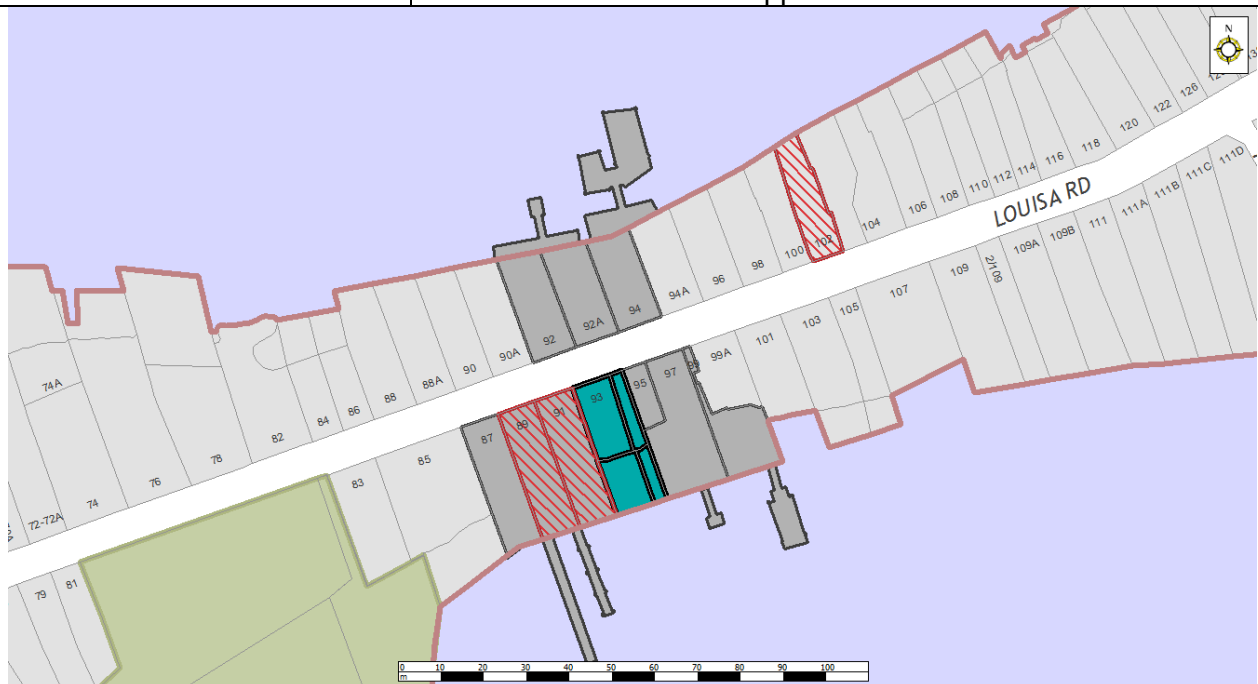




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/25
<b>Address</b>	93 Louisa Road, Birchgrove
<b>Proposal</b>	Demolition of existing dwelling and associated structures and remediation of site. Construction of a new dwelling with basement parking provided with a car lift, landscaping and pool.
<b>Date of Lodgement</b>	18 January 2018
<b>Applicant</b>	F Bilotta
<b>Owner</b>	Mr F Bilotta and Mrs B Bilotta
<b>Number of Submissions</b>	Six
<b>Value of works</b>	\$1,464,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegation
<b>Main Issues</b>	Foreshore flooding Building location zone/bulk and scale Visual privacy View loss
<b>Recommendation</b>	Deferred commencement approval



LOCALITY MAP

Subject Site



Objectors



N

Notified Area



Supporters



## 1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of the existing dwelling and associated structures and remediation of site, construction of a new dwelling with basement parking provided with a car lift, landscaping and pool at 93 Louisa Road, Birchgrove. The application was notified to surrounding properties and six submissions were received.

The main issues that have arisen from the application include:

- Bulk and scale;
- Building location zone / visual privacy;
- Foreshore flood protection;
- Seawall retention; and
- View impact.

While the proposal can be amended to ameliorate these impacts, support from Sydney Water and RMS is required before the construction works can occur, and therefore, the application is recommended for deferred commencement approval.

## 2. Proposal

The works involve the demolition of the existing dwelling on the site and erection of a replacement dwelling. The replacement dwelling will be built over five levels when viewed from the rear, though will appear as a two storey dwelling when viewed from Louisa Road. The construction works will involve excavation up to 6 metres in depth at the Louisa Road frontage. The dwelling will comprise:

- Basement: Third car-parking space, plant and laundry internally with private open space / terrace, lawn and pool;
- Lower ground: Two car parking spaces, bathroom, guest bedroom and living room with large balcony facing the harbour;
- Upper ground (i.e. Louisa Road level): vehicular entrance to car lift, study, bathroom, lounge, kitchen and dining room with large balcony facing the harbour;
- First floor: bedrooms and bathrooms with smaller rear facing balcony.
- Roof terrace: Access to roof terrace.

## 3. Site Description

The site is located on the southern side of Louisa Road, between Birchgrove Oval and Yerroulbin lane. The site consists of four allotments and is generally rectangular with a total area of 417.2 m<sup>2</sup>. The site is legally described as Lot 1 DP 947055, Lot 1 DP 972969, Lot 1 DP 770507 and Lot 2 DP 770507.

The site has a frontage to Louisa Road of 12.195 metres and a rear boundary with Snails Bay of 12.17 metres. The survey shows that the stone sea wall at the rear of the property is not located within the property boundaries.

The site supports a weatherboard cottage with corrugated iron roof which presents as single storey to Louisa Road, with a lower level accessing the rear yard. While the existing dwelling contains heritage fabric, it is in a dilapidated condition and its front elevation is hidden from view from Louisa Road behind a high brick and lattice front fence. The existing seawall is also in poor condition.

The adjoining properties support modern dwellings that present as two storey to Louisa Road and include off street parking in their front façade.

The property is located within a conservation area and is identified as a foreshore flood control lot. The listed heritage items in the visual vicinity of the subject site include:

- I553 “Geierstein”, the dwelling at 85 Louisa Road, Birchgrove; and
- I536 Birchgrove Park, Grove Street, Birchgrove.

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
D/2000/1013 M/2001/300 M/2004/80	Demolition of existing dwelling, erection of a new dwelling and rebuilding/refurbishment of an existing rear boatshed with residence above and associated works.	Approved - 10/10/2001
EPA/2009/183	Unsafe boat shed.	Finalised - 12/1/2010

#### Surrounding properties

Application	Proposal	Decision & Date
D/2011/425 M/2013/52 M/2014/37	<u>87-91 Louisa Road, Birchgrove</u> Demolition of existing structures, remediation of the site, construction of three new dwellings with parking and three lot subdivision.	Approved on appeal – 3/4/2012
D/2000/645	<u>95 Louisa Road, Birchgrove</u> Alterations and additions to the existing dwelling at ground and first floor level.	Approved – 19/3/2001
D/2002/915 M/2004/5 M/2004/219	Alterations and additions to existing dwelling involving new external cladding at ground and first floor level and demolition of the front room of the dwelling to accommodate a new carport to the Louisa Road elevation.	Approved - 6/8/2003
D/2005/475	<u>99 Louisa Road, Birchgrove</u> Alterations and additions to existing dwelling including new terrace.	Approved 19/4/2006

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
6.4.2018	Letter sent to applicant requesting the following additional documentation to enable a complete assessment of the application to be undertaken: <ul style="list-style-type: none"> <li>• Accurate plans with regard to neighbouring dwelling at 91 Louisa Road, Birchgrove;</li> </ul>

	<ul style="list-style-type: none"> <li>• Height poles and string lines set out by a register surveyor to enable view impact assessment to be undertaken;</li> <li>• Amended Statement of Environmental Effects to reflect applicable controls including FSR, flood affectation, need for site to be remediated, solar access provision to new dwelling;</li> <li>• Clause 4.6 exception to landscaped area and floor space ratio;</li> <li>• Shadow diagrams showing north point and location of windows on adjacent properties;</li> <li>• Amended landscape plans.</li> </ul> <p>Design issues were raised regarding minor details of the development.</p>
10.4.2018	Meeting held with the applicant and their architect to discuss issues raised in the letter.
11.4.2018- 16.4.2018	Amended plans and additional information were submitted to Council addressing the issues raised in the letter. Note: Height poles and string lines set out by a register surveyor were not erected however photomontages were provided by the applicant and are used in the view loss assessment later in this report. A shadow impact analysis at 3pm on June 21 on the studio to the rear of no. 95 Louisa Rd was provided. The amended plans are assessed in this report.
21.5.2018	Site coverage plan and calculations provided.
22.5.2018 – 23.5.2018	Additional photomontages provided.

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Coastal Management) 2018
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are

undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of SEPP 55.

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

The application was referred to the Foreshores and Waterways Planning and Development Advisory Committee as required under the SREP. The committee raised no specific issues in relation to the proposed development.

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities for the following reasons:

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

#### 5(a)(iii) State Environmental Planning Policy (Coastal Management) 2018

The application has been considered against the SEPP for Coastal Management. The subject site is located within "the coastal zone" pursuant to Cl 5 of the SEPP, as identified on the map to the SEPP. The proposed development is unlikely to cause increased risk of coastal hazards on the site.

#### 5(a)(iv) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management
- Clause 6.5 – Limited development on foreshore area
- Clause 6.6 – Development on the foreshore must ensure access

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

Standard (maximum)	Proposal	% of non compliance	Compliance
<b>Floor Space Ratio</b> Maximum: [0.8:1] or [333.8m <sup>2</sup> ]	0.92:1 or 382.5 m <sup>2</sup>	14.6%	No

<b>Landscape Area</b> Minimum: [20%] or [83.4m <sup>2</sup> ]	21.3% or 89 m <sup>2</sup>	Complies	Yes
<b>Site Coverage</b> Maximum: [60%] or [250.3m <sup>2</sup> ]	58.75% or 245.1 m <sup>2</sup>	Complies	Yes

The following provides further discussion of the relevant issues:

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

The application requests that development consent be granted for the development even though the proposal will contravene the maximum permissible floor space ratio development standard prescribed under Part 4 of Leichhardt Local Environmental Plan 2013.

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

A written request has been submitted by the applicant raising the following key issues seeking to justify the contravention of the standard:

- More than 118m<sup>2</sup> of the GFA is located in the basement and lower ground floor, both of which are below the existing ground level. As such, this space does not add to the bulk and scale of the proposed dwelling, as it would otherwise be foundation space below the building.
  - The lower level is not visible from Louisa Road due to the fall in the land and will not be visible from the water as it is behind the terrace, pool and landscaped open space.
  - The objectives of the control is met;
  - The proposed dwelling is of similar bulk and scale to adjoining dwellings and does not result in view loss.
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
    - (a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards and the written request is considered to be well founded. Subject to the proposed conditions which ameliorate the impacts of the current proposal, the approved dwelling will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard and General Residential zoning as demonstrated below:

- The proposal is compatible with the desired future character of the area in relation to building bulk, form and scale
- The proposal complies with the Landscaped Area and Site Coverage standards, providing a suitable balance between landscaped areas and the built form
- The siting of the building is generally within the building location zones when it can be reasonably assumed development can occur.
- The proposal does not result in any significant adverse amenity impacts to the surrounding properties.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning and there is no public benefit in maintaining strict compliance with the standard.

#### Clause 5.10 – Heritage Conservation

No objection is posed to the demolition of the existing dwelling as it is beyond reasonable repair. Salvaging of certain aspects of the historic fabric within the interior of the dwelling, particularly the unique pressed metal wall and ceiling linings in the bedrooms; and potentially also the front façade windows as recommended by the applicant's heritage consultant is supported, as is the recommendation for archival recording of the dwelling prior to demolition.

The form, bulk and scale of the proposed dwelling house is not supported by Council's heritage advisor, particularly the proposed inclusion of car parking within the main built form of the dwelling. Council's heritage advisor has stated that *"any required off-street parking should be provided within a separate discrete structure set behind the front building line of the proposed infill building in keeping with the Leichhardt Development Control Plan 2013 – best practice heritage management requirements"*. Council's heritage advisor has also raised concern that the roof terrace and associated landing access for that space results in the dwelling presenting as a five storey building from adjacent Snail's Bay, contrary to *Development Control Plan 2013 – best practice heritage management requirements*.

A condition of development consent is recommended to reduce the height of the main section of the roof by 600 mm. This will result in an eaves height between the eaves of the neighbouring dwellings. While the section of roof over the access to the roof terrace would be higher than neighbouring dwellings; this section is set back 20 metres from the street and would not be readily visible in the Louisa Road streetscape. The appearance of the dwelling from Snails Bay is comparable to the adjacent development at 87-91 Louisa Road which also presents as five storeys to the bay. Given the context, it would be unreasonable to impose constraints on this site that have not been imposed on adjoining properties. Garaging as part of the main dwelling is common along Louisa Road, particularly in the immediate vicinity of the subject site.

Ensuring views through the property from Louisa Road to the water is essential and has been a requirement historically for properties within Louisa Road. A condition of development consent will require the tree proposed in the front yard to be moved eastwards and the public view corridor to the water provided by the western setback to be maintained.

