



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2017/292
Address	14 McKell Street, BIRCHGROVE NSW 2041
Proposal	Alterations and additions to dwelling including additional floor.
Date of Lodgement	23 June 2017
Applicant	Stephen Bowers Architects
Owner	Mr D J Vas and Mrs L J Vas
Number of Submissions	One (1)
Value of works	\$467,555.70
Reason for determination at Planning Panel	Clause 4.6 variation - breach exceeds officer delegation.
Main Issues	Bulk & scale Flood control lot FSR Landscaped area
Recommendation	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the dwelling including additional floor at 14 McKell Street, BIRCHGROVE. The application was notified to surrounding properties and one (1) submission was received.

The main issues that have arisen from the assessment of the application include:

- Bulk & Scale
- Flood control lot

The non-compliances are acceptable given the application was amended to address issues raised and therefore the application is recommended for approval.

2. Proposal

The development essentially proposes a reconfiguration of the second floor and the addition of a third floor housing bedrooms and bathrooms. The application has been amended to address issues raised by Councils engineers relating to parking and finished floor levels for the flood control lot. The development was also amended to address heritage and planning amenity issues by pushing the setback of the third floor in alignment with the elevation to the adjoining dwellings, McKell Street, elevation. Subject to conditions, the development is considered satisfactory as outlined in this report.

3. Site Description

The overall site is a multi-dwelling, residential redevelopment of former shipping terminal land undertaken by the NSW Department of Housing and Public Works. The whole site was privatised and sold off under the Strata Scheme, 1-43 McKell Street, Birchgrove. The site has an area of 17,230sqm. It occupies the area bound by McKell Street, Yeend Street, Ballast Point Road and Short Street and includes Challenger Place and Lizzie Webber Place.

The specific strata-titled lot within the overall site that is the subject of this application is 177sqm in area and has a frontage of approximately 6.1 metres to McKell Street, opposite Mort Bay Park. It currently accommodates a two storey townhouse, with similar townhouses located to the South West (known as No. 16 McKell Street) and three storey town houses to the North East (known as No. 12 McKell Street)

The overall site is not a heritage item however it is located within a conservation area. The site is identified as a flood control lot and is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013.

4. Background

4(a) Site history

The site was previously used in association with shipping before being converted to residential use. Strata subdivision of the residential estate occurred in 2003 and many alterations and additions to the individual dwellings of the estate have occurred in the intervening period. None of those approvals are of particular relevance to this application.

Subject Site

Application	Proposal	Decision & Date
D/2016/364	Extension of level one of the existing dwelling.	Withdrawn – 20/1/2017

	Add an additional floor. Change internal layout at Lower ground level.	
OCP/2015/394	Alterations and additions to an existing townhouse.	Approved (private) – 24/11/2015
PCA/2008/297	Alterations and additions to an existing townhouse.	Accepted (private) – 30/9/2008
CC/2008/362	Alterations and additions to an existing townhouse.	Approved (private) – 29/09/2008
D/2007/507	Alterations and additions to an existing townhouse.	Approved – 21/12/2007

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
8 August 2017	<p>Request for further information and amendments to the development were requested.</p> <p>Design Issues</p> <p>Heritage</p> <ul style="list-style-type: none"> The following comments have been made with regard to the bulk, form, mass, scale, rhythm and façade composition of the immediate streetscape setting within the conservation area. The front façade of the second floor is to be set back to align with the existing front façade The first floor façade treatment is to reproduce the gable façade, similar to that previously submitted, to be more sympathetic to the existing streetscape setting, and it is recommended the level of the adjacent gutter line be reproduced in a string course across the remainder of the façade above the entry. It also recommended that all new external materials and colours be similar to existing on comparable building elements. <p>Engineering</p> <ul style="list-style-type: none"> Reference is made to the Flood Risk Management Report prepared by Greenview Consulting dated 2 February 2017. The report and associated Flood Certificate identifies that the existing ground floor level is 370mm below the Flood Planning Level (100 year ARI flood level plus 500mm freeboard) of RL 5.4m AHD. The proposed ground floor additions must be raised at least one step (190mm) above the existing ground floor level to RL 5.21m AHD. The raised floor level could be limited to the entry vestibule, subject to the remainder of the new floor area being tanked/ waterproofed to this level. This treatment will provide greater flood protection to the existing dwelling. The Ground Floor extension of the main Entry appears to extend over an existing common stormwater drainage pit. The additions must be set back generally in line with the southern end of the existing carport to ensure sufficient clearance is maintained around the stormwater pit. The proposed Laundry must be set back further to the south to ensure a minimum length of 6000mm is maintained within the carport.

	<p>Planning</p> <ul style="list-style-type: none"> As per Heritage Comments, it is recommended that the existing level 2 be retain its current floor plate and only propose a modest master bedroom on level 3 to ensure the form is not overly disrupted, bulk and scale reduced, impacts to privacy and overshadowing are reduced. The LLEP2013 requirements in regards to FSR, Landscape and Site coverage are required to demonstrate the Strata Development. Calculations based on the Stata lot alone are not sufficient. Only then can Clause 4.6 objections be considered.
20 August 2017	The applicant returned amended plans addressing the issues above to full compliance.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

A BASIX Certificate was submitted with the application.

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

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

5(a)(iii) 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 5.9 – Preservation of trees or vegetation
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management

The site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposal is permissible in the zone and is consistent with the planning objectives for the area in the Leichhardt Local Environmental Plan.

Based upon a survey (undertaken by Garvin Morgan and Co) of the strata subdivision in 2003, the floor space ratio was identified as 0.696:1 (being 11,936sqm of GFA). Since this survey was undertaken, numerous development consents for alterations and additions to the individual townhouses within this Strata Scheme have been issued and a cumulative record of increases to the overall floor space ratio and changes to landscaped areas has not been maintained. Thus, exact floor space ratio and landscaped area calculations cannot be determined for the overall site.

As has been the case with previous applications for alterations and additions within the estate, a breach of the maximum floor space ratio development standard of 0.7:1 has been assumed and accordingly, the applicant has provided a written request for an exception to the standard, in accordance with Clause 4.6. This request is considered below.

Further, the following table assesses the compliance of the proposal in regards to relevant development standards as applied to the individual strata lot to which the application relates only:

NB – The site is 125sqm by calculation.

