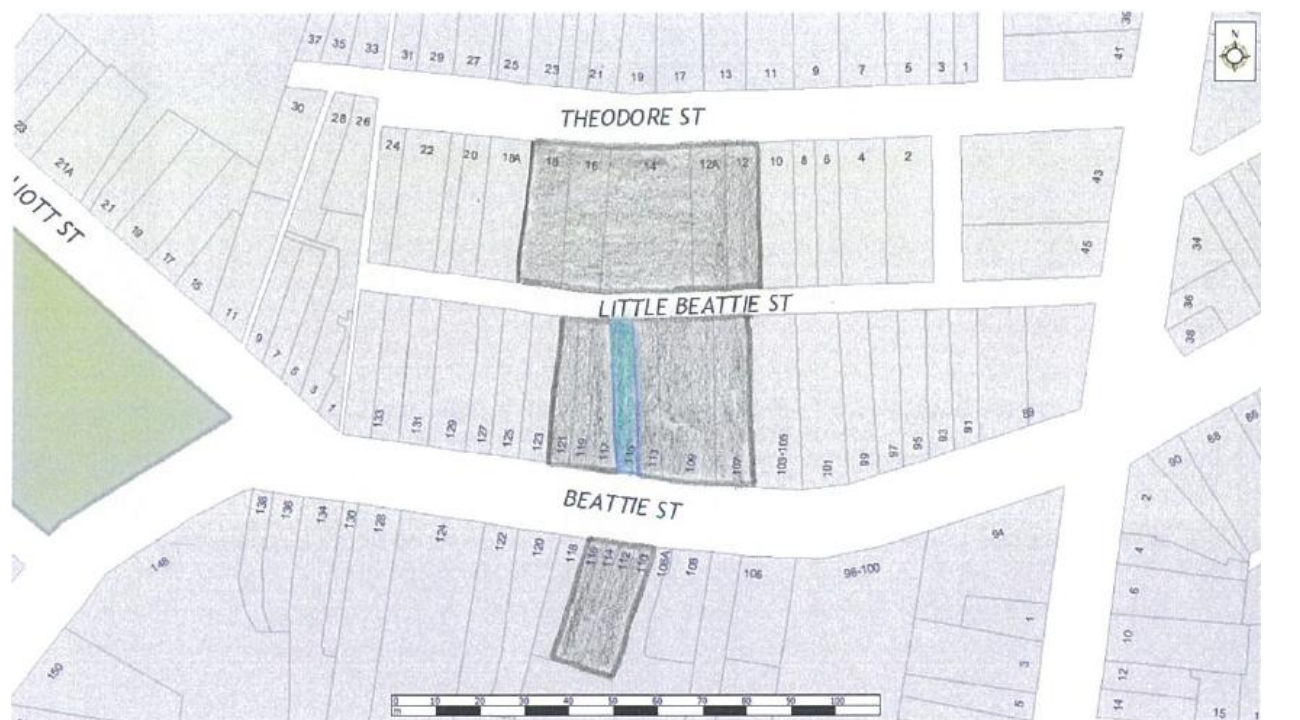








INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2017/650
Address	115 Beattie Street, Balmain
Proposal	New carport structure and associated access to rear of site.
Date of Lodgement	8 December 2017
Applicant	Hugh Slatyer and Associates
Owner	Mr A Pollifrone
Number of Submissions	Nil
Value of works	\$22,000
Reason for determination at Planning Panel	Clause 4.6 variation to landscaped area and site coverage exceeds officer delegation
Main Issues	Site Coverage; and Landscaped Area
Recommendation	Consent subject to conditions



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for a new carport structure and associated access to rear of site at 115 Beattie Street, Balmain. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application include:
Site Coverage and Landscaped Area development standard non-compliances.

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 carport with a translucent polycarbonate flat roof over an existing uncovered hardstand car space off Little Beattie Street.

The carport roof has dimensions of 3.065m width by 5.813m length with side setbacks of 0m to the eastern side boundary and 1.6m to the western side boundary. The carport is open to the southern and western sides with the exception of a 2.24m wide timber clad wall on the western elevation. The overall height of the proposal is 2.77m as measured from the existing slab level of RL31.75, which will be concealed by the existing parapet height of RL34.73 as viewed from Little Beattie Street.

