 SUPPLEMENTARY REPORT	
Application No.	DA/2020/0346
Address	14 Forrest Street HABERFIELD NSW 2045
Proposal	Demolition of existing rear extension, construction of single storey pavilion and basement carpark.
Date of Lodgement	12 May 2020
Applicant	Mr Domenico Alvaro
Owner	Mr Domenico Alvaro Mrs Susan A Alvaro
Number of Submissions	One (1)
Value of works	\$488,675.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Depth of excavation, landscaped area, built form, length of additions
Recommendation	Refusal
Attachment A	Original IWLPP Report
Attachment B	Amended Plans
Attachment C	Clause 4.6 Exception to Development Standards – Gross floor area below the existing ground floor level
Attachment D	Clause 4.6 Exception to Development Standards – Landscaped area

SUMMARY

This report concerns an assessment of amended plans and additional information submitted to the Inner West Local Planning Panel's (IWLPP) 8 September 2020 meeting in relation to the development application for alterations and additions to a dwelling house at 14 Forrest Street, Haberfield.

At the IWLPP 8 September meeting the application was deferred so that an assessment of amended plans / additional information could be undertaken.

The current information has been provided in an attempt to address and resolve the following reasons for refusal as recommended by Council officers within the original assessment report (Attachment A):

- I. Proposals non-compliance with the existing and desired future character of the Haberfield Heritage Conservation area and non-compliance with clauses 5.10(1) and 5.10(4) of the ALEP 2013.
- II. Non-compliance with Clause 6.5(3)(b) of the Ashfield LEP 2013 – Depth of excavation
- III. Non-compliance with Clause 6.5(3)(d) of the Ashfield LEP 2013 – Landscaped Area
- IV. Non-compliance with clauses 2.3(b), 2.6(e) and 2.12 of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016, relating to the proposed lateral extension.
- V. Non-compliance with clauses 2.6(g) of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016, relating to the proposed built form of the additions.

1. Background

A report on a development application for alterations and additions to the existing dwelling house at 14 Forrest Street, Haberfield was considered by the IWLPP at its meeting on 8 September 2020.

The Panel resolved unanimously to defer the determination of the application and require the provision of the following:

The applicant has requested that this matter be deferred to the next Inner West Local Planning Panel meeting. The Panel agrees that the matter be deferred to the next meeting on 13 October 2020. The Panel requires the applicant to formally submit amended documentation, including an amended Clause 4.6 request, by 11 September 2020.

The amended Clause 4.6 request that Mr Alvaro brought to the Panel meeting was not able to be assessed on the day as the Panel is a decision-making body, rather than an assessment body. Council officers will prepare a supplementary report to the Panel based on the amended information submitted by Mr Alvaro.

The decision of the panel was unanimous.

2. Amended Plans and Additional Information

The current information was submitted on the 5 September 2020 and includes amended floor plans and northern elevation, an amended clause 4.6 relating to clause 6.5(3)(a)(ii) – Gross Floor Area Below Ground and an amended clause 4.6 relating to clause 6.5(3)(d) – Landscaped Area.

3. Planning Assessment

As part of this supplementary report Council officers have re-assessed each of the original concerns/reasons for refusal as outlined within attachment A, against the provided additional information and provide the following responses:

1. *Proposals non-compliance with the existing and desired future character of the Haberfield Heritage Conservation area.*

This matter is not resolved by amended plans/additional information submitted by the applicant and remains current. Original concerns outlined within attachment A remain valid and unresolved. A further assessment of the non-compliance can be found within the original assessment report. The proposal is not supported and the original recommendation of refusal remains current.

The proposal continues to result in a built form and development outcome which presents a two-storey appearance to the streetscape and is not in-keeping with the character of the Haberfield Conservation Area or development controls set out by Council. While its acknowledged that neighbouring sites currently enjoy two storeys, these dwellings were approved/constructed prior to current planning controls, which have consistently and strongly sought to prohibit such built form outcomes from occurring again.

The applicant's justification that the proposal will maintain a single storey appearance does not consider that the fall of the driveway into the basement, which will provide a sight line of a driveway to a basement structure and would present a clear two storey development. This is best illustrated by the amended elevation provided by the applicant, replicated in figure 1 below. As seen within figure 1 pedestrians walking along Forrest Street would easily obtain sightlines of the proposed driveway leading to the basement and the basement its-self.

Acceptance of the proposed basement results in a development pattern not in keeping with the values of the original garden suburb and current planning controls which have consistently and strongly required the retention and protection of original garden suburb pattern of development. The original garden suburb pattern of development actively seeks to have side boundaries unobstructed by development, in order to accommodate a driveway down one side looking on to an at grade garage at the rear of the site. This pattern of development directly attributes to the garden suburb setting and historical significance of separate houses on individual lots, with the suburb originally marketed as the antithesis of the unhealthy crowded inner suburbs of the period. Acceptance of the proposed basement will result in a built form which removes this significant pattern of development through a built form which blocks the existing driveway and presents a clear two storey form.

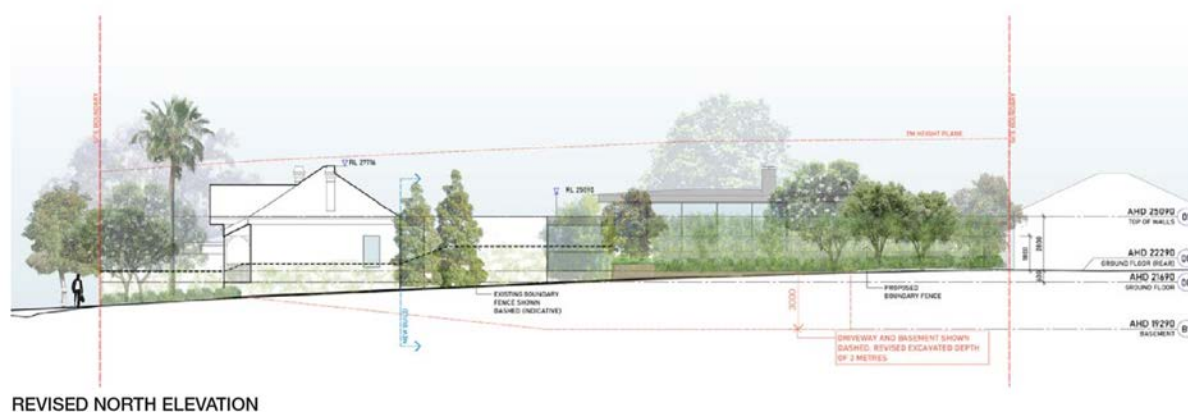


Figure 1 – Elevation provided by applicant – visibility/line of proposed driveway detailed by red dashed line.

II. Non-compliance with Clause 6.5(3)(b) of the Ashfield LEP 2013 – Depth of excavation

Amended elevations provided by the applicant detail a revised basement depth of 3m and attempt to demonstrate a revised design compliant with the 3m maximum excavation limit. The provided information is insufficient to enable approval of the application and fails to provide key details required to be considered prior to the granting of any consent. In particular concerns are raised with regards to the new ceiling height of the basement (as 800mm of excavation have been removed from the proposal in order to achieve compliance with the 3m limit) and if there is any subsequent changes to the proposed finished floor levels of the ground floor above or overall height of the addition. It is also considered that the proposed excavation required for construction would still exceed 3m, as the proposed finished floor level of the garage is at the 3m depth. The proposal is therefore unable to be supported due to insufficient information and a requirement for a full re-assessment of the application prior to the issue of any consent.

