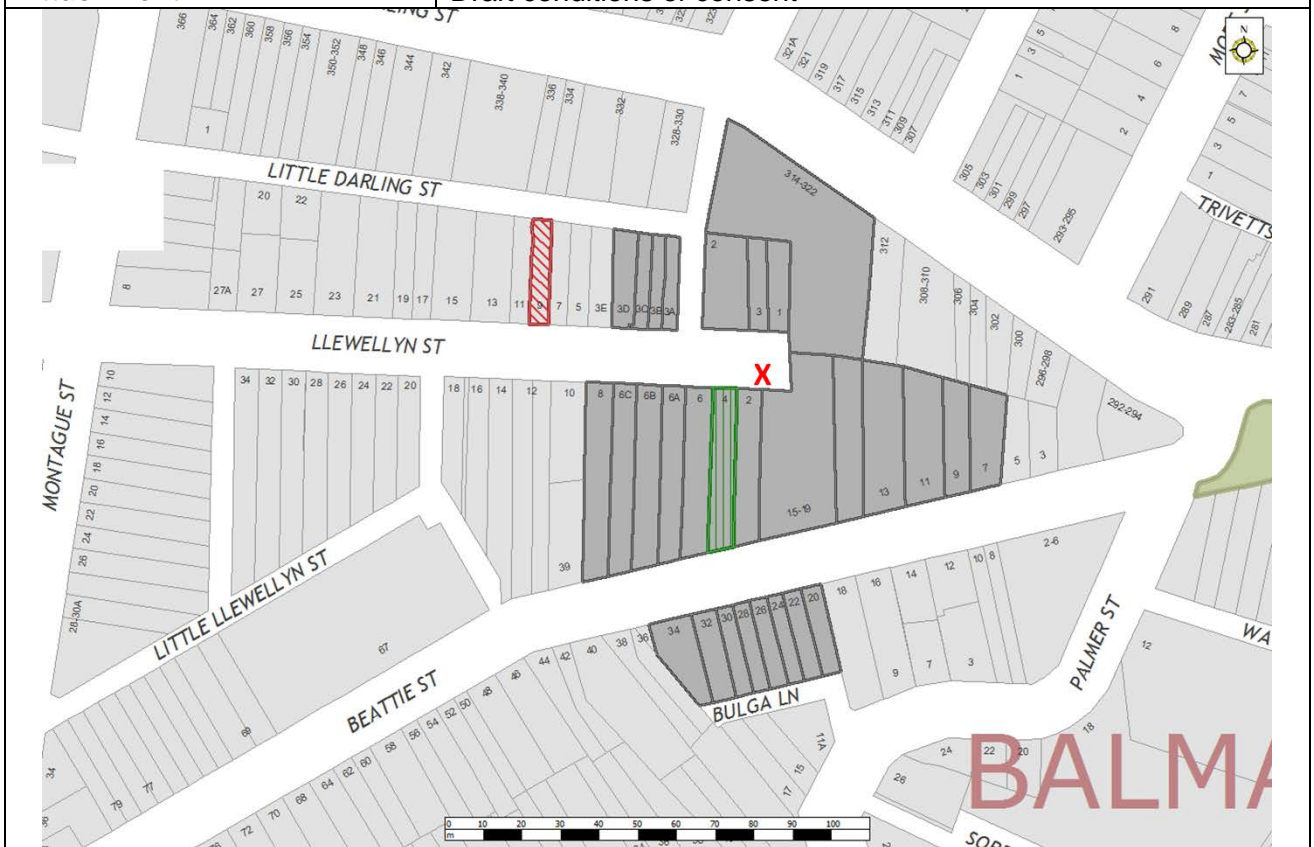







INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DAREV/2017/22
Address	Llewellyn Street, BALMAIN NSW 2041
Proposal	Removal of one Ficus microcarpa var Hillii (Hill's Weeping Fig) tree located on Llewellyn Street in front of No. 2 Llewellyn Street
Date of Receipt	14 July 2017
Applicant	Inner West Council
Owner	Inner West Council
Number of Submissions	2
Building Classification	N.A
Reason for determination at Planning Panel	Recommendation for refusal unchanged.
Main Issues	Property damage Heritage protection Tree Preservation policy Amenity
Recommendation	Refusal
Attachment A	Supporting documents
Attachment B	Draft conditions of consent



