



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/168
<b>Address</b>	24 Hartley Street, Rozelle
<b>Proposal</b>	Construction of a new reinforced concrete spa pool and adjacent decking and timber hardwood screen at rear of site.
<b>Date of Lodgement</b>	6 April 2018
<b>Applicant</b>	Good Manors Pool + Garden
<b>Owner</b>	Ms C M Peel
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$88,200.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variations to FSR, landscaped area and site coverage exceed officer delegation
<b>Main Issues</b>	FSR; Site Coverage; and Landscaped Area
<b>Recommendation</b>	Consent subject to conditions



### LOCALITY MAP

Subject Site



Objectors



Notified Area



Supporters



N

## 1. Executive Summary

This report is an assessment of the application submitted to Council for construction of a new reinforced concrete spa pool and adjacent decking and timber hardwood screen at rear of site at 24 Hartley Street, Rozelle. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application relate to non-compliances with:

- Floor Space Ratio
- Site Coverage
- Landscaped Area

Notwithstanding the above non-compliances, the proposal is acceptable given the existing pattern of surrounding development and its acceptable amenity impacts, and therefore, the application is recommended for approval.

## 2. Proposal

The proposal involves the construction of a new partial above ground reinforced concrete spa pool 1.4m deep, new decking and timber screening.

The pool has dimensions of 2m width by 4m length with setbacks of 0.545m to the northern side boundary, 3.03m to the southern secondary street boundary and 8.575m to the eastern rear lane boundary. The deck is proposed to cover the existing impervious paved and deck areas to achieve single level of RL12.99, which is set 400mm below the pool coping level of RL 13.49. The 1.4m high timber screening is proposed above an existing retaining wall along the northern side boundary to achieve an overall fence height of 2.3m above the deck or 1.9m above the pool coping level. Associated pool filter equipment will be located inside the existing garage within a soundproof box.

The proposal seeks to retain two existing trees located between the proposed pool and existing garage and is supported by an Arborist's Report which confirms that the trees will not be adversely impacted by the proposal given the location of existing retaining walls acting as root barriers. The proposal also retains an existing below ground 5,000L water tank located within the internal courtyard approved as a part of D/2010/239.

No change is proposed to existing impervious area, landscaped area, floor space, parking or access arrangements (previously approved under D/2010/239) as a part of this proposal.

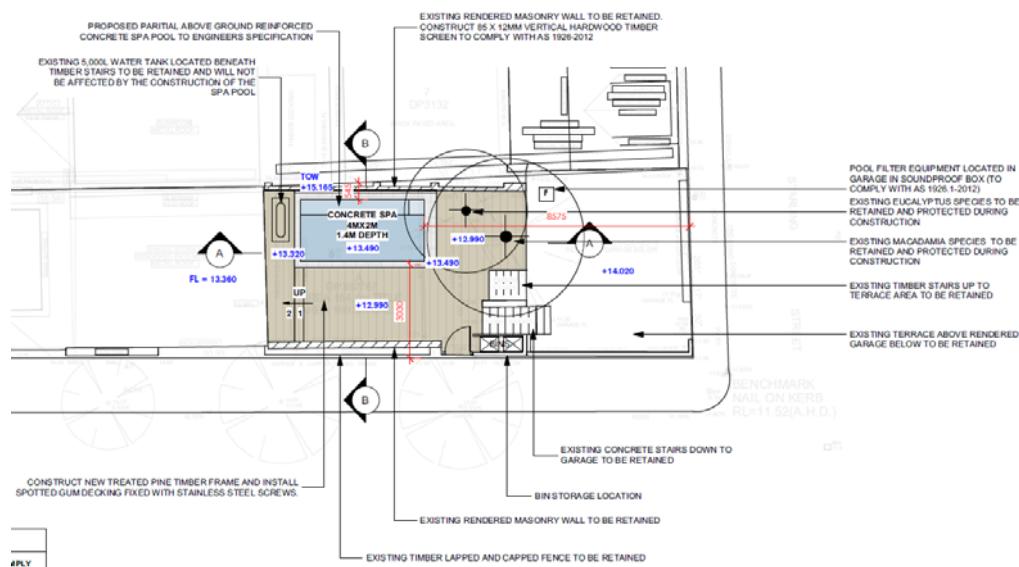


Figure 1: Proposed rear carport plan at 115 Beattie Street Balmain.

## 3. Site Description

The site is approximately 164.4m<sup>2</sup> in area and has a frontage of 5.335m to Hartley Street, 6.10m to Starling Street at the rear, and 30.33m to Brent Street at the side. The site is

located on the eastern side of Hartley Street. The site consists of one allotment rectangular in shape and is legally described as Lot A, DP 382767.

The site supports a part one/part two storey terrace dwelling. The adjoining properties consist of very similar dwellings, all constructed in a like manner and style and dating from the same period.

The site is located within the distinctive neighbourhood of Rozelle – The Valley.

The subject site is not a heritage item however it is located within a conservation area. The site is not identified as a flood control lot.

The following trees are located on the site and within the vicinity.

- Eucalyptus robusta located at the rear of the site between the existing paved area and garage; and
- Macadamia integrifolia located at the rear of the site between the existing paved area and garage.