LLEP 2013 Development Standard	Proposal (sqm)	Proposal ratio / %	Compliance	% of Non-compliance
Floor Space Ratio – 0.7:1	169.55	1.36:1	No	93.77%
Landscaped Area – Min. 15% of site area	4.6	3.68%	No	75.47%
Site Coverage – Max. 60% of site area	103.7	82.96%	No	39.27%

The following provides further discussion of the relevant issues:

Clause 4.6 Exceptions to Development Standards

As outlined in the 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.*

The applicant seeks development consent for partial demolition and the internal reconfiguration of the existing double storey dwelling, with addition to the second storey and the addition of third level floor that necessitates variation of:

- a) Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1 – the development proposes to breach the standard by 75.47% or 14.15sqm
 - b) Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1– the development proposes to breach the standard by 39.27% or 28.7sqm
 - c) Clause 4.4 – Floor Space Ratio– the development proposes to breach the standard by 93.77% or 82.05sqm
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.*

Written requests have been submitted by the applicant identifying the following key reasoning in seeking to justify the contravention of the standards:

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

- As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped area and site coverage. The subject site has a lot size less than 235sqm and the Landscape and Site Coverage plans lodged with this application show the landscaped area is 15.2% of the site and the site coverage is 82.9%. While there is no record of a current landscaped area and site coverage for the estate it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the landscaped area is unchanged, and subject to conditions, the site coverage is minimally increased.

Clause 4.4 – Floor Space Ratio

- Clause 4.4 of LLEP 2013, in conjunction with the Floor Space Ratio Map, requires that the maximum Floor Space Ratio (FSR) of buildings for the subject site shall not exceed 0.7:1. The application proposes to increase the floor space associated with the subject property by 83.37sqm, from 98.18sqm to 181.55sqm. The permitted maximum in this area is 0.7:1. As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing FSR associated with the overall site that has a site area of 17,140sqm. From Council records it appears the existing FSR for the estate when first constructed is 0.696:1 (11,936sqm of GFA). There have been numerous modifications to the dwellings associated with the estate, and our understanding is that this has resulted in an increase in gross floor area.

While there is no record of a current FSR for the estate it can be assumed that an additional 83.37sqm will result in an overall FSR exceeding the maximum 0.7:1 FSR

identified in this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard.

- The proposed development achieves the objectives of the FSR standard notwithstanding noncompliance with the standard because:

Proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale because the proposed development has been designed so that the bulk, form and scale is compatible with the adjoining townhouses to the east. The amended building also provides for a gable roof line to the McKell Street elevation to match the adjoining gable to the west. Window openings are designed to remain consistent in style with the existing streetscape. Proposed development provides a suitable balance between landscaped areas and the built form. The proposed development provides for only a minimal change to the previously approved site coverage for the site. The balance between landscaped areas and the built form is compatible with other developments in the locality and will not detrimentally impact on the character of the locality or the amenity of residents. Proposed development will not detrimentally impact on the amenity of the residents. Assessment of the proposal has shown the amenity of adjoining and nearby residents will not be detrimentally impacted by the proposed development. Minor variations to the landscaped area are not of a magnitude that will detrimentally impact on the enjoyment and use of the townhouse by its occupants.

- The underlying objectives of the standard are to control development to ensure that the proposed built form is compatible with surrounding development, and consistent with the desired future character of the area. The development generally achieves this intent.
- Council has virtually abandoned a policy of strict compliance with FSR controls. Its use of Clause 4.6 for FSR tends to be the rule, rather than the exception. Council's own Floor Space Ratio Review (2014) makes this clear. The Review was written in response to the Department of Planning and Environment's concern that Council was making excessive use of SEPP 1 (now Clause 4.6). Remarkably, the Review found that over 40% of DAs being approved do not comply with FSR standards. Strict compliance with the standard is considered unreasonable and unnecessary.

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

- As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped area and site coverage. The subject site has a lot size less than 235sqm and the Landscape and Site Coverage plans lodged with this application show the landscaped area is 15.2% of the site and the site coverage is 82.9%. While there is no record of a current landscaped area and site coverage for the estate it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard. Subject to conditions the site coverage is marginally increased and is acceptable.
- (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 as amended.
- The siting of the building is within the building location zones when it can be reasonably assumed development can occur.

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

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

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

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

The proposed variation to the development standard will not compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is no material public benefit to the enforcing of the development standards.

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

No other matters are required to be considered before granting concurrence.

5(b) Draft Environmental Planning Instruments

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

- Review of FSR's – Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

Review of Floor Space Ratio – Leichhardt Local Environmental Plan 2013

Current Standard (maximum)	Proposed for lots over 450m ²
0.7:1	0.7:1

Due to the size of the strata allotment, there is no change on the FSR under the Draft.

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
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	Yes
C1.20 Foreshore Land	Yes
Part C: Place – Section 2 Urban Character	
Suburb Profile	
C2.1.2.Mort Bay (Lower slopes) Balmain	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
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
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	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

The development was required to be amended to reduce the setback of the proposed third level back towards the South East to better align with the form of dwellings to the South West. This in turn improved the form, scale and bulk impacts to the properties to the South West. The development is considered to meet the objective for the terrace style row.

C3.9 Solar Access

The development has demonstrated that the southern neighbour at No. 16 is already in shadow due to the setback of the neighbouring double storey dwelling and site orientation. The development was amended to reduce the third floor footprint and roof form, however none of these changes impact on solar to the rear North East facing courtyard. Further to this, the lower ground floor of these townhouses are open plan, and windows from the kitchen opening up to the living area are located to the North west, providing some solar access.

E1.3.1 Flood Risk Management

Refer to Engineers comments. Level changes as per the amended design have addressed issues and is considered satisfactory subject to standard conditions.

5(d) The Likely Impacts

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

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

The site is zoned R1 General Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with Section 3 for a period of 14 days to surrounding properties. A total of one (1) submission was received.

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

- The increase in visual bulk from the development – see Section 5(c) – C3.2
- Overshadowing – see Section 5(c) C3.9

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

Heritage Officer

Most recent heritage advice for this Development Application remains relevant to the amended plans - accordingly, refer to recommended conditions which deal with the matters, mentioned above, that have not been fully addressed in the amended plans;

It also recommended that all new external materials and colours be similar to existing on comparable building elements."