Regardless of the above the request to construct a basement is still wholly rejected by Council officers and concerns raised within the original assessment report remain current. In particular concerns regarding impacts to the heritage conservation area (outlined under point 1 and within the original assessment report) remain and have not been resolved by the additional information. The proposal is therefore still recommended for refusal.

III. Non-compliance with Clause 6.5(3)(d) of the Ashfield LEP 2013 – Landscaped Area

The applicants amended plans/additional information attempt to provide justification as to how the site now has 45% landscaped area and why a clause 4.6 variation to vary the required 50% is acceptable. Analysis of this information has highlighted that the proposal only truly incorporates a 38% landscaped area (a 1% increase from previous plans which were at 37%) and attempts to justify an additional 7% area located on top of the basement as landscaped area. Council officers have reviewed the amended clause 4.6 and once again wholly reject the request for a variation. The matters raised within the original assessment report remain valid and have not been addressed by the provided amendments. As outlined in the original assessment report it is considered that compliance could be readily achieved through the removal of the basement and pool, and that such removal would ensure an outcome consistent with the desired current and desired future character.

With regards to the applicant's justification for an additional 7% landscaped area on top of the basement, this is not supported and should not be counted as landscaped area as it does not meet the definition of landscaped area as defined by the ALEP 2013, which states:

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

The proposed additional 7% landscaped area is located on top of a structure (being a basement) and is therefore not counted towards the 50% requirement. Such an interpretation aligns with the intention of the controls which is to retain and protect the original landscape setting of the garden suburb. This interpretation of landscaping and requirement for compliance with the minimum 50% landscaped area has consistently and strongly been applied by Council Officers. Acceptance of the current variation which undermine the strength and consistency of the landscaping controls. The proposal is therefore still recommended for refusal.

- IV. Non-compliance with clauses 2.3(b), 2.6(e) and 2.12 of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016, relating to the proposed lateral extension.*

Amended plans provided detail the removal of the proposed lateral extension along the northern boundary of the site and satisfactorily resolve this concern. However the amended plans detail the revised design being extended further to the rear western boundary, beyond the building envelope original placed on neighbour notification. It is considered that the revised proposal would therefore be required to be re-notified prior to any consent being issued in order for neighbouring properties to review and outline any concerns with this revised design.

- V. Non-compliance with clauses 2.6(g) of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016, relating to the proposed built form of the additions.*

This concern has not been addressed or resolved in any way. The revised proposal results in a greater non-compliance with these controls through the further extension towards the rear western boundary (discussed above). The matters raised within the original assessment report remain current and valid. The proposal is therefore still recommended for refusal.








4. Conclusion

Regarding the items referred to within the record of deferral, the proposal has not addressed all items satisfactorily. This supplementary report provides the additional information and considerations the IWLPP has requested.

5. Recommendation

It is recommended that the application be refused subject to the reasons outlined within attachment A of the original assessment report.

Attachment A – Original IWLPP Report

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2020/0346
Address	14 Forrest Street HABERFIELD NSW 2045
Proposal	Demolition of existing rear extension, construction of single storey pavilion and basement carpark.
Date of Lodgement	12 May 2020
Applicant	Mr Domenico Alvaro
Owner	Mr Domenico Alvaro Mrs Susan A Alvaro
Number of Submissions	One (1)
Value of works	\$488,675.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Depth of excavation, landscaped area, built form, length of additions
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards – Depth of Excavation
Attachment D	Clause 4.6 Exception to Development Standards – Landscaped Area
Attachment E	Statement of Heritage Significance
Attachment F	Conditions of Consent (in the event that the development is approved)
	
LOCALITY MAP	
Subject Site 	Objectors   N
Notified Area 	Supporters 

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of existing rear extension, construction of single storey pavilion and basement carpark at 14 Forrest Street, Haberfield.

The application was notified to surrounding properties and one submission was received in response to the notification.

The main issues that have arisen from the application include:

- Depth of excavation – the proposed depth of excavation is in excess of 3m and results in a variation to clause 6.5(3)(b) of the ALEP 2013. This variation is not supported as basements are not typical to the Haberfield conservation area and the design results in a built form which would be out of character with the locality.
- Non-compliance with Landscaped Area – The proposal results in a non-compliance with the 50% minimum landscaped area. The requested variation to the landscaped area is not supported as compliance may be readily achievable.
- Impact upon Heritage Conservation Area – Council's Heritage Advisor has outlined that the proposal is not in keeping with the objectives and controls for the Haberfield Heritage Conservation Area and outlined an objection to the proposal stating that acceptance of the current scheme will diminish the heritage values of the locality.
- Lateral Extension - The proposal incorporates a lateral extension which is not in keeping with the heritage significant pattern of development within Haberfield and will have a detrimental impact upon the streetscape.
- Built Form – The proposed additions are not secondary or less than the original dwelling house and result in a built form which is not typical of the conservation area.

These non-compliances are not supported and the application is therefore recommended for refusal.

2. Proposal

The current proposal seeks consent for alterations and additions to an existing dwelling house. In particular this development application seeks consent for the following works:

- Demolition of an existing rear single storey extension
- Construction of a basement accommodating two vehicular parking spaces, turn table, cellar and vestibule
- Construction of a new rear single storey pavilion style addition incorporating two new bedrooms, living room, kitchen and dining room
- Internal alterations to the original portion of the existing dwelling house to create a master bedroom with en-suite, lounge room and laundry
- Construction of an in-ground swimming pool within the rear yard
- Landscaping works to create new raised planter beds, terrace and bbq area as well as tree removal, replacement and transplanting

Following Council correspondence outlining concerns with the original proposal, amended plans and additional information were provided by the applicant on the 21 July 2020. This assessment report is based on the amended plans and additional information.

3. Site Description

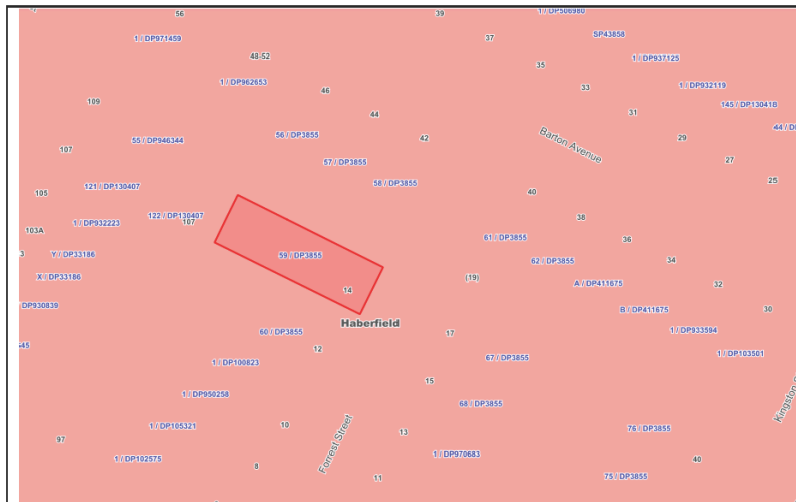
The subject site is located on the northern side of Forrest Street, close to the intersection of Forrest Street and Barton Avenue. The site consists of one (1) allotment and is generally rectangular shaped with a total area of 715.3 sqm and is legally described as 14 Forrest Street, Haberfield. The site has a frontage to Forrest Street of 15.1 metres and a maximum depth of 47 metres.

The site currently supports a single storey brick and tile dwelling house, with various outbuildings including a detached garage. The adjoining properties support single and two storey dwelling houses both of brick and tile construction.

The property is located within the Haberfield Heritage Conservation Area.

The following trees are located on the site and within the vicinity (tree numbers relate to tree protection plan provided by applicant).