#### Clause 6.2 – Earthworks

The proposal involves excavation of up to 6 metres in depth adjacent to Louisa Road and the neighbouring properties. Conditions of development consent are recommended to ensure these excavation works do not damage adjacent properties or Council's roadway.

#### Clause 6.3 – Flood Planning

The current proposal does not meet the objectives of this clause as it would result in flooding of the internal basement rooms and terrace based on the projected sea level rise planning benchmarks for 2100. A condition of development consent is recommended requiring the floor level of the terrace and basement to be raised to RL2.7m AHD and RL2.8m AHD respectively.

The proposed pool is located immediately adjacent to the sea wall on the Snails Bay frontage and is identified in the Foreshore Risk Management report submitted with the application as being susceptible to inundation. The report also advises that overtopping of the seawall presently represents a safety hazard and entry to this area during a very severe storm and/or at time of high tide must be avoided. The level of the pool and lawn are proposed to be at RL2.5m AHD and RL 1.9m AHD respectively, which is significantly higher than the adjacent sea wall. Conditions of consent have been imposed to address this issue by deleting the pool and lowering the lawn/landscaping area adjacent the sea wall to RL1.5m AHD with no retaining walls within 3 metres of the sea wall.

#### Clause 6.5 – Limited development on foreshore area

The proposal involves the construction of a swimming pool and landscaping within the foreshore area which are permitted under subclause (2).

The Foreshore Risk Management report advises that the sea wall is proposed to be recapped to RL 1.5m AHD; however these works are not indicated on the architectural plans or elevations or referred to in the description of development or Statement of Environmental Effects submitted with the application. In addition, owners consent from RMS has not been provided and this level is lower than the level specified under the Sydney Harbour Foreshores and Waterways Areas Development Control Plan for seawalls. Approval of the application on a deferred commencement basis has been recommended to enable RMS approval to be granted for the works to the seawall prior to the consent being made operational.

The construction of the swimming pool and landscaping works proposed are not possible without the reconstruction of the sea wall which is not proposed as part of this proposal. Consequently, the pool is not supported as currently proposed and conditions have been imposed requiring the pool to be deleted and replaced with lawn/landscaping. Conditions are also proposed to require the lawn/landscaping area adjacent the sea wall to be lowered to RL1.5m AHD with no retaining walls within 3 metres of the sea wall.

#### Clause 6.6 – Development on the foreshore must ensure access

As both adjoining properties do not provide public access to the foreshore and the site is not located close to public foreshore paths, there is not opportunity to provide foreshore access on this site.



## 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

## 5(c) Development Control Plans

### 5(a)(v) Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

An assessment has been made of the matters set out in Parts 2.2 and 5.13 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. While the proposal complies with the specific requirements for swimming pools, concern is raised regarding the condition of the existing seawall and its ability to withstand the proposed works.

Conditions of consent require the deletion of the proposed swimming pool, retaining wall and raised levels adjacent to the sea wall to prevent adverse impacts on the sea wall. The application is proposed to be approved on a deferred commencement basis subject to written consent of RMS being obtained for any rectification works or otherwise required to the seawall. It is noted that the DCP requires the top of the sea wall to be 1.675 AHD and comprised of similar sandstone coursing to match the existing seawall.

### 5(a)(vi) Leichhardt Development Control Plan 2013

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

Part	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Not applicable
B3.1 Social Impact Assessment	Not applicable
B3.2 Events and Activities in the Public Domain (Special Events)	Not applicable
<b>Part C</b>	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Not applicable
C1.4 Heritage Conservation Areas and Heritage Items	No
C1.5 Corner Sites	Not applicable
C1.6 Subdivision	Not applicable
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Not applicable
C1.10 Equity of Access and Mobility	Not applicable
C1.11 Parking	No
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	Not applicable
C1.14 Tree Management	Not applicable
C1.15 Signs and Outdoor Advertising	Not applicable
C1.16 Structures in or over the Public Domain: Balconies,	Not applicable

Verandahs and Awnings	
C1.17 Minor Architectural Details	Not applicable
C1.18 Laneways	Not applicable
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes
C1.20 Foreshore Land	Yes
C1.21 Green Roofs and Green Living Walls	Not applicable
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.2.6(a) Louisa Road subarea, Birchgrove distinctive neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	No
C3.2 Site Layout and Building Design	No
C3.3 Elevation and Materials	No
C3.4 Dormer Windows	Not applicable
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Not applicable
C3.8 Private Open Space	Yes
C3.9 Solar Access	No
C3.10 Views	No
C3.11 Visual Privacy	No
C3.12 Acoustic Privacy	No
C3.13 Conversion of Existing Non-Residential Buildings	Not applicable
C3.14 Adaptable Housing	Not applicable
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	Not applicable
<b>Part D: Energy</b>	
Section 1 – Energy Management	Not applicable
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	Not applicable
D2.5 Mixed Use Development	Not applicable
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	No
E1.1.2 Integrated Water Cycle Plan	Not applicable
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Not applicable
E1.1.5 Foreshore Risk Management Report	No
E1.2 Water Management	
E1.2.1 Water Conservation	Not applicable
E1.2.2 Managing Stormwater within the Site	No
E1.2.3 On-Site Detention of Stormwater	Not applicable
E1.2.4 Stormwater Treatment	Not applicable
E1.2.5 Water Disposal	Yes

E1.2.6 Building in the vicinity of a Public Drainage System	Not applicable
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	
E1.3.1 Flood Risk Management	Not applicable
E1.3.2 Foreshore Risk Management	No
<b>Part F: Food</b>	Not applicable
<b>Part G: Site Specific Controls</b>	Not applicable

The following provides discussion of the relevant issues:

#### Part C1.2 – Demolition

The dwelling is considered to be beyond reasonable repair, thus is demolition is not opposed.

#### C1.0 General Provisions / C3.1 Residential General Provisions / C3.3 Elevation and Materials

As currently proposed, the dwelling is considered to be of excessive bulk and not compatible with the surrounding area / desired future character particularly in terms of form. Council's heritage adviser has stated that: *The height of the dwelling is considered excessive in relation to adjoining historic and modern infill buildings in this section of Louisa Road. In this regard, there appears to be scope to readily reduce the height and bulk of the pitched roof of the dwelling (particularly to the rear) and the internal floor to ceiling heights.*

The controls generally require new dwellings to fit in with the heights of adjacent buildings in terms of roof height, gutter height etc. There is scope to reduce the overall height of the dwelling house by approximately 600mm. This will have the added advantage of lowering the eaves height by a commensurate amount so that they fall between the first floor eaves height of the adjacent properties. It is recommended that the proposal be approved on a deferred commencement basis subject to the provision of plans showing this height reduction and other changes that may flow from it such as a reduction in the height of the first floor glazed doors etc.

#### C1.4 Heritage Conservation Areas and Heritage Items

Heritage aspects have been discussed previously in Part 5(a)(iv) of this report above with regards to Clause 5.10 of Leichhardt Local Environmental Plan 2013. In addition, the proposed materials and finishes schedule including colour scheme are acceptable on heritage grounds. It is noted that the use of glass balustrading is generally not acceptable on heritage grounds; however it is acceptable in this instance having regard to the surrounding built context and the need to preserve view lines.

#### C1.11 Parking

One submission was received during the notification period relating to car parking, as follows: *This is a huge structure which has an overbuilt car parking area. We have seen the car parking fail many times on the street (i.e. Sunland Unit Blocks). When these fail, the cars end up on the street. The street is already overcrowded with cars, tradies and another 4-5 cars will not help the situation.*

Three on site car parking spaces are proposed for a single dwelling which exceeds the maximum permissible number of car parking spaces specified under this part, being two. Should the car lift stop working, the site would still have one off street parking space which

exceeds the minimum car parking provision. The additional car parking is provided below ground and thus does not add to the bulk of the building or result in adverse amenity impacts in terms of overshadowing. Provision has been made for vehicles to independently enter and exit the lift and its siting is also consistent with the specific controls in this part, being set back more than 1 metre from the front property boundary and having a width in excess of 3 metres. As such, there is no reason not to support the proposed basement parking area and car service lift.

Council's heritage adviser has stated that *"the proposed inclusion of car parking within the main built form would be contrary to the character of nearby historic dwellings in the street despite the car parking area being hidden behind glass doors – it would be difficult to police any requirement that these doors remain in the closed position. (Whilst it is appreciated that there are a number of modern infill dwellings within the vicinity that have included car parking within their main built form this has had an adverse visual impact on the character of this historic street). Accordingly, any required off – street parking should be provided within a separate discrete structure set behind the front building line of the proposed infill building in keeping with the Leichhardt Development Control Plan 2013 – best practice heritage management requirements"*.

There are no controls requiring off street parking to be located in a separate structure to the dwelling. The controls relating to car parking state that: *C48 Where no rear lane or secondary road access is available, vehicle parking may be provided from the primary street frontage when:*

- a. it is located wholly behind the front wall of the main building of the dwelling;*
- b. has a single width parking space only;*
- c. has one access point per dwelling;*
- d. has a maximum vehicle crossing and parking space width less than 50% of the width of the front elevation of the main building on the site; and*
- e. is subordinate to the main building.*

The proposal does not comply with point (a) in that the garage entrance door is in line with the study wall, these walls comprising the front wall of the main building of the dwelling. A central entry portico is located forward of the front wall and covers just over a third of the frontage. Although it would be possible to set the garage door back in line with the entrance door, increasing the length of the driveway and resulting in strict compliance with point (a) requiring this change would adversely impact on the symmetry of the design and not improve the streetscape appearance of the building. Less than half of the frontage of this dwelling is devoted to car parking and the garage is not considered to dominate the streetscape appearance of the dwelling. The objectives of the control are therefore met by the proposal.

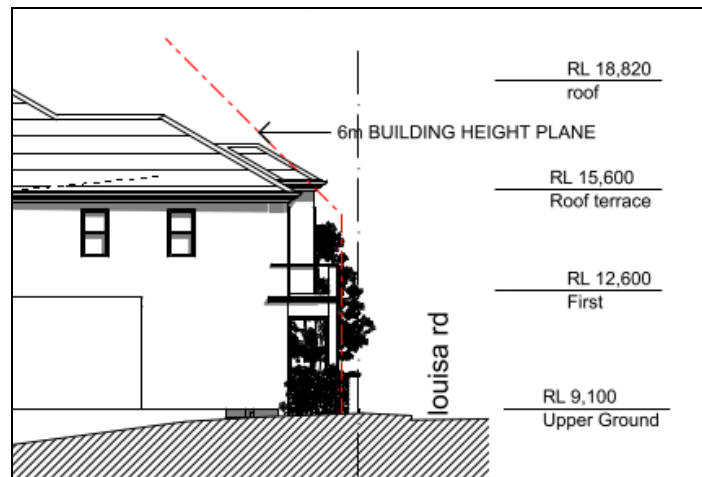
#### C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls

The survey submitted for the site shows a rock wall located under the balcony and the foreshore access stairs on the eastern side of the site. It is proposed to excavate the rock face to enable the construction of the lower ground and basement levels from the rock face to the Louisa Road frontage. This excavation is considered to meet the criteria outlined in C2 where excavation of rock faces may be granted as: *a. other openings in the rock exist in close proximity to the proposal and the additional opening would not detract from the setting.*

#### C3.2 Site Layout and Building Design

##### **Building envelope**

The building envelope that applies in the Birchgrove distinctive neighbourhood is based on a 6 metre wall height. The first floor portico encroaches this building envelope currently; however the reduction in height and lowering of eaves required by condition to reduce the bulk of the dwelling/improve streetscape would remove this non-compliance.



### Side setback

The dwelling has a maximum height of 13.8 metres (10.4 metres above existing ground level) which requires a setback in excess of 4 metres under this control. The proposed dwelling is located within close proximity of the eastern boundary and is set back 1.025 metres from the western boundary and therefore does not comply with the numerical requirements.

Notwithstanding, the non-compliance is considered to be acceptable for the following reasons:

- The pattern of development within the streetscape is not compromised; Louisa Road contains many dwellings which present as two storey to the street and a built to one or both boundaries.
- The bulk and scale of the development will be minimised as a result of the recommended conditions of development consent will include reducing the height of the ridge and eaves of the dwelling.
- The siting of the dwelling adjacent to similarly sized dwellings will ensure that the dwelling will not result in adverse impacts in terms of bulk and scale.
- The non-compliance with the side setback control does not result in adverse amenity impacts for adjoining properties.
- Reasonable access will be maintained for the necessary maintenance of adjoining properties as a result of the imposition of a condition of consent requiring the car/service lift to be reduced in width so that its eastern wall is set back 410mm so that it aligns with the eastern garage entrance/kitchen wall and eastern wall of the first floor. This will provide access to the western wall of the dwelling at 95 Louisa Road if required for maintenance.
- Public views to Snails Bay will be provided along the western setback, a condition of development consent will provide that this corridor should not be blocked.