The application is not objected to on heritage grounds subject to the conditions.

Amended plans are to be submitted incorporating the following amendments:

- a) The level of the adjacent gutter line on the addition be reproduced in a string course across the remainder of the façade above the entry; and*
- b) All new external materials and colours to be similar to the existing external materials and colours, on comparable building elements.*

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

Development Engineer

Reference is made to the Flood Risk Management Report prepared by Greenview Consulting dated 2 February 2017 and the Engineers referral dated 11 July 2017.

The entry has been amended to provide a step up to RL 5.21m AHD in accordance with previous advice. As advised, this treatment will provide greater flood protection to the existing dwelling within the existing site constraints. However the proposed entry between the carport and the Kitchen provides no similar protection. The entry must be deleted and the wall flood proofed up to RL 5.4m AHD.

As previously advised, the ground floor extension of the main Entry appears to extend over an existing common stormwater drainage pit. The additions must be set back clear of this pit generally in line with the southern end of the existing carport to ensure sufficient clearance is maintained around the stormwater pit. This issue can be addressed by condition.

6(b) External

The application was not required to be referred externally.

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)(b) Site Coverage/landscaped area 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 Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2017/292 for Alterations and additions to dwelling including additional floor. at 14 McKell Street, BIRCHGROVE 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. D/2017/292 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
DA-100 Site Plan Rev C	Stephen Bower Architects	August 2017
DA-101 Floor & Roof Plan Rev C	Stephen Bower Architects	August 2017
DA-102 Floor & Roof Plan Rev C	Stephen Bower Architects	August 2017
DA-200 Elevations Rev C	Stephen Bower Architects	August 2017
DA-201 Elevations Rev C	Stephen Bower Architects	August 2017
DA-300 Section A Rev B	Stephen Bower Architects	August 2017
DA-301 Section B Rev B	Stephen Bower Architects	August 2017
Stormwater Plans	Prepared By	Dated
C01 - 5	Greenview Consulting	09/06/2017
C02 - 5	Greenview Consulting	09/06/2017
BASIX Certificate	Prepared By	Dated
A251119_02	Aminga Holdings P/L	30/5/2017

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.

2. Consent is granted for the demolition on the property, subject to strict compliance with the following conditions:
 - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
 - b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:

- i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
- ii) A *final* inspection when the demolition works have been completed.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.

- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
 - i) A WorkCover licensed contractor must undertake removal of all asbestos.
 - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
 - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
 - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
 - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

- 3. Amended plans are to be submitted incorporating the following amendments:
 - a) The level of the adjacent gutter line on the addition be reproduced in a string course across the remainder of the façade above the entry; and
 - b) All new external materials and colours to be similar to the existing external materials and colours, on comparable building elements i.e the existing dwelling and No. 16 McKell Street.
 - c) The entry between the carport and the Kitchen must be deleted. A window may be provided at this wall with a minimum sill height of RL 5.4m AHD
 - d) The Entry must be set back 5500mm from the north western boundary

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

- 4. A Flood Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided prepared / prior to the issue of a Construction Certificate. The Plan must be prepared / amended to make provision for the following:
 - a) The plan must be generally in accordance with the recommendations of the Flood Risk Management Statement prepared by Greenview Consulting and dated 2 February 2017, amended to reflect the new floor levels at the entry.
 - b) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such

recommendations must be consistent with the approved development. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The precautions shall include but not be limited to the following:

- i) Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
- ii) Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections. The existing dwelling must be tanked/water proofed up to RL 5.4m AHD.
- iii) Flood warning signs/depth indicators for areas that may be inundated
- iv) A flood evacuation strategy.
- v) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.

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

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

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

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

5. The approved Architectural plans must be amended to address all relevant recommendations of the Flood Risk Management Plan prepared under Condition No **CCFLD1 (condition above)**.

The plans addressing the requirements of this condition must be provided prior to the issue of a Construction Certificate. The design must be prepared to make provision for the following:

- a) Specification of materials
- b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans shall occur except as identified by this condition. Any changes to such must be subject to separate approval in accordance with Section 96 of the Environmental Planning and Assessment Act.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying

Authority prior to the issue of the Construction Certificate.

6. A stormwater drainage design prepared by a Licensed Plumber or qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/ amended to make provision for the following:
- a) The existing stormwater drainage pit must be clear of the Ground Floor extension of the main Entry and steps in accordance with Condition 3(d)
 - b) Stormwater runoff from all roof areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the existing drainage system. Charged or pump-out stormwater drainage systems are not permitted.
 - c) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
 - d) A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings
 - e) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS 3500.3-2003 Plumbing and Drainage – Stormwater Drainage*
 - f) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.

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

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

The system/s shall be operated as follows:

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

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

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

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

8. 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.
9. In accordance with the provisions of Section 81A 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.

10. 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.

11. 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.

12. 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 amended by these conditions of consent which require all new external materials and colours to be similar to the existing external materials and colours, on comparable building elements.** 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.

13. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 *Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:

The carport must have minimum clear internal dimensions of 6000 x 3000mm (length x width).

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

14. 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.

15. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
- The building is to be provided with smoke alarm system that complies with AS3786-1993: *Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the application prior to the issuing of a for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

16. 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.

17. 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 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.

18. 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.

19. 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.

20. 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.

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

21. 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)	\$3312.00
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.

22. 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
12 McKell Street Birchgrove	Within 1m of the common wall
16 McKell Street Birchgrove	Within 1m of the common wall

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.

23. 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

24. 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;

25. 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.

26. 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.

27. 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.

28. 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.
29. 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.
30. 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

31. 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.

32. 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.

33. The site must be appropriately secured and fenced at all times during works.
34. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

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

35. 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.

36. 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.

37. 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.
38. 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.
39. 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.
40. 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.

41. 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

42. 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

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

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

44. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
45. 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.

46. 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.

47. 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.

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

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

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

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

ONGOING CONDITIONS OF CONSENT

50. 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.

51. 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.
52. The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
53. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling 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, is defined under the *Leichhardt Local Environmental Plan 2013*.

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 80A (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 82A 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, integrated 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 82A.
3. If you are unsatisfied with this determination, Section 97 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 96 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.