Tree No.	Botanical/Common Name	Location	Works
1	<i>Lophostemon confertus</i> (Brush Box)	In road - Forrest Street	Retain/ Protect
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front yard of No 12 Forrest Street	Retain/ Protect
3	<i>Washingtonia robusta</i> (Washington Palm)	Front yard of subject site	Retain/ Protect
4	<i>Plumeria actinophylla</i> (Frangipani)	Front yard of subject site	Retain/ Protect
5	<i>Plumeria actinophylla</i> (Frangipani)	Front yard of subject site - to be transplanted	Transplant
6	<i>Plumeria acutifolia</i> (Frangipani)	Front yard of subject site	Remove
7	<i>Laurus nobilis</i> (Bay Tree)	Rear yard subject site	Remove
8	<i>Archontophoenix cunninghamiana</i> (Bangalow)	Rear yard subject site	Remove
9	<i>Harphyllum caffrum</i> (Kaffir Plum)	Rear No 12 Forrest Street	Retain/ Protect



Zoning Map – Showing R2 Zoning – Site Identified in red box

4. Background

4(a) Site history

Not applicable.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
16 June 2020	<p>Council Officers sent formal correspondence to the applicant requesting the submission of amended plans/ additional information addressing the following concerns:</p> <ul style="list-style-type: none"> - Amended plans detailing removal of the proposed basement in order to comply with Clause 6.5(3)(a)(ii) and (b) which states that gross floor area below existing ground level will not exceed 25% and that excavation will not be in excess of 3m. - Amended plans detailing compliance with the minimum 50% landscaped area or a substantial improvement upon existing deep soil landscaped area. - Amended plans detailing no lateral extensions and building side boundary setbacks in line with the existing dwelling house - Amended plans detailing retention of original heritage significant fabric to the original portion of the dwelling house including windows, fireplaces and walls - Amended plans detailing a reduction to the overall length and scale of the proposed extension. - Amended plans detailing an amended fenestration design which retains original heritage significant windows. - Submission of an amended material finishes schedule, detailing colours typical within the Haberfield Heritage Conservation Area
21 July 2020	The applicant provided amended plans/additional information to address Council correspondence sent on 16 June 2020.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. The DCP provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that "the site is, or can be made, suitable for the proposed use" prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer who outlined no objection to the proposal subject to suitable conditions of consent should the application be approved.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and DCP subject to the imposition of conditions, which have been included in the recommendation of this report.

5(a)(iv) Ashfield Local Environment Plan 2013 (ALEP 2013)

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2011*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.5 - Additional permitted uses for land
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Earthworks
- Clause 6.5 - Development on land in Haberfield Heritage Conservation Area

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R2 – Low Density Residential under the *ALEP 2011*. The *ALEP 2013* defines the development as:

"dwelling house means a building containing only one dwelling"

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 zone.

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

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: 7m	6m to top of new chimney	N/A	Yes
Floor Space Ratio Maximum permissible: 0.5:1 or 357.6m ²	0.36:1 or 256.7m ²	N/A	Yes
Gross Floor Area Below Existing Ground Level Maximum permissible: 25% (40.6m ²)	24.7m ² or 16%	N/A	Yes
No excavation in excess of 3m	3.8m	26.6%	No
Landscaping in Haberfield 50% of site Minimum Landscaped Area: 50% or 357.6m ²	37% or 265m ²	26%	No

Heritage

The site is located within the Haberfield Heritage Conservation Area. The application was accompanied by information addressing heritage management and impacts upon heritage significance. This documentation has been reviewed by Council's Heritage Advisor who expressed an objection to the proposal and recommended that the application should be refused as it is not in line with the relevant values and objectives for the conservation area. Council's Heritage Advisor is specifically concerned that the proposal does not meet the controls and objectives of clause 5.10 – Heritage Conservation outlined within the Ashfield LEP 2013 and recommended that the application be refused due to its impacts upon the conservation area.

Council's Heritage Advisor has made the following comments with regards to the current proposal:

- The assessment of significance contained in the SOHI is not supported as this house demonstrates the transition from the typical suburban housing stock of the late nineteenth century to the Federation era housing stock that Richard Stanton promoted in his garden suburb. There are very few of these transitional houses in Haberfield, so the design of the building is rare at a local level. Council applications for modifications to the dwelling or Waterboard diagrams that would indicate the extent of changes to the original layout have not been sourced. The proposal removes key elements of the planning that demonstrate that the residence is an early example of one of Stanton's house types developed for use in Haberfield.
- It is proposed to excavate a sloping drive and provide parking in the rear. Excavation for garages is not permitted in Haberfield unless the natural slope of the land permits a lower level. This residence is on the high side of the street. In addition, lowered courtyards are also not a feature of the housing stock of this era. Federation era housing stock is predominately single storey with a floor level set above ground level. The excavation of a basement will impact on the main portion of the house that is being retained and will change the moisture content adjacent to the footings. The excavated

section will no longer be able to be landscaped as there will be no deep soil, thus negating the garden suburb aim of the subdivision.

- The consistent conservation approach taken in Haberfield is to retain the principal room layout beneath the main roof and to alter the areas of lesser significance. This proposal includes substantial internal alterations to the main portion of the house to provide ensuites that cannot be supported on heritage grounds. The controls require the retention of original elements including joinery and chimneys and the retention of these features should be indicated on the architectural drawings. The surviving fireplaces, as shown in the Real Estate photographs and in the SOHI are rare in the Haberfield, the majority of the fireplace surrounds were Art Nouveau in style and were timber not marble. Removal of original details or alteration of room uses to secondary uses such as bathrooms is contrary to the aim of conserving the character of the Haberfield Conservation Area as a whole, as it diminished the identified significance of the suburb as a repository of details of the Federation era.
- Within the HCA substantial alterations are permitted to the rear wings (particularly if these areas have already been modified) however the main portion of the house needs to retain its Federation detailing to contribute to the character of the streetscape and the HCA. The architectural render of the proposal shows the main portion of the building devoid of any original detailing, a slate roof without the necessary Federation era terracotta cresting and a bright white colour scheme. The building is almost unrecognisable as being of the Federation era due to this stripping back of the historic detail and the inappropriate modern colour scheme. Removal of detailing is contrary to the aims of the DCP and the overall aims of the LEP, to conserve the environmental heritage of the former Ashfield LGA.
- The dark materials selected are not suitable for this HCA. Materials with a medium solar absorptancy that correspond to the traditional palette of materials utilised in the HCA should be employed. Dark Grey and Black materials fall within the Dark range under BASIX and add to the heat load, as do large areas of fixed glazing. The housing stock in Haberfield was intended to be passively ventilated.
- The heritage advice provided by the applicant does not demonstrate an understanding of the longstanding efforts by the former Ashfield Council (now Inner West Council) to retain the particular character of the Garden Suburb of Haberfield via its Heritage Conservation Area designation and the specific HCA controls. Whilst the design might be acceptable in a mixed HCA, it is not acceptable in Haberfield where the housing stock is of a consistent scale and palette of materials.

The application is recommended for refusal due to impacts to the heritage conservation area and non-compliance with clause 5.10 of the Ashfield LEP 2013.

Clause 4.6 Exceptions to Development Standards – Depth of Excavation

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

- Clause 6.5 - Development on land in Haberfield Heritage Conservation Area

The applicant seeks a variation to the Development on land in Haberfield Conservation Area development standard under Clause 6.5(3)(b) of the Ashfield local environmental plan by 27% (0.8 metres).