LOCALITY MAP

Subject Site	X	Objectors		↑ N
Notified Area		Supporters		

1. PROPOSAL

This application seeks to review the determination of Development Application No. D/2017/40 pursuant to the provisions of Section 82A of the Environmental Planning and Assessment Act, 1979 in the following way:

- Review the original decision, which was to refuse the application for removal of the fig tree.

The original Development Application determined on 9 March 2017 by way of a refusal.

2. SITE DESCRIPTION

The tree in question is a *Ficus microcarpa var Hillii* (Hill's Weeping Fig) tree located on Llewellyn Street in front of No. 2 Llewellyn Street

3. SITE HISTORY

Other than the initial development application identified above there is no relevant history.

4. SECTION 82A REVIEW

Section 82A of the Environmental Planning and Assessment Act, 1979 allows an applicant to request Council to review the determination of an application. The review is to be carried out in accordance with the requirements discussed in the following.

A review of a determination can not be carried out on a complying development certificate, or a determination in respect of designated development, or a determination in respect of integrated development, or a determination made by the council under section 116E in respect of an application by the Crown.

The subject application was not complying development, designated development, integrated development or an application made by the Crown.

A determination cannot be reviewed after the time limit for making of an appeal under Section 97 expires, being 6 months from the original determination.

The subject application was determined on 9 March 2017. The request for review was received by Council on 14 July 2017. A determination must be made no later than 9 September 2017.

The prescribed fee must be paid in connection with a request for a review.

The applicant has paid the applicable fee in connection with the request for a review.

In requesting a review, the applicant may make amendments to the development described in the original application, provided that Council is satisfied that the development, as amended, is substantially the same as the development described in the original application.

Further information was lodged with the DA review and is attached in full to this report.

The review of determination has been notified in accordance with the regulations, if the regulations so require, or a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations.

The application was advertised for a period of 14 days. The advertising period was between 20 July 2017 to 3 August 2017.

At the date of writing this report, (prior to the conclusion of the notification period) two submissions had been received, one supporting removal and one objecting to removal.

Consideration of any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan.

The submission in support of removal cites concerns with property damage and ongoing costs to ratepayers of repairing such damage. The submission opposed to removal supports retention on heritage and streetscape grounds.

As a consequence of a review, Council may confirm or change the determination.

After reviewing the determination of the application, it is recommended that Council confirm the original determination of the application which was refusal.

The review must not be made by the person who determined the original but is to be made by another delegate of the council who is not subordinate to the delegate who made the determination. If the original determination was made by the Council then the review is also to be considered by the Council.

The review of the application is reported to the Inner West Planning Panel in accordance with the above requirement.

5. REASONS FOR REFUSAL

The original development application was refused on 9 March 2017.. The reasons for refusal and discussion on how the proposed amendments address these reasons follows.

1. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013, pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 1.2 – Aims of the Plan
 - b) Clause 5.9 – Preservation of Trees
 - c) Clause 5.10 – Heritage Conservation

2. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Part C1.4 Heritage Conservation Areas and Heritage Items
 - b) Part C1.12 Landscaping
 - c) Part C1.14 Tree Management
 - d) C2.2.2.4 - The Valley 'Balmain' Distinctive Neighbourhood, Balmain

3. The proposal would result in adverse environmental impacts on the built environment in the locality pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979.
4. The proposal is not considered suitable on the site pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979.
5. The proposal is not considered to be in the public interest pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.

In summary, the application has been assessed by an external Level 5 qualified arborist who has concluded that removal of the tree cannot be supported – see detailed assessment later in this report.

The structural concerns have also been reviewed by Council staff and are considered insufficient justification for removal also.

