proposed built form is at odds with nearby mixed use development and is comparatively overscale.

#### C2.2.2.5(d) Norton Street - Residential Sub Area- Distinctive Neighbourhood

The provisions under C2.2.2.5(d) Norton Street - Residential Sub Area- Distinctive Neighbourhood detail the desired future character of the area, including the pattern of development, height, bulk, scale and setbacks. The desired future character provisions require infill development to respond to the context area and the unique characteristics of the site. The size and scale of the fourth storey is excessive and is not supported as it is contrary to the desired future character, results in visual bulk impacts to the streetscape and to the low scale residential development to the side and rear of the subject site. Additionally the proposed front and rear setbacks are less than the minimum required under this part and are inconsistent with the pattern of development. The rear setbacks proposed do not allow for adequate separation to protect the residential amenity of the adjoining properties and that of the future occupants of the site. The proposal in its current form is not considered to satisfy Objective O1 and Controls C1, C5, C6(d)(f) and C7 under this Part.

#### C4.1 Objectives for Non-Residential Zones

The proposed development not been appropriately designed with respect to the site context, scale, built form and desired future character. Specifically, the proposal is inconsistent with the objectives O3, O6, O9, O10 and O12.

#### C4.2 Site Layout and Building Design

The proposed development not been appropriately designed with respect to the site context, scale, built form and desired future character. Furthermore, the proposal is inconsistent with the rear building location zone as established by the development to the north of the subject site, this being 9m. Specifically, the proposal is inconsistent with objectives O1, O2, O3, O4a, O4c, O4d and controls C1, C2, C3, C6, C11, C12, C14, C16 and C17.

#### C4.5 Interface Amenity

Insufficient information has been included on the plans provided illustrating the existing and proposed overshadowing impacts to the adjoining properties to the south, specifically the impacts of all adjoining structures have not been depicted on the plans. In particular the proposal has not demonstrated that the adjoining properties will retain the minimum amount of reasonable solar access to their rear POS and main living room windows. Furthermore, an inadequate rear setback has been provided whereby the proposal fails to mitigate visual privacy impacts to the adjoining low density residential properties. The proposal is inconsistent with objectives O1d, O1e and controls C8 and C15.

#### C4.15 Mixed Use

The proposed development not been appropriately designed with respect to the site context, scale, built form and desired future character. The excessive scale of the proposal within the site context results in overshadowing impacts to the western and southern residential dwellings in addition to creating adverse visual bulk impacts to the streetscape and adjoining low scale residential dwellings. Furthermore, the residential units proposed have poor access to natural ventilation and result in adverse visual privacy impacts to the properties to the rear. Specifically, the proposal is inconsistent with objectives O1 and controls C7 a, C7c, C8 and C10.

#### 5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality.

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

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

#### 5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 8 submissions were received in response to the initial notification.

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

- Visual privacy impacts from the rear facing windows and balconies;
- Overshadowing impacts to adjoining residential properties;
- Visual bulk impacts to adjoining residential properties;
- Insufficient landscaping

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

Issue: Noise impacts during construction

Comment: If an approval was recommended, suitable conditions would be imposed requiring a construction management plan

Issue: Insufficient car parking

Comment: The proposed development includes car parking in compliance with the LDCP 2013 car parking provisions.

Issue: Damage to adjoining properties during the excavation and construction phase

Comment: If approval was recommended for the application suitable conditions would be imposed requiring a dilapidation report for immediately adjacent properties.

Issue: Cumulative traffic impacts to the local area

Comment: It is unlikely that the proposed development will result in adverse traffic impacts to the area

#### 5(h) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is contrary to the public interest as it fails to satisfy Council planning controls and results in poor amenity outcomes for neighbouring development and unacceptable streetscape outcomes.

## 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.

- Urban design
- Development engineering
- Waste

## 7. Section 7.11 Contributions/7.12 Levy

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

## 8. Conclusion

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

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

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2022/0228 for the demolition of the existing 1-storey building and proposed new 4-storey shop top development with basement parking with 6 apartment units and commercial space at ground floor at 310 Norton Street, LEICHHARDT for the following reasons.