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the applicable local environmental plan justifying the proposed contravention of the development standard which is summarised as follows:

- *Compliance with the development standard is unreasonable and unnecessary as the proposal, irrespective of the depth of excavation will provide a single storey dwelling as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.*
- *The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.*
- *The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.*
- *The proposed basement is not sited below the significant front portion of the existing dwelling, which is to be retained and the depth of excavation will not affect the structural stability of this portion.*
- *Exceedance of the depth control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.*

The applicant's written rationale has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is not in the public interest because it is not consistent with the objectives of the R2, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

To provide for the housing needs of the community within a low-density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The construction of a basement with an area of 115m² and 3.8m of excavation is not required in-order for the site to accommodate two vehicular parking spaces and residential storage. Two vehicular parking spaces are readily achievable within an at grade garage located towards the rear of the site.

It is considered the development is not in the public interest because it is not consistent with the objectives of the development on land within the Haberfield Heritage Conservation Area

development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

The objective of this clause is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area

Comment: Acceptance of the proposed basement is anticipated to result in a built form which presents a two-storey appearance to the streetscape which is not in keeping with the character of the Haberfield conservation area or the development controls set out by Council. The applicant's justification that the proposal will maintain a single storey appearance does not take into account that the fall of the driveway into the basement, which will provide a sight line of a driveway to a basement structure and would present a clear two storey development. This is best illustrated by the photomontage provided by the applicant, replicated in figure 1 below. Current elevational plans fail to detail the fall of the driveway and no driveway section has been provided at this time.

- Acceptance of the proposed basement results in a development pattern not in keeping with the values of the original garden suburb and current planning controls which have consistently and strongly required the retention and protection of original garden suburb pattern of development. The original garden suburb pattern of development actively seeks to have side boundaries unobstructed by development, in order to accommodate a driveway down one side looking on to an at grade garage at the rear of the site. This pattern of development directly attributes to the garden suburb setting and historical significance of separate houses on individual lots, with the suburb originally marketed as the antithesis of the unhealthy crowded inner suburbs of the period. Acceptance of the proposed basement will result in a built form which removes this significant pattern of development through a built form which blocks the existing driveway and presents a clear two storey form.
- Council has consistently required compliance with the maximum 3m excavation standard within the Haberfield Heritage Conservation Area. Acceptance of the current variation would undermine the strength and consistency of the controls.



Figure 1 – Photomontage provided by applicant – visibility of proposed driveway detailed within red circle.

The strength of controls relates directly to their consistent application by the relevant consent authority. In this instance the requested variation to the depth of excavation control could be readily complied with/ avoided through a re-design of the application. Such a re-design would result in an overall outcome which is consistent with the existing and desired future character of the Haberfield Heritage Conservation Area.

The proposal thereby does not accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are not sufficient planning grounds to justify the departure from clause 6.5 and it is recommended the Clause 4.6 exception not be granted and the application refused.

Clause 4.6 Exceptions to Development Standards – Landscaped Area

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

- Clause 6.5 - Development on land in Haberfield Heritage Conservation Area

The applicant seeks a variation to the landscaped area development standard under Clause 6.5(3)(d) of the Ashfield local environmental plan 2013 by 26% (92.6sqm).

Analysis of existing on-site landscaped area highlights that the site currently enjoys 47.6% (341m²) landscaped area – which is already less than the required 50% - and that the current proposal decreases on-site landscaping by 76m². Thus, the proposal seeks to move further away from the desired character of the area in terms of landscaping.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the applicable local environmental plan justifying the proposed contravention of the development standard which is summarised as follows:

- *Compliance with the development standard is unreasonable and unnecessary as the proposal will provide a single storey dwelling within a landscaped setting as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.*
- *The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.*
- *The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.*
- *The non-compliant landscaped area is not as the result of a noncompliant FSR as the proposal will provide a gross floor area significantly below the FSR development standard.*
- *Overall, the proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).*
- *The shortfall in terms of the development can be justified as the proposal meets the objective of the control and provides a suitable built form within the locality within a landscaped setting. This can be described as an environmental planning ground.*

The applicant's written rationale has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The provided clause 4.6 request has not adequately outlined why compliance is unreasonable when it is considered that minor amendments to the proposal, such as deletion of the basement and creation of an ordinary two car garage, would result in a compliant landscaping area. On balance, and given the importance of the landscaped setting to the garden suburb of Haberfield, the requested variation to landscaped area is not supported and the application is recommended for refusal.

It is considered the development is consistent with the objectives of the R2, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal has been designed to meet the day to day needs of the residents, while also ensuring a variety of housing types within the low density residential zone.

It is considered the development is not the public interest because it is not consistent with the objectives of the Clauses 1.2 – Aims of Plan and 6.5 – Development on land in Haberfield Heritage Conservation Area, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan. The objectives of these clauses are as follows:

- *To protect the urban character of the Haberfield, Croydon and Summer Hill urban village centres while providing opportunities for small-scale, infill development that enhances the amenity and vitality of the centres,*
- *The objective of this clause is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area*

The development does not meet these objectives for the following reasons:

- The proposed variation diminishes the urban character of the Haberfield Heritage Conservation Area and erodes the landscape setting of the original garden suburb.
- Elements of the development which result in the requested variation to the minimum landscaped area relate to the proposed basement and in-ground swimming pool. These areas could easily be modified or removed to ensure compliance with the minimum landscaped area and would still result in a development which meets the day to day needs of residents. For example, the proposed basement could easily be removed and converted to an at grade two car garage located at the rear of the site. This amendment would be consistent with the desired future character of the area and values of the Heritage Conservation Area.
- Council has consistently required compliance with the minimum landscaped area within the Haberfield Heritage Conservation Area and only considered variations to the landscaped area where an applicant can demonstrate a substantial increase to existing on-site landscaped area/ demonstrate that any application results in a landscaped area closer to the minimum 50% required. The current application seeks to substantially reduce existing on-site landscaped area (by 76m²). Acceptance of which would undermine the strength and consistency of the landscaping controls.

The strength of controls relates directly to their consistent application by the relevant consent authority. In this instance the requested variation to the landscaping control could be avoided through a re-design of the application. Such a re-design would result in an overall outcome which is consistent with the existing and desired future character of the Haberfield Heritage Conservation Area.

The proposal the proposal is not considered to accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are not sufficient planning grounds to justify the departure from minimum landscaped area development standard and it is recommended the Clause 4.6 exception not be granted and the application be refused.

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not particularly relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
15 - Stormwater Management	Yes
B – Public Domain	
E2 – Haberfield Heritage Conservation Area	
1 – Preliminary	No – see discussion
2 – Detailed Planning measures for Residential properties	No – see discussion
F – Development Category Guidelines	
1 – Dwelling Houses and Dual Occupancy	Yes

The following provides discussion of the relevant issues:

Lateral Extension

The current application results in a variation to clauses 2.3(b), 2.6(e), and 2.12 of Chapter E2 – Haberfield Heritage Conservation Area within the Inner West Comprehensive Development Control Plan 2016. These controls require new development to be located at the rear of the site, maintain similar development pattern and size established by the original development and retain existing front and side setbacks as to not dominate or detract from the original dwelling and streetscape.

The current proposal seeks consent for the creation of a new lateral extension along the northern boundary of the site, relating to the proposed living room. This lateral extension results in a modern and conflicting built form presentation to the streetscape and is not in-keeping with the objectives or controls of the Haberfield Conservation Area. Analysis of the provided survey plan and proposed floor plans has revealed that the proposed lateral extension is to be setback roughly 26m from the front boundary, have a finished floor level 1.1m higher than the existing footpath and result in an overall height of 4.7m. This built form is best demonstrated by the eastern elevation provided by the applicant (see figure 2 below), which highlights that the proposed lateral extension will be readily visible in the streetscape.