## 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/2010/230	Alterations and additions to existing dwelling including new roof to rear of dwelling, new glazing, internal alterations, new garage with roof terrace and landscaping.	Approved 27/9/2010

#### Surrounding properties

No applicable site history.

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
4/5/2018	Council – Wrote to the Applicant requesting further information: <ul style="list-style-type: none"> <li>• Amended plans indicating the retention of the existing 5,000L water tank</li> <li>• FSR and Site Coverage calculation diagrams</li> <li>• Updated Clause 4.6 requests for variations to FSR, landscaped area and site coverage</li> </ul>
9/5/2018	Applicant – Amended plans and revised Clause 4.6 requests submitted addressing the issues raised by Council.

## 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 Plan (Building and Sustainability Index: BASIX) 2004
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

#### 5(a)(i) State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004

A BASIX Certificate was not required as a part of the application given the pool or spa services only one dwelling and is less than the 40,000L threshold for BASIX affected development.

#### 5(a)(ii) 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

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio</b> Required: [0.8:1]	0.99:1 169.27sqm	24.5%	No
<b>Landscape Area [15%]</b>	0%	100%	No
<b>Site Coverage [60%]</b>	91.05% or 154.7sqm	51.75%	No

**Note:** The proposal does not involve any change to existing FSR or landscaped area as approved under D/2010/239. While the proposed 8sqm swimming pool results in an increase to site coverage, there is no change to existing impervious area.

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 4.3A(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 4.6(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.*

Comment: As discussed below in subclauses (3) and (4), it is considered that the contravention to the development standard is acceptable in this instance.

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.*

Comment: The 'key' reasons submitted by the applicant as justification to the contravention of the standards are:

Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1

The proposed development maintains the existing landscaped area of 0%, equating to a variation of 100% or 25.48sqm. Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *There is no reduction in landscaped area because the existing landscaped area is 0%.*
- *Whilst the proposal does not comply with the standard, it is considered to provide a high standard of landscaped area which contributes to the amenity of the site and the locality.*
- *The quality of the landscaped area on the site provides a high quality landscaped setting for the site.*
- *The opportunity to provide additional deep soil landscaping is limited in the backyard because it is occupied by a double garage and the front yard is a small with minimal setback from the boundary to the front building line.*
- *The proposal does not reduce the site's existing landscaped area.*
- *The proposal does not increase the surface area of the existing building's roof.*
- *The proposal does not increase the buildings footprint.*

- *The variation sought will enhance the utility of the existing development without unreasonable impacts on neighbouring amenity or the public domain.*

Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1

The proposed development seeks to provide a site coverage of 91.05% (or a dwelling, swimming pool, deck and garage of 154.7sqm). Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *There is no increase in existing site coverage.*
- *The proposed works remain consistent and are compatible with the existing site and desired future character of the area.*
- *The site coverage is maintained, the proposal also maintains the site's existing landscaped area whilst contributing to the landscape and townscape area character of Leichhardt's residential area.*
- *The proposal does not increase the site coverage and provides adequate and usable ground level open space for recreation and landscaping as well as to contain urban run-off.*
- *The proposal does not increase the surface area of the existing building's roof.*
- *The proposal does not increase the buildings footprint.*
- *The variation sought will enhance the utility of the existing development without unreasonable impacts on neighbouring amenity or the public domain.*

Clause 4.4 – Floor Space Ratio

The proposed development seeks to maintain the existing FSR of 0.99:1 (or a dwelling and garage of 169.27sqm). Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *The works are external and there is no increase in the FSR.*
  - *The non-compliance with the FSR exists and is historical. There is no change proposed to the building footprint and existing site landscaped and site coverage is not increased.*
  - *The proposal does not increase the site's FSR.*
  - *The proposal does not increase the surface area of the existing building's roof.*
  - *The proposal does not increase the buildings footprint.*
- (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.*