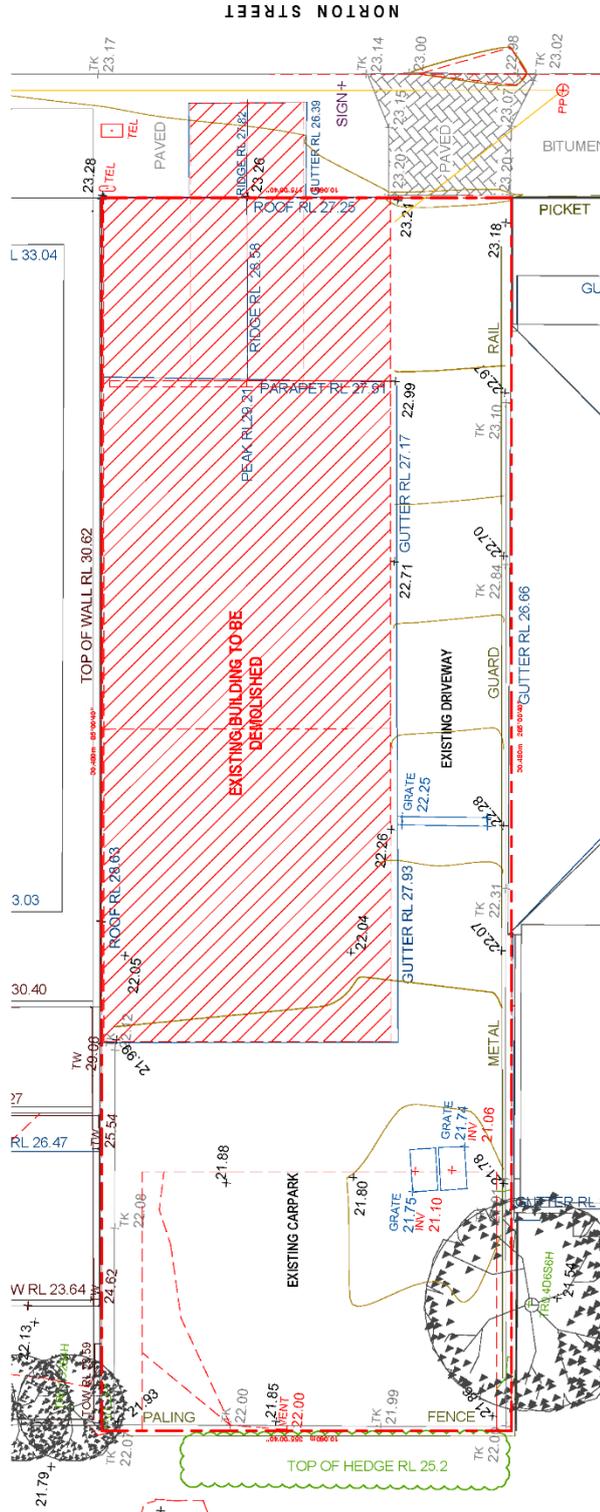
## Attachment A – Reasons for refusal

### REASONS FOR REFUSAL

1. The proposed development is inconsistent with and has not demonstrated compliance with Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, including:
  1. Clause 1.2(2)(b)(d)(e)(f)(l) - Aims of Plan
  2. Clause 2.1- Zone objectives and Land use table
  3. Clause 4.4 - Floor space ratio
  4. Clause. 4.3A - Exceptions to maximum floor space ratio for active street frontages
  5. Clause 6.11 Residential accommodation in Zone B1 and B2
2. The proposed development is inconsistent with and has not demonstrated compliance with the design quality principles of the State Environmental Planning Policy - 64 Design Quality of Residential Apartment Development, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
3. The proposed development is inconsistent with and has not demonstrated compliance with Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, including:
  1. Draft Clause 1.2(2)(h) - Aims of Plan.
  2. Draft Clause 2.3 - Zone objectives and Land Use Table.
4. The proposed development is inconsistent with and has not demonstrated compliance with Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, including:
  1. Part C1.0 Site Context and Analysis
  2. Part C2.2.2.5(d) Norton Street - Residential Sub Area - Distinctive Neighbourhood
  3. Part C4.1 Objectives for Non-Residential Zones
  4. Part C4.2 Site Layout and Building Design
  5. Part C4.5 Interface Amenities
  6. Part C4.15 Mixed Use
5. The proposed development will result in adverse impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.

6. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Attachment B – Plans of proposed development



1 DEMOLITION PLAN  
DA03 Scale: 1 : 100

**DEVELOPMENT APPLICATION**

Project	PROPOSED MIXED-USE DEVELOPMENT AT 310 NORTON STREET, LEIGHARDT, NSW 2040
Drawn	DA03
Checked	1:100/AG
Drawn	DA03
Issue	A
Date	16/02/21



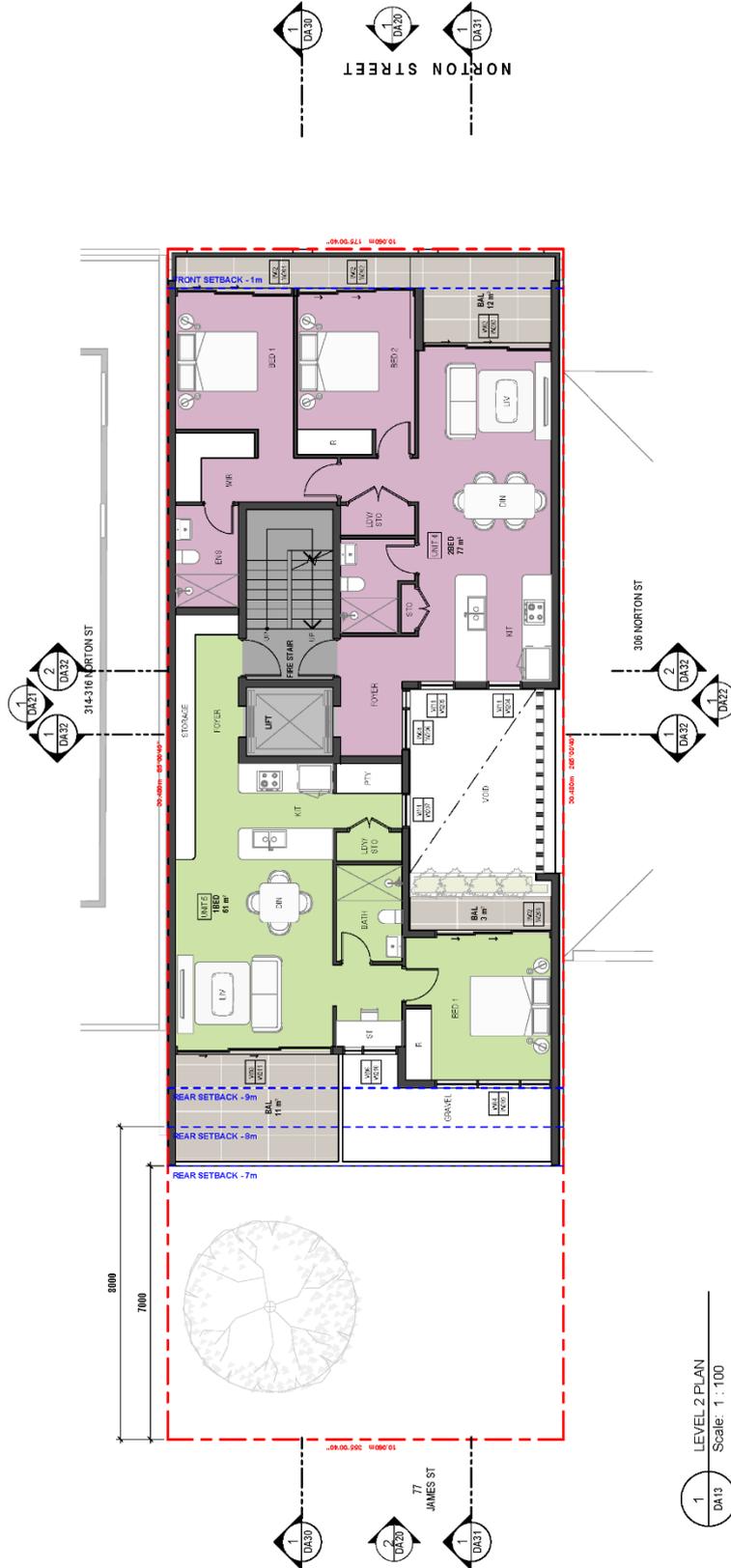
Client	TL	Scale	1:100/AG	Project No.	202136
Drawn	DM	Project No.	202136	Issue	A

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Version: 1, Version Date: 09/11/2022