6. SECTION 79C(1) 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.

(a)(i) Environmental Planning Instruments

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

- Leichhardt Local Environmental Plan 2013

5.9 – Preservation of trees or vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. As discussed under C1.14, the subject tree makes a significant contribution to the amenity of the area in terms of biodiversity and visual value. Accordingly the removal of the subject tree is considered to be contrary to the objectives of this clause.

5.10 – Heritage Conservation

The tree has high visual amenity and makes a significant contribution to the streetscape. The tree is locally heritage listed and forms part of a group landscape listing under Council's LEP 2013. The tree is located within a heritage conservation area. The Heritage Impact Assessment Report notes that the tree was one of the original street tree plantings in the 1930s. The report also notes that removal of the tree would have an adverse impact on the streetscape and some negative visual impact for residents and business owners at the eastern end of the street. Accordingly removal of the subject tree is contrary to the objectives of this clause that seeks to conserve the environmental heritage of Leichhardt, and is therefore recommended for refusal.

(a)(ii) Draft Environmental Planning Instruments

Nil applicable

(a)(iii) Development Control Plans

The application has been assessed against the relevant Development Control Plans listed below:

- Leichhardt Development Control Plan 2013

C2.2.2.4 - The Valley 'Balmain' Distinctive Neighbourhood, Balmain

The Valley distinctive neighbourhood controls seek to preserve and promote the establishment of trees in front gardens as these contribute significantly to streetscape amenity. Assessment of the proposed tree removal has concluded it will result in a poor heritage outcome for listed group of trees, and will detrimentally impact the streetscape value and visual amenity of Llewellyn Street. The proposal is therefore recommended for refusal in this regard.

(a)(iv) Environmental Planning and Assessment Regulation 2000

The application has been assessed against the relevant clauses of the Environmental Planning and Assessment Regulation 2000. The application fully complies with the Environmental Planning and Assessment Regulation 2000.

(b) The likely environmental both natural and built environment, social and economic impacts in the locality

The assessment of the application demonstrates that the proposal will have an adverse impact on the locality.

(c) The suitability of the site for the development

Not applicable

(d) Any submissions made in accordance with the Act or the regulations

The application was notified for a period of 14 days. The notification period was from 20 July 2017 to 3 August 2017.

The notification of the application included:

- Letters sent to neighbouring properties.
- A blue and white site notice placed on the site.
- Listing under the notification section on Council's website.

One submission was received during the notification period supporting removal due to damage to property, liability to Council and ongoing costs of repairs and the availability of alternative plantings for the street

One submission was received during notification opposing removal due to the heritage/amenity value of the tree and on the basis that damage to nearby property

can be repaired and protected in a similar way as the repair and protection of the public footpath.

(e) 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 contrary to the public interest.

6. SECTION 94 CONTRIBUTIONS

Not applicable

7. INTERNAL REFERRALS

The application was referred to the following Council Officers:

Building

1. A site inspection was undertaken in April 2017 from the external parts of the site as access was not provided to the internal parts of the dwelling and the private land associated with the application. There are photographs from the structural report dated 1/6/2017 which have been referred to.

2. The site presently accommodates a 2 storey brick dwelling likely to be constructed using brick footings. The dwelling is also likely to be founded on weather sandstone which is supported by the geotechnical report as the underlying bedrock for the area.

The dwelling fronts onto Llewellyn Street and has a brick 110mm courtyard wall with engaged piers typical of the construction for courtyard walls, there is also evidence that the wall is built on sandstone blocks as a bedding course.

There is evidence of cracking and displacement to the front brick fence most likely from the tree roots as supported by the root mapping information provided. This matter is not disputed and Council has previously provided a raised walkway over the public footpath area due to displacement of the footpath concrete slabs due to the tree roots from the tree.

In relation to the main walls of the dwelling there is minimal cracking of 1mm to the lounge room and the first floor bedroom, which also included a separation of the door architrave, which the structural engineer attributes to tree root jacking and the root mapping indicates evidence of roots travelling towards and potentially impacting the underside of the footings of the dwelling due to the close proximity of the bedrock sandstone on which the brick footings are founded.