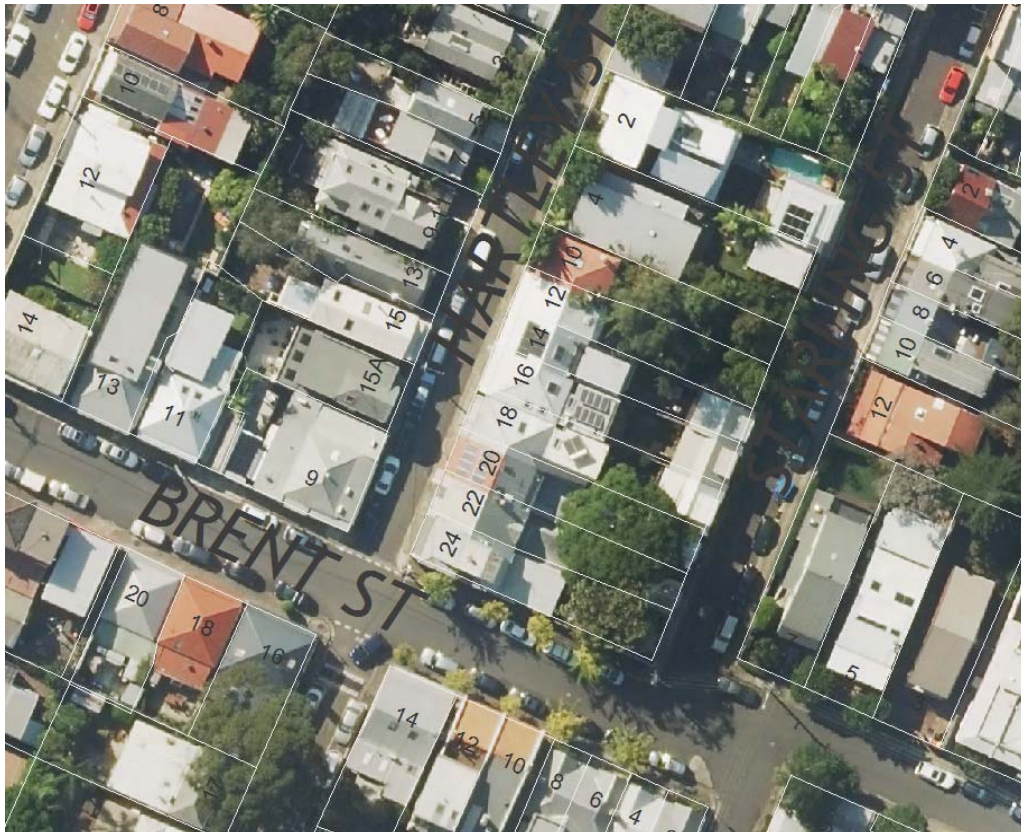
Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered to be well founded in this instance. The proposal will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard/s and General Residential zoning as demonstrated below:

- The proposal is compatible with the existing residential character of the area in relation to building bulk, form and scale.
- The proposal results in a greater internal amenity outcome for the occupants of the dwelling, retains existing canopy trees and maintains adequate private open space



and is located where it can be reasonably assumed a small spa pool can be constructed (wholly contained within existing impervious area), providing an acceptable balance between landscaped areas and the built form.

- The proposal does not result in any undue adverse amenity impacts to the surrounding properties.
- Despite the variations, the proposal results in superior on-site amenity outcomes.
- The FSR, site coverage and landscaped area proposed will be compatible with the FSR, site coverage and landscaped areas characteristic of the general pattern of development in the vicinity as shown in the aerial photo below.



**Figure 3:** Aerial photo indicating existing pattern of development adjoining 24 Hartley Street Rozelle



**Figure 4:** Existing rear courtyard as viewed from the rear garage roof terrace (left photo) and from the house (right photo) at 24 Hartley Street Rozelle

### 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

### 5(c) Development Control Plans

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	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.2.4 The Valley 'Rozelle' Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	N/A
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	N/A



<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
<b>Part E: Water</b>	N/A

### 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 Council's Policy for a period of 14 days to surrounding properties. No submissions were received.

### 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:

- Landscape Officer

Suitable conditions to ensure the protection of existing trees in the vicinity will be imposed on any consent granted.

## 7. 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 approval subject to the imposition of appropriate conditions.

## 8. Recommendation

- A. The variation to Clause 4.3A(3)(a) Landscape Area, 4.3A(3)(b) Site Coverage and 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 consent to Development Application No: D/2018/168 for Construction of a new reinforced concrete spa pool and adjacent decking and timber hardwood screen at rear of site at 24 Hartley Street, Rozelle subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. 2018/168 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Dwg. No. LP 01, Landscape Plan, Rev. A	Goodmanors	21/2/2018
Dwg. No. S 01, Sections, Rev. A	Goodmanors	21/2/2018
Document Title	Prepared By	Dated
Arboricultural Impact Assessment	Graham Brooks Arboricultural Tree Services Pty Ltd	18/3/2018

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.

2. The trees identified below are to be retained:

Tree/location
<i>Eucalyptus robusta</i> (Swamp mahogany) located in rear of property.
<i>Macadamia integrifolia</i> (Macadamia tree) located in rear of property.

Details of the trees to be retained must be included on the Construction Certificate plans

### PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

3. 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.

4. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
  - a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

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

5. 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.

6. 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.

7. A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

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.

8. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be 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.

9. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans 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.

10. 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) 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.



- iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
  - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
  - v) 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.
- b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. 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.
- 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 shown on the 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"

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.

11. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
- a) Estimated volume (m3) or weight (t) of materials that are reused, recycled or removed from site.
  - b) On site material storage areas during construction.
  - c) Material and methods used during construction to minimise waste.
  - d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
  - e) A clear statement within the Waste Management Plan of responsibility for the

transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

12. The footings of the proposed deck will be isolated pier or pier and beam construction within the specified radius of the trunk(s) of the following tree(s).

Schedule	
Tree/location	Radius in metres
<i>Eucalyptus robusta</i> (Swamp mahogany)	5m
<i>Macadamia integrifolia</i> (Macadamia tree)	5m

The piers shall be located such that no roots of a diameter greater than 30mm will be severed or injured during the construction period. The beam(s) shall be of reinforced concrete or galvanised steel sections and placed in positions with the base of the beam being a minimum of 50mm above existing soil levels.

Structural details of the pier or pier and beam construction shall be submitted to the Principal Certifying Authority satisfying the above requirements prior to the release of a Construction Certificate.

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

13. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below 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.