1 LEVEL 2 PLAN  
Scale: 1 : 100

**DEVELOPMENT APPLICATION**

Project: PROPOSED MIXED-USE DEVELOPMENT AT 310 NORTON STREET, LEICHHARDT, NSW 2040

Drawn: [Name]

Level 2 FLOOR PLAN

Drawn By: [Name]

Scale: 1:100

Project No: 202108

Drawn: [Name]

Scale: 1:100

Project No: 202108

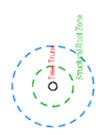
Drawn: [Name]

Scale: 1:100

Project No: 202108



MGA  
MAGNETIC ARCHITECTURE  
314-316 NORTON STREET  
LEICHHARDT NSW 2040  
PH: 02 9550 1234  
WWW.MGAARCHITECTURE.COM.AU



**NOTE:**  
ADDRESSING ADDITIONAL INFORMATION ITEMS 1-4:  
REVISED PLANS, ELEVATIONS, AND SECTIONS LAYOUT.

- [Symbol] - FACE BRICK
- [Symbol] - REDUCED PAINT FINISH
- [Symbol] - METAL CLADDING
- [Symbol] - GLASS BALUSTRADE
- [Symbol] - TIMBER FINISH

- [Symbol] - PROPOSED WALL
- [Symbol] - EXISTING WALL
- [Symbol] - EXISTING WINDOW
- [Symbol] - EXISTING DOOR
- [Symbol] - EXISTING SETBACK
- [Symbol] - EXISTING SETBACK
- [Symbol] - EXISTING SETBACK

Date: 06/12/2021  
DA3202

Issue: Amendment  
A: DA Submission  
B: Address Information Consult

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Document Set ID: 37044939  
Version: 1, Version Date: 09/11/2022







**1 EAST ELEVATION**  
DWG01 Scale: 1 : 100

**2 WEST ELEVATION**  
DWG02 Scale: 1 : 100

**DA LEGEND**

- PROPOSED WALL
- EXIST. SHEET
- EXISTING
- EXIST. CARPARK
- NATURAL GROUND

**FINISHES**

- FACE BRICK
- RENDERED PAINT FINISH
- METAL CLADDING
- CLASS BALCONY/TRADE
- TIMBER FINISH

**NOTE:** ADDRESSING ADDITIONAL INFORMATION ITEMS 1.4, REVISED PLANS, ELEVATIONS, AND SECTIONS LAYOUT.

**DA Legend:**

- PROPOSED WALL
- EXIST. SHEET
- EXISTING
- EXIST. CARPARK
- NATURAL GROUND

**FINISHES**

- FACE BRICK
- RENDERED PAINT FINISH
- METAL CLADDING
- CLASS BALCONY/TRADE
- TIMBER FINISH

**Project:** PROPOSED MIXED-USE DEVELOPMENT AT 310 NORTON STREET, LEICHTHARDT NSW 2040

**Drawing:** EAST AND WEST ELEVATIONS

**Client:** MGA

**Scale:** 1:100

**Project No:** 201105

**Drawn:** DA20

**Issue:** B

**Project No:** 201105

**Scale:** 1:100

**Project No:** 201105

**Drawn:** DA20

**Issue:** B











**1 SECTION C**  
 Scale: 1 : 100

**2 SECTION D**  
 Scale: 1 : 100

**NOTE:** ADDRESSING ADDITIONAL INFORMATION ITEMS 1.4, REVISED PLANS, ELEVATIONS, AND SECTIONS LAYOUT

**DA LEGEND**

- PROPOSED WALL
- EXISTING BED
- SKULLERY
- NATURAL GROUND
- FACE BRICK
- RENDERED PAINT FINISH
- META GLAZING
- CLASS BALCONY/TRADE
- TIMBER DECK

**MGA**  
 Murray Grogan Architects  
 25 St Marks Avenue  
 Surry Hills NSW 2010  
 info@murraygrogan.com.au  
 02 9514 1931/229

**DEVELOPMENT APPLICATION**

Project: PROPOSED MIXED-USE DEVELOPMENT AT 310 NORTON STREET LEICHHARDT NSW 2040

Drawing: D432

Created: 20/10/22  
 Drawn: B

Scale: 1:100/8/3

Project No: 201018

30/03/2022 1:37:16 PM

MGA Sydney 2012

Amendment: Dr. S. Johnson

Date: 19/12/2021  
 18/08/2022

Issue: A Additional Information is Drawn

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Do not scale drawings. Verify all dimensions on site.