There is agreement that the tree roots are impacting the courtyard and landscape features however the structural engineer provided a statement that there is no joint failure or mortar failure in the brick work of the main dwelling.

The cracks are considered minimal (1-2mm) and can be easily rectified by filling and repainting as is evidenced by the report where the cracks have been previously filled. It would be considered that the cracking would be typical of a brick dwelling of this type of construction and age and are not significant enough to justify the removal of the significant street tree.

The comment in the conclusion of the structural report "It is anticipated that the damage to the residential structure will continue to a point where localised collapse of the north eastern brickwork " is emotive and not supported by the remainder of the report especially considering that the "budge" (bulge) has not been further investigate or attributed to the tree roots and may have other causes which are not articulated or addressed as part of the report which may include brick tie failure or other matters the bulge has not been measured or monitored.

8. EXTERNAL REFERRALS

The application was outsourced to an independent Level 5 Qualified Arborist for assessment. The consultant arborist's comments are reproduced below.

DESCRIPTION OF TREE:

- *Ficus macrocarpa* var. *hillii* (Hills weeping fig)

COMMENTS:

The subject tree is a mature street tree in good health, normal vitality and with fair to good structure. Its form is good with a slightly asymmetrical crown emerging from several co-dominant stems with included bark. The subject tree is a heritage item as well as being within a heritage conservation area (HCA), which influences its landscape significance and therefore its tree retention value.

The tree retention value has been determined using the methodology described in the Newcastle Urban Forest Technical Manual (August 2013), modified by A Moreton, from Couston, M and Howden, M (2001). The tree is assessed as having a 15 to 40 years useful life expectancy (ULE). The tree has the highest landscape significance on a 7-point scale, "significant" due to its heritage listing. The ULE and landscape significance combine to result in high retention value on a scale of high, moderate, low and very low. Even disregarding the heritage status of the tree, it would rate a high retention value.

Public trees are assets and are managed as such. They provide significant environmental services which can individually and collectively be quantified in dollar terms. Individual trees can be evaluated and given a financial value for their amenity contribution. It is considered useful to provide an estimation of the amenity value of the subject tree, to help consider management of the tree in an asset management context. The cost of maintaining any asset needs to be considered in relation to its value and the benefit it provides.

The value of the subject tree has been estimated using the Thyer Tree Valuation Method (P Thyer, 2007) as \$45,000 to \$50,000.

As the owner and manager of the subject tree, Inner West Council (IWC) has applied for consent to remove the tree in response to representation from the owner of the residential property closest to the tree, no. 2 Llewellyn Street. Independently, the Planning Section of Inner West Council is the determining authority. Consent was refused and a S82 A application has been submitted.

The S82 A application provides as the reason for review, "application was not assessed to take into consideration JK Geotechnics Report December 2015 with findings that dwelling is founded on sandstone and that internal cracks to dwelling had been caused by tree root jacking from Council's Street Tree." A Structural Inspection Report (James Rose Consulting, 15/6/17) was included as additional information with the S82 A application.

Leichhardt Development Control Plan 2013, C1.14.7 provides criteria for consideration of applications for tree removal. The Statement of Environmental Effects (SEE) cites two of these as relevant criteria. They are (c) the tree poses a threat to human life or property, and (d) the tree is causing significant damage to public infrastructure which cannot be remedied by other reasonable and practical means. The SEE goes on to include the "continued claims for damage to private property of 2 Llewellyn Street which cannot be prevented by installation of root guard without impacting on SRZ" as further justification.

Threat to human life or property

The Arborist Report by Paul Shearer Consulting (17/11/16) states that the author is of the opinion that "the subject tree poses a risk of mechanical root-plate failure," then re-states a recommendation from his previous report that the tree should be removed "due to the contributing factors of property damage and the potential for windthrow." However, the report presents the result of tree risk assessment as a risk rating of low, on a scale of low, moderate, high and extreme.