Security Deposit (FOOT)	\$2100.00
Inspection fee (FOOTI)	\$225.00

Payment will be accepted in the form of cash, bank cheque or 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 & footpath prior to & 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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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.

14. 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	Structures / Area
22 Hartley Street	Dwelling and rear courtyard

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.

15. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
- Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
  - A concrete pump across the roadway/footpath. – A Standing Plant permit
  - Mobile crane or any standing plant – A Standing Plant Permit
  - Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
  - Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
  - Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
  - Awning or street verandah over footpath. – Road works Application

- h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

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.

- 16. Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority is required to verify that tree protection measures comply with all relevant conditions.

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.

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

- 17. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

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 or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

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

- a) location of the building with respect to the boundaries of the site.

- 18. 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.

- 19. 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.

20. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt 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.
21. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
22. 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.
23. 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.

#### **DURING WORKS**

24. 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.

25. 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.

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.

26. The site must be appropriately secured and fenced at all times during works.
27. 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.

28. 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.
29. 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.
30. 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.
31. 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.
32. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

The requirements of the Soil and Water Management Plan must be maintained at all times during the works and shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

33. If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning shall be undertaken by a minimum Level 5 (AQF 5) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

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

Schedule	
Tree/location	Time of Inspection
<i>Eucalyptus robusta</i> (Swamp mahogany) located in rear of site.	Prior to and duration of all excavation works.
<i>Macadamia integrifolia</i> (Macadamia tree) located in rear of site.	Prior to and duration of all excavation works.
<i>Jacaranda mimosifolia</i> (Jacaranda) tree located in the rear of 22 Hartley St.	Duration of all excavation works required for installation of spa.

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

Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

35. Where a tree's canopy or root system has developed across property boundaries, consent to undertake works on the tree does not permit a person acting on the consent to trespass on adjacent lands. Where access to adjacent land is required to carry out approved tree works, Council advises that the owners consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent shall meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

36. No tree roots of 30mm or greater in diameter located within the specified radius of the trunk(s) of the following, tree(s) shall be severed or injured in the process of any works during the construction period.

All excavation within the specified radius of the trunk(s) of the following tree(s) being hand dug:

Schedule	
Tree/location	Radius in metres
<i>Eucalyptus robusta</i> (Swamp mahogany) located in rear of site.	5m
<i>Macadamia integrifolia</i> (Macadamia tree) located in rear of site	5m
<i>Jacaranda mimosifolia</i> (Jacaranda) tree located in the rear of 22 Hartley St.	10m

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal

Certifying Authority.

37. 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.
38. 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 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**

39. 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

40. 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.
41. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall be satisfied that:
  - a) Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*. The pool shall not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012
  - b) Any mechanical equipment associated with the swimming pool and spa shall be located in a sound-attenuating container and positioned to minimise acoustic impacts on habitable rooms of surrounding properties. Prior to operation of the pool pump, the Principal Certifying Authority shall be satisfied that noise levels associated with the pool/spa pumping units shall not exceed 5dB(a) above the ambient background noise in any habitable room of adjoining properties. Evidence from a practising acoustical engineer demonstrating compliance with the above must be submitted to the Principal Certifying Authority prior to the operation of the pool pump or issue of an Occupation Certificate.
  - c) A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifying Authority prior to

the issue of an Occupation Certificate.

- d) Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
  - e) A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with clause 10 of the *Swimming Pool Regulation 2008*.
42. 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.

43. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.

#### **ONGOING CONDITIONS OF CONSENT**

44. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
45. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the Swimming Pools Act, 1992 at all times

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

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

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

The disposal of backwash and/or the emptying of a swimming pool into a reserve, watercourse, easement or storm water drainage system is prohibited. These waters are to discharge via a permanent drainage line into Sydney Water's sewer via the filter/pump in



accordance with Australian Standard AS 3500.2:2003 *Plumbing and drainage – Sanitary plumbing and drainage*. Permission is to be obtained from Sydney Water prior to the emptying of any pool to the sewer.

A resuscitation chart is to be displayed and maintained at all times.