### Building location zone

Building location zone (BLZ) is the part of the subject site where it can be reasonably expected that a building can be located. *Development shall be located within the BLZ area of the subject site. BLZ for the main building, shall be determined having regard to that part of the building that is fully enclosed by walls, however open-sided structures such as balconies and verandas may extend beyond the BLZ so determined, where they are consistent with similar structures on adjoining properties.*

The proposed rear building lines at all levels are aligned with 91 Louisa Road, with the exception of the upper ground level, which extends 1 metre further to the rear. The Statement of Environmental Effects submitted with the application contends that *“this position still lies between the rear building line of the neighbouring dwellings on either side and as such, complies with this control and does not result in any view loss”*. This conclusion

is not agreed with. The development at 95 Louisa Road consists of two separate buildings, the dwelling fronting Louisa Road and the modified boatshed which fronts Snails Bay. While the proposal does not comply with the building location zone at any level, it is considered reasonable to align the rear extent of the proposed dwelling with the rear extent of the neighbouring dwellings at 87-91 Louisa Road as they are recent approvals and most similar in terms of lot depth. This will necessitate a condition of development consent requiring the upper ground floor to be reduced in depth by 1 metre to align with the rear alignment of the upper ground level of 91 Louisa Road, Birchgrove.

The submissions provided by 91 Louisa Road states *"All of the balconies are actually protruding more than ours (and adjacent properties). The owners fail to demonstrate that the balustrades are actually recessed from the masonry structure by 1000 to 1500mm at different levels. This will obviously also impact on the enjoyment of the view of the Harbour Bridge from our living areas, master bedroom and outdoor spaces. Careful analysis of each balcony and how it protrudes out substantially past those of our property at the same level needs to be carried out"*.

It is agreed that the upper ground floor balcony, first floor balcony and roof terrace at 91 Louisa Road have balustrades inset from the edge of the structure. This was not shown on the original plans but inserted on the amended plans. In order to address privacy impacts at upper ground level, a condition of consent will require the balustrade to be setback. The balcony at first floor level will be restricted in depth to approximately 1 metre and the balustrade or the roof terrace setback to match the equivalent balcony at 91 Louisa Road.

### C3.9 Solar Access

One submission raised concerns regarding the information shown on the shadow diagrams and lack of shadows in elevation however also advised that *"I do not consider that there will be unreasonable overshadowing on my Client's property"*.

Shadows are only required in elevation where the shadows in plan show additional overshadowing of an elevation containing protected windows and elevational shadows are needed to establish whether the height of the shadow will affect the window. This is not the case in this instance with regards to 91 Louisa Road. Shadows in elevation were provided for 95 Louisa Road, showing that no additional overshadowing of main living room windows was proposed. It is noted that south facing windows and areas of private open space are not protected under this part.

The submitted shadow diagrams show that the proposal does not comply with the following controls:

- *C4 Private open space is to receive a minimum three hours of direct sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice.* The private open space of the subject property will not meet this standard, receiving minimal solar access in winter.
- *C9 New residential dwellings are to obtain a minimum of three (3) hours of direct sunlight to the main living room between 9am and 3pm during the winter solstice.* The main living rooms of the proposed new dwelling are south facing and do not meet this standard.

Due to the north-south orientation of the sites, with the water view facing southwards, most dwellings on this side of Louisa Road do not meet the solar access requirements, overshadowing their own areas of private open space and main living rooms. The owners of the subject site have shown a preference for views over solar access. Thus the non-compliances outlined above are considered to be acceptable in this instance.

### C3.10 Views

Submissions have been received from 87-91 Louisa Road that the proposal will adversely impact on views from their properties. One submission states that *“final determination cannot be made until such time as height poles are erected by the Applicant which should be certified by a Surveyor”*. The erection of such height poles was requested in Council’s letter, however the applicant cited current difficulties in accessing the site due to the dilapidated nature of the existing dwelling. The same architect/applicant was used for the construction of the dwellings at 87-91 Louisa Road as the current application, thus it was accepted that their computer modelling would be able to produce accurate photomontages.

Photomontages from one level were initially provided, purporting to be of the roof terrace. Two further submissions were received advising that the photomontages were from the upper ground floor balcony of 91 Louisa Road and not their roof terrace. It was agreed by the applicant that an error had been made, and subsequently, accurate photomontages from upper ground, first floor and roof terrace levels provided.

Council’s assessment officer undertook a site inspection of 91 Louisa Road and photographs taken at that site inspection have been used (in addition to the submitted photomontages) to assess the impact of the proposal on neighbouring views. It is noted that the owners of 87 and 89 Louisa Road were happy for the views from 91 Louisa Road to be used in the assessment and did not feel it necessary for site inspections to be undertaken from their properties.

This part states that *“a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Sydney Tower). Such views are more highly valued than district views or views without significant landmarks”*. This assessment is further refined in the planning principles outlined in Tenacity as follows: *Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Views of Sydney Harbour, the Sydney Harbour Bridge and the city skyline including Sydney Tower, North Sydney and Parramatta River are currently available from 91 Louisa Road. An assessment of these views in the steps outlined in the planning principle established by Tenacity follows:

**Basement level:** Water views and partial views of the Sydney Harbour Bridge are available and will not be affected by the proposal.

**Lower ground floor:** Partial views of the Sydney Harbour Bridge and water views are available from the rear balcony/terrace and family room. The views from the balcony will be altered as a balcony of the same depth is proposed on the subject site, however views across the balcony, and therefore, the side boundary will still be available as a glazed balcony is proposed and water views directly to the rear will not be affected by the proposal.

**Upper ground floor:** The views from the balcony will be altered as part south-western corner of the proposed dwelling and glazed balcony will be visible in views from the lounge/kitchen and balcony. The view across the side boundary of the rear of other dwellings in Louisa Road will be blocked, however setting back the upper ground floor an additional 1 metre from the rear will reduce this impact. Water views directly to the rear and the view of the Sydney Harbour Bridge will not be affected by the proposal.

Existing view from upper ground floor balcony of 91 Louisa Road, Birchgrove	Proposed view from upper ground floor balcony at 91 Louisa Road, Birchgrove

**First floor level:** Views from this level are from a bedroom and its associated balcony. The views of the Sydney Harbour Bridge, city skyline and land/water interface are not affected as demonstrated in the photomontages below.

Existing view from First floor of 91 Louisa Road, Birchgrove	Photomontage showing existing view with proposed construction superimposed.

**Roof terrace:** Extensive 270 degrees views are available from the roof terrace extending from Birchgrove Oval to Parramatta River. The views to Parramatta River will be lost under the proposal as they would be by any two storey development fronting Louisa Road.

Two photomontages were provided by the applicant – one of which has been coloured in orange by the objector to indicate their perception of the impact of the original plans on the view. See below:

Neighbour mock up modified by applicant, from inside building at roof terrace level.	View from roof terrace with glazed balustrade from amended plans shown.



Views are available over five levels from the rear of the neighbouring dwelling. While these views will be affected to a minor degree through the loss of some water views, the iconic views of the Sydney Harbour Bridge, city skyline and land/water interface are maintained.

The proposal is considered to be reasonable as it complies with the site coverage and landscaped area development standards and has a floor space ratio commensurate with surrounding development. While the amended roof form made a significant improvement in the retention of views, it is not the case that the site could not achieve the same development potential and amenity with a more skilful design which reduces the impact on the view of neighbours. For this reason it is recommended that a condition be imposed to restrict the extent of the development at upper ground and first floor levels. Subject to the proposed conditions, it is considered that the proposal results in view sharing and complies with the relevant controls in this regard.

### C3.11 Visual Privacy

Windows W06 and the eastern elevation of W13 are located opposite the balconies at 95 Louisa Road and only set back 410mm from the side boundary. The applicant has advised that the windows will be fire protected in accordance with the Building Code of Australia and has suggested applying an obscure film to the windows. The use of obscure film does not meet the screening requirements of this part - compliant screening will be required via a condition of development consent.

Window W07 RL 9.10 would permit direct views to the balcony off the main living area – lounge / kitchen of 91 Louisa Road, Birchgrove within 45 degrees and 9 metres. A condition of consent will require this window to be screened to avoid this impact.

The rear facing balconies and terraces are designed to address the highly prized water and city/bridge views. Residences along Louisa Road tend to be designed with regard to view gain, rather than achieving their own privacy and the owner of 91 Louisa Road has objected to the proposal on the basis of view impact rather than privacy.

It is recommended that a condition be imposed on any consent granted to restrict access to the section of the first floor rear balcony behind the dwelling (i.e. no access to the balcony areas indicated on the sides of the dwelling house) to ensure that the proposal is consistent with the adjacent approval and does not permit direct views over the side boundaries.

### C3.12 Acoustic Privacy

The size of the first floor balcony is required to be reduced in dimension to limit its use and associated acoustic impacts.

### Stormwater /Foresore flooding

These areas been addressed previously in Section 5(a)(iv) of this report above.

It is noted that a sewer pit and pipes are located on the site and appear to be impacted by the works. Any approved plans will be required to be stamped by Sydney Water Corporation. Modifications to the consent may be required pending Sydney Water requirements.

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

The site is zoned R1 – General Residential. 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(f) Any submissions

The application was notified in accordance with Section 3 of Leichhardt Development Control Plan 2013 for a period of 30 days to surrounding properties. A total of 6 submissions were received on behalf of 4 properties.

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

- Inappropriate car parking area – see Section 5(c)
- Non-compliance with development standards and planning controls – see Section 5(a)(iii) and 5(c).
- View loss – See Section 5(c)

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

Issue: Amended plans did not address all issues raised in Council's request for additional information / amended plans.

Comment: Noted, however it is considered that Council has sufficient information to assess the application.

### 5(g) 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 Officer
- Development Engineer
- Landscape
- Health
- Building

### 6(b) External

The application was referred to the Foreshores and Waterways Planning and Development Advisory Committee who raised no issues in their referral as discussed in section 5 above.

## 7. Section 7.11 Contributions

As the proposal involves demolition of a dwelling and construction of a larger dwelling, Section 7.11 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A financial contribution would be required for the development under Leichhardt Section 94 Contributions Plans as follows:

Column A	Column B
Open space and recreation	\$6,829.00
Community facilities and services	\$1,043.00
<b>Total Contribution</b>	<b>\$7,872.00</b>

A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for the issue of a deferred commencement approval subject to the imposition of appropriate terms and conditions.

## 9. Recommendation

- A. The variation to Clause 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That the Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant deferred commencement consent to Development Application No: D/2018/25 for demolition of existing dwelling and associated structures, remediation of site and construction of a new dwelling with basement parking, car lift and landscaping at 93 Louisa Road, Birchgrove subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### DEFERRED COMMENCEMENT

1. The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.
  - a) NSW Maritime approval shall be obtained for the repair of the existing stone seawall extending the full length of the waterfrontage of the site. All new stone work must be of a size to match existing and have a design life of 50 years.
  - b) Sydney Water Corporation approval shall be obtained for all works in the vicinity of the Sydney Water Corporation owned sewer pit and pipes on the site. A letter detailing Sydney Water Corporation approval and any conditions imposed shall be submitted and accepted by Council.
  - c) The overall height of the dwelling house and the eaves of the first floor are to be lowered by 600mm to be more in keeping with corresponding eave heights of the adjoining properties.
  - d) The eastern wall of the car/service lift is to be set back an additional 170mm further west so that it is setback 410mm from the eastern boundary and aligns with the eastern garage entrance/kitchen wall on the upper ground floor plan and eastern wall of the first floor to provide reasonable access to the western wall of the dwelling at 95 Louisa Road if required for maintenance.
  - e) The southern wall of the upper ground floor plan must be setback an additional 1 metre from the rear/southern boundary to align with the rear alignment of the upper ground level of 91 Louisa Road, Birchgrove.
  - f) The proposed rear facing first floor balcony is to be modified as follows:
    - i) The parts of the balcony to the east and west of the dwelling are not to be accessible. They shall either be converted to planter beds or a balustrade erected between the rear elevation of the dwelling and the southern edge of the balcony to prevent access to these areas.
    - ii) The central section of the balcony that extends approximately 2 metres from the rear elevation shall be cut back so that it aligns with the side sections and has a depth of approximately 1 metre to align with the first floor balcony at 91 Louisa Road, Birchgrove.
  - g) The southern balustrade of the Upper Ground floor rear facing “terrace” is to be in set approximately 1.5 metres from the rear/south to align with the balustrade of the adjoining property at this level at 91 Louisa Road, Birchgrove.
  - h) The trees proposed in the western setback must be relocated further east so that they are located in front of the proposed dwelling and do not block the public view corridor from Louisa Road to the water.
  - i) The finished floor level of all internal basement rooms shall be raised such that they are not less than RL2.8m AHD.
  - j) The level of the proposed terrace at basement level shall be raised to RL2.7m AHD.
  - k) The following design changes are required in the rear yard:

- i) The proposed pool shall be deleted and replaced with lawn and/or landscaping.
- ii) The finished surface level of the proposed lawn and landscaping shall not exceed RL 1.5m AHD adjacent to the seawall.
- iii) No retaining walls are permitted within 3.0m of the sea wall.

The operational Development Consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement consent.