No change is proposed to existing impervious area, landscaped area, floor space, parking or access arrangements (previously approved under D/2009/325) as a part of this proposal.

The proposed installation of a new roller shutter door less than 4.5m wide and not higher than 3m adjoining a lane constitutes exempt development under Clause 2.66A of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

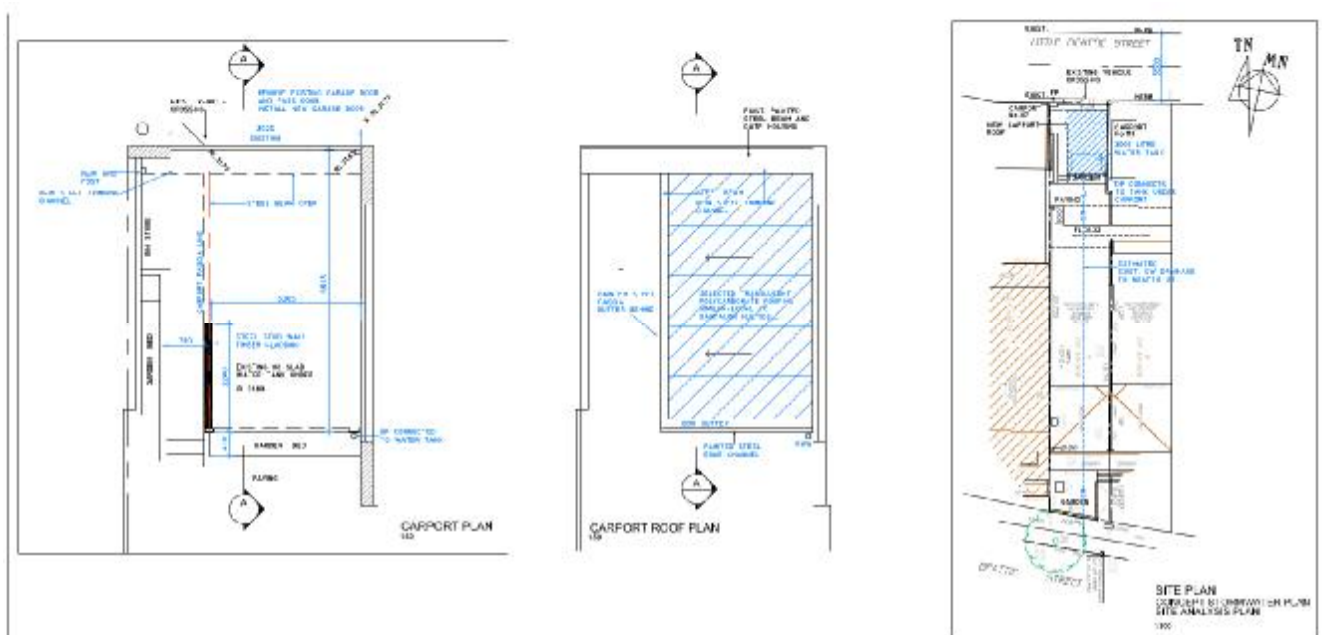


Figure 1: Proposed rear carport plan at 115 Beattie Street Balmain.

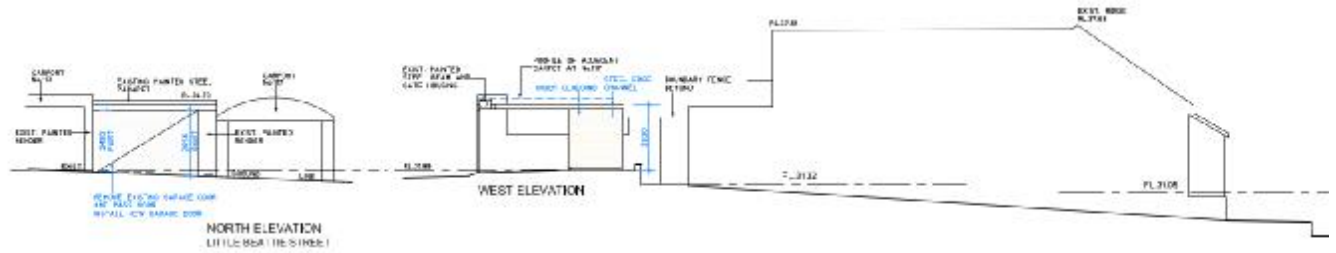


Figure 2: Proposed North (Little Beattie Street) and West Elevations at 115 Beattie Street Balmain.