## **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 96 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**

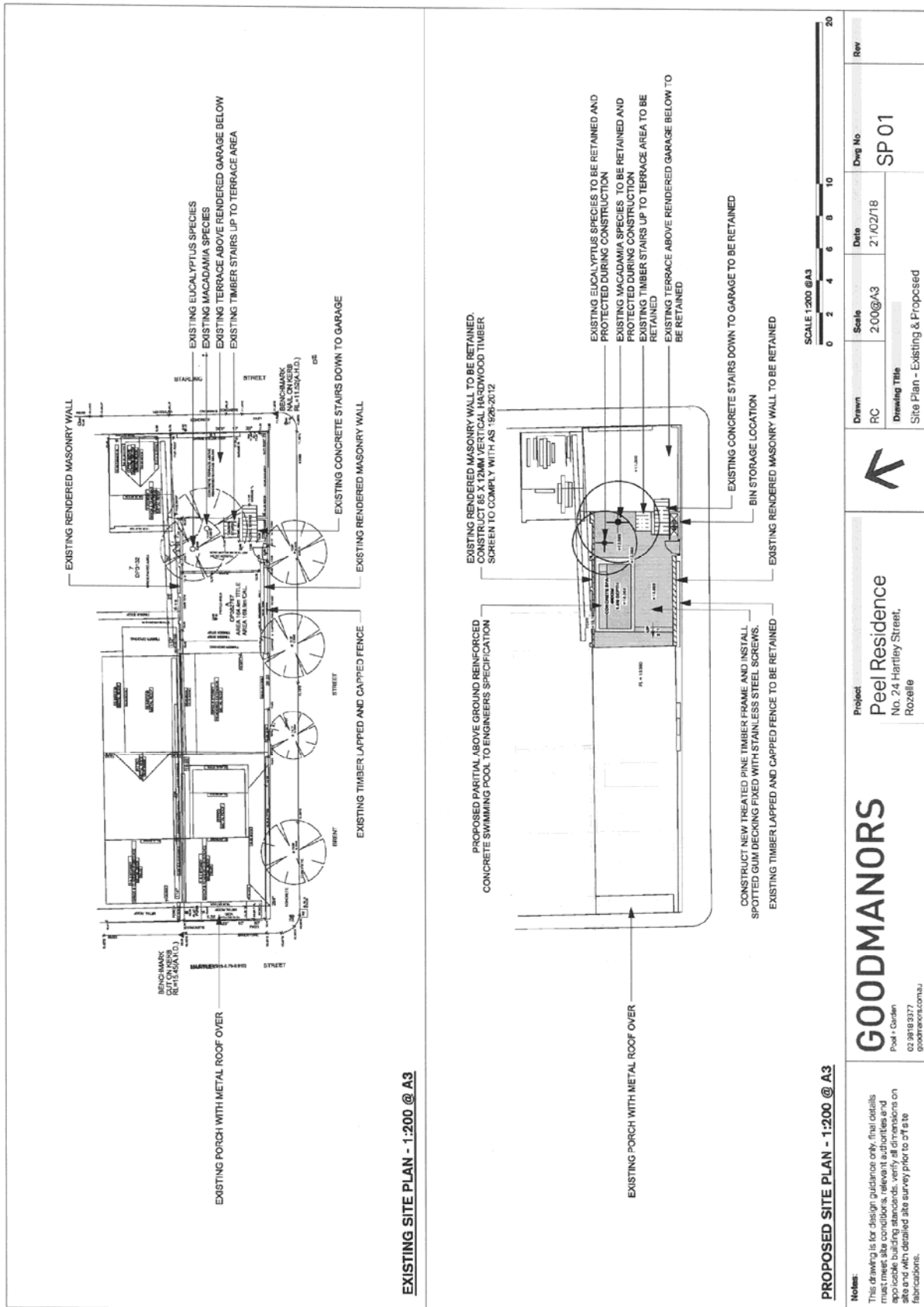
- (1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent 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.