Two other consulting arborists who have reported on the tree, Tree Wise Men and Sally Arnold, have not considered the risk unacceptable.

My assessment is that the risk rating of the tree is clearly low and that the likelihood of failure is improbable, with respect to the whole tree or major branch failure.

The Arborist Report, two Geotechnical Investigation Reports (JK Geotechnics, 18/3/11 & 16/12/16), and Structural Inspection Report (James Rose Consulting, 15/6/17) all conclude that damage to the dwelling at no. 2 Llewellyn Street and to the front fences and courtyards of nos. 2 and 4 Llewellyn Street results from "tree root jacking". This is understood to mean the lifting of a structure by direct upward pressure resulting from secondary (circumferential) growth of roots.

Whilst each of the reports states this as opinion and supports the opinions of the other reports, the opinions are based only on observations of the damage and the conclusions of the other reports. With respect to the dwelling at no. 2 Llewellyn Street, no excavation has been undertaken to identify points of contact between roots and building where the jacking is occurring. Spot levels of the floor of the dwelling have not been measured to ascertain where the upward forces from roots may be occurring. The patterns of cracks have not been analysed to demonstrate where the points of conflict may be.

Whilst the damage to the dwelling may be caused by root jacking, no conclusive evidence has been presented that guarantees that direct pressure from roots is the cause. As discussed in the recent JK Geotechnics report, there are various mechanisms that “may be the cause of potential ground movements.” That report discusses the various mechanisms and presents opinion as to the likely cause.

It is reasonably obvious and accepted that the subject tree contributes to the damage to the front garden areas and the front fence walls due to direct pressure exerted by secondary (circumferential) root growth (jacking). Pavers and brick fences are less able to withstand pressure from roots and are more likely to be affected than are buildings. However, damage to minor infrastructure such as fences, verandas and paving can be repaired. The cost of repairs can be considered in light of the asset value of the tree and the cost of its removal and replacement. Removal of a valuable tree such as the subject tree is rarely warranted on the basis of damage to minor infrastructure that can be repaired.

Assuming that damage to the dwelling is caused by the subject tree, options to mitigate and prevent damage should be considered in the first instance. Removal of a valuable tree should be the last option. Paul Shearer Consulting asserts that installation of a root barrier will result in major encroachment of the Tree Protection Zone (TPZ) and is not an option. However, major encroachment of the TPZ already exists due to the proximity of the dwellings.

The species of the subject tree is relatively tolerant of disturbance. The subject tree is healthy and has good vitality and would tolerate the installation of a root barrier across the front of the dwelling. However, it may not be physically possible to effectively install a root barrier but root pruning is considered a realistic option. There is no guarantee that a root barrier would stop all future root incursion, but it should reduce the likelihood, frequency and extent of root incursion under the house. Pruning the roots alone would alleviate any existing conflict but may need to be repeated from time to time to avoid further conflict.

Ideally, roots in contact with and exerting pressure on the building would be located. Identified woody roots could be pruned along the front of the veranda, outside the Structural Root Zone (SRZ), which is 3.6 metres from centre of trunk (COT). The front of the veranda is slightly more than 5.4 metres from COT, leaving more than adequate space to prune roots outside the SRZ. There is absolutely no reason that root pruning across the front of the veranda would destabilise the tree. Conflict along the eastern wall of the house could be investigated also and roots pruned as necessary.

Root pruning across the front of the veranda would require consent from the owner of no.2 to undertake the root pruning. If consent is not given to root prune in the front yard of no 2 Llewellyn Street, there is insufficient space to root prune outside the property without significantly encroaching into the SRZ.

CONCLUSION:

It has not been shown with absolute certainty that the subject tree is the major contributor to the damage in the house at 2 Llewellyn Street. The subject tree should not be removed based on an assumption.

Even if it was proven that the subject tree was the major contributor to the damage to the house, root pruning along the front of the building, with or without installation of root barrier, would mitigate the impact and facilitate retention of the tree.