Such a design outcome results in a direct contrast to the values of the conservation area, which has had a high degree of emphasis place upon retaining and enforcing existing front and side setbacks to ensure that the original dwelling house is the focus point of the streetscape.

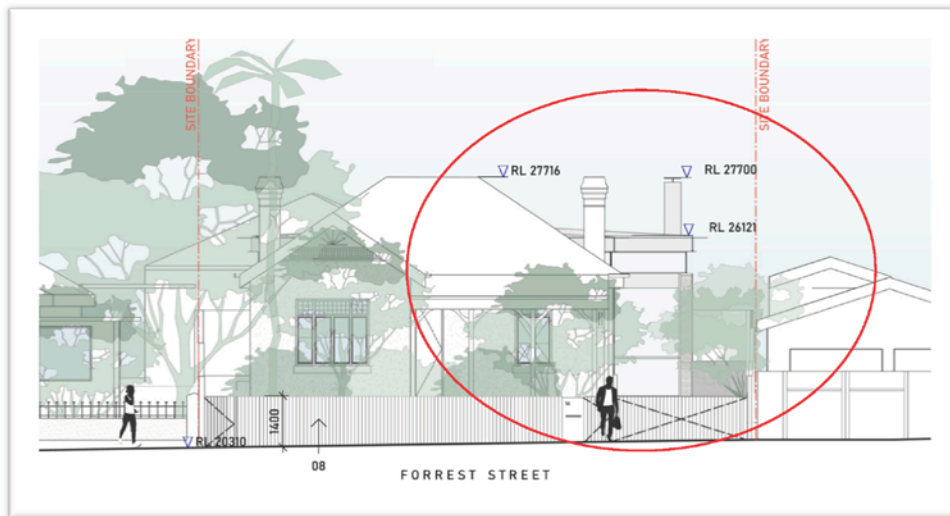


Figure 2 – Eastern (Streetscape) Elevation – This extract highlights that the lateral extension will be highly visible from the Forrest Street.

In this instance acceptance of the proposed lateral extension results in a development pattern not in keeping with the values of the original garden suburb and current planning controls which have consistently and strongly required the retention and protection of original garden suburb pattern of development (detailed in figure 3 below). As seen within figure 3 below the original garden suburb pattern of development actively seeks to have side boundaries unobstructed by development, in order to accommodate a driveway down one side and landscaping/ pedestrian access down the other. A “landscaped setting” and adequate open space between buildings is not maintained in the current design.

This pattern of development directly attributes to the garden suburb setting and historical significance of separate houses on individual lots, with the suburb originally marketed as the antithesis of the unhealthy crowded inner suburbs of the period. Acceptance of the proposed lateral extension will result in a built form which removes this significant pattern of development through a built form which blocks the existing driveway.

Council’s Heritage Advisor has reviewed this proposed lateral extension and outlined strong objection to such a design scheme, outlining that acceptance of such an outcome will significantly disrupt and diminish the established pattern of development and garden suburb nature which Haberfield is recognised for. The proposed lateral extension not supported and the application is therefore recommended for refusal.

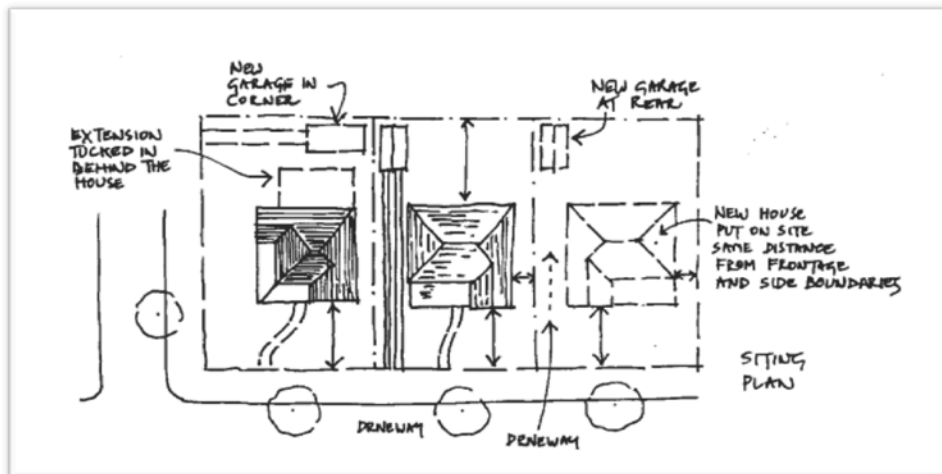


Figure 3 – Established and desired development pattern

Built Form

The current application results in a variation to clause 2.6 (g) of Chapter E2 – Haberfield Heritage Conservation Area within the Inner West Comprehensive Development Control Plan 2016. This control requires extensions to be less than and secondary to the original house. The intention of this control is to ensure that residential buildings in Haberfield are uniformly single storey, of a similar bulk and are of a similar shape but individually designed.

The current proposal seeks consent for a rear addition which is substantially larger than the original house and results in a built form which is not of a similar bulk or shape to that of other designs within the conservation area. The length of the proposed built form is best illustrated in figure 4 below – roof plan provided by the applicant.

The proposed length of the addition is largely driven by the proposed courtyard in front of the basement and the internal stairs providing access to the basement. The removal of the basement, associated courtyard and internal access stairs would provide opportunities for the overall length of the addition to be lessened and result in a built form which is in-line with the current and desired future character of the area. A reduction to the overall length of the addition would also provide opportunities for additional on-site landscaped area to be created ensuring greater compliance with the minimum required 50% landscaped area, improved solar access for neighbouring sites to the south and reduced impacts of bulk/scale for neighbouring sites.

Council's Heritage Advisor has reviewed the proposed length of the additions and also expressed concerns regarding the length and resulting out of character bulk and scale. The proposed variation to clause 2.6 (g) is not supported and the application is recommended for refusal.

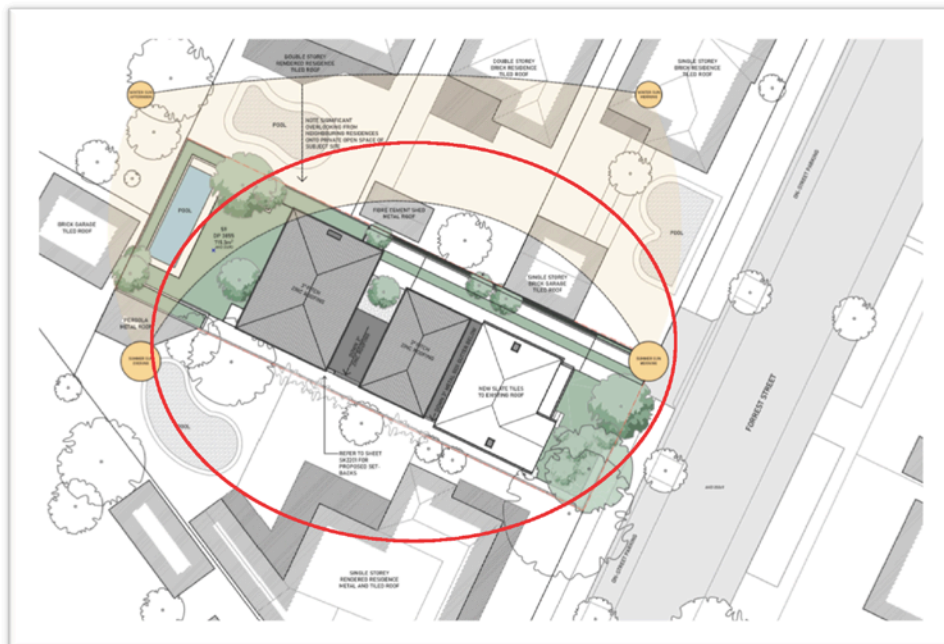


Figure 4 – Roof Plan provided by applicant – Extent of additions compared to original dwelling detailed within red circle.