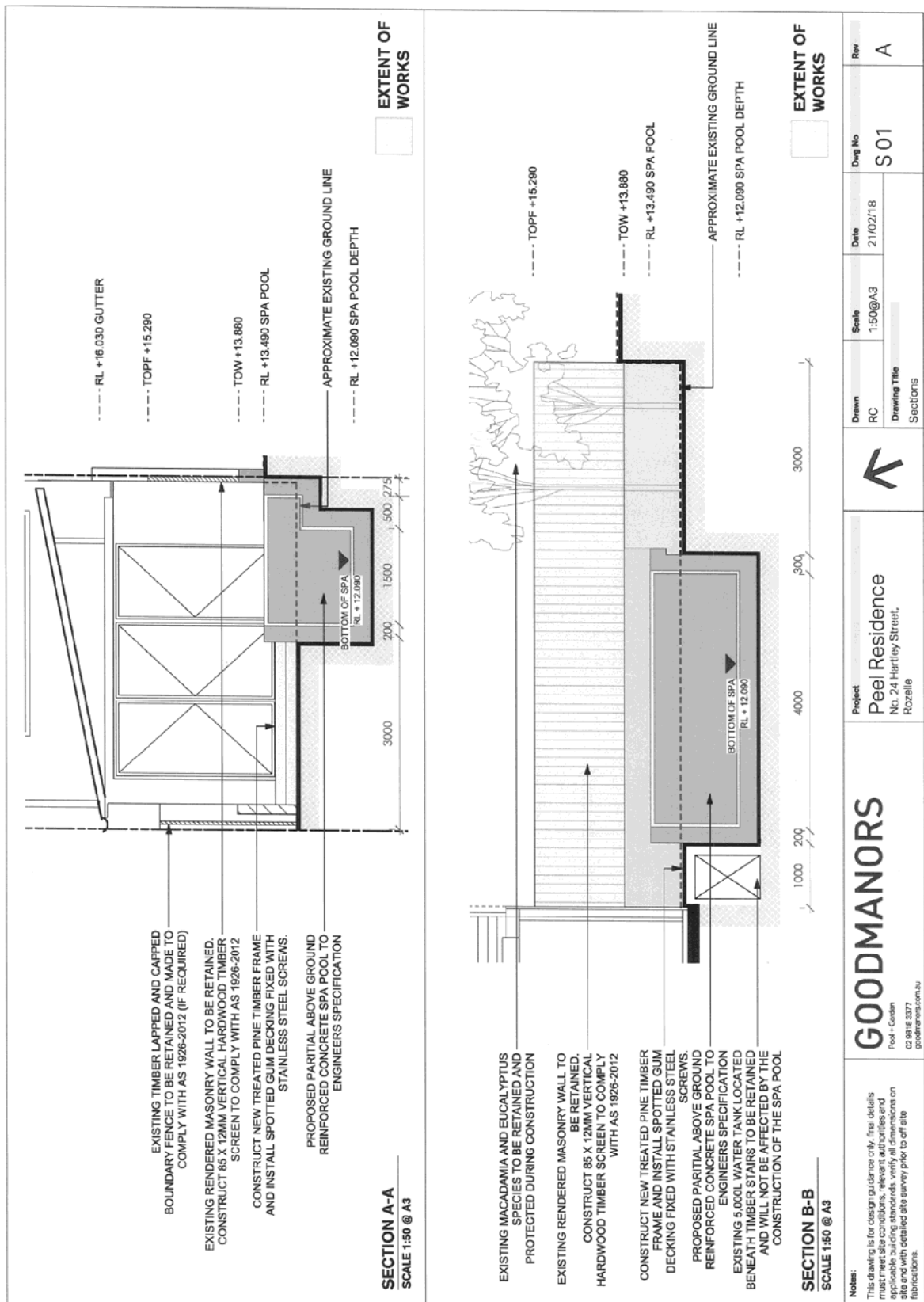
**NOTES**

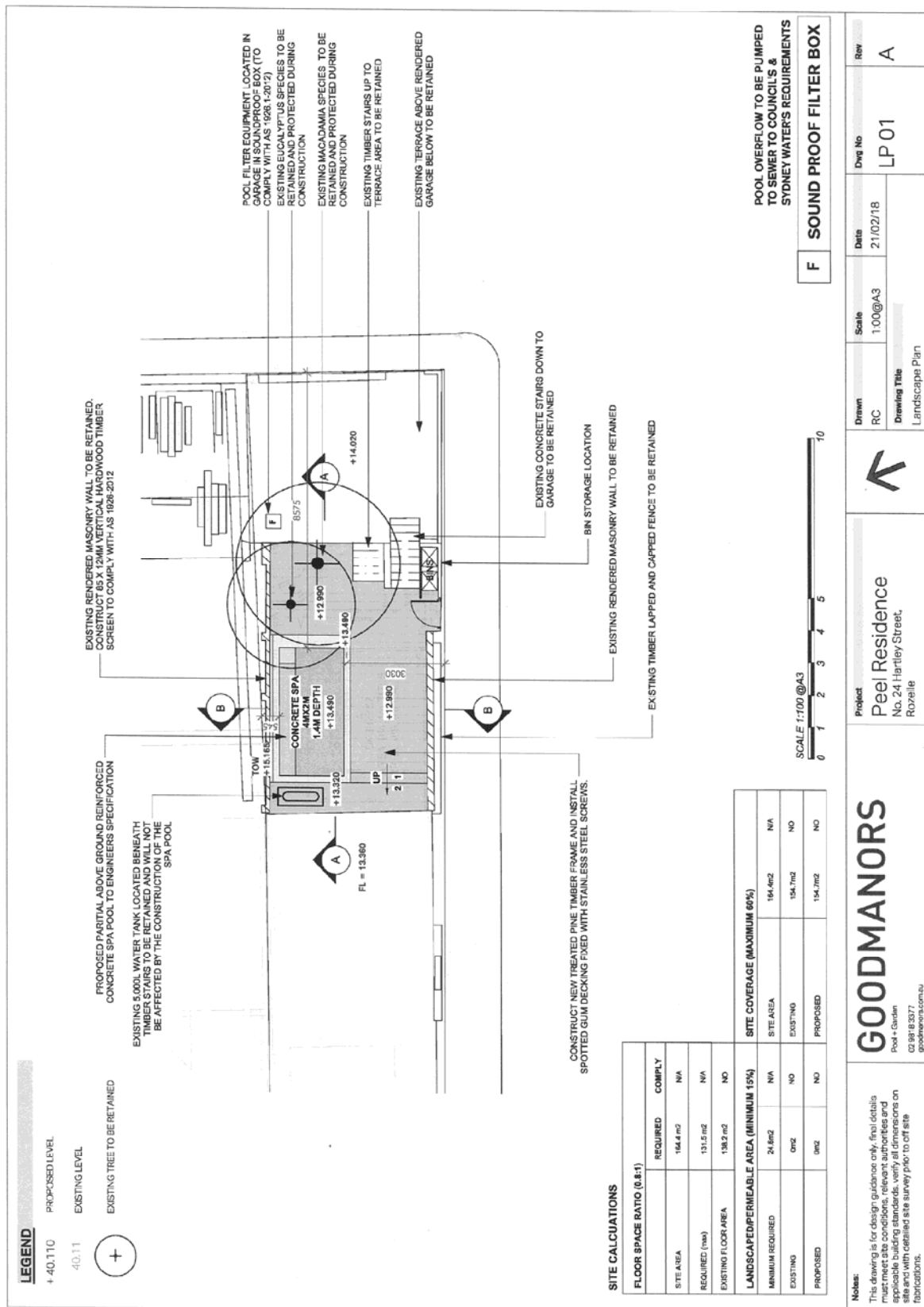
1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, 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.