3. Site Description

The subject site is located on the northern side of Beattie Street, between Elliott Street and Montague Street. The site consists of one allotment and is generally regular in shape with a total area of 169sqm and is legally described as Lot A DP 394929.

The site has a frontage to Beattie Street of 5.11m and rear frontage of 4.79m to Little Beattie Street.

The site supports a two storey brick and rendered semi-detached dwelling, rear courtyard and uncovered hardstand parking space with roller shutter door off Little Beattie Street. The adjoining properties support one and two storey dwellings with rear covered parking areas.

The subject site is not identified as a heritage item or a flood prone lot. The property is located within the Balmain heritage conservation area.

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/2009/325	Proposed ground floor alterations and new first floor addition to existing semi detached dwelling.	Approved 2/3/2010
M/2010/189	Section 96 application to modify D/2009/325 which approved alterations and additions to the existing dwelling. Modification seeks to reduce the security deposit amount for the relocation of the power pole as the pole has been relocated.	Approved 17/9/2010

Surrounding properties

113 Beattie Street

Application	Proposal	Decision & Date
D/2008/590	Alterations and additions to an existing dwelling, including new first floor.	Approved 4/6/2009

117 Beattie Street

No applicable site history.

4(b) Application history

Not applicable

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:

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
Leichhardt Local Environmental Plan 2013

The proposal is consistent with the above Environmental Planning Instruments. The following provides further discussion of relevant issues pertaining to the Leichhardt Local Environmental Plan 2013:

5(a)(i) 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 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 6.4 – Stormwater management

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

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio: 0.9:1 or 152.1sqm	0.72:1 or 122sqm	N/A	Yes
Landscape Area: 15%	8.07% or 13.63sqm	46.23%	No
Site Coverage: 60%	69.7% or 117.8sqm	16.17%	No

Note: The proposal does not involve any change to existing FSR or landscaped area as approved under D/2009/325. While the proposed 17.5sqm carport 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 4.6(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 8.4% (or 14.2sqm), equating to a variation of 43.9% or 11.15sqm. Notwithstanding numerical non-compliance, the proposed building satisfies the stated objectives given that:

The non-compliance relates to a small amount measuring approximately 11.15sqm;

Compliance with the private open space control of 16sqm has been achieved with 18.2sqm apparent;

Notwithstanding the 8.4% landscaped area the site development is consistent with the built form character of the immediate locality;

The proposed car port and its location is consistent with the development pattern apparent on adjacent sites;

The proposed car port is to be constructed over an existing slab and as such the existing landscaped area is retained in its current quantum;

The proposed development is not unsympathetic in a streetscape context nor is its built form characteristics at odds with the locality. It is therefore concluded that the proposal is compatible with its surroundings and is consistent with the conclusions of then Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191; and

Having regard to Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

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

The proposed development seeks to provide a site coverage of 69.7% (or a dwelling and carport of 117.8sqm). Notwithstanding numerical non-compliance, the proposed building satisfies the stated objectives given that:

The non-compliance is numerically minor representing only 16.4sqm. It should be noted that 7.5 sqm of the site cover is the unenclosed verandah on the southern side of the house.

Notwithstanding the site cover the scale of the development will integrate with the built form character and site coverage of buildings within the immediate locality which features similar such development at the rear;

There is no impact on drainage or water flow associated with the breach of the standard;

The additional site cover is a ground level control and is not associated with any amenity impact related to overshadowing, and no impact related to loss of view or invasion of privacy; and

Adequate provision has been made for private open space in achievement of objective (f).

(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 desired future character of the area in relation to building bulk, form and scale.