Basement Setbacks

The proposal seeks consent for a nil boundary setback for the proposed basement along the northern boundary of the site. This setback results in a variation to clause DS4.4 and DS4.5 of Chapter F – Development Category Guidelines within the Inner West Comprehensive Development Control Plan 2016. These controls require development to have a 900mm setback for dwelling houses and a 450mm setback for outbuildings. The intention of these controls is to ensure that building setbacks are consistent with that prevailing in the street, reduce bulk and scale and provide adequate visual and acoustic privacy. In this instance the proposed basement is not supported as it is inconsistent with LEP controls discussed above and not in-keeping with the values or significance of the Heritage Conservation Area.

No objection is raised to the proposed nil boundary setback of the basement from a planning perspective should the Panel determine to support the proposal. The proposed basement setback will not impact visual or acoustic privacy of neighbouring sites, will not result in a visible setback inconsistent with the streetscape and will not result in bulk and scale for neighbouring sites. Appropriate conditions regarding protection of neighbouring properties, trees and dilapidation reports could be imposed on a consent in the event the development were approved.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

Impact on Haberfield Heritage Conservation Area

As noted by Council's Heritage Advisor and highlighted by the non-compliances with LEP and DCP controls, the proposal is not in-keeping with the existing values or desired future character for the Haberfield Heritage Conservation Area. Acceptance of the proposal will result in a development which will erode and undermine the historical significance of the locality and the strength of current planning controls which have been consistently applied to dwelling houses within the HCA.

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

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, subject to the scale of the development being reduced. This has been demonstrated in the assessment of the application.

5(g) Any submissions

The application was notified in accordance with Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill for a period of 14 days to surrounding properties. One (1) submission was received in response to the notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Damage to adjoining property resulting from basement excavation

Comment: The proposed basement has been reduced in size since the time of initial lodgement. The proposed basement is not supported, and the application recommended for refusal for the reasons outlined above. Should the application be approved appropriate conditions requiring dilapidation reports, protection of neighbouring sites and tree protection has been recommended for any consent issued.

Issue: Loss of Solar Access

Comment: Shadow impacts resultant from the proposed additions have been assessed and are generally compliant with DCP controls for solar access and neighbouring dwellings. In this instance the extent of overshadowing is unavoidable given the orientation of the sites, resultant from original subdivision. The proposal is largely compliant with LEP and DCP controls regarding height, FSR, wall height and setbacks. Improved solar access for neighbouring sites may be achieved through a reduction to the overall length of the addition as discussed above. Overall impacts of overshadowing are considered to be acceptable and unavoidable due to the orientation of the site.

Issue: Height and Length of addition and loss of garden suburb outlook/feel

Comment: The proposed length of the addition has been assessed above and is not supported by Council. The height of the proposed structure has been reviewed and is compliant with the maximum height limit. The application is recommended for refusal because of non-compliances discussed above.

5(h) 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, as it does not ensure consistent application of current Planning controls and is not in line with the existing or future desired future character of the Haberfield Heritage Conservation Area.

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.

- Development Engineers – Council's Development Assessment Engineers have reviewed the proposal and outlined no objection, subject to suitable conditions of consent regarding security damage bonds, stormwater and driveway crossovers.
- Urban Forests – The proposal has been referred to Council's Urban Forests Team who outlined no objection to the proposal, subject to suitable conditions of consent. Council's Urban Forests Team has outlined that the requested removal of three (3) on-site trees and transplanting of one (1) tree is supported, subject to suitable conditions of consent requiring replacement plantings. Other trees on-site, in the street and on neighbouring sites also have conditions recommending protection and retention.
- Heritage Advisor – The proposal was referred to Council's Heritage Advisor who outlined an objection to the proposal. This referral and the concerns raised are discussed within the body of the report.

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid could be imposed on any consent granted.

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will result in significant impacts on the streetscape and significance of the Haberfield Heritage Conservation Area and is considered to not be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. The applicant has made written requests pursuant to Clause 4.6 of the *Ashfield Local Environmental Plan 2013*. After considering the requests, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will not be in the public interest because the exceedance is not consistent with the objectives of the standard or of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2020/0346 for Demolition of existing rear extension, construction of single storey pavilion. at 14 Forrest Street Haberfield for the reasons listed in Attachment A.

Attachment A – Recommended Reasons For Refusal

Attachment A – Recommended Reasons For Refusal

The Inner West Local Planning Panel, as the responsible authority, hereby refuses Development Application No. DA/2020/0346 for alteration and additions a dwelling at 14 Forrest Street, Haberfield for the following reasons:

1. The proposal is inconsistent with the aims set out in clause 1.2(2) of the Ashfield Local Environmental Plan 2013 as the proposal does not protect the urban character of Haberfield.
2. The proposal is inconsistent with the aims set out in clause 5.10(1) and 5.10(4) of the Ashfield Local Environmental Plan 2013 as the proposal does not conserve the heritage significance of the heritage conservation area including fabric, settings and views.
3. The proposal is contrary to clause 6.5(3)(b) of the Ashfield Local Environmental Plan 2013 as the proposal involves excavation in excess of 3m below ground level (existing).
4. The proposal is contrary to clause 6.5(3)(d) of the Ashfield Local Environmental Plan 2013 as the proposal does result in at least 50% of the site being landscaped area.
5. The proposal is contrary to clauses 2.3(b), 2.6(e), and 2.12 of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016 as the proposal does not maintain similar development pattern and size established by the original development and retain existing front and side setbacks.
6. The proposal is contrary to clause 2.6 (g) of Chapter E2 – Haberfield Heritage Conservation Area of the Comprehensive Inner West Development Control Plan 2016 the proposal does not result in an extension less than and secondary to the original house
7. In accordance with Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development would have adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality.
8. Pursuant to the provisions of Section 4.15(1)(d)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal would not be in the public interest.