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

## CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No. D/2018/25 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Demolition plan DA13	ESNH Design Pty Ltd	November 2017
Basement floor plan DA02	ESNH Design Pty Ltd	November 2017
Lower ground floor plan DA03	ESNH Design Pty Ltd	November 2017
Upper ground floor plan DA04A	ESNH Design Pty Ltd	April 2018
First floor plan DA05	ESNH Design Pty Ltd	November 2017
Roof terrace plan DA06A	ESNH Design Pty Ltd	April 2018
Roof plan DA07A	ESNH Design Pty Ltd	April 2018
Landscape Plan L-01-A	Space Landscape Designs	23/04/18
North and West Elevations DA08A	ESNH Design Pty Ltd	April 2018
South and East Elevations DA09A	ESNH Design Pty Ltd	April 2018
Section aa and Section bb DA10A	ESNH Design Pty Ltd	May 2018
Pool Section Plan DA15	ESNH Design Pty Ltd	January 2018

Document Title	Prepared By	Dated
BASIX Certificate 869219S	ESNH Design Pty Ltd	21/11/2017
Landscape specifications L-02-A	Space Landscape Designs	23/04/18
Finishes Board DA13	ESNH Design Pty Ltd	November 2017
Waste Management Plan	Eugenia Harley	20.11.12
Geotechnical report No. 17/3401B	STS GGeoEnvironmental	December 2017
Remediation Action Plan	LG Consult	12/12/2017
Structural Engineers Report and Construction Methodology	Mance Arraj	1/12/2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc.) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

3. Consent is granted for the demolition of all built structures currently existing on the property, subject to strict compliance with the following conditions:

- a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
  - i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
  - ii) A *final* inspection when the demolition works have been completed.

**NOTE:** If Council is nominated as your Principal Certifying Authority 24-48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.

- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
  - k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
  - l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
  - m) Care must be taken during demolition to ensure that existing services on the site (i.e., sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig [www.1100.com.au](http://www.1100.com.au) should be contacted prior to works commencing.
  - n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
  - o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
  - p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
    - i) A WorkCover licensed contractor must undertake removal of all asbestos.
    - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
    - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
    - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
    - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.
4. Remediation and validation of contaminated land must be carried out in accordance with State Environmental Planning Policy No. 55 – Remediation of land, the Contaminated Land Management Act 1997, Development Control Plan 2013 and the following documentation:

Document Title	Prepared By	Dated
Remediation Action Plan	Land and Groundwater Consulting Pty Ltd	12 December 2017

**PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

5. To ensure reasonable privacy for the adjoining property, the following windows/glazing:

Window/glazing	Room	Elevation
W06	Kitchen	Eastern
W07	Lounge	Western
W13	Bedroom	Eastern

must be treated with one of the following privacy treatments:

- have a minimum sill height of 1.6m above finished floor level. or
- be permanently fixed (that is windows are not to swing or lift open) with obscure glazing (not frosted film on clear glazing) to a height of 1.6 metres above finished floor level; or
- provided with fixed external louvers with a density of 75% and have no individual opening more than 30mm wide, and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials. Where fixed louvered screens are used, the screen structure must be securely fixed. The louvers may tilt open from a closed position to an angle of 45 degrees in either a downward or upward position, depending on the sightlines that are to be restricted.

The treatment must ensure that the ventilation requirements of the Building Code of Australia are met. If one treatment cannot satisfy the requirements, an alternative in the list above is to be used.

Details must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The privacy measures must be maintained for the life of the building.

6. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
- a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
  - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
  - c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

7. A contribution pursuant to the provisions of Section 7.11 of the *Environmental Planning and Assessment Act 1979* for the services detailed in column A and for the amount detailed in column B must be made to Council prior to the issue of a Construction Certificate:

Column A	Column B
Open space and recreation	\$6,829.00
Community facilities and services	\$1,043.00



<b>Total Contribution</b>	<b>\$7,872.00</b>
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Payment will only be accepted in the form of cash, bank cheque or EFTPOS / Credit Card (to a maximum of \$10,000). It should be noted that personal cheques or bank guarantees cannot be accepted for Section 7.11 Contributions. Contribution Plans may be inspected on Council's website [www.leichhardt.nsw.gov.au](http://www.leichhardt.nsw.gov.au) or a copy purchased at the Customer Service counter in Council's Administration Centre, 7-15 Wetherill Street, Leichhardt, during business hours.

A receipt demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

8. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
- i) 10:00pm to 7:00am on Monday to Saturday: and
  - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

9. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site (with the exception of any works to the sea wall covered by Condition 1). No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property (with the exception of any works to the sea wall covered by Condition 1).

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by / pegged out by a registered surveyor in accordance with the approved plans, prior to the issue of a construction certificate.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or

occurs first, indicating the location of the building with respect to the boundaries of the site.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

10. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy 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. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate

11. All plant and associated equipment must be located within the approved building envelope and is not be located on the roof. Details on the location of all plant and equipment must be consistent with the approved plans and provided prior to the issue of a Construction Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

12. Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard AS 1158.3:2005 *Pedestrian area (Category P) lighting – Performance and design requirements* and Australian Standard AS 4282:1997 *Control of the obtrusive effects of outdoor lighting*.

13. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:

- a) Must preserve and protect the adjoining building from damage
- b) Must, at least seven (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.
- c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

14. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
15. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and the Construction Management and

Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:

- a) Minimise the area of soils exposed at any one time.
- b) Conservation of top soil.
- c) Identify and protect proposed stockpile locations.
- d) Preserve existing vegetation. Identify revegetation technique and materials.
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
- f) Control surface water flows through the site in a manner that:
  - i) Diverts clean run-off around disturbed areas;
  - ii) Minimises slope gradient and flow distance within disturbed areas;
  - iii) Ensures surface run-off occurs at non erodable velocities;
  - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences.
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

16. The approved plans must be checked online with Sydney Water Tap In 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. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

The Certifying Authority must ensure that the appropriate approval has been provided prior to the issue of a Construction Certificate.

17. To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided.

The ventilation systems are to be designed, constructed and operated in accordance with the:

- The Building Code of Australia,
- Australian Standard AS 1668 Part 1 – 1998,
- Australian Standard AS 1668 Part 2 – 2012,
- Australian Standard 3666.1 – 2011,
- Australian Standard 3666.2 – 2011; and
- Australian Standard 3666.3 - 2011.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate. The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any

modifications to the approved plans required to house the system must be the subject of further approval from Council (the consent authority).

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

18. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):

- a) A plan view of the entire site and frontage roadways indicating:
  - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
  - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
  - ii) The 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.
  - iv) 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).
  - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
  - vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
  - vii) An on-site parking area for employees, tradespersons and construction vehicles as far as possible.
  - viii) The 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.
  - ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
  - x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil works or a survey company of Registered Surveyors with "preliminary accreditation" from the Institution of Surveyors New South Wales Inc. or an accredited certifier.
- b) Noise & Vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information. Advice should be obtained from a suitably qualified Geotechnical Engineer. .
- c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.

- d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be provided on plan.
- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual" and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

19. Prior to issue of the Construction Certificate the applicant shall have a Geotechnical / Civil Engineering report prepared which addresses (but is not limited to) the following:
- i. The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs shall be related to Australian Height Datum.
  - i. The appropriate means of excavation/shoring in light of point (i) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations/buildings shall be discussed and ameliorated.
  - ii. The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support to be provided within the subject site).
  - iii. The existing groundwater levels in relation to the basement structure, where influenced.
  - iv. Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program (as required) including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by a suitably qualified consulting Geotechnical / Hydrogeological Engineer with previous experience in such investigations and reporting.

The report, satisfying the requirements of this condition, must be provided as part of the supporting documentation lodged with the Principal Certifying Authority for approval of the Construction Certificate application. The professional recommendations of the report shall be implemented in full during the relevant stages of excavation and construction.

20. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
21. A Foreshore Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided prepared / prior to the issue of a Construction Certificate. The Plan must be prepared / amended to make provision for the following:
- a) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The precautions shall include but not be limited to the following:
    - i) Types of materials to be used to ensure the structural integrity of the building and the sea wall to immersion and impact of velocity and debris.
    - ii) Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
    - iii) Flood warning signs/depth indicators for areas that may be inundated
    - iv) A flood evacuation strategy.
    - v) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.

All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.

<b>Building Code of Australia</b>	<b>Development Control Plan 2013</b>
<i>Defined flood level (DFL)</i>	<i>100 year Average Recurrence Interval flood level</i>
<i>Defined flood event (DFE)</i>	<i>100 year Average Recurrence Interval flood</i>
<i>Flood hazard level (FHL)</i>	<i>Foreshore Planning Level (FPL)</i>

- b) Specify the architectural and structural plans upon which the above recommendations have been incorporated.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

22. The approved Architectural plans shall be amended to incorporate the recommendations of the Foreshore Risk Management Plan prepared under Condition 22. The plans addressing the requirements of this condition must be provided prior to the issue of a Construction Certificate. The design must be prepared to make provision for the following:
- a) Specification of materials
  - b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans shall occur except as identified by this condition and Condition 5. Any changes to such must be subject to separate approval in accordance with Section 4.55 of the Environmental Planning and Assessment Act.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

23. Engineering design plans prepared by a qualified practicing Structural Engineer must be prepared and incorporate the following recommendations of the Foreshore Risk Management Plan prepared under Condition 22.

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

- a) Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b) Waterproofing works, where applicable.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

24. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:

- a) Stormwater runoff from all roof and paved 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) by gravity to Snail's Bay.
- b) Comply with Council's Stormwater Drainage Code.
- c) Charged or pump-out stormwater drainage systems are not permitted.
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- e) An overland flowpath must be provided within the setback to the western site boundary between the Louisa Road frontage of the dwelling and Snail's bay. The front yard and driveway at the Louisa Road frontage must be graded so that bypass flows from the site drainage system are directed to the overland flowpath.
- f) A minimum 150mm step up must be provided between the finished surfaces of all external courtyards and the adjacent internal floor levels.
- g) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3.2015 Plumbing and Drainage – Stormwater Drainage*.
- h) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- i) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.

- j) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- k) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

25. An integrated structural and geotechnical engineering design and report must be prepared by a qualified practicing Structural and Geotechnical Engineer prior to the issue of a Construction Certificate. The design and report must be prepared/amended to make provision for the following:

- a) The basement must be of fully tanked construction and be entirely waterproofed.
- b) The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
- c) 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.
- d) All components of the structure, including subsoil drainage, must be set back inside the property boundary.
- e) Any retaining walls 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.
- f) Recommendations regarding method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.
- g) No adverse impact on surrounding properties or the adjacent road.
- h) Relevant geotechnical/subsurface conditions of the site, as determined by full geotechnical investigation.

The design must be certified as compliant with the terms of this condition by a suitably qualified Structural and Geotechnical Engineers.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

26. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the opposite kerb line of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary.



27. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 *Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:
- 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 garage slab or driveway must rise within the property to be a minimum 230mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
  - 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) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
  - e) The garage including Garage Entrance and Car/Service Lift must have minimum clear internal dimensions of 6000 x 3000mm (length x width) and an door opening width of 2800mm to the driveway. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
  - f) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

The design must be certified by a suitably qualified Civil Engineer as complying with the above requirements.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate and provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

28. The car lift and vehicular access design and specification must be certified by a suitably qualified Civil Engineer with NPER registration and be provided prior to the issue of a Construction Certificate as meeting the following requirements:
- a) The car lift shall have the internal dimensions not less than shown on the approved plans or as amended by Condition 5.
  - b) A minimum of 2200mm headroom must be provided throughout the car lift
  - c) Ensure operating noise and vibration levels of the car lift are limited to acceptable levels in accordance within appropriate standards
  - d) Provide manufacturer specifications of the car lift
  - e) Provide operational details and maintenance plan of the entire car lift facility, demonstrating safe and functional access for all users, include details of safety protection systems for users and non-users.

**PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)**

29. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
30. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit (FOOT)	\$7,860
Inspection fee (FOOTI)	\$225

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 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 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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

31. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property
95 Louisa Road, Birchgrove
91 Louisa Road, Bircghrove

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

32. Prior to the commencement of works or issue of a Construction Certificate (whichever occurs first), a Noise and Vibration Management Plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant Australian Standards and Assessing Vibration: A technical guideline (available [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)). The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works. The Plan shall address, but not be limited to, the following matters:

- a) Identification of activities carried out and associated noise sources.
- b) Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment.
- c) Determination of appropriate noise and vibration objectives for each identified sensitive receiver.

- d) Noise and vibration monitoring, reporting and response procedures.
  - e) Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles.
  - f) Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction.
  - g) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency (consistent with conditions of this consent).
  - h) Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration.
  - i) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.
33. An experienced suitably qualified & experienced Heritage Architect must be commissioned to assist and to provide advice on the following elements of the approved development, **and to oversee the following component of the project:**

**The salvaging of certain aspects of the historic fabric within the interior of the dwelling - unique pressed metal wall and ceiling linings in the bedrooms; and the front façade windows as recommended by the applicant's heritage consultant.**

Details of the engagement of the experienced Heritage Architect in accordance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Prior to the issue of an Occupation Certificate the Heritage Architect is to certify that the works have been carried out in accordance with these requirements.