It is accepted that roots from the subject tree are causing damage to the front fences and to paving and paths in the front gardens. However, lifted paths and damaged brick fences do not constitute major infrastructure damage and do not warrant the removal of a high retention value tree. The damage can be repaired and / or renewed for a cost less than the value of the tree or the environmental benefits it provides.

An unacceptable level of risk from the tree has not been demonstrated despite the assertion of "potential for windthrow." None of the three arborists who have previously reported on the tree, including Paul Shearer Consulting, have rated the risk as anything greater than low. It is agreed that the level of risk is low and the risk is considered acceptable.

There are no arboricultural reasons the subject tree should be removed. Consent to remove the tree could not be justified based on criteria in the Leichhardt DCP and the normal criteria used by most NSW councils. Even if removal of the tree was supported on the basis of damage to the dwelling at no 2 Llewellyn Street, the extent of the contribution by the tree to causing the damage should be proven and the option for root pruning and rot barrier installation should be demonstrated as being ineffective before consent was granted.

RECOMMENDATIONS:

*It is recommended that the S82 1A application to remove the *Ficus macrocarpa* var. *hillii* (Hill's weeping fig) outside 2 Llewellyn Street, Balmain is not supported and that the original determination is upheld, for the reasons detailed above.*

9. CONCLUSION

This application has been assessed under Section 82A of the Environmental Planning and Assessment Act, 1979 and is considered to be unsatisfactory. Therefore the application is recommended for refusal for the reasons listed below.

Upon completion of the notification period, a supplementary report will be prepared addressing any further submissions received.

10. RECOMMENDATION

That Council as the consent authority pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 change the original determination of Development Application No. D/2017/40 in the following way:

That the application be refused for the following reasons:

1. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013, pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979:

- a) Clause 1.2 – Aims of the Plan
- b) Clause 5.9 – Preservation of Trees
- c) Clause 5.10 – Heritage Conservation

2. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:

- e) Part C1.4 Heritage Conservation Areas and Heritage Items
- f) Part C1.12 Landscaping
- g) Part C1.14 Tree Management
- h) C2.2.2.4 - The Valley 'Balmain' Distinctive Neighbourhood, Balmain

3. The proposal would result in adverse environmental impacts on the built environment in the locality pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979.

4. The proposal is not considered suitable on the site pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979.

5. The proposal is not considered to be in the public interest pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENT A – DRAFT CONDITIONS OF CONSENT

- 1 Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Ficus macrocarpa</i> var. <i>hillii</i> (Hills weeping fig)	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

- 2 Replacement trees are to be planted within 30 days of the removal. Council is to be notified when the replacement tree has been planted within the timeframe specified above and an inspection arranged with Council's Parks Technical Officer. If the replacement is found to be faulty, damaged, dying or dead prior to being protected under the Tree Management Controls of the Leichhardt Development Control Plan 2013, the replacement tree shall be replaced with the same species, which will comply with the criteria above.

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

The minimum container size of the new tree shall be 75 litres at the time of planting, and shall comply with Australian Standard *Tree Stock for Landscape Use* AS 2303—2015.

- 3 All tree work shall be undertaken by an experienced Arborist with a minimum qualification of Level 3 under the Australian Qualification Framework (AQF). The work shall be undertaken in accordance with AS4373 – 2007 'Pruning of amenity trees' and in compliance with the Safe Work Australia Code of Practice 'Guide to Managing Risks of Tree Trimming and Removal Work'.
- 4 Any works in the vicinity of overhead power lines shall be undertaken by a qualified Arborist with a current *Powerline Awareness Certificate*.

ATTACHMENT B:

- **NON-DESTRUCTIVE GROUND PENETRATING RADAR INVESTIGATION**
- **STRUCTURAL ENGINEER'S REPORT**
- **GEOTECHNICAL INVESTIGATION**
- **HERITAGE IMPACT ASSESSMENT**
- **ARBORIST REPORT**