The proposal does not alter (compliant) FSR, retains existing private open space provision, complies with the applicable building envelope controls, and the siting of the carport is consistent with the established building location zones and where it can be reasonably assumed a carport can be constructed (over an existing parking space adjacent to the rear boundary and similar type parking structures), 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 acceptable on-site amenity outcomes.

The site coverage and landscaped area proposed will be compatible with the site coverage and landscaped areas characteristic of adjoining and nearby development as shown in the aerial photo below.



Figure 3: Aerial photo indicating existing pattern of development adjoining 115 Beattie Street Balmain



Figure 4: Existing Streetscape looking east (left photo) and west (right photo) at the rear of the site at Little Beattie Street Balmain

5(b) Draft Environmental Planning Instruments

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

State Environmental Planning Policy (Coastal Management) 2016

The subject site is not located within “the coastal zone” pursuant to CI 5 of the draft SEPP, as identified on the map to the SEPP. Consequently, the proposal raises no issues that would be contrary to the provisions of the draft SEPP.

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
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
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
Part C	
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	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
Part C: Place – Section 2 Urban Character	
Suburb Profile	
C2.2.2.4 The Valley 'Balmain' Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
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	N/A
C3.12 Acoustic Privacy	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
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
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	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:

Development Engineer; and.
Heritage Officer.

These Officers raised no objections to the proposal proceeding subject to conditions relating to stormwater management and ensuring / reinforcing that appropriate external colours and finishes are used that are sympathetic to the Heritage Conservation Area, which are recommended to be imposed on any consent granted. It is noted that Council's Engineering Officer requested a condition for the reconstruction of the existing vehicular crossing due to the widening of the roller shutter door. However, whilst the existing/proposed roller shutter door is wider than that approved under D/2009/325, the width and location of the approved car space remains unchanged and the proposed carport structure reflects the existing car space. Further, an existing power pole is located on the western side of the garage door, which would conflict with any widened vehicular crossing. Given the existing car space and vehicular crossing are consistent with Council's recent approval and AS2890.1, it is considered that the widening of the existing driveway is not necessary in this instance.

7. Section 7.11 Contributions

Section 7.11 contributions are not payable for the proposal.

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 approval subject to the imposition of appropriate conditions.

9. Recommendation

A. The variations to Clause 4.3A(3)(a) Landscape Area and 4.3A(3)(b) Site Coverage of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.

B. That Council, as the consent authority pursuant to S4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2017/650 for new carport structure and associated access to rear of site. at 115 Beattie Street, BALMAIN NSW 2041 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. 2017/650 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Dwg. No. 86617.01 Site & Roof Plan, Rev. B	HSA Architects	25.11.2017
Dwg. No. 86617.02 Section & Elevations, Rev. B	HSA Architects	25.11.2017
Survey Plan Reference Number: 23918- 1CL	Junek & Junek P/L	11.9.2017

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.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

2. 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.

3. 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.
4. Materials and finishes must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used, **except where modified by this condition of consent. In this regard, the exterior of the new work shall match the colours and finishes of the existing comparable external materials and finishes sympathetic to the Heritage Conservation Area.** Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties.

Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.

5. 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.

6. 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.

7. 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 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.

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

8. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued (whichever occurs first), a security deposit as set out below must be paid to Council to cover the costs associated with the road, footpath and drainage works required by this consent.

Works	Security Deposit
Roadworks (ROADWB)	\$ 2,100
Total	\$ 2,100

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 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.

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.

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.

9. 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)
- a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
 - b) A concrete pump across the roadway/footpath. – A Standing Plant permit
 - c) Mobile crane or any standing plant – A Standing Plant Permit
 - d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
 - e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
 - f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
 - g) 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.

PRIOR TO THE COMMENCEMENT OF WORKS

10. 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.

11. 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.

12. 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.

13. Where applicable, 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.
14. 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.
15. 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.
16. 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

17. 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.

18. The site must be appropriately secured and fenced at all times during works.
19. 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.

20. 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.

21. 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.
22. The development must be inspected at the following relevant 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.
23. 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.
24. 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.

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.

25. 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.

26. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the

existing site drainage system.

Any existing component of the stormwater system that is to be retained must be checked and certified by a Licensed Plumber or qualified practicing Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily, it must be upgraded.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

27. 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.
28. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
29. 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.