Details of the engagement of the experienced Heritage Architect & copy of the certification in accordance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

34. Prior to the commencement of demolition or any works or issue of a Construction Certificate (whichever occurs first), the Principal Certifying Authority shall be satisfied that an **Archival Record, as recommended by the applicant's heritage consultant**, has been completed and 3 copies have been submitted to Council for the following properties:

**Address/Building**

***No.93 Louisa Road, Birchgrove.***

The report must be prepared by a suitably qualified and experienced heritage consultant, be consistent with the Heritage Office 'Photographic Recording Of Heritage Items Using Film Or Digital Capture' and must contain the following minimum requirements:

- a) Title page with subject, author, client, date, copyright etc.
- b) Statement of why the record was made

- c) Outline history of the item and associated sites, structures and people.
- d) Statement of heritage significance of the items in accordance with the Burra Charter and the Heritage Inventory.
- e) Inventory of archival documents related to the item and their location (eg company records, original drawings, photography), when available.
- f) Location plan showing relationship to surrounding geographical features, structures, roads etc. Include a north point.
- g) Floor plans/site plans cross-referenced to photographs and showing the order & orientation in which the photos were taken. Name the relevant features, structures and spaces. Show a north point.
- h) Photographic record, labelled and cross-referenced to floor / site plans and accompanied by informative catalogues and two copies of proof sheets. Images should include:
  - View to and from the site (possible from four compass points)
  - Views showing relationships to other relevant structures, landscape features and movable items.
  - All external elevations.
  - Views of all external and internal spaces (e.g. courtyards, rooms, roof spaces etc).
  - External and internal detail (e.g. joinery, construction joints, decorative features, paving types etc).

Selected prints to give an overall picture of the item may be required. They should be mounted and labelled.

- i) Colour slides/archival quality prints. One set of slides mounted in archival stable slide pockets or 10.5 x 14.8cm prints on archival quality paper and archivally stable inks, clearly labelled and cross-referenced to base plans. Images should include:
  - Views to and from the site and/or the heritage item.
  - Views and details of external and internal elements and colour schemes as appropriate.

Two (2) hard copies and one (1) electronic copy (including digital copies of images – not scanned copies) of the report must be submitted to Council; one of the hard copies shall contain negatives (if using film) or DVD with digital copies of photos (if using digital). A written acknowledgment from the Consent Authority (Leichhardt Council) must be obtained (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or commencement of works (whichever occurs first).

35. Site cranes and hoists may be erected within the boundaries of the site subject to compliance with the relevant provisions of Australian Standard AS 1418:2005 *Crane, hoists and winches*, Australian Standard AS 2549:1996 *Cranes (including hoists and winches)* and Australian Standard AS 2550:2002 *Cranes, hoists and winches*.

Cranes must not swing or hoist over any public property unless the relevant approval under Local Government Act 1993, Crown Lands Act 1989, or the Roads Act 1993 has been obtained prior to the commencement of works.

The use of the cranes and hoists must comply with the approved hours of construction and/or Roads Act approval. The cranes must not be illuminated outside approved working hours other than safety beacons required by the Civil Aviation Safety Authority. No illuminated signs are to be erected upon or displayed upon any crane.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate or works commencing (whichever occurs first).

36. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall 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
- 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.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

37. Council will not approve permanent anchors in the road reserve. Temporary anchors may be considered in shallow environments where they are to be removed during construction.

If you are seeking to use temporary anchors, you should 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 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.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

38. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
39. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
  - a) Unauthorised entry to the work site is prohibited.
  - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
  - c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

40. The site must be secured with temporary fencing prior to any works commencing.

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

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

41. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

42. An Asbestos Survey prepared by a suitably qualified Occupational Hygienist shall be prepared for the premises. The Survey is to incorporate appropriate Asbestos removal and disposal methods in accordance with the requirements of WorkCover NSW, NSW Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and NSW Environment Protection Authority, Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)] and conditions of this consent.

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

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to any works on site commencing or the issue of the Construction Certificate (whichever occurs first).

43. 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 'Application for Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

#### **DURING WORKS**

44. Alignment levels for the site at all pedestrian access locations shall match the existing back of footpath levels at the boundary.
45. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);



- b) 8:00 am to 1:00 pm 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 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 shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and  
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall 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.

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

- 46. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
- 47. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
  - a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element, and
  - d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

48. Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.
49. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

In this condition, the allotment of land includes public property.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

50. Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environment Operations Act 1997*.

Any soil, which fails to meet the criteria, is not to be disposed of off-site unless agreed to in writing by the NSW Environmental Protection Authority (EPA). Results of the testing are to be forwarded to Leichhardt Council and the Environmental Protection Authority (EPA) for acknowledgement before any off-site disposal and before proceeding with any construction works.

51. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

52. Construction material and vehicles shall not block or impede public use of footpaths or roadways.

53. The site must be appropriately secured and fenced at all times during works.

54. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.

55. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
56. Vibration caused by excavation and construction at any residence or structure outside the site must be limited to:
- a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and
  - b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).

Vibratory compactors must not be used in the vicinity of residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified above.

57. The following replacement trees must be planted:

Tree/species	Quantity	Location
In accordance with Landscape plan prepared by SPACE Landscape Designs Pty Ltd, Project No. 181544, dated 23/04/2018.		

The minimum pot size at time of planting will be equivalent to 75 litre (min) containerised stock. The tree(s) is/are to conform to the AS 2303—*Tree Stock for Landscape Use*.

Council encourages the uses of replacement trees that are endemic to the Sydney Basin to increase biodiversity in the local environment and provide a natural food source for native birds and marsupials. Note: Any replacement tree species must not be a palm tree species or be a plant declared to be a noxious weed under the Noxious Weeds Act 1993 or tree species listed as an exempt species under Section C1.14 (Tree Management) of the Leichhardt Development Control Plan 2013.

58. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
59. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

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

#### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

60. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
61. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate

62. A street number must be clearly displayed at the ground level frontage of the building prior to the issue of an Occupation Certificate. A separate application must be made to Council if new street numbers or a change to street numbers is required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

63. All allotments involved in this proposal must be consolidated into one allotment. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Evidence of registration shall be submitted to Council or the Principal Certifying Authority prior to the issue of an Occupation Certificate.

64. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.

65. All letter boxes must be constructed and located in accordance with the relevant provisions of Australian Standard AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction. Work is to be completed prior to the issue of any Occupation Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

66. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.

67. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:

- the approved plans;
- BASIX certificate (where relevant),
- approved documentation (as referenced in this consent); and
- conditions of this consent.

68. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

69. Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environmental Operations Act 1997*.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

70. To ensure the development is constructed in accordance with the approved plans, a Check Survey prepared by a registered surveyor to Australian Height Datum (AHD) shall be prepared on completion of the building works. The survey shall be submitted to the Principal Certifying Authority who must be satisfied that the following are consistent and no higher or closer than that depicted on the approved plans prior to the issue of an Occupation Certificate.
- a) Level of the floor/terrace/lawn in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
  - b) Ridge heights of the building and gutters.

Where there is a difference in the above RL's / dimensions /degree between that of the survey and the approved plans and the survey indicates the constructed development is larger/higher/closer than the approved development, an application under Section 4.55 of the Environmental Planning and Assessment Act 1979 shall be submitted to Council for consideration of the amendments.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

71. A validation report shall be prepared by a suitably qualified Environmental Consultant and be submitted to Council upon completion of remediation works and prior to the site being occupied. The validation report shall be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines 'Consultants Reporting on Contaminated Sites' and shall include :
- Description and documentation of all works performed
  - Results of validation testing and monitoring
  - Validation results if any imported fill was transferred to site
  - Demonstrate how all agreed clean-up criteria and relevant regulations have been satisfied

Confirmation and justification as to the suitability of the site for the proposed use and the potential for off site migration of any residual contaminants.

72. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.
73. Light duty concrete vehicle crossing, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be reconstructed at the vehicular access location to match the new driveway and garage before the issue of the Occupation Certificate and at no cost to Council.

74. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all aspects of the foreshore risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer this condition has been complied with must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

75. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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 Certifying Authority stamped Construction Certificate plans.

The Plan must be prepared by a suitably qualified professional and provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

76. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance the development consent and with relevant Australian Standards must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

77. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath, Vehicle Crossing and Public Domain Works on Council property required to be undertaken as a result of this development, including removal of rock anchors, have been completed satisfactorily and in accordance with Council approved plans and specifications.

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

79. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.

**ONGOING CONDITIONS OF CONSENT**

80. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling house is defined under the *Leichhardt Local Environment Plan 2013*.

81. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
82. The use of the premises shall 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 shall not give rise to the transmission of a vibration nuisance or damage other premises.
83. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage to other premises as defined in the Environment Protection Authority's Technical Guidelines for Assessing Vibration.
84. The public view corridor from Louisa Road to Snails Bay is to be maintained.
85. The Foreshore Risk Management Plan approved with the Occupation Certificate must be implemented and kept in a suitable location on site at all times.
86. The basement level terrace shall not be enclosed, walled or otherwise altered from the approved plans contrary to this consent without prior approval from Council.

**PRESCRIBED CONDITIONS****A. BASIX Commitments**

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
- i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and

- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

## **B. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

## **C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - 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, or
  - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

## **D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.



**E. Condition relating to shoring and adequacy of adjoining property**

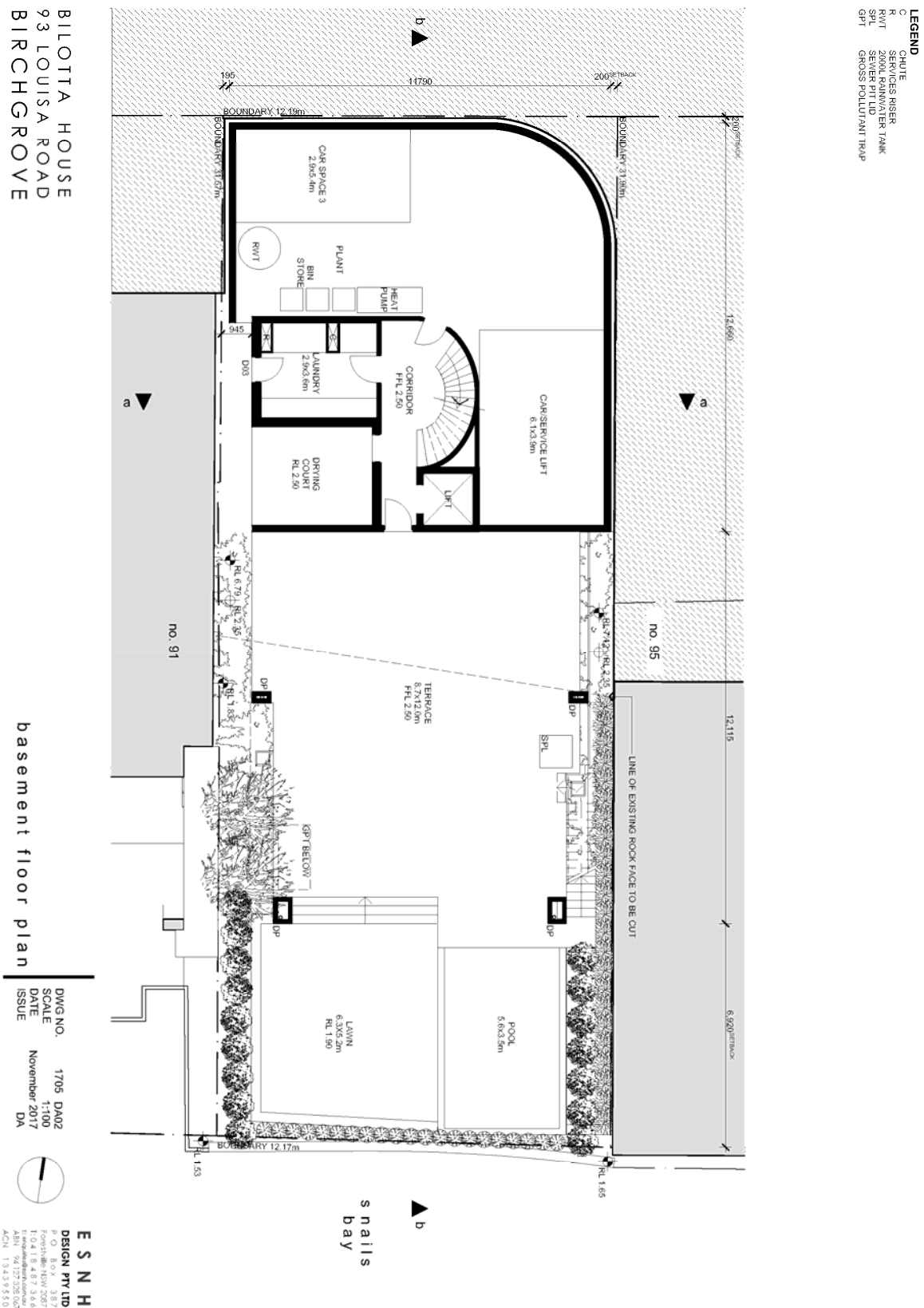
- 1) For the purposes of section 4.17(11) of [the Act](#), it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**NOTES**