MORT BAY RESERVE ELEVATION

MCKELL STREET ELEVATION

STEPHEN BOWERS ARCHITECTS
 14 MCKELL STREET
 BIRCHGROVE NSW 2341
 Tel: 08 9391 1111
 Fax: 08 9391 1112
 Email: info@stephenbowers.com.au
 Website: www.stephenbowers.com.au

PROJECT INFORMATION

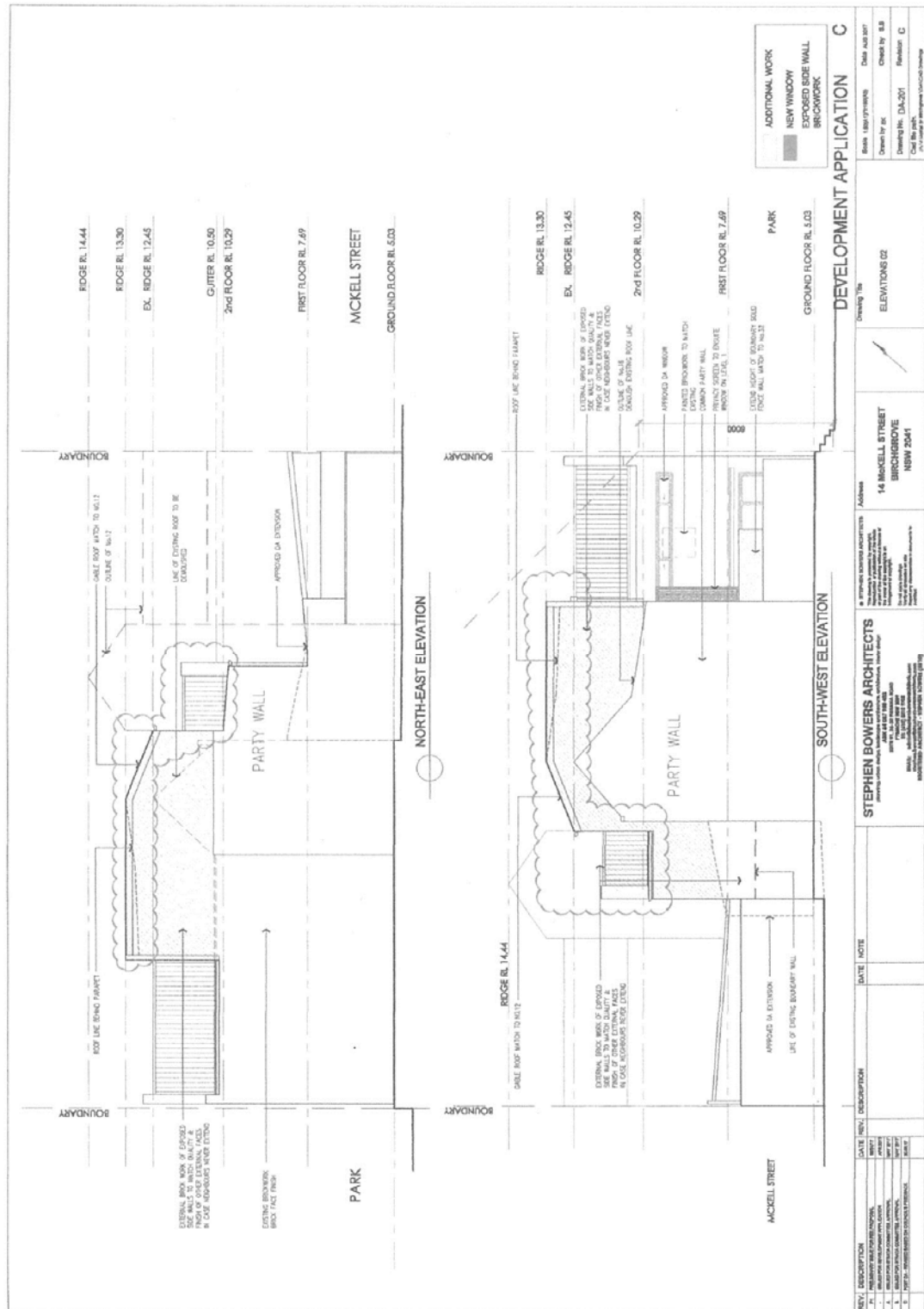
NO.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	NOTE
1	PRELIMINARY DESIGN					
2	FINAL DESIGN					
3	CONSTRUCTION DOCUMENTS					
4	CONSTRUCTION DOCUMENTS					
5	CONSTRUCTION DOCUMENTS					