Document Set ID: 37044939  
 Version: 1, Version Date: 09/11/2022







**Attachment C- Conditions in the event of approval**

**CONDITIONS OF CONSENT**

**DOCUMENTS RELATED TO THE CONSENT**

**1. Documents related to the consent**

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

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
DA03, Rev A	Demolition plan	16/12/2021	Metropoint Group Architects
DA10, Rev B	Basement floor plan	2/09/2022	Metropoint Group Architects
DA11, Rev B	Ground floor plan	2/09/2022	Metropoint Group Architects
DA12, Rev B	Level 1 Floor Plan	2/09/2022	Metropoint Group Architects
DA13, Rev B	Level 2 Floor Plan	2/09/2022	Metropoint Group Architects
DA14, rev B	Level 3 Floor Plan	2/09/2022	Metropoint Group Architects
DA15, Rev B	Roof Plan	2/09/2022	Metropoint Group Architects
DA20, Rev B	East and West Elevations	2/09/2022	Metropoint Group Architects
DA21, Rev B	North Elevation	2/09/2022	Metropoint Group Architects
DA22, Rev B	South Elevation	2/09/2022	Metropoint Group Architects
DA30, Rev B	Sections A	2/09/2022	Metropoint Group Architects
DA31, Rev B	Section B	2/09/2022	Metropoint Group Architects
DA32, Rev B	Section C and D	2/09/2022	Metropoint Group Architects

DA40, Rev B	Demolition Construction Waste Management Plan	2/09/2022	Metropoint Group Architects
DA41, Rev B	On-Going Waste Management Plan	2/09/2022	Metropoint Group Architects
DA80, Rev B	Materials and Finishes Schedule	2/09/2022	Metropoint Group Architects

As amended by the conditions of consent.

**FEES**

**2. Section 7.11 (Former Section 94) Contribution**

Prior to the before commencing works written evidence must be provided to the Certifying Authority that a monetary contribution of \$117,930.48 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access has been paid to the Council.

The above contribution is the contribution applicable as at 9/11/2022.

Local Infrastructure Type:	Contribution \$
Community Facilities	\$14,138.78
Open Space	\$103,103.28
Local Area Traffic Management	\$581.51
Bicycle Works	\$109.90
<b>TOTAL</b>	<b>\$117,930.48</b>

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

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

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit*

**card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

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

**3. 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.

**4. Security Deposit - Custom**

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

<b>Security Deposit:</b>	1% of cost of works or \$8000.00 - whichever is greater
<b>Inspection Fee:</b>	\$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.

### **GENERAL CONDITIONS**

#### **5. Separation of Commercial and Residential Waste and Recycling**

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

#### **6. Car Parking**

The development must provide and maintain within the site:

- a. 6 car parking spaces must be paved and line marked;
- b. 1 x visitor/retail car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;
- c. 4 x Bicycle storage capacity within the site;
- d. 1 x motorcycle space must be paved and line marked.

#### **7. Residential Flat Buildings – Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

#### **8. Residential Flat Buildings – Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

#### **9. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 2 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

#### **10. Waste Management Plan**

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

#### **11. Erosion and Sediment Control**

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

#### **12. Standard Street Tree Protection**

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

#### **13. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

#### **14. Works Outside the Property Boundary**

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

#### **15. 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.

#### **16. Contamination – Remedial Action Plan (No Site Auditor Engaged)**

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Alliance Geotechnical & Environmental Solutions, reference 13976.2-ER-1-3 dated 3 March 2022, the *Contaminated Land Management Act*

1997 and Chapter 4 - Remediation of Land of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

#### **17. 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.

#### **18. Rock Anchors**

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

#### **19. Project Arborist**

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

### **PRIOR TO ANY DEMOLITION**

#### **20. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

#### **21. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

**22. 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.

**23. 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.

**24. Construction Traffic Management Plan – Detailed**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;

- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **PRIOR TO CONSTRUCTION CERTIFICATE**

##### **25. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Leichhardt DCP 2013 and must include doorways/entrance points of 1200mm.