30. 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.

ONGOING CONDITIONS OF CONSENT

31. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
32. 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.
33. 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 Environmental Plan 2013*.

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 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

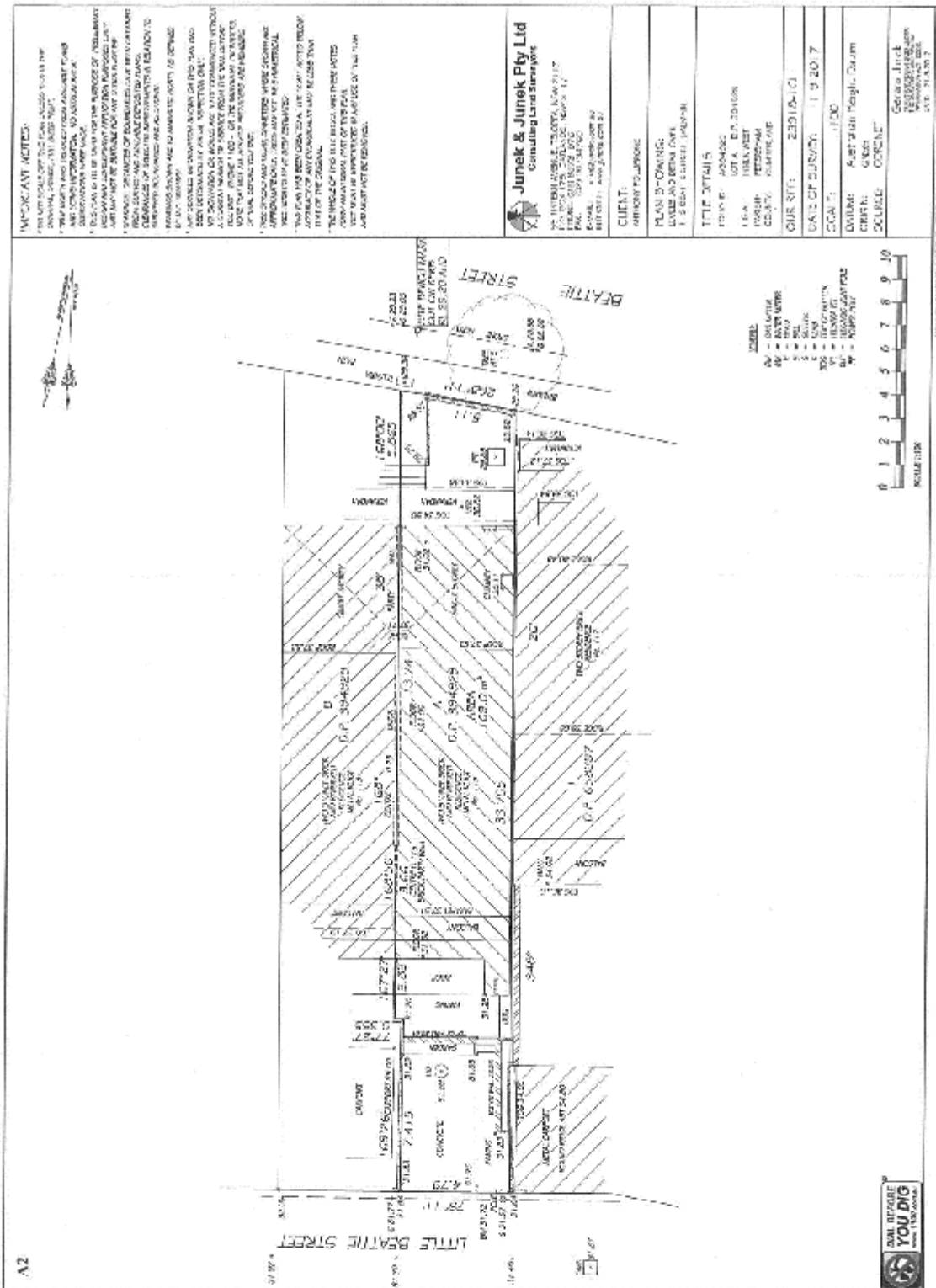
- 1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must,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

