



 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2023/1000
Address	344 Marrickville Road MARRICKVILLE NSW 2204
Proposal	Removal of three (3) trees and pruning of sixteen (16) trees on a heritage listed site.
Date of Lodgement	27 November 2023
Applicant	Trustees of The Passionist Fathers
Owner	Trustees Of The Passionist Fathers St Brigids Church Trust
Number of Submissions	0
Value of works	\$20,000.00
Reason for determination at Planning Panel	Pruning/removal of trees on heritage item whose listing includes “grounds”.
Main Issues	N/A
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Site Plan and Images



Figure 1 – Locality Map

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for removal of three trees and pruning of sixteen trees at 344 Marrickville Road Marrickville.

The application was notified to surrounding properties and no submissions were received in response to the notification.

The proposal generally complies with the applicable planning controls. The proposal will not result in any significant impacts on the streetscape or the amenity of the adjoining properties, subject to conditions of consent.

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

2. Proposal

The application seeks development consent for tree pruning/removal.

Specifically, the application seeks to remove three (3) and prune sixteen (16) *Phoenix spp.* (date palm species) trees from within the site as shown in Figure 3 below.



Figure 2 – Aerial Imagery



Figure 3 – Tree Location Plan



Figure 4 and 5 – Tree 1 to 5

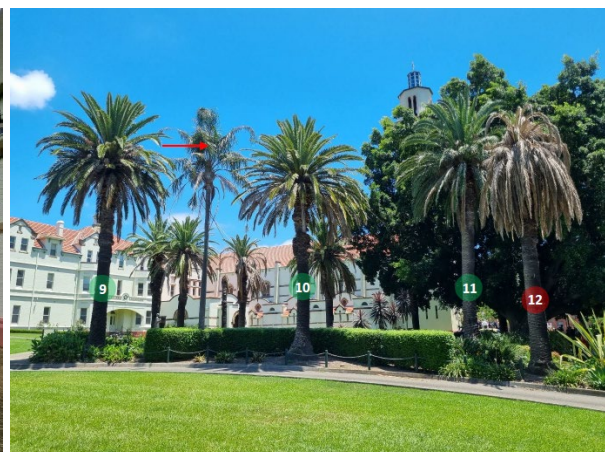


Figure 6 and 7 – Tree 5 to 12



Figure 8 – Tree 13 to 19

3. Site Description

The subject site is located on the southern side of Marrickville Road, at the intersection of Livingstone Road. The site consists of three (3) allotments, is generally rectangular – shaped with a total area of approximately 16,300 sqm and is legally described as Lot 1 in DP 9223, Lot 2 in DP 1076579 and Lot 3 in DP 1076759.

The site has a frontage to Marrickville Road of 87.5 metres and a secondary frontage of approximately 172.5 metres to Livingstone Road.

The site consists of numerous buildings of different sizes, most noticeably the St Brigid Catholic Church, monuments and associated landscaping. The adjoining properties support various type of structures, including single storey dwelling houses, public library and one/two storey retail buildings.

The subject site is listed as a locally listed heritage item, known as “*St Brigid’s Church, Hall, Monastery, Shrine and grounds, including interiors*” (Item No. I1268). The property is also located within the Civic Precinct Heritage Conservation Area (HCA).