[illegible]







## Attachment C – Clause 4.6 Exception to Development Standard



### DEVELOPMENT APPLICATIONS EXCEPTIONS TO DEVELOPMENT STANDARDS PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

#### DEVELOPMENT APPLICATION DETAILS:

<b>Address:</b>	24 HARTLEY STREET, ROZELLE
<b>Proposed Development:</b>	CONSTRUCTION OF A NEW REINFORCED CONCRETE SPA POOL AND ASSOCIATED HARD AND SOFT LANDSCAPE WORKS
I wish to lodge a request to vary the following development standard for the reasons indicated:	

#### WHAT IS THE STANDARD SOUGHT TO BE VARIED?

- ☒ **Floor Space Ratio** – Clause 4.4 or 4.4A of LEP 2013
- ☐ **Landscaped Area** – Clause 4.3A(3)(a) of LEP 2013
- ☐ **Site Coverage** – Clause 4.3A(3)(b) of LEP 2013
- ☐ **Subdivision Allotment size** – Clause 4.1 of LEP 2013
- ☐ **Foreshore Building Area** – Clause 6.5 of LEP 2013
- ☐ **Diverse Housing** – Clause 6.13 of LEP 2013

The purpose of the above standards is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items

Where an applicant wishes to vary a development standard, the application must be accompanied by a well-founded, written request which 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
- b. that there are sufficient environmental planning grounds to justify contravening the development standard.



<p><b>What are the environmental planning grounds that justify contravening the development standard?</b></p> <p>The cases referred to below have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:</p> <ul style="list-style-type: none"> <li>• The works are external and there is no increase in the FSR.</li> <li>• The site is located in Area 7 of the floor space ratio (FSR) map. A building must not exceed a floor space ratio (FSR) of 0.8:1 on a lot with an area of 150 square metres or more but less than 300 square metres in Area 7. The site area is 164.4m<sup>2</sup> and, therefore, a total floor area of 131.5m<sup>2</sup> is allowed. The designer has calculated that the existing floor area is 138.2m<sup>2</sup> and; therefore, it does not comply with the standard.</li> </ul> <p>The non-compliance with the FSR exists and is historical. There is no change proposed to the building footprint and existing site landscaped and site coverage is not increased.</p> <p>For the reasons set out above, the proposal will achieve a better planning outcome than a compliant development of the site.</p>
<p><b>Why is compliance with the standard unreasonable or unnecessary?</b>  <b>What are the special circumstances in this case?</b>  <b>(To answer consider whether a development that complies is unnecessary or unreasonable)</b></p> <p>Compliance with the development standard is unreasonable or unnecessary in the circumstances because:</p> <ul style="list-style-type: none"> <li>• the proposal does not increase the site's FSR.</li> <li>• the proposal does not increase the surface area of the existing building's roof.</li> <li>• the proposal does not increase the buildings footprint.</li> </ul> <p>The objectives of the development standard are achieved notwithstanding noncompliance with the standard. The proposed development will achieve the objectives of standard 4.4 of the LEP not withstanding numerical non-compliance.</p>
<p><b>Is the proposed development consistent with the objectives of the particular standard?</b>  <b>Is the proposal consistent with the objectives of the relevant zone?</b></p> <p>In my opinion, the proposal is consistent with the underlying objectives of the standard for reasons outlined earlier and is therefore considered to be in the public interest.</p> <p>In relation to the objectives of the R1 zone:</p> <p>The implications of the proposal not complying with the FSR development standard of the Leichhardt LEP is local in scope and raise no matters of significance for State or regional environmental planning. The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The FSR of the proposed development is justified as set out above. The variation sought will enhance the utility of the existing development without unreasonable impacts on neighbouring amenity or the public domain.</p>



# INNER WEST COUNCIL

## DEVELOPMENT APPLICATIONS EXCEPTIONS TO DEVELOPMENT STANDARDS PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

### DEVELOPMENT APPLICATION DETAILS:

<b>Address:</b>	NO. 24 HARTLEY STREET, ROZELLE
<b>Proposed Development:</b>	CONSTRUCTION OF A NEW REINFORCED CONCRETE SPA POOL AND ASSOCIATED HARD AND SOFT LANDSCAPE WORKS
I wish to lodge a request to vary the following development standard for the reasons indicated:	

### WHAT IS THE STANDARD SOUGHT TO BE VARIED?

- ☐ **Floor Space Ratio** – Clause 4.4 or 4.4A of LEP 2013
- ☒ **Landscaped Area** – Clause 4.3A(3)(a) of LEP 2013
- ☐ **Site Coverage** – Clause 4.3A(3)(b) of LEP 2013
- ☐ **Subdivision Allotment size** – Clause 4.1 of LEP 2013
- ☐ **Foreshore Building Area** – Clause 6.5 of LEP 2013
- ☐ **Diverse Housing** – Clause 6.13 of LEP 2013

The purpose of the above standards is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items

Where an applicant wishes to vary a development standard, the application must be accompanied by a well-founded, written request which 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
- b. that there are sufficient environmental planning grounds to justify contravening the development standard.