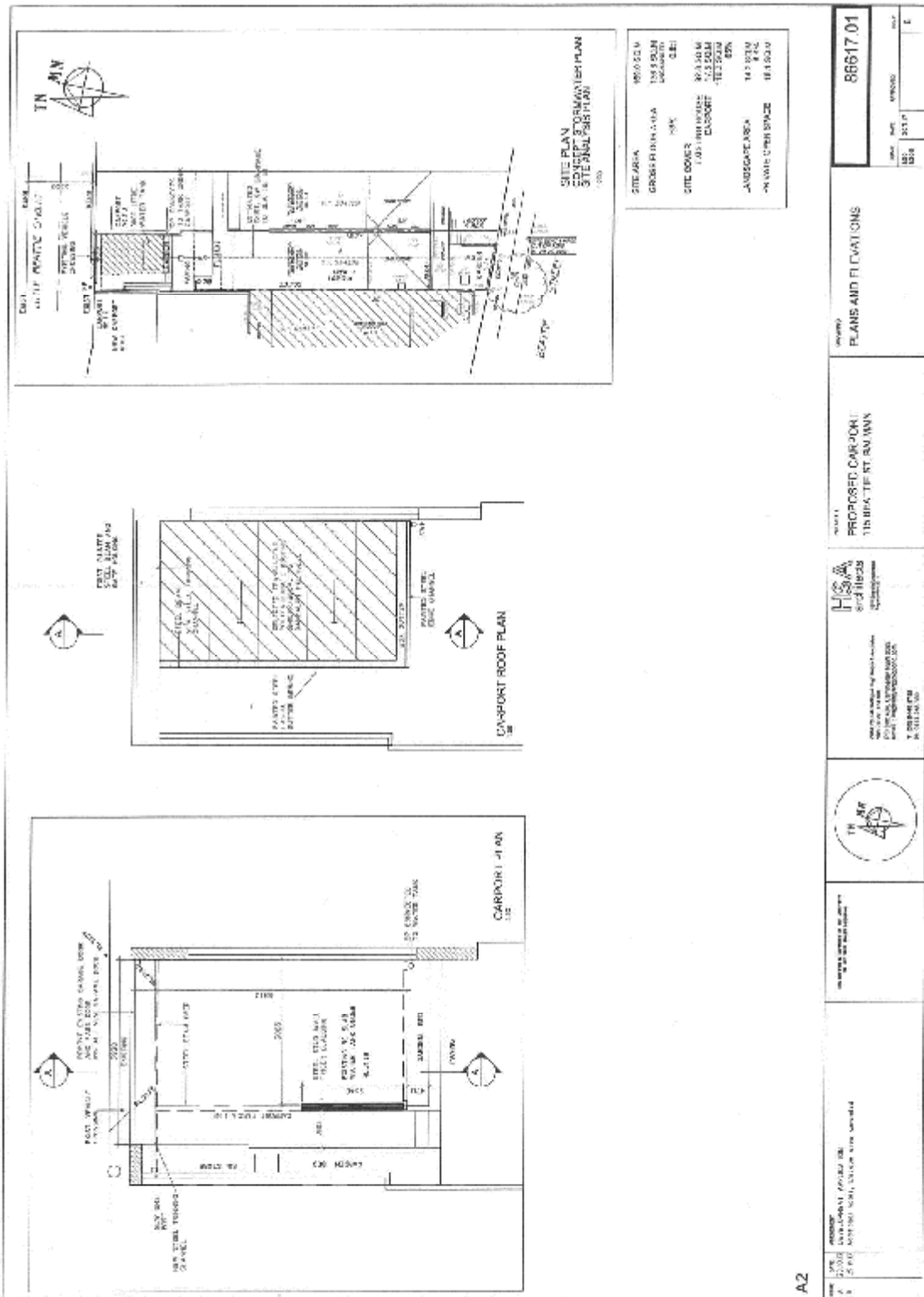
NOTES

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.