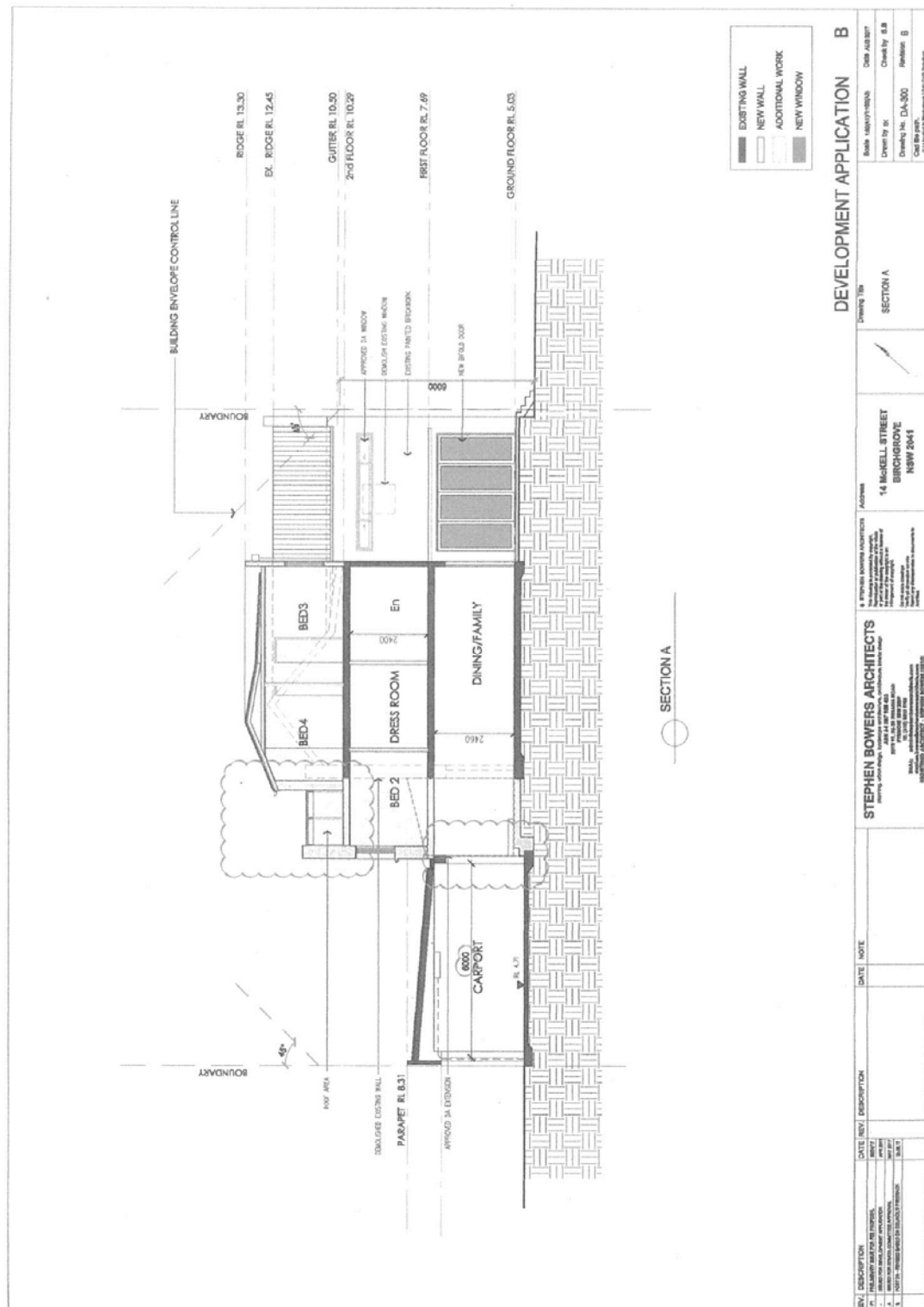
DEVELOPMENT APPLICATION

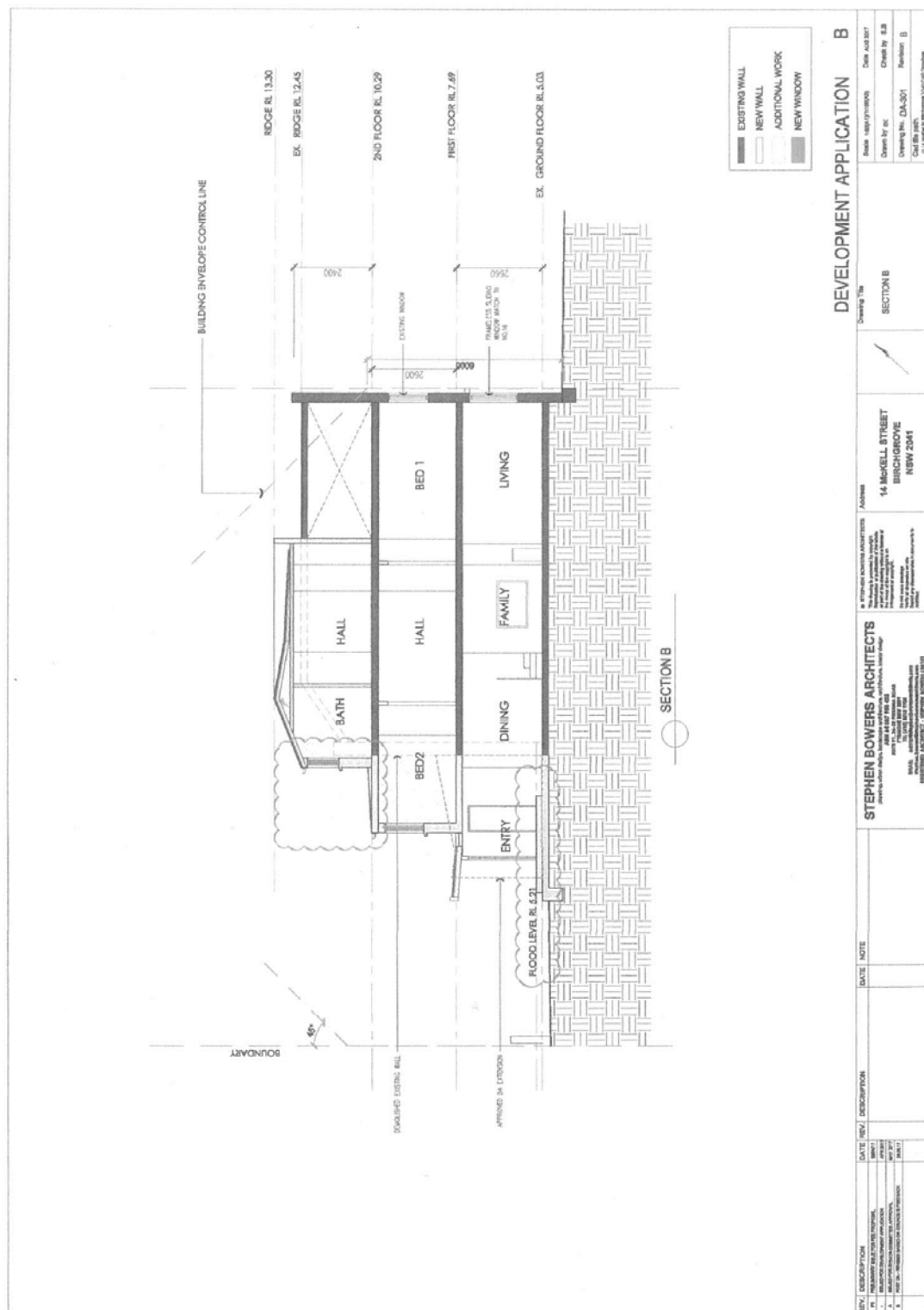
ADDITIONAL WORK

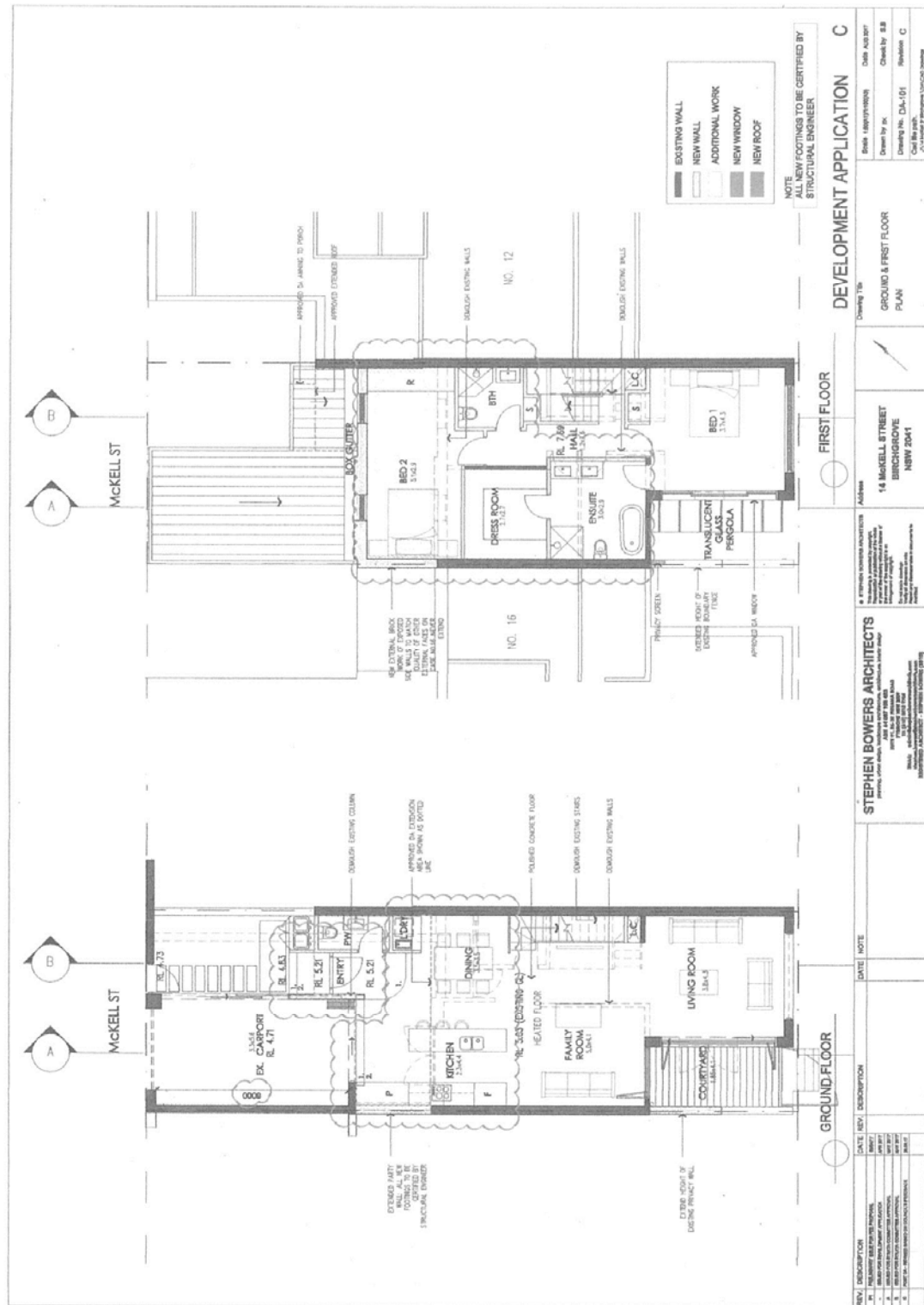
NEW WINDOW

DATE SUBMITTED 18/07/2014
DATE FOR DECISION 18/07/2014
PROJECT NO. DA-200
PROJECT NAME Mort Bay Reserve
PROJECT ADDRESS 14 McKell Street, Birchgrove NSW 2341