**26. Waste Transfer Route**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:14.

**27. Each Residential Unit is to have Access to a Disposal Point for All Waste Streams**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

**28. Amended Waste and Recycling Management Plan - Ongoing Use**

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with an updated Waste Management Plan which includes diagrams or descriptions showing the route of transfer of bins, including gradients and width of passageway, including the use of the lift or bin tugs if necessary. Maximum gradient on the route of transfer is 1:14. The update must also describe, with the use of diagrams or written descriptions, the exact waste collection point.

**29. 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*

**30. Acoustic Report – Aircraft Noise**

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

**31. Fibre-ready Facilities**

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

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

**32. 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.

### 33. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced 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 the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. ST01 Rev B, ST02 Rev B, ST03 Rev B and ST04 Rev B prepared by Stronghold Engineers and dated 17/12/2021, as amended to comply with the following;
- b. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) via the OSD/OSR tanks by gravity to directly to Council's piped drainage system;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's Leichhardt DCP2013.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of surface flows from the driveway from the basement;
- e. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and discharge to the gutter does not exceed 15L/s in 100 year event;
- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- h. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided. Overflow must be to Norton Street and designed such that overflows do not drain into the property including to the basement ramp;
- i. Where there is no overland flow/flood path available from the rear and central courtyards to the Norton Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
  1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.;

2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
  3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands/roof areas.
- j. A pump-out system for drainage of surface flows from the basement ramp only is permitted and must be designed in accordance with the following criteria:
1. Comply with all relevant Australian Standards;
  2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
  3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
  4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
  5. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank;
  6. The basement drainage system must be designed to prevent and/or capture and treat all pollutants from cars or other sources prior to discharge from the site by installing grease and hydrocarbon treatment device(s) and locating stormwater drains outside vehicle standing areas.
- 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. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- o. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm.
- p. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- q. Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s); and
- r. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets. The basement must be fully "tanked" so as not to allow the ingress of seepage or groundwater.

#### 34. Parking Facilities – Major (including basement)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans 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) demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a. The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent;
- b. The internal garage slab or hard stand area must be adjusted locally at the boundary to ensure that it matches the above-issued alignment levels;
- c. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- d. Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004;
- e. Minimum headroom of 2500mm must be provided above any disabled parking space(s);
- f. The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B99 design vehicle. Longitudinal sections must be provided along each outer edge of all ramps;
- g. The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
  1. Car spaces adjacent to walls or fences are increased in width by an additional 300mm;
  2. End spaces are provided with an additional 1m aisle extension; and
  3. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004.
- h. At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road;
- i. The relative surface levels of the internal access from the road being controlled so that:
  1. The surface levels at the property boundary match "alignment levels"
  2. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1; and

- 3. The maximum grade at the property boundary does not exceed 1 in 20 (5%) within 6m of the property boundary.
- j. The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles;
- k. All parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction;
- l. The entry security door must be set back a minimum of 5500mm from the property boundary;
- m. A bicycle storage area must be provided to accommodate the numerical requirements of Leichhardt DCP2013 and be designed in accordance with relevant provisions of AS 2890.3-2015. Bicycle parking spaces for visitors to the commercial component and residential components of the development must be provided at ground floor level and must be compliant with AS 2890.3-2015 Security Class C facilities standards. Bicycle parking spaces for residents and employees of the commercial component of the development must be compliant with AS 2890.3-2015 Security Class A or Class B facilities standards.
- n. An internal traffic management system must be installed on both ends of the driveway access ramp to maintain a conflict free traffic movement through the access ramp. Priority must be given to entering vehicles. The system must also allow for motorbikes and cyclists. Suitable passing opportunities within the basement must be demonstrated.
- o. Permanent physical barriers must be provided on each side of the vehicular access, to the north between the vehicle access and foyer entry and, to the south between the vehicle access and fire door egress. The barriers must not obstruct sightlines to pedestrians.
- p. Off-street parking for visitors to the commercial component of the development is not permitted.

**35. Tree Protection Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a detailed site-specific Tree Protection Plan (TPP) prepared by a AQF5 Consultant Arborist. The TPP is to be prepared in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

The trees identified below are to be retained and protected throughout the development:

Tree No.	Botanical/Common Name	Location
7	Red Flowering Gun	308 Norton Street, Leichhardt

The tree protection measures contained in the TPP must be shown clearly on the Construction Certificate drawings, including the Construction Management Plan.

The Certifying Authority must ensure the construction plans and specifications submitted fully satisfy the tree protection requirements identified in the TPP.