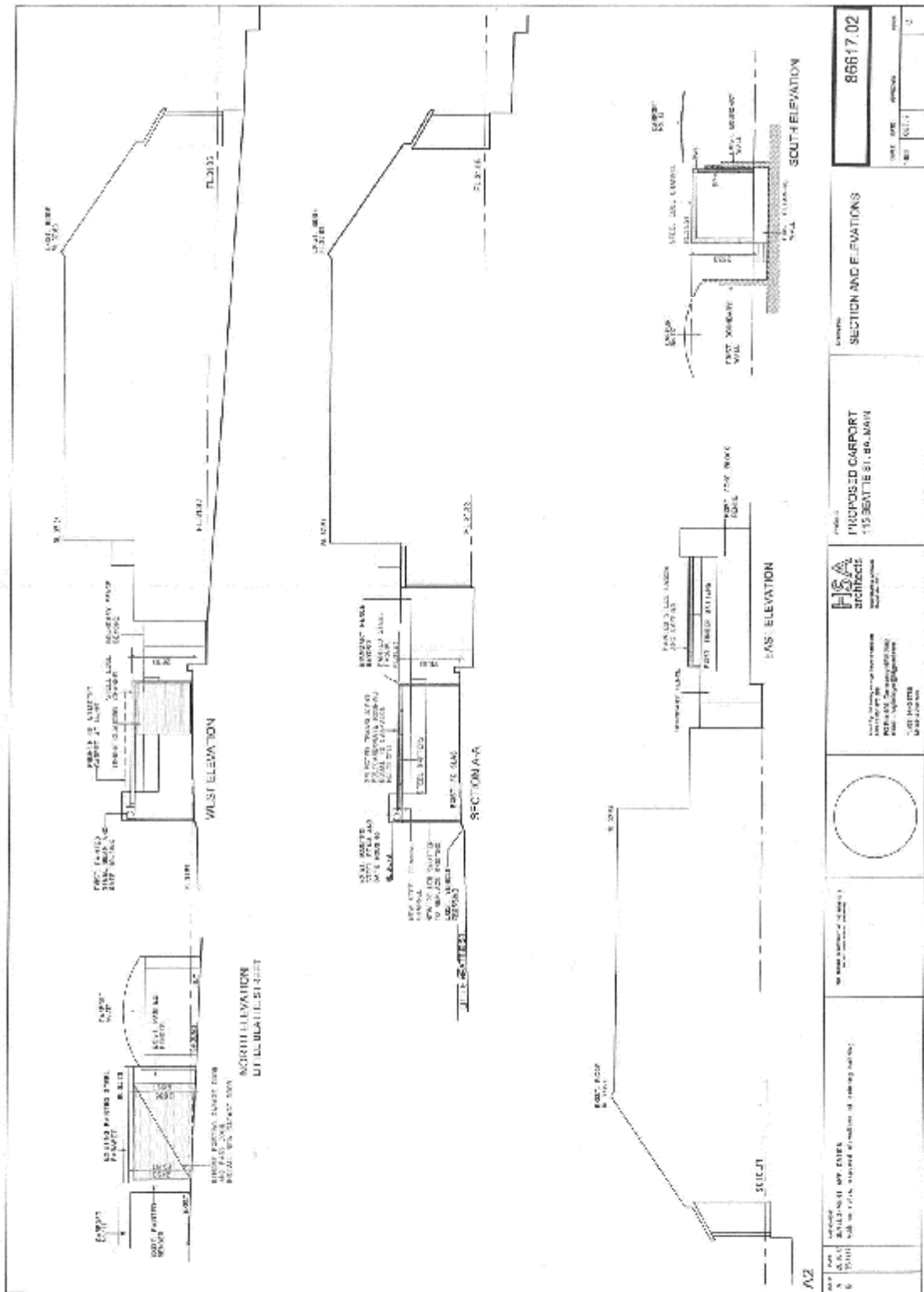
4. Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
5. Works or activities other than those approved by this Development Consent will require the submission 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.

Attachment B – Plans of proposed development





A2



Attachment C – Exceptions to development standards

**No. 115 Beattie Street Balmain
Objection pursuant to the provisions
of CL 4.6 of Leichhardt Local Environmental Plan 2013**

This Cl.4.6 objection has been prepared in relation to a Development Application that proposes a car port at No.115 Beattie Street Balmain.