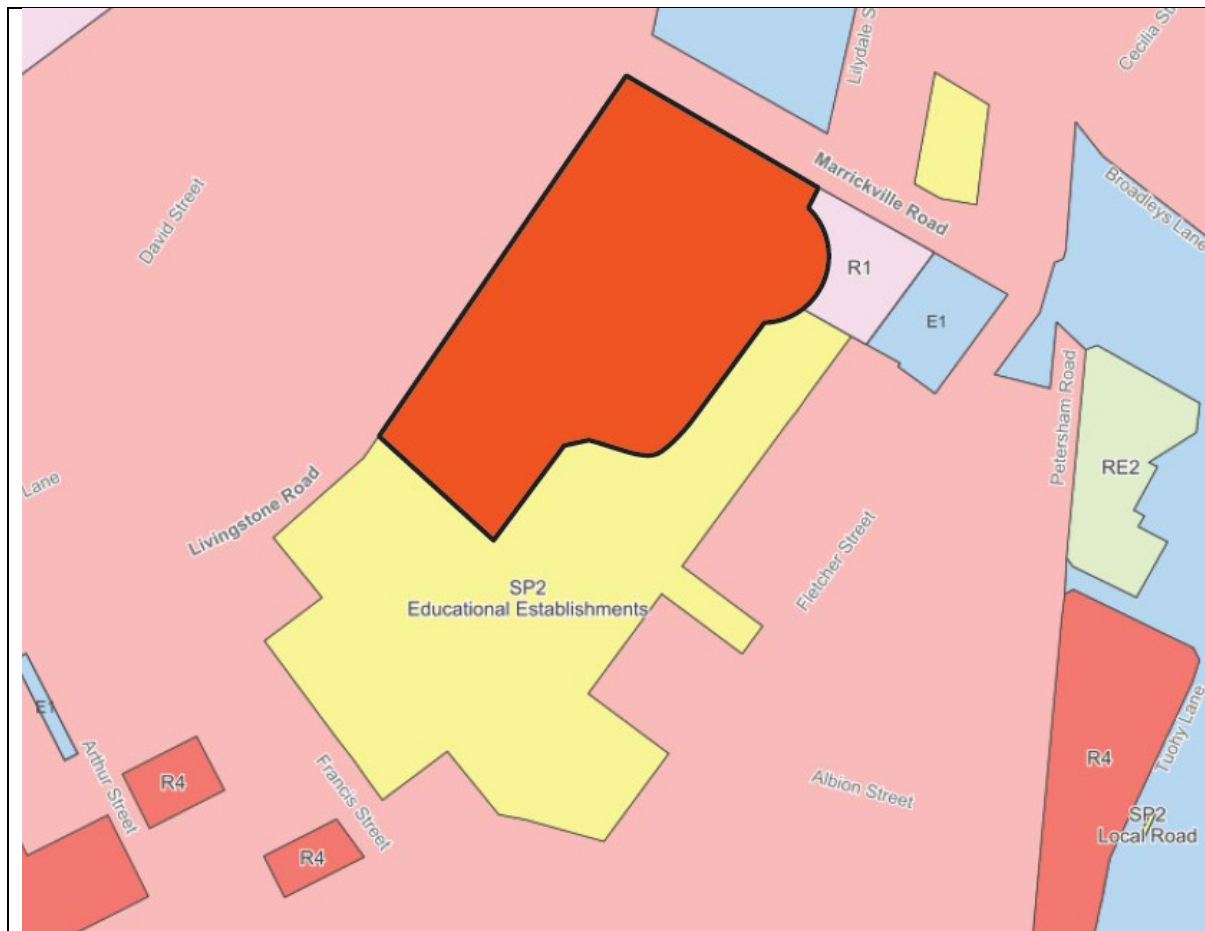


Figure 9 – IWLEP zoning map

- Subject site
- R2 – Low Density Residential
- SP2 – Infrastructure
- R1 – Low Density Residential
- E1 – Local Centre

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
TREE/2020/0004	Tree Removal Application	Approved 02/03/2020
MW200600007	Demolition of a statue and landscaping in church grounds	Approved 09/02/2006

4(b) Application history

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

Date	Discussion / Letter / Additional Information
27 November 2023	Application lodged with Council.
19 January 2024	Applicant provided a Tree Health and Condition Report.
19 January 2024	Applicant confirmed the subject application relates to the 19 palm trees only.

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 (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

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

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

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

Chapter 2 Vegetation in non-rural areas

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

The application seeks the pruning/removal of vegetation from within the site. The application was assessed in reference to relevant planning provisions and identified the following:

- The subject trees are located within the front/side setbacks of the subject property.
- The application includes nineteen (19) date palm species, of which three (3) trees are dead/dying. The remaining trees are being proposed to be pruned.
- It is observed that this tree species is susceptible to a fungal disease called *Fusarium oxysporum* (fusarium wilt).
- No objection is raised to the removal of the three (3) dying/dead trees which may be replaced. The remaining trees may be pruned.
- Conditions have been recommended to establish whether trees have been infected with fusarium wilt and for three (3) replacement date palms to be planted. If infection is found, a suitable alternative tree species will need to be planted subject to Council's approval.

Overall, the proposal is considered acceptable with regard to the SEPP and Part 2.20 of Marrickville Development Control Plan (MDCP) 2011 subject to the imposition of conditions, which have been included in the recommendation of this report.

5(a)(ii) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 5.10 – Heritage conservation

Section 1.2 – Aims of the plan

The proposal achieves the aims of the plan as it seeks:

- *To conserve and maintain the natural, built and cultural heritage of Inner West*
- *To prevent adverse social, economic and environmental impacts on the local character of Inner West*

Section 2.3 – Land Use Table and Zone Objectives

The site is zoned RE2 Private Recreation under the *IWLEP 2022*. The application seeks consent for removal and pruning of trees.

The development is consistent with the objectives of the RE2 zone as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposal will continue to provide for public facilities and services that caters to the needs of the community.

Section 2.7 – Demolition requires development consent

The proposal satisfies this section as follows:

- Demolition works are proposed, which are permissible with consent; and
- Standard conditions are recommended to manage impacts which may arise during demolition.

Section 5.10 – Heritage Conservation

The subject site is a listed heritage item, namely ‘*St Brigid’s Church, Hall, Monastery, Shrine and grounds, including interiors*’ (Item No. 11268).