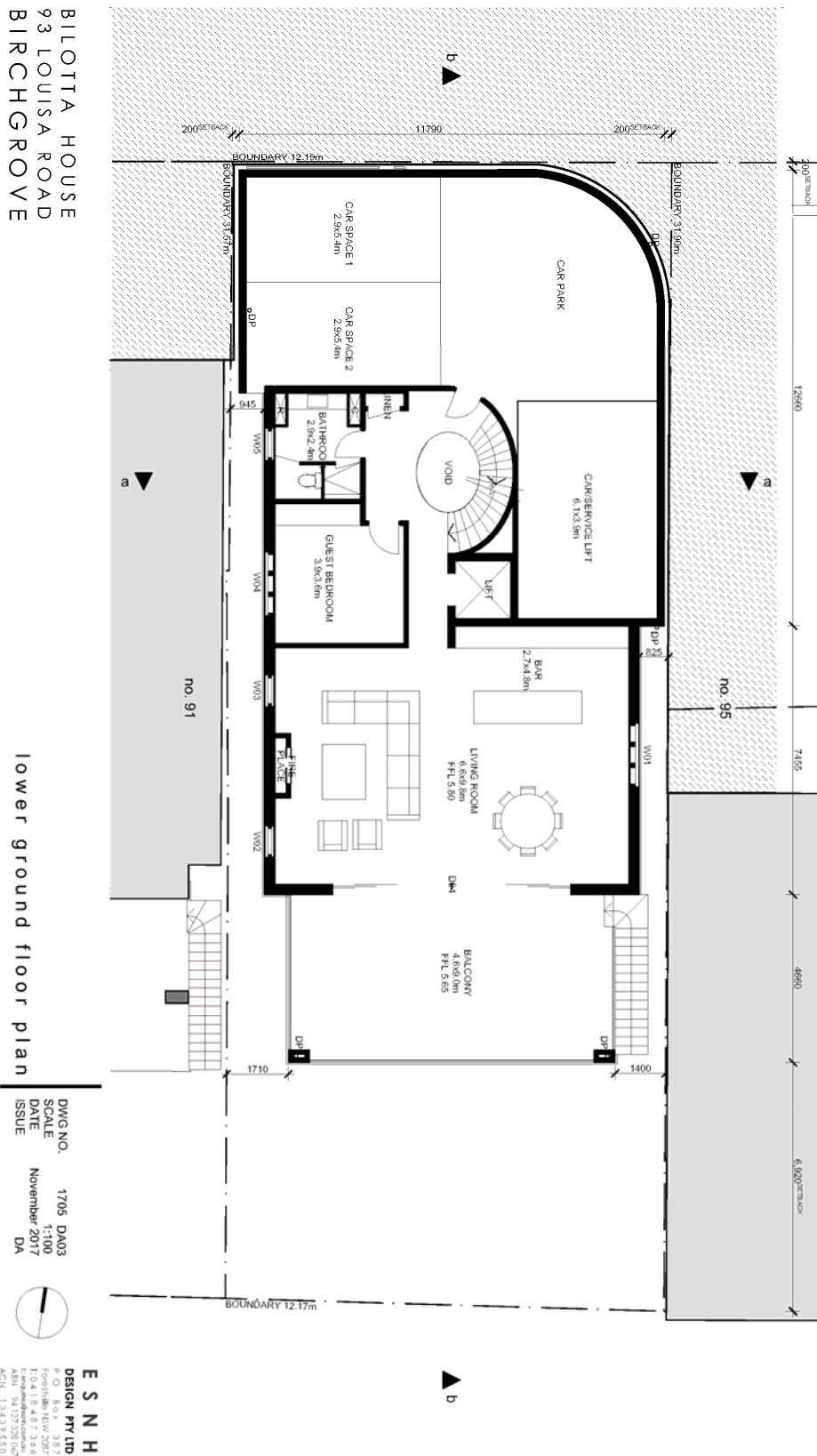
1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. 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.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.
9. You may need a permit before filling a new or renovated swimming pool which holds more than 10,000 litres of water. You are advised to contact Sydney Water on 132092 to obtain this permit.

## Attachment B – Plans of proposed development



**LEGEND**  
C CHUTE  
R SERVICES RISER



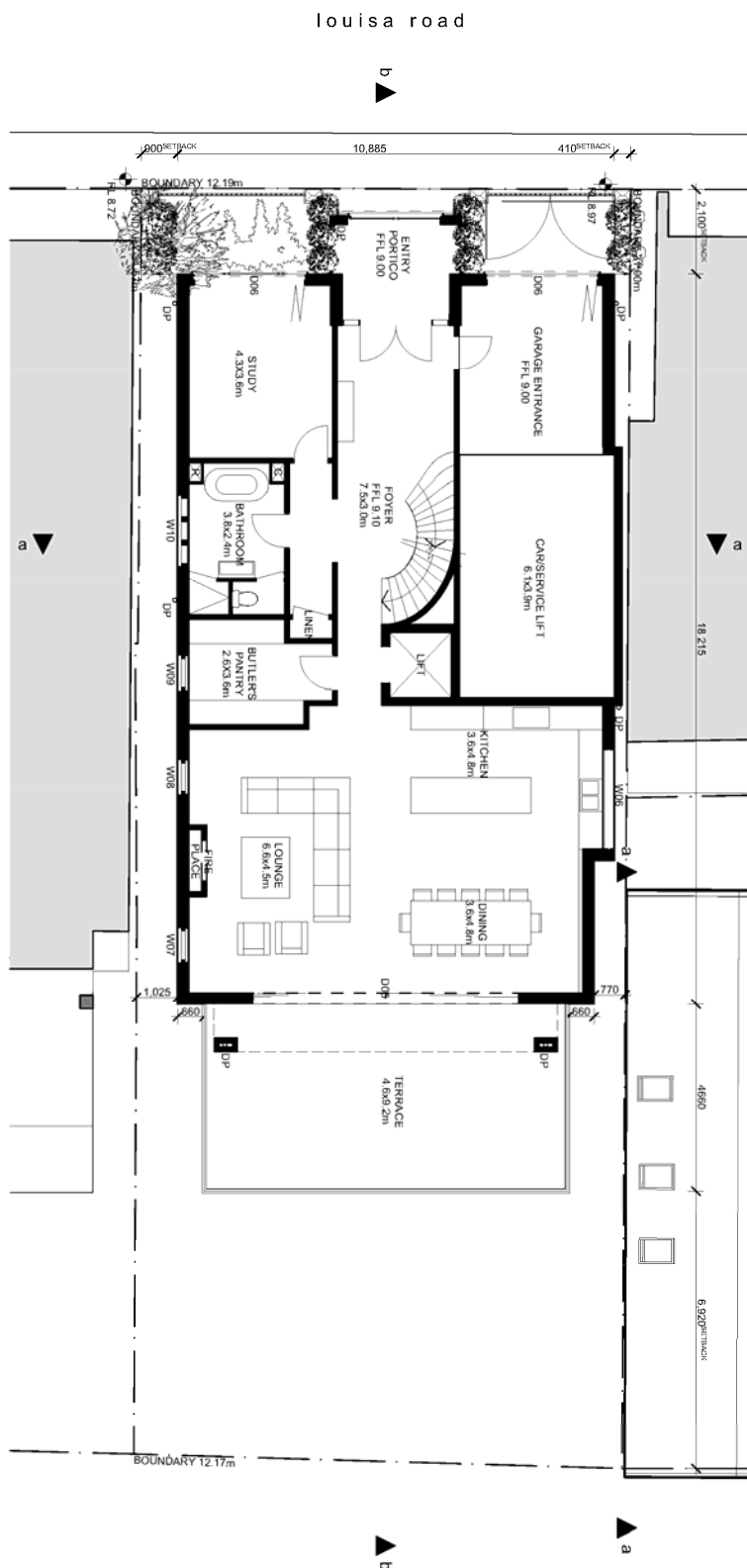
**LEGEND**  
C CHUTE  
R SERVICES RISER

BILOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

upper ground floor plan

DWG NO.	1705DA04A
SCALE	1:100
DATE	April 2018
ISSUE	amended DA

**ESNH**  
**DESIGN PTY LTD**  
P O Box 387  
Forestville NSW 2087  
T: 0418 487 366  
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ACN 13439550



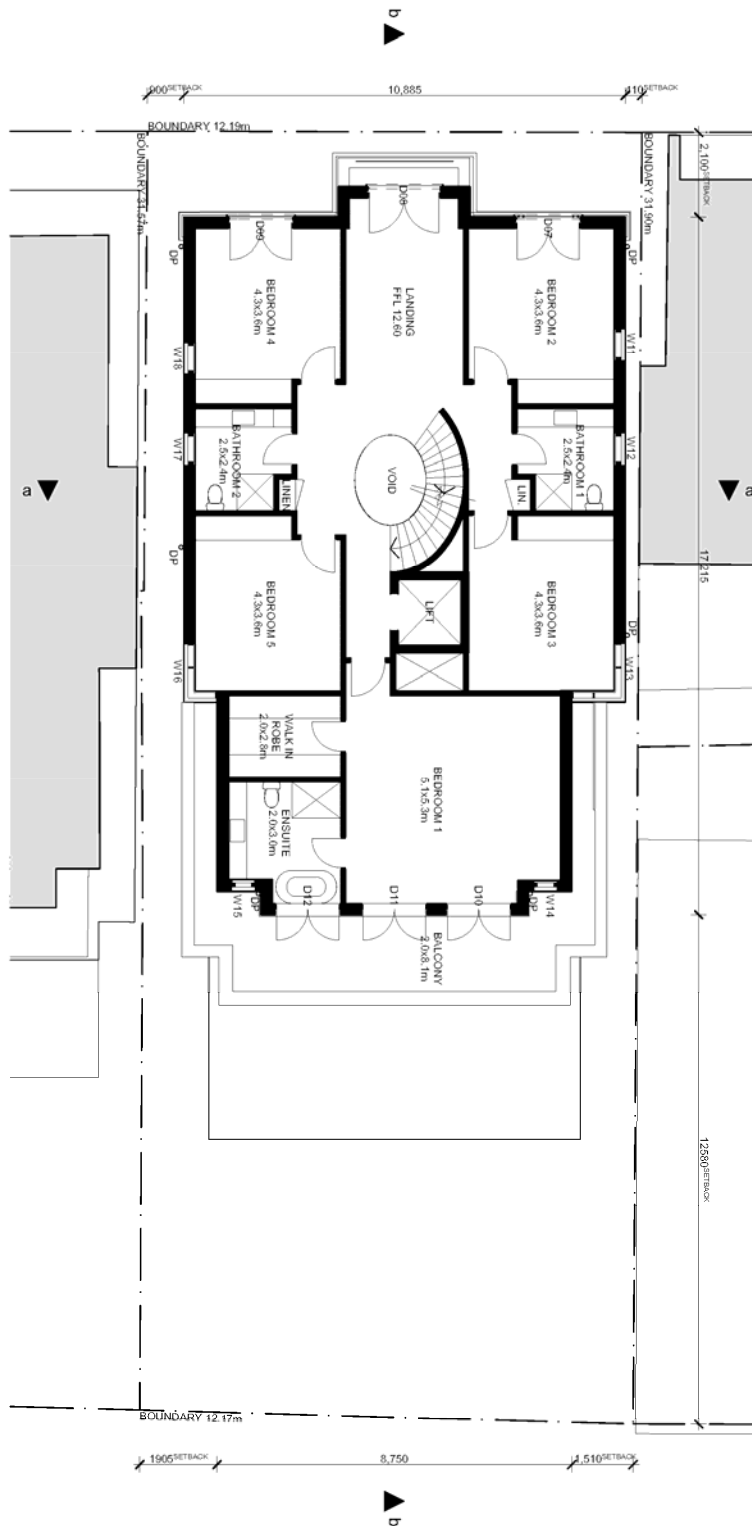
BILLOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

first floor plan

DWG NO. 1705 DA05  
SCALE 1:100  
DATE November 2017  
ISSUE DA



**ESNH**  
DESIGN PTY LTD  
1/104 ILLUMINATE NEW 2007  
1/104 ILLUMINATE NEW 2007  
1/104 ILLUMINATE NEW 2007  
ACN 13439550



BILLOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

roof terrace plan

DWG NO. 1705DA06A  
SCALE 1:100  
DATE April 2018  
ISSUE amended DA



**ESNH**  
DESIGN PTY LTD  
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BASIX COMMITMENTS

CERTIFICATE NO. 8692195

Landscaping

The swimming pool must not have a volume greater than 30 kilolitres and is to be located outdoors.

Thermal Comfort

The dwelling must not contain open mezzanine areas exceeding 25 square metres.