It is apparent that there is a non-compliance with the site coverage standard of 60% and landscaped area standard of 15%.

1.0 Cl.4.6 Exceptions to development standards LLEP 2013

Clause 4.6 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though it would contravene a development standard imposed by this or any other environmental planning instrument. This clause does not apply However to a development standard that is expressly excluded from the operation of this clause.

This clause would apply to the development standards in Cl4.3A (3)(a)(i) landscaped area and Cl4.3A (3)(b) site coverage.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

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

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

2.0 Zone Objectives

The subject site is zoned R1 General Residential pursuant to the provisions of Leichhardt Local Environmental Plan 2013 ("LLEP 2013"). The objectives of the R1 zone are as follows:

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

The proposed development complies with the objectives as outlined by maintaining development that is consistent with adjoining and nearby development and proposing development which maintains the street presentation in Little Beattie Street and which has no adverse amenity impacts on neighbours.

The proposed development notwithstanding the non-compliance with the site coverage and landscaped area standards is considered to be consistent with the stated

zone objectives. Accordingly there is no zone or zone objective impediment to the granting of consent.

3.0 Objection to Standard

(i) Site Coverage

Pursuant to Clause 4.3A(3)(b) of LLEP 2013 the maximum site coverage for development permissible on the site is 60%. The objectives of this clause are:

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

The proposal has a site coverage of 69.7%, slightly in excess of the standard noting this extent of site coverage represents 117.8 m² which is only 16.4m² in excess of compliance. It should be noted that 7.5 sq.m

of the site cover is the unenclosed verandah on the southern side of the house.

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- ☐ *The non-compliance is numerically minor representing only 16.4m²;*
- ☐ *Notwithstanding the site cover the scale of the development will integrate with the built form character and site coverage of buildings within the immediate locality which features similar such development at the rear;*
- ☑ *There is no impact on drainage or water flow associated with the breach of the standard;*
- ☑ *The additional site cover is a ground level control and is not associated with any amenity impact related to overshadowing, and no impact related to loss of view or invasion of privacy;*
- ☑ *Adequate provision has been made for private open space in achievement of objective (f);*

(ii) Landscaped Area

Pursuant to CI4.3A (3)(a)(i) 15% landscaped area is required whereas 8.4% is available. The objectives of this clause are:

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

The proposal has a landscaped area of 8.4% representing 14.2m² whereas compliance would require 25.35m². Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- ☐ *The non-compliance relates to a small amount measuring approximately 11.15m²;*
- ☐ *Compliance with the private open space control of 15m² has been achieved with 18.2m² apparent;*
- ☐ *Notwithstanding the 8.4% landscaped area the site development is consistent with the built form character of the immediate locality;*
- ☑ *The proposed car port and its location is consistent with the development pattern apparent on adjacent sites;*
- ☑ *The proposed car port is to be constructed over an existing slab and as such the existing landscaped area is retained in its current quantum;*
- ☑ *The proposed development is not unsympathetic in a streetscape context nor is its built form characteristics at odds with the locality. It is therefore concluded that the proposal is compatible with its surroundings and is consistent with the conclusions of then Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191;*
- ☑ *Having regard to Velashin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design;*

4.0 Conclusions

Having regard to the provisions of Cl. 4.6 I am of the following opinion :

- the development responds to the local context and is consistent with the zone objectives;*
- the development is consistent with the objectives of the landscaped area and site coverage standards;*
- there are sufficient circumstances to justify the non-compliance with the development standards in this case;*
- there are no adverse amenity impacts caused to surrounding properties due to the non-compliance;*

- that having regard to the above, compliance with the site coverage and landscaped area standards is unreasonable or unnecessary in the circumstances of the case;*
- that given the fact that the objectives of the zone have been achieved, approval would not be antipathetic to the public interest;*
- contravention of the development standards does not raise any matter of significance for State or regional environmental planning;*

As such it is my opinion that there is no statutory impediment or merit planning reason to deny the granting of a floor space ratio, site coverage and landscaped area variation in this case.

C.F.Blyth MPIA CPP Director
Plansight Pty Ltd

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