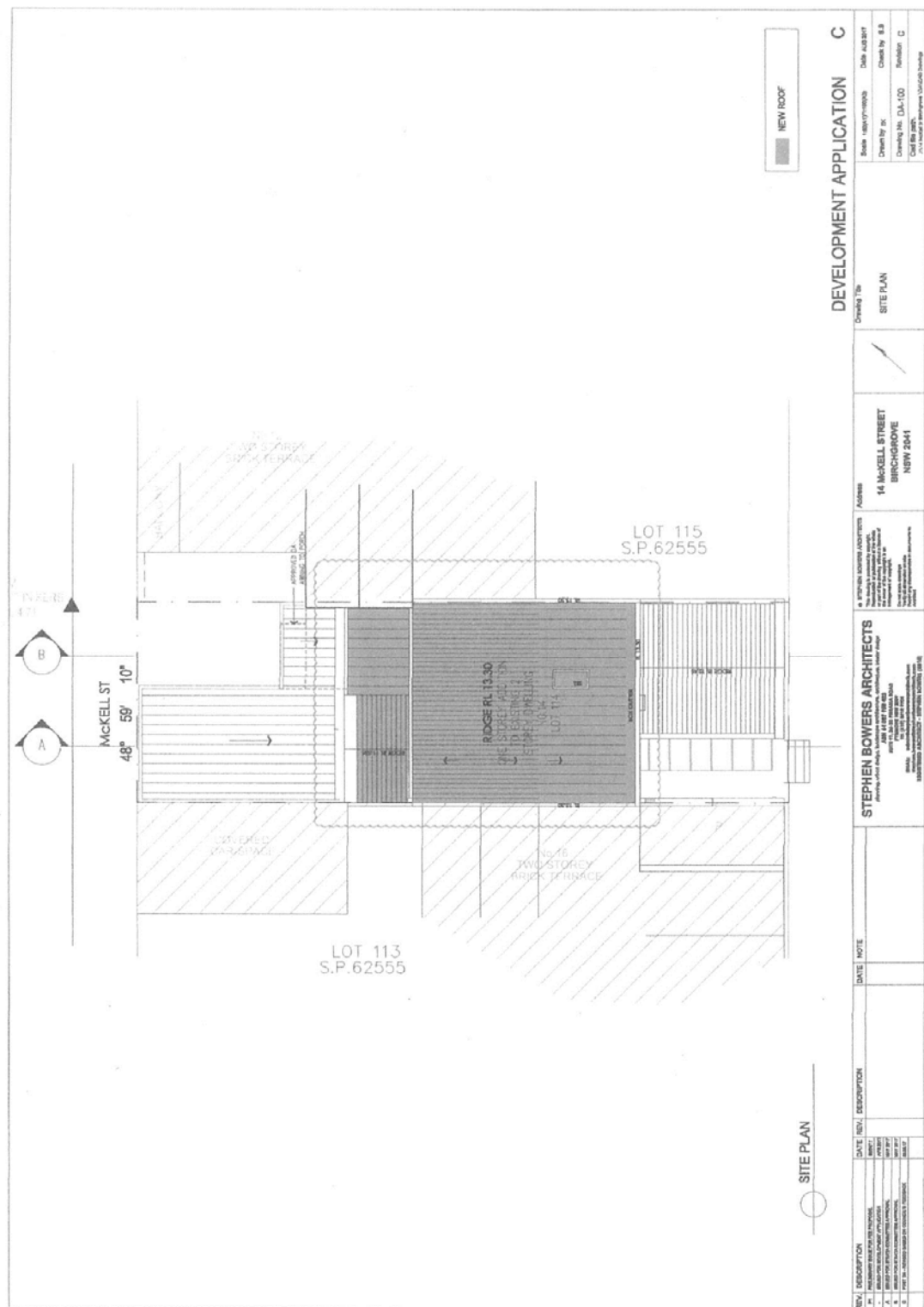












Attachment C – Clause 4.6 objections



24 April 2017

Inner West Council
7-15 Wetherill Street
Leichhardt NSW 2040

Request for a variation of a Development Standard for alterations and additions to an existing townhouse at 14 McKell Street, Leichhardt

This request is made pursuant to the provisions of *Clause 4.6 Leichhardt Local Environmental Plan 2013* (LLEP 2013) to vary the 'Floor Space Ratio' development standard in relation to a development application for alterations and additions to an townhouse at 14 McKell Street, Birchgrove.

This request is made having regard to:

1. The provisions of Clause 4.6 of LLEP 2013; and
2. Varying development standards: A Guide (August 2011) prepared by the Department of Planning and Infrastructure.

The Guide "contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard." The following addresses the information detailed in the Guide.

1. Background

The subject site is zoned *R1 General Residential*.

The objectives of the R1 zone are:

- 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.

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Unit 407,5 Warayama Place, Rozelle
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- 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.

Clause 4.4 of LLEP 2013, in conjunction with the Floor Space Ratio Map, requires that the maximum Floor Space Ratio (FSR) of buildings for the subject site shall not exceed 0.7:1. The application proposes to increase the floor space associated with the subject property by 83.37m², from 98.18m² to 181.55m². The permitted maximum in this area is 0.7:1. As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing FSR associated with the overall site that has a site area of 17,140m².

From Council records it appears the existing FSR for the estate when first constructed is 0.696:1 (11,936m² of GFA). There have been numerous modifications to the dwellings associated with the estate, and our understanding is that this has resulted in an increase in gross floor area.

While there is no record of a current FSR for the estate it can be assumed that an additional 83.37m² will result in an overall FSR exceeding the maximum 0.7:1 FSR identified in this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard.

The objectives of the floor space ratio development standard are:

- (a) to ensure that residential accommodation:
 - (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and
 - (ii) provides a suitable balance between landscaped areas and the built form, and
 - (iii) minimises the impact of the bulk and scale of buildings,
- (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

2. Justification for Clause 4.6 Request

Clause 4.6 of LLEP 2013 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the

matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The following subsections address the preconditions for justification to vary a development standard as described in Clause 4.6 of LLEP 2013.

2.1 Is the development standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the FSR standard is considered unreasonable or unnecessary in the circumstances of this case.

Strict adherence to the standard will not result in a development that is anymore consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The table below provides an assessment of the matters in the 'five part test'.

Five Part Test	Comments
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The proposed development achieves the objectives of the FSR standard notwithstanding non-compliance with the standard because:</p> <p><u>Proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale.</u></p> <p>The proposed development has been designed so that the bulk, form and scale is compatible with the adjoining townhouses to the east. The amended building also provides for a gable roof line to the McKell Street elevation to match the adjoining gable to the west.</p>

	<p>Window openings are designed to remain consistent in style with the existing streetscape.</p> <p><u>Proposed development provides a suitable balance between landscaped areas and the built form.</u></p> <p>The proposed development provides for only a minimal change to the previously approved site coverage for the site. The balance between landscaped areas and the built form is compatible with other developments in the locality and will not detrimentally impact on the character of the locality or the amenity of residents.</p> <p><u>Proposed development will not detrimentally impact on the amenity of the residents.</u></p> <p>Assessment of the proposal has shown the amenity of adjoining and nearby residents will not be detrimentally impact by the proposed development. Minor variations to the landscaped area are not of a magnitude that will detrimentally impact on the enjoyment and use of the townhouse by its occupants.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The underlying objects of the standard are to control development to ensure that the proposed built form is compatible with surrounding development, and consistent with the desired future character of the area. The development generally achieves this intent.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable	Leichhardt Council has virtually abandoned a policy of strict compliance with FSR controls. Its use of Clause 4.6 for FSR tends to be the rule, rather than the exception. Council's own Floor Space Ratio Review (2014) makes this clear. The Review was written in response to the Department of Planning and Environment's concern that Council was making excessive use of SEPP 1 (now Clause 4.6). Remarkably, the Review found that over 40% of DAs being approved do not comply with FSR standards. Strict compliance with the standard is

	considered unreasonable and unnecessary.
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	N/A

2.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the FSR development standard.

The development has been assessed in the Statement of Environmental Effects to:

- Have no detrimental impacts on both the natural and built environments;
- Have no detrimental social or economic impacts;
- Be suitable for the site; and
- Be in the public interest.

2.3 Is the proposed development consistent with zone objectives?

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

With this in mind, the proposed development is considered to be consistent with the B2 zone objectives because:

- The development provides for the housing needs of the community by providing for additional amenity and living space for families.
- The development contributes to the variety of housing types and densities.