Attachment B – Plans of proposed development

14 FORREST ST HABERFIELD | ALTERATIONS + ADDITIONS

DEVELOPMENT APPLICATION DRAWING LIST	
SHEET NUMBER	SHEET NAME
01	GENERAL NOTES
02	SECTION 1 - ELEVATIONS
03	SECTION 2 - ELEVATIONS
04	SECTION 3 - ELEVATIONS
05	SECTION 4 - ELEVATIONS
06	SECTION 5 - ELEVATIONS
07	SECTION 6 - ELEVATIONS
08	SECTION 7 - ELEVATIONS
09	SECTION 8 - ELEVATIONS
10	SECTION 9 - ELEVATIONS
11	SECTION 10 - ELEVATIONS
12	SECTION 11 - ELEVATIONS
13	SECTION 12 - ELEVATIONS
14	SECTION 13 - ELEVATIONS
15	SECTION 14 - ELEVATIONS
16	SECTION 15 - ELEVATIONS
17	SECTION 16 - ELEVATIONS
18	SECTION 17 - ELEVATIONS
19	SECTION 18 - ELEVATIONS
20	SECTION 19 - ELEVATIONS
21	SECTION 20 - ELEVATIONS
22	SECTION 21 - ELEVATIONS
23	SECTION 22 - ELEVATIONS
24	SECTION 23 - ELEVATIONS
25	SECTION 24 - ELEVATIONS
26	SECTION 25 - ELEVATIONS
27	SECTION 26 - ELEVATIONS
28	SECTION 27 - ELEVATIONS
29	SECTION 28 - ELEVATIONS
30	SECTION 29 - ELEVATIONS
31	SECTION 30 - ELEVATIONS
32	SECTION 31 - ELEVATIONS
33	SECTION 32 - ELEVATIONS
34	SECTION 33 - ELEVATIONS
35	SECTION 34 - ELEVATIONS
36	SECTION 35 - ELEVATIONS
37	SECTION 36 - ELEVATIONS
38	SECTION 37 - ELEVATIONS
39	SECTION 38 - ELEVATIONS
40	SECTION 39 - ELEVATIONS
41	SECTION 40 - ELEVATIONS
42	SECTION 41 - ELEVATIONS
43	SECTION 42 - ELEVATIONS
44	SECTION 43 - ELEVATIONS
45	SECTION 44 - ELEVATIONS
46	SECTION 45 - ELEVATIONS
47	SECTION 46 - ELEVATIONS
48	SECTION 47 - ELEVATIONS
49	SECTION 48 - ELEVATIONS
50	SECTION 49 - ELEVATIONS
51	SECTION 50 - ELEVATIONS
52	SECTION 51 - ELEVATIONS
53	SECTION 52 - ELEVATIONS
54	SECTION 53 - ELEVATIONS
55	SECTION 54 - ELEVATIONS
56	SECTION 55 - ELEVATIONS
57	SECTION 56 - ELEVATIONS
58	SECTION 57 - ELEVATIONS
59	SECTION 58 - ELEVATIONS
60	SECTION 59 - ELEVATIONS
61	SECTION 60 - ELEVATIONS
62	SECTION 61 - ELEVATIONS
63	SECTION 62 - ELEVATIONS
64	SECTION 63 - ELEVATIONS
65	SECTION 64 - ELEVATIONS
66	SECTION 65 - ELEVATIONS
67	SECTION 66 - ELEVATIONS
68	SECTION 67 - ELEVATIONS
69	SECTION 68 - ELEVATIONS
70	SECTION 69 - ELEVATIONS
71	SECTION 70 - ELEVATIONS
72	SECTION 71 - ELEVATIONS
73	SECTION 72 - ELEVATIONS
74	SECTION 73 - ELEVATIONS
75	SECTION 74 - ELEVATIONS
76	SECTION 75 - ELEVATIONS
77	SECTION 76 - ELEVATIONS
78	SECTION 77 - ELEVATIONS
79	SECTION 78 - ELEVATIONS
80	SECTION 79 - ELEVATIONS
81	SECTION 80 - ELEVATIONS
82	SECTION 81 - ELEVATIONS
83	SECTION 82 - ELEVATIONS
84	SECTION 83 - ELEVATIONS
85	SECTION 84 - ELEVATIONS
86	SECTION 85 - ELEVATIONS
87	SECTION 86 - ELEVATIONS
88	SECTION 87 - ELEVATIONS
89	SECTION 88 - ELEVATIONS
90	SECTION 89 - ELEVATIONS
91	SECTION 90 - ELEVATIONS
92	SECTION 91 - ELEVATIONS
93	SECTION 92 - ELEVATIONS
94	SECTION 93 - ELEVATIONS
95	SECTION 94 - ELEVATIONS
96	SECTION 95 - ELEVATIONS
97	SECTION 96 - ELEVATIONS
98	SECTION 97 - ELEVATIONS
99	SECTION 98 - ELEVATIONS
100	SECTION 99 - ELEVATIONS
101	SECTION 100 - ELEVATIONS