Floor, walls and ceiling

Additional insulation required (R-value)

Other specifications

0.9 (or 1.5 including construction) (down)

0.50 (or 1.17 including construction)

1.15 (up), roof: foil backed blanket (110 mm)

dark (solar absorbance > 0.70)

external wall - cavity brick

internal wall - single skin masonry

floor - suspended floor above open subfloor - concrete

floor - concrete slab on ground

ceiling - single skin masonry

ceiling - foil backed blanket (110 mm)

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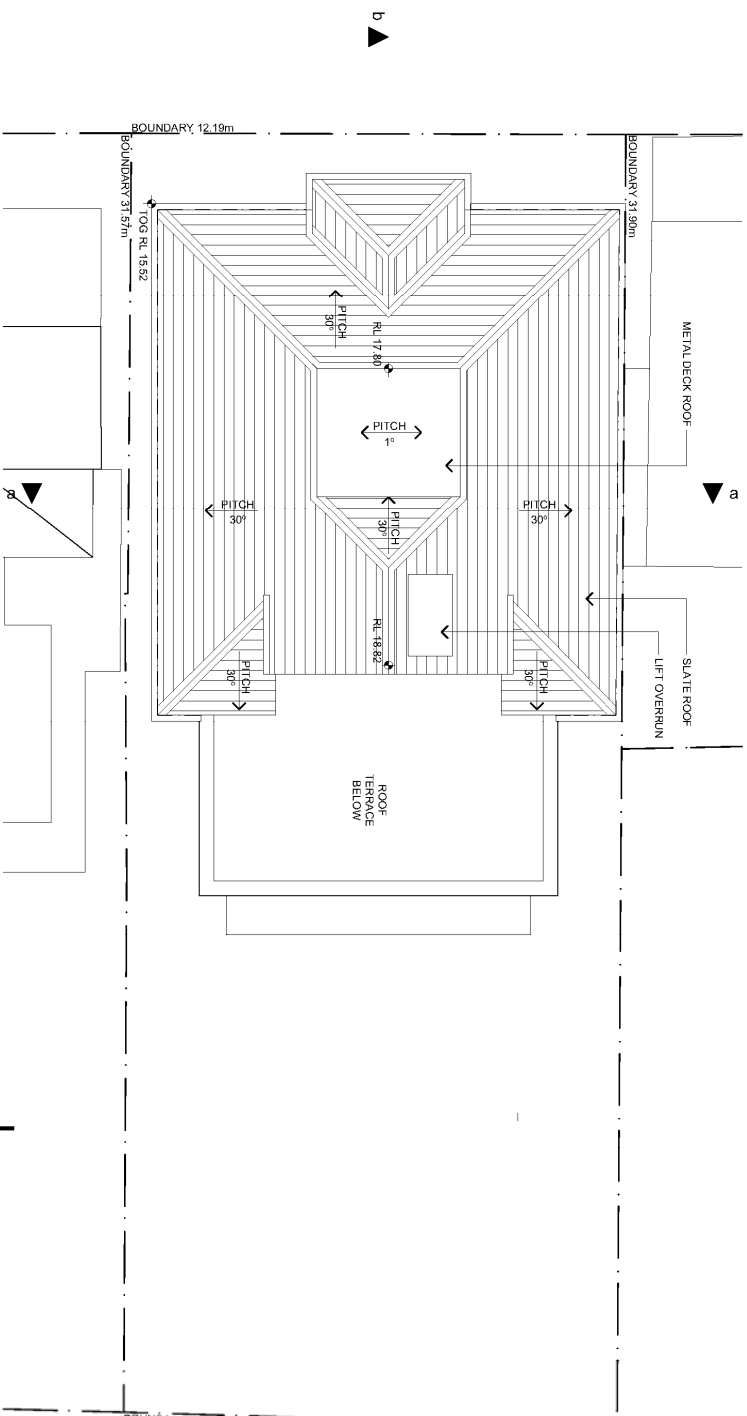
BILOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

roof plan

DWG NO. 1705DA07A  
SCALE 1:100  
DATE April 2018  
ISSUE amended DA

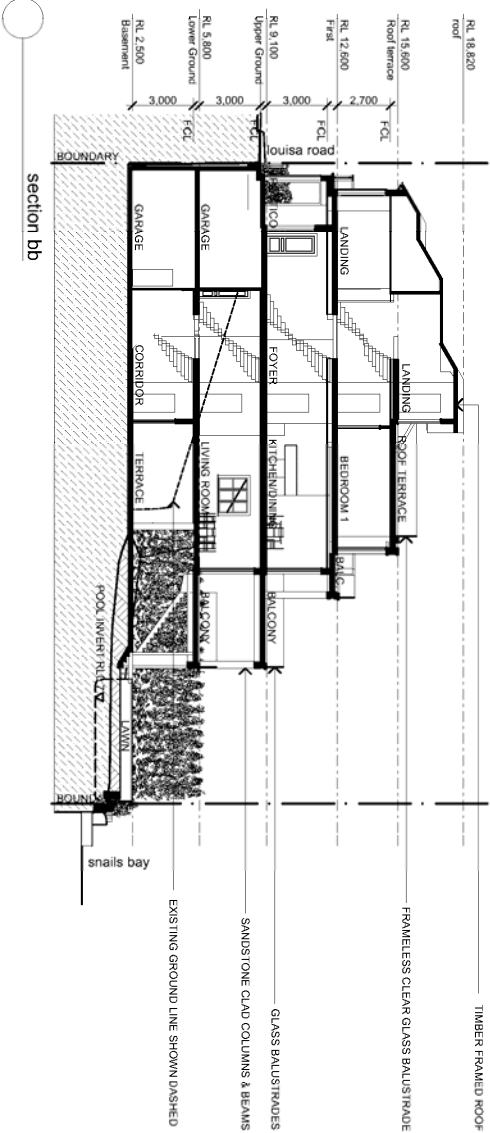
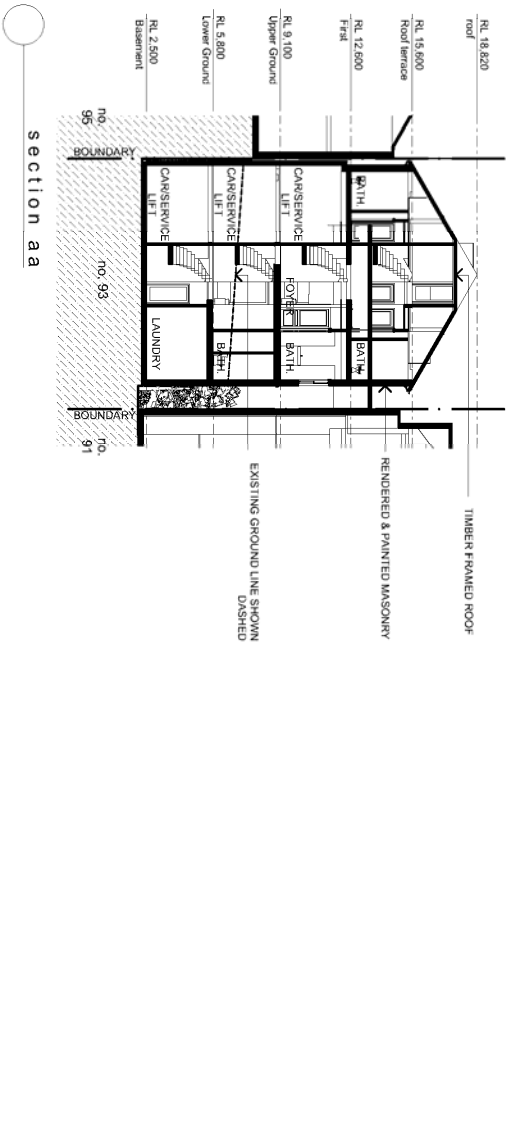


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BILOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

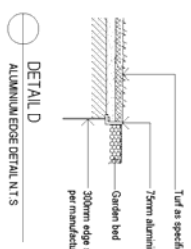


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SCALE 1:200  
DATE May 2018  
ISSUE amended DA

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May 2018  
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BILLOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

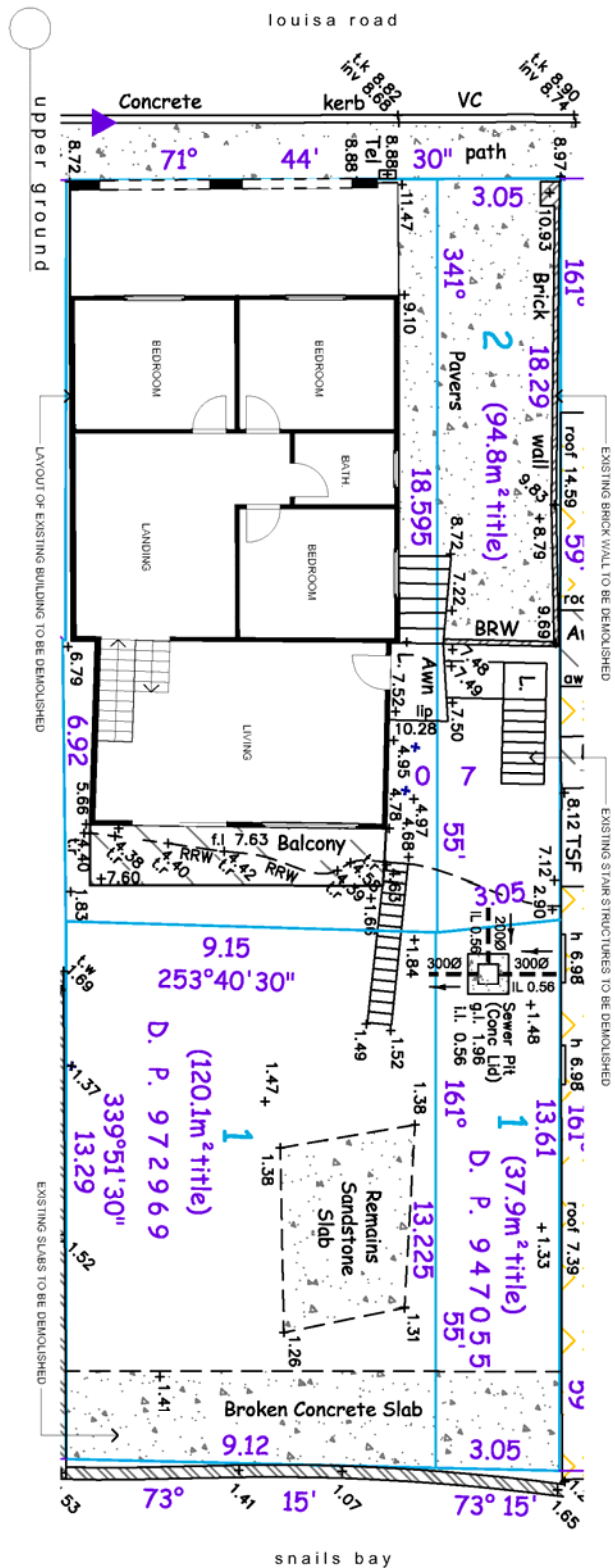
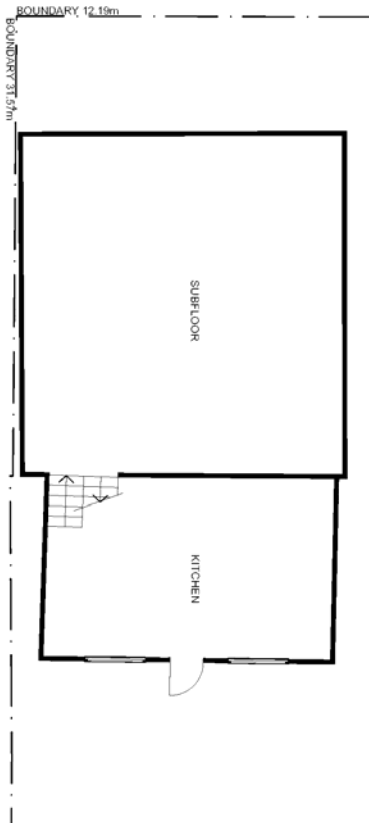
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DATE November 2017  
ISSUE DA

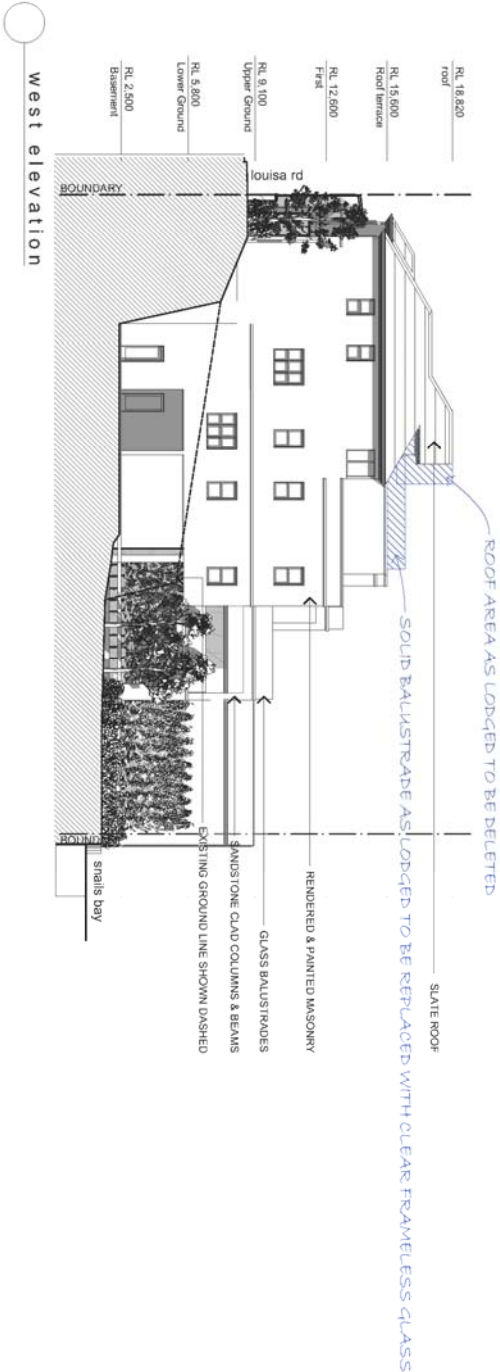


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**NOTE:**  
WALL LOCATIONS ARE APPROXIMATE AS THE  
STATE OF DILAPIDATION OF THE EXISTING STRUCTURES  
PREVENT THEIR ACCURATE MEASUREMENT.