A Project Arborist is to be appointed prior to any works commencing to monitor tree protection for the duration of works in accordance with the requirements identified in the TPP.

All tree protection measures as detailed in the approved Tree Protection Plan must be installed and certified in writing as fit for purpose by the Project Arborist.

### **DURING DEMOLITION AND CONSTRUCTION**

#### **36. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

#### **37. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and

- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

**38. Survey Prior to Footings**

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

**39. Tree Protection Zone**

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with the Arboricultural Impact Assessment Report prepared by High the Arborist dated 9 September 2022 . The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name
7	Red Flowering Gum

**PRIOR TO OCCUPATION CERTIFICATE**

**40. Aircraft Noise –Alterations and Additions**

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the “Before the Issue of a Construction Certificate” Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a

further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

#### **41. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

#### **42. Public Domain Works**

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

- a. Light/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. 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".

#### **43. 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.

#### **44. Parking Signoff – Minor Developments**

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

**45. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

**46. Basement/Retaining Wall Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical 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 the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

**47. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from 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 the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a. The car park has been completed, line marked and all signage relating to car parking erected;
- b. A notice has been clearly displayed at the Norton Street frontage to indicate that visitor parking is available within the property with access from Norton Street;
- c. Sign(s) have been erected that clearly indicate(s) to the drivers of vehicles both on and off the property which driveway they are to use to enter or leave the subject land;

- d. Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

#### **PRIOR TO SUBDIVISION CERTIFICATE**

##### **48. Section 73 Certificate**

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

#### **ON-GOING**

##### **49. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

##### **50. Commercial Bin and Re-usable Item Storage**

All commercial bins and re-usable items such as crates and trays are to be stored within the site.

##### **51. Bin Storage**

All bins are to be stored within the site. Bins must be returned to the bin storage area within 12 hours of having been emptied.

##### **52. Loading/unloading on site**

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

##### **53. Commercial Waste/Recycling Collection**

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

### **ADVISORY NOTES**

#### **Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

#### **Recycling / Garbage / Organics Service Information and Education**

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

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

At least 7 days before any demolition work commences:

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

#### **Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

- a. Application for any activity under that Act, including any erection of a hoarding;

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

#### **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.

**Permits from Council under Other Acts**

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

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

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

**Noise**

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

**Amenity Impacts General**

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

**Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Construction of Vehicular Crossing**

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

**Dial before you dig**

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

**Useful Contacts**

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

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

**Street Numbering**

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

**Rock Anchors**

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

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

**Subsurface drainage pump-out systems**

Where it is demonstrated by detailed geotechnical investigation that the groundwater flows are minimal or intermittent, a pump out system for groundwater may be considered. An application for modification of development consent with supporting documentation must be submitted. Where this option is to be pursued dry-weather flows of any seepage water will not be permitted through kerb outlets and must be connected directly to a Council stormwater system in accordance with Council requirements.

**Consent of Adjoining property owners**

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

**Arborists standards**

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

**REASONS FOR REFUSAL**

1. The proposed development is inconsistent with and has not demonstrated compliance with Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, including:
  1.
    1. Clause 1.2(2)(b)(d)(e)(f)(l) - Aims of Plan.
    2. Clause 2.1- Zone objectives and Land use table
    3. Clause 4.4 - Floor space ratio
    4. Clause. 4.3A - Exceptions to maximum floor space ratio for active street frontages
    5. Clause 6.11 Residential accommodation in Zone B1 and B2
2. The proposed development is inconsistent with and has not demonstrated compliance with the design quality principles of the State Environmental Planning Policy - 64 Design Quality of Residential Apartment Development, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
3. The proposed development is inconsistent with and has not demonstrated compliance with Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, including:
  1. Draft Clause 1.2(2)(h) - Aims of Plan.
  2. Draft Clause 2.3 - Zone objectives and Land Use Table.
4. The proposed development is inconsistent with and has not demonstrated compliance with the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, including:
  1. Part C1.0 Site Context and Analysis

2. Part C2.2.2.5(d) Norton Street - Residenziale Sub Area - Distinctive Neighbourhood
3. Part C4.1 Objectives for Non-Residential Zones
4. Part C4.2 Site Layout and Building Design
5. Part C4.5 Interface Amenity
6. Part C4.15 Mixed Use
5. The proposed development will result in adverse impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
6. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.