The proposal responds to the significance of the conservation area and preserves contributory elements and fabric of the existing heritage listed buildings.

An assessment of the proposed works in reference to Section 5.10 and relevant planning provisions under MDCP 2011 has identified the following matters:

- The pruning of the trees will have minimal impact on the heritage item, or the Civic Precinct HCA.
- Whilst it is likely that these trees are original plantings, there have been various changes to the original landscaping.
- Proposed removal is supported as it has been demonstrated that the trees are not viable for retention.

Given the above, the development preserves the environmental heritage of the Inner West.

5(b) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

MDCP 2011	Compliance
Part 2.20 – Tree Management	Yes
Part 8 – Heritage	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

Part 2.20 – Tree Management

Part 2.20 stipulates the following objectives with respect to protection and management of trees within the Inner West LGA:

- O4 To manage the urban landscape so trees continue to make a significant contribution to its quality, character, and amenity.*
- O5 To maintain and enhance the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.*

Comment: The proposal is considered acceptable with regard to the relevant provisions of this Part, in accordance with the *State Environmental Planning Policy (Biodiversity and Conservation)* discussion above.

Part 8 – Heritage

Part 8 sets out objectives for works to heritage items:

- O1 To conserve heritage items and maintain appropriate setting and views.*
- O3 To provide guidelines for alterations and additions which complement and do not detract from the heritage significance of individually listed heritage items, HCAs and period buildings.*

Comment: Whilst the subject trees form a part of and contribute to the setting of the item, no objection is raised to the removal of the three (3) dying trees. Sixteen (16) date palms will be retained and three (3) replacement date palms (or another suitable species) are required to be planted as per the recommended conditions of consent.

Part 9 – Strategic Context

The proposed development satisfies the relevant provisions of this Part as it maintains subject site's function and addresses the town centre character along Marrickville and Livingstone Road.

5(c) The Likely Impacts

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

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

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

5(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 35 days to surrounding properties (NB: The public exhibition period was extended due to public holidays and Christmas period).

No submissions were received in response to the notification.

5(f) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage
- Urban Forest

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal as the carrying out of the development would not result in an increased demand for public amenities and public services within the area.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Marrickville Development Control Plan 2011*.

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

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

9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/1000 for removal of three trees and pruning of sixteen trees on heritage item at 344 Marrickville Road, MARRICKVILLE subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date submitted	Prepared by
-	Site Plan and Images	25/01/2024	-

As amended by the conditions of consent.

GENERAL CONDITIONS

2. Works to Trees

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

Tree/location	Approved works
Within the front setback of the property	The removal of dead palm fronds (16 trees) and the removal and replacement of three (3) dead/dying trees.

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

3. Works Outside the Property Boundary

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

4. Tree Pruning or Removal (including root pruning/mapping)

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

DURING DEMOLITION AND CONSTRUCTION

5. Canopy Pruning

Canopy pruning of the following trees has been approved:

Tree No.	Botanical/Common Name	Radius in metres
n/a	16x <i>Phoenix</i> spp. (date palm species)	n/a

The person acting on this consent has approval under Council's Tree Management Controls to remove dead palm fronds. Note that pruning is limited to dead palm fronds only; the removal of healthy fronds has not been approved as this may place the palm trees under stress.

6. Construction Hours

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.

PRIOR TO OCCUPATION CERTIFICATE

7. Certification of Tree Planting

After it has been established that the subject trees have not been infected with *Fusarium oxysporum* (fusarium wilt), three (3)x100 litre size trees of the same date palm species (*Phoenix* sp.) must be planted in a suitable location within the property (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased trees must meet the requirements of AS2303—*Tree stock for landscape use*.

Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

Should the Royal Botanic Gardens in Sydney (RBGS) determine that the subject trees are infected with fusarium wilt, Council's Urban Forest Team must be contacted to determine which (palm) tree species shall be planted to replace the trees to be removed.

ON-GOING**8. Tree Establishment**

The trees planted as part of this consent are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the trees are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).

ADVISORY NOTES**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 conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

To avoid the possible spread of fusarium wilt (*Fusarium oxysporum*) from palm to palm, tools shall be disinfected between palm trees at all times.

Prescribed Conditions

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

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.

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.

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.

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm
	www.basix.nsw.gov.au
Department of Fair Trading	13 32 20
	www.fairtrading.nsw.gov.au
	Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100
	www.dialprior toyoudig.com.au
Landcom	9841 8660
	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441
	www.lspc.nsw.gov.au

NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Site Plan and Images



Figure 2 – Aerial Imagery



Figure 3 – Tree Location Plan

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Figure 4 and 5 – Tree 1 to 5



Figure 6 and 7 – Tree 5 to 12



Figure 8 – Tree 13 to 19