draft



BILLOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

elevations sheet 1 of 2

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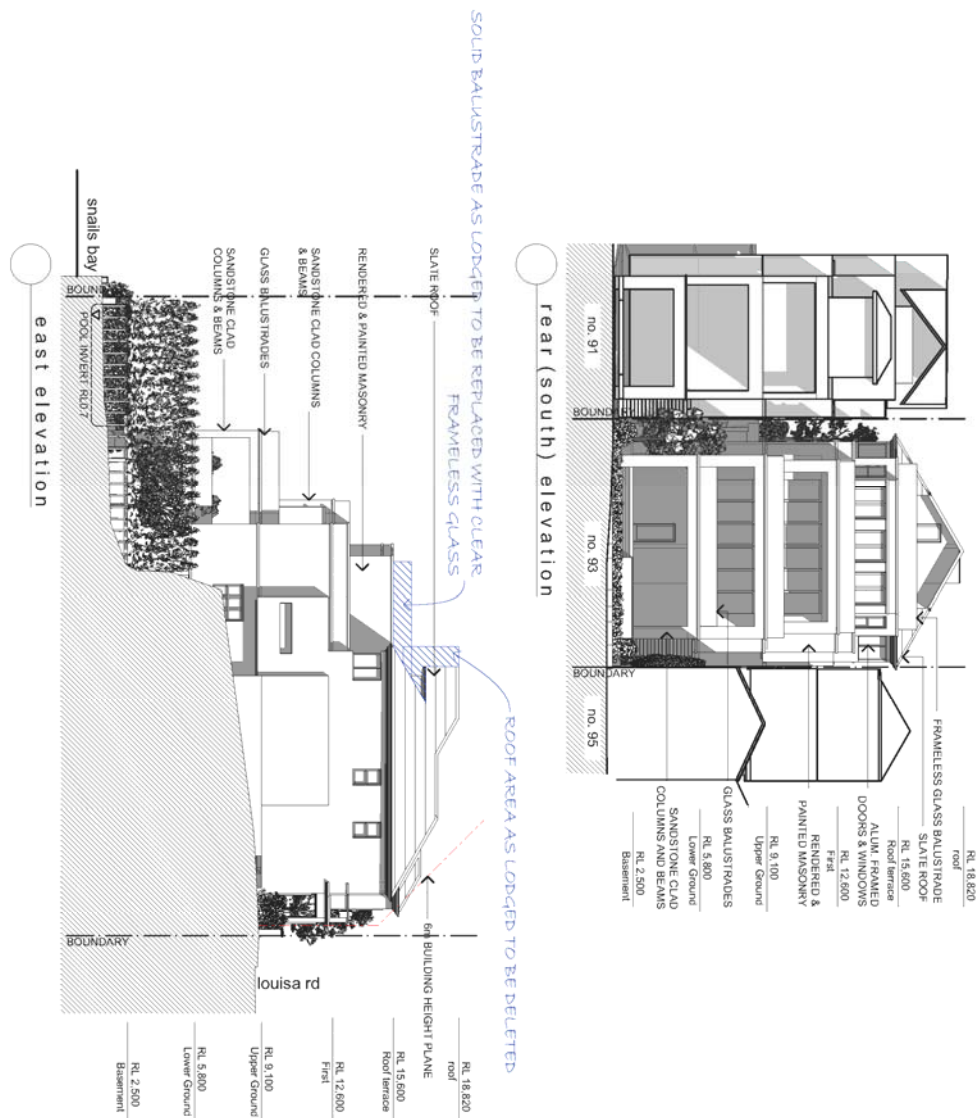
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BILOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE

elevations sheet 2 of 2

DWG NO. 1705DA09A  
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DATE April 2018  
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BILLOTTA HOUSE  
93 LOUISA ROAD  
BIRCHGROVE



pool section

DWG NO. 1705  
SCALE 1:50  
DATE January 2018  
ISSUE DA

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**Attachment C – Clause 4.6 Exceptions to Development Standard**



**CLAUSE 4.6 VARIATION (V2)**  
**CLAUSE 4.4 - FLOOR SPACE RATIO**  
**LEICHHARDT LEP 2013**



**Proposed New Dwelling,  
93 Louisa Road, Birchgrove  
10 April, 2018**



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*Figure 1 – Site Survey*

*Figure 2 – Existing Building*

*Figure 3 - Location Map*

*Figure 4 – Aerial Photo*

*Figure 5 – FSR Map*

## 1. INTRODUCTION

This report has been prepared to support the submission of a Development Application (DA) to be lodged with the Inner West Council. The proposal seeks approval for the demolition of the existing dwelling at 93 Louisa Road, Birchgrove and the construction of a new dwelling in its place.

In detail the application proposes the demolition of the existing building at 93 Louisa Road and the construction of a new dwelling, landscaping and associated facilities. The new dwelling will contain four levels, five bedrooms, bathrooms, kitchen, dining and living areas, garage and car lift, internal lift, stairs and other service facilities. A small roof terrace is also proposed.

Under *Clause 4.4* of the *LEP* the site is subject to a maximum floor space ratio (FSR) of 0.8:1 (for dwellings). The current proposal incorporates 393.3m<sup>2</sup> of gross floor area (GFA), which exceeds the control by 101.26m<sup>2</sup> and results in a floor space ratio (FSR) of 0.94:1.

More than 118m<sup>2</sup> of the GFA is located in the basement and lower ground floor, both of which are below the existing ground level. As such, this space does not add to the bulk and scale of the building, as it would be otherwise foundation space below the building.

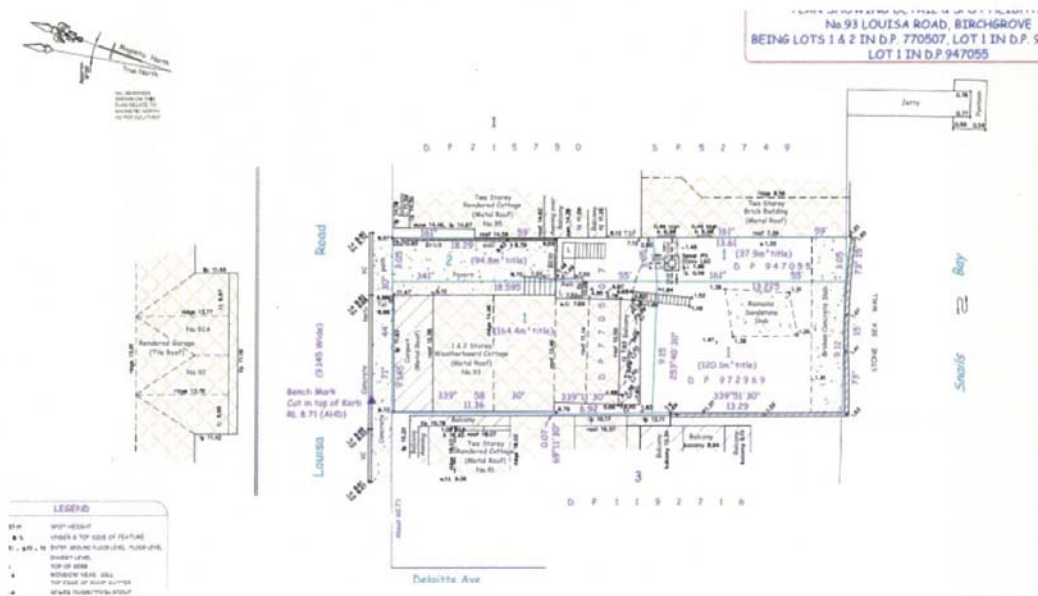
Accordingly, a request to vary the FSR standard under *clause 4.6* of the *LEP* needs to be prepared. That is the purpose of this report.

## 2. SITE AND LOCATION

The site that is the subject of this report comprises Lot s 1 & 2 in DP 770507, Lot 1 in DP 972969 and Lot 1 in DP947055 and is known as 93 Louisa Road, Birchgrove. The site is located on the southern side of Louisa Road, with frontage to Snails Bay and it has an area of 417.2m<sup>2</sup>.

The property has a frontage of 12.195 metres (m) to Louisa Road, 31.90m on its eastern boundary and 31.57 along the western boundary and enjoys a 12.17m frontage to the Parramatta River as per the survey in *figure 1* below.

**Figure 1 – Site Survey**



The existing building is a one and two storey weatherboard cottage with metal roof.

The property is located within a Heritage Conservation Area, under *Leichhardt Local Environmental Plan (LEP) 2013* and is surrounded predominantly by one and two storey dwellings and medium density developments of a range of age and style. Opposite the site in Louisa Road are a series of semi - detached style dwellings facing the Parramatta River.

As is the case in many streets along the waterfront, the streetscape in this part of Louisa Road is predominantly that of small front gardens and garage structures, with the dwellings taking advantage of their waterfront locations. In a design sense the streetscape is quite eclectic with a range of styles ages and built form ranging from modern replacement dwellings though to Victorian terrace houses.

*Figures 2, 3 and 4* below and on the following pages provide a photo of the existing premises, the general location of the property and an indication of the surrounding built form.

**Figure 2– Existing Building**



Source: Google Maps

Birchgrove Park is approximately 100m to the west of the site along Louisa Road, while the Balmain Town centre is approximately 1 kilometre further to the south - west.



Figure 3 – Location Map



Map reproduced with permission of UBD. Copyright Universal Publishers Pty Ltd. DG 05/05

Figure 4 – Aerial Photo



Source: © DEPARTMENT OF LANDS SIX Portal [www.lands.nsw.gov.au](http://www.lands.nsw.gov.au)

### 3. CLAUSE 4.6 VARIATION

*Clause 4.6* of the LEP outlines the matters to be considered by Council where a proposal seeks to vary a numerical standard contained within the LEP. The subject development seeks to vary the FSR standard currently contained within *clause 4.4* of the LEP and therefore an assessment under *clause 4.6* is required. The FSR is increased by the “lower floors, which are excavated beyond the existing ground level.

### 4. THE TERMS OF CLAUSE 4.6

Development consent may still be granted to the proposed development (despite the non-compliance with the maximum height and FSR) if variations to the relevant controls are approved under clause 4.6 of the LEP. Clause 4.6 states as follows:

#### *4.6 Exceptions to development standards*

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

- (a)to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b)to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2)Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. ...*

*(3)Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

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

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence. ...

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

This document provides written requests from the applicant seeking to justify the contravention of the Building Height and FSR standards in accordance with **clause 4.6**.

**Clause 4.6** continues to be an appropriate and frequently applied mechanism to ensure that planning rules have appropriate levels of flexibility, when the circumstances warrant it. Some recent examples of the application of clause 4.6 by the Land and Environment Court are as follows:

- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.



The Court was satisfied that the clause 4.6 request by the applicant's town planner was comprehensive and had addressed all of the prerequisites. The Court was also persuaded that the site was 'unusual in terms of its location at the low point of the locality, its proximity to larger RFBs that would not comply with the building height development standard and its flood affectation'. Those features, when taken together with other benefits of the proposal such as its design excellence and internal amenity, provided sufficient environmental planning grounds to justify approval via clause 4.6.

- In *Moskovich v Waverley Council* [2016] NSWLEC 1015 the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The exceedance was around 65 per cent. The Court's decision set out a detailed analysis of the decision of the Court in *Four2Five v Ashfield Council*, which concluded that the large numerical exceedance of the FSR control could be supported.
- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Court granted a development consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.

## 5. FLOOR SPACE RATIO (FSR) VARIATION

The LEP also sets floor space ratio (FSR) limitations for buildings throughout the former Leichhardt Council area. *Clause 4.4* states relevantly in part as follows

### *4.4 Floor space ratio*

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

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

*(2A) Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*

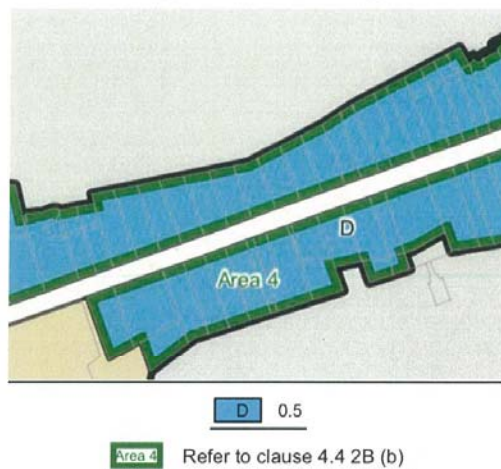
*(2B) Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:.....*



- (b) on land shown edged red or green on the Floor Space Ratio Map is not to exceed:...
- (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or

Figure 5 below indicates the relevant extract from the LEP FSR map

Figure 14 – FSR Map



Source: Leichhardt LEP 2013 – FSR Map

The current proposal incorporates 393.3m<sup>2</sup> of gross floor area (GFA), which exceeds the control by 101.26m<sup>2</sup> and results in a floor space ratio (FSR) of 0.94:1.

Under **Clause 4.4** of the (**LEP** the site is subject to a maximum floor space ratio (FSR) of 0.8:1 (for dwellings). The current proposal incorporates 393.3m<sup>2</sup> of gross floor area (GFA), which exceeds the control by 101.26m<sup>2</sup> and results in a floor space ratio (FSR) of 0.94:1.

More than 118m<sup>2</sup> of the GFA is located in the basement and lower ground floor, both of which are below the existing ground level. As such, this space does not add to the bulk and scale of the proposed dwelling, as it would otherwise be foundation space below the building.

Accordingly, a request to vary the differing standards applicable within the site is considered to be necessary and discussed further in this section of the report.

NOTES