- The development is not antipathetic to enabling other land uses to meet the day-to-day needs of residents.
- The development is not antipathetic to improving opportunities to work from home.
- The development provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. Many other homes in the area have FSRs well over 0.7:1. The proposed addition would not be out of place or character.
- The development is not antipathetic to the provision of landscaped areas for the use and enjoyment of existing and future residents;
- The development is not antipathetic to the creation of lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area; and
- The development is not antipathetic to the protection and enhancement of the amenity of existing and future residents and the neighbourhood.

2.4 Is the proposed development consistent with the objectives of both standards?

The first matter in the Five Part Test (refer Section 3.1 of this request) details how the proposed development achieves the objective of the standard notwithstanding non-compliance with the standards.

3. Conclusion

Clause 4.6 of LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the subject case;
- There are sufficient environmental planning grounds to justify contravening the development standard; and
- The proposed development will be in the public interest because the objectives of the standard and the objectives of the zone are achieved despite non-compliance with the standard.

In conclusion, the request is considered well founded and granting consent is considered to be consistent with the requirements of Clause 4.6 of LLEP 2013.

Regards

A handwritten signature in black ink, appearing to read 'Tony Polvere', with a horizontal line extending to the right.

Tony Polvere
Director



24 April 2017

Inner West Council
7-15 Wetherill Street
Leichhardt NSW 2040

Request for a variation of a Development Standard for alterations and additions to an existing townhouse at 14 McKell Street, Leichhardt

This request is made pursuant to the provisions of *Clause 4.6 Leichhardt Local Environmental Plan 2013* (LLEP 2013) to vary the "Landscaped areas for residential accommodation in Zone R1" development standard in relation to a development application for alterations and additions to an townhouse at 14 McKell Street, Birchgrove.

This request is made having regard to:

1. The provisions of Clause 4.6 of LLEP 2013; and
2. Varying development standards: A Guide (August 2011) prepared by the Department of Planning and Infrastructure.

The Guide "contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard." The following addresses the information detailed in the Guide.

1. Background

The subject site is zoned *R1 General Residential*.

The objectives of the R1 zone are:

- 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.

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- *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.*

Clause 4.3A of LLEP 2013 states development consent must not be granted to development to which this clause applies unless:

- (a) the development includes landscaped area that comprises at least:
 - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or*
 - (ii) where the lot size is greater than 235 square metres—20% of the site area, and**
- (b) the site coverage does not exceed 60% of the site area.*

As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped area and site coverage. The subject site has a lot size less than 235m² and the Landscape and Site Coverage plans lodged with this application show the landscaped area is 15.2% of the site and the site coverage is 82.9%.

While there is no record of a current landscaped area and site coverage for the estate it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard.

The objectives of this clause are as follows:

- 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

2. Justification for Clause 4.6 Request

Clause 4.6 of LLEP 2013 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The following subsections address the preconditions for justification to vary a development standard as described in Clause 4.6 of LLEP 2013.

2.1 Is the development standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the landscaped areas standard is considered unreasonable or unnecessary in the circumstances of this case.

Strict adherence to the standard will not result in a development that is anymore consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The table below provides an assessment of the matters in the 'five part test'.

Five Part Test	Comments
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The proposed development achieves the objectives of the landscaped areas standard in relation to site coverage notwithstanding non-compliance with the standard because:</p> <p><u>Proposed development provides landscaped areas that are suitable for substantial tree planting</u></p> <p>The proposed alterations and additions will not remove any existing tree planting and will continue to maintain the existing level of amenity in the streetscape.</p> <p><u>Proposed development provides landscaped areas for the use and enjoyment of residents</u></p> <p>The proposed alterations and additions will not remove any existing tree planting and will continue to maintain the existing level of amenity enjoyed by the residents. The townhouse has 2 courtyards and both areas have direct access from the primary living spaces in the townhouse. The site also enjoys access to the immediately adjoining public open space area to the south and adjacent to Mort Bay.</p> <p><u>Proposed development promotes the desired future character of the neighbourhood.</u></p> <p>The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood. The reduction of 1.7m² in landscaped area is minor and will not detrimentally impact on the desired future character of the neighbourhood or the ecological sustainability of the development.</p> <p>Proposed development provides for only a very minor change to the previously approved building footprint.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The underlying objects of the standard are to control development to ensure that the proposed built form is compatible with the desired future character of the area and provides for the amenity of residents. The development generally achieves this intent.
3. The underlying object of purpose would be defeated or thwarted if compliance was required	N/A

and therefore compliance is unreasonable.	
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable	Leichhardt Council has virtually abandoned a policy of strict compliance with this standard by granting consents to extensions in the strata scheme that have ensured the scheme can no longer meet the prescriptive requirements of the standard. The measure of non-compliance cannot be adequately determined.
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	N/A

2.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard.

The development has been assessed in the Statement of Environmental Effects to:

- Have no detrimental impacts on both the natural and built environments;
- Have no detrimental social or economic impacts;
- Be suitable for the site; and
- Be in the public interest.

2.3 Is the proposed development consistent with zone objectives?

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

With this in mind, the proposed development is considered to be consistent with the B2 zone objectives because:

- The development provides for the housing needs of the community by providing for additional amenity and living space for families.
- The development contributes to the variety of housing types and densities.
- The development is not antipathetic to enabling other land uses to meet the day-to-day needs of residents.
- The development is not antipathetic to improving opportunities to work from home.
- The development provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. Many other homes in the area have FSRs well over 0.7:1. The proposed addition would not be out of place or character.
- The development is not antipathetic to the provision of landscaped areas for the use and enjoyment of existing and future residents;
- The development is not antipathetic to the creation of lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area; and
- The development is not antipathetic to the protection and enhancement of the amenity of existing and future residents and the neighbourhood.

2.4 Is the proposed development consistent with the objectives of both standards?

The first matter in the Five Part Test (refer Section 3.1 of this request) details how the proposed development achieves the objectives of the standard notwithstanding non-compliance with the standards.

3. Conclusion

Clause 4.6 of LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The

proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- Both development standards are unreasonable and unnecessary in the circumstances of the subject case;
- There are sufficient environmental planning grounds to justify contravening both development standards; and
- The proposed development will be in the public interest because the objectives of the standards and the objectives of the zone are achieved despite non-compliance with the standard.

In conclusion, the request is well founded and granting consent is considered to be consistent with the requirements of Clause 4.6 of LLEP 2013.

Regards



Tony Polvere
Director

NOTES