**What are the environmental planning grounds that justify contravening the development standard?**

The cases referred to below have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- There is no reduction in landscaped area because the existing landscaped area is 0%.
- Whilst the proposal does not comply with the standard, it is considered to provide a high standard of landscaped area which contributes to the amenity of the site and the locality.
- The quality of the landscaped area on the site provides a high quality landscaped setting for the site.
- The opportunity to provide additional deep soil landscaping is limited in the backyard because it is occupied by a double garage and the front yard is a small with minimal setback from the boundary to the front building line.

For the reasons set out above, the proposal will achieve a better planning outcome than a compliant development of the site.

**Why is compliance with the standard unreasonable or unnecessary?**

**What are the special circumstances in this case?**

**(To answer consider whether a development that complies is unnecessary or unreasonable)**

Compliance with the development standard is unreasonable or unnecessary in the circumstances because:

- the proposal does not reduce the site's existing landscaped area
- the proposal does not increase the surface area of the existing building's roof
- the proposal does not increase the buildings footprint

The objectives of the development standard are achieved notwithstanding noncompliance with the standard. The proposed development will achieve the objectives of standard 4.3a of the LEP not withstanding numerical non-compliance.

**Is the proposed development consistent with the objectives of the particular standard?**

**Is the proposal consistent with the objectives of the relevant zone?**

In my opinion, the proposal is consistent with the underlying objectives of the standard for reasons outlined earlier and is therefore considered to be in the public interest.

In relation to the objectives of the R1 zone:

The implications of the proposal not complying with the landscaped area development standard of the Leichhardt LEP is local in scope and raise no matters of significance for State or regional environmental planning. The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The landscaped area of the proposed development is justified as set out above. The variation sought will enhance the utility of the existing development without unreasonable impacts on neighbouring amenity or the public domain.



# INNER WEST COUNCIL

## DEVELOPMENT APPLICATIONS EXCEPTIONS TO DEVELOPMENT STANDARDS PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

### DEVELOPMENT APPLICATION DETAILS:

<b>Address:</b>	24 HARTLEY STREET, ROZELLE
<b>Proposed Development:</b>	CONSTRUCTION OF A NEW REINFORCED CONCRETE SPA POOL AND ASSOCIATED HARD AND SOFT LANDSCAPE WORKS
I wish to lodge a request to vary the following development standard for the reasons indicated:	

### WHAT IS THE STANDARD SOUGHT TO BE VARIED?

- ☐ **Floor Space Ratio** – Clause 4.4 or 4.4A of LEP 2013
- ☐ **Landscaped Area** – Clause 4.3A(3)(a) of LEP 2013
- ☒ **Site Coverage** – Clause 4.3A(3)(b) of LEP 2013
- ☐ **Subdivision Allotment size** – Clause 4.1 of LEP 2013
- ☐ **Foreshore Building Area** – Clause 6.5 of LEP 2013
- ☐ **Diverse Housing** – Clause 6.13 of LEP 2013

The purpose of the above standards is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items

Where an applicant wishes to vary a development standard, the application must be accompanied by a well-founded, written request which 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
- b. that there are sufficient environmental planning grounds to justify contravening the development standard.

<b>What are the environmental planning grounds that justify contravening the development standard?</b>
The cases referred to below have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:
<ul style="list-style-type: none"> <li>• There is no increase in existing site coverage.</li> <li>• The proposed works remain consistent and are compatible with the existing site and desired future character of the area.</li> </ul>
For the reasons set out above, the proposal will achieve a better planning outcome than a compliant development of the site.
<b>Why is compliance with the standard unreasonable or unnecessary?</b>
<b>What are the special circumstances in this case?</b>
<b>(To answer consider whether a development that complies is unnecessary or unreasonable)</b>
Compliance with the development standard is unreasonable or unnecessary in the circumstances because:
<ul style="list-style-type: none"> <li>• The site coverage is maintained, the proposal also maintains the site's existing landscaped area whilst contributing to the landscape and townscape area character of Leichhardt's residential area.</li> <li>• The proposal does not increase the site coverage and provides adequate and usable ground level open space for recreation and landscaping as well as to contain urban run-off.</li> <li>• The proposal does not increase the surface area of the existing building's roof.</li> <li>• The proposal does not increase the buildings footprint.</li> </ul>
The objectives of the development standard are achieved notwithstanding noncompliance with the standard. The proposed development will achieve the objectives of standard 4.3A(3)(b) of the LEP not withstanding numerical non-compliance.
<b>Is the proposed development consistent with the objectives of the particular standard?</b>
<b>Is the proposal consistent with the objectives of the relevant zone?</b>
In my opinion, the proposal is consistent with the underlying objectives of the standard for reasons outlined earlier and is therefore considered to be in the public interest.
In relation to the objectives of the R1 zone:
The implications of the proposal not complying with the site coverage percentage development standard of the Leichhardt LEP is local in scope and raise no matters of significance for State or regional environmental planning. The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The site coverage of the proposed development is retained. The variation sought will enhance the utility of the existing development without unreasonable impacts on neighbouring amenity or the public domain.

NOTES