PROPOSED VIEW FROM FORREST STREET

ALVARO

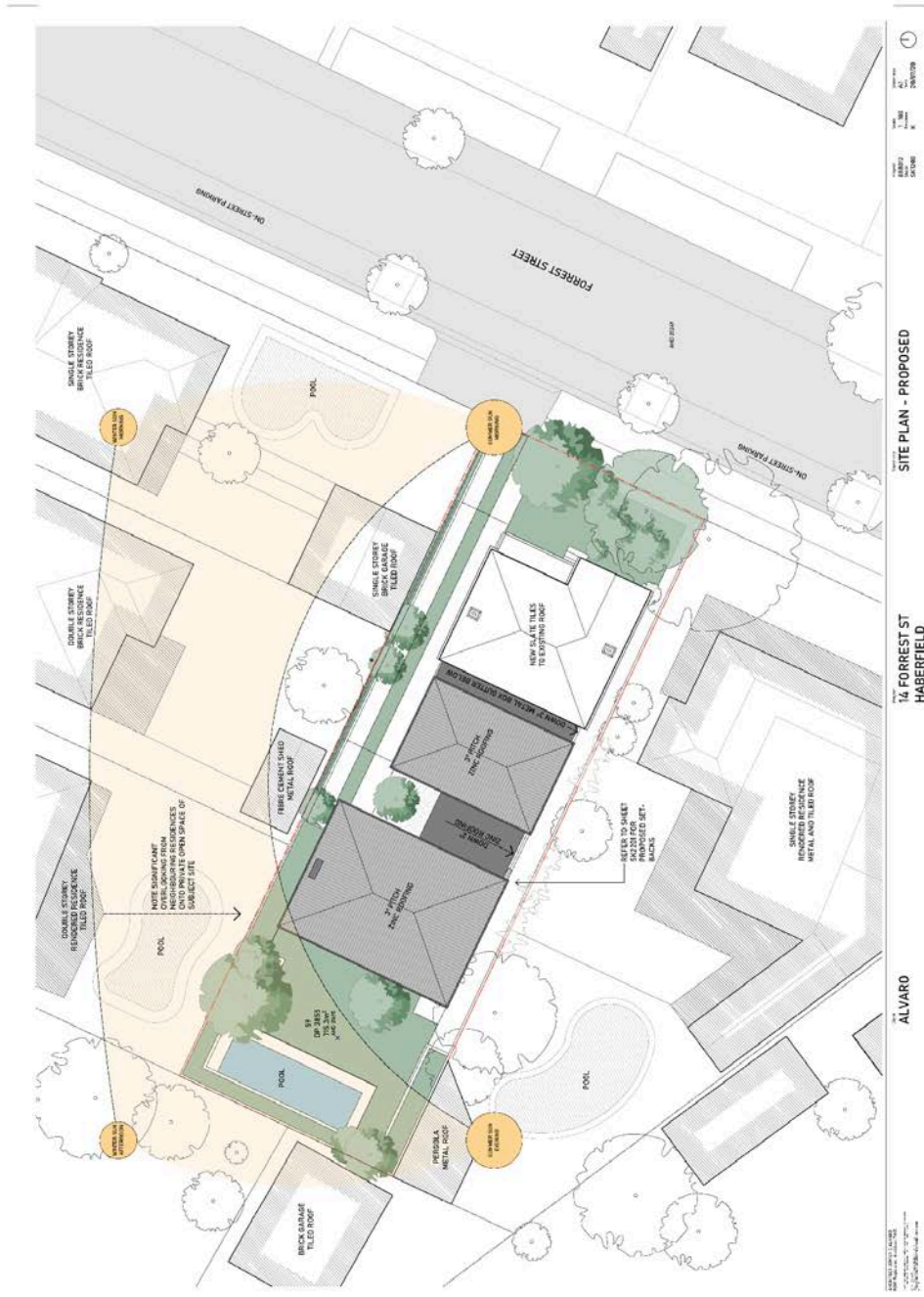
14 FORREST ST HABERFIELD

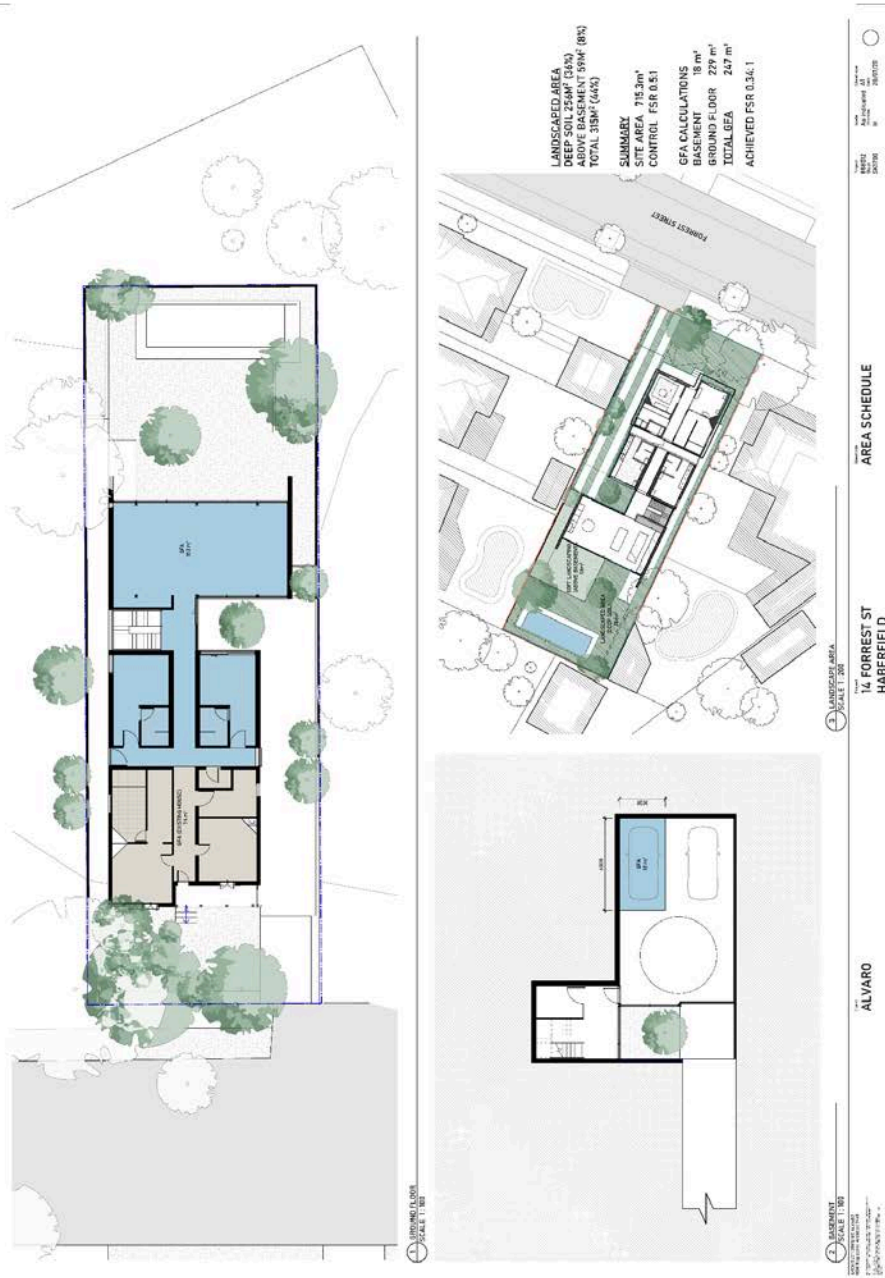
COVERSHEET

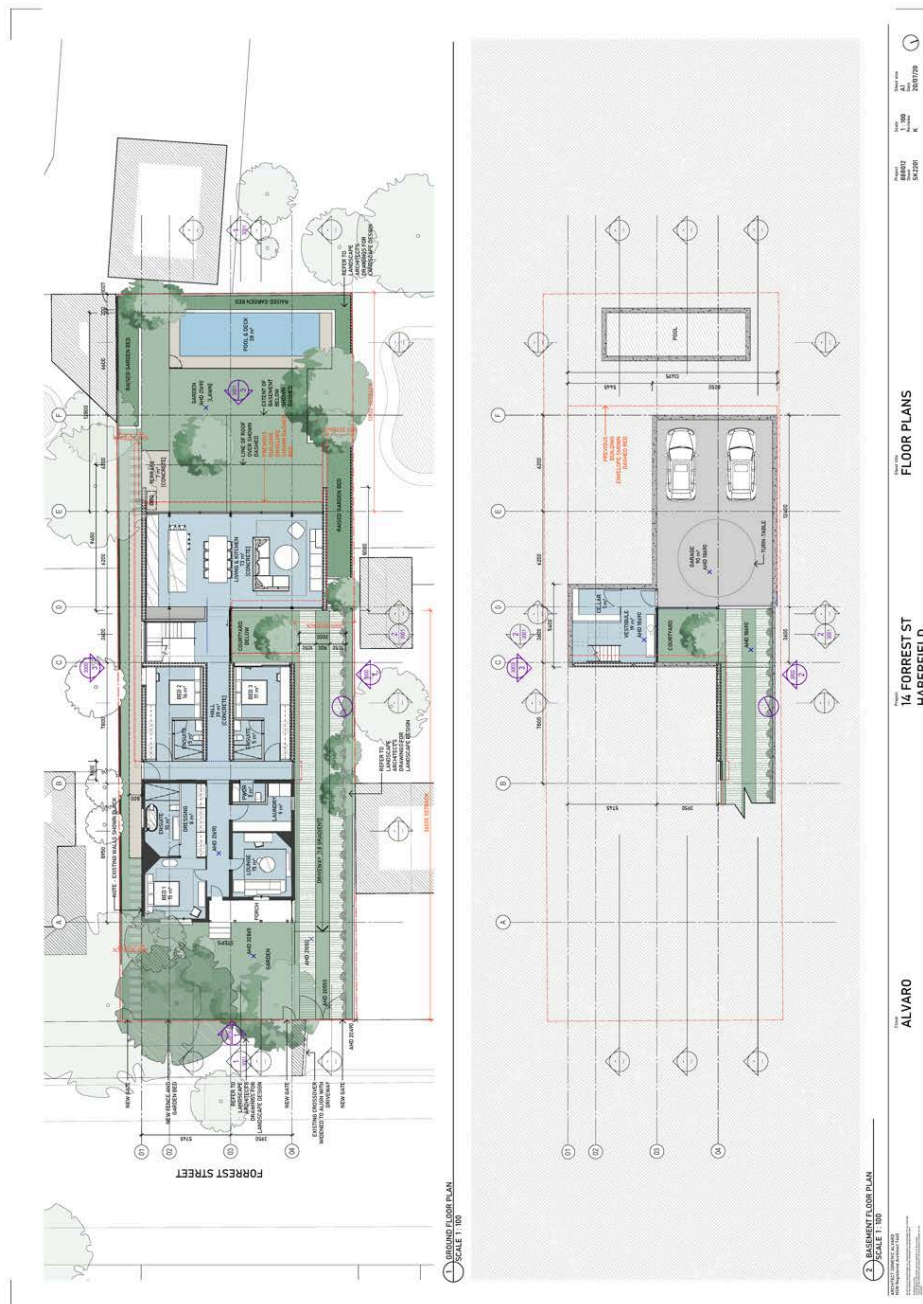
DATE: 14/01/2024

SCALE: 1:100

PROJECT NO: 2024/00000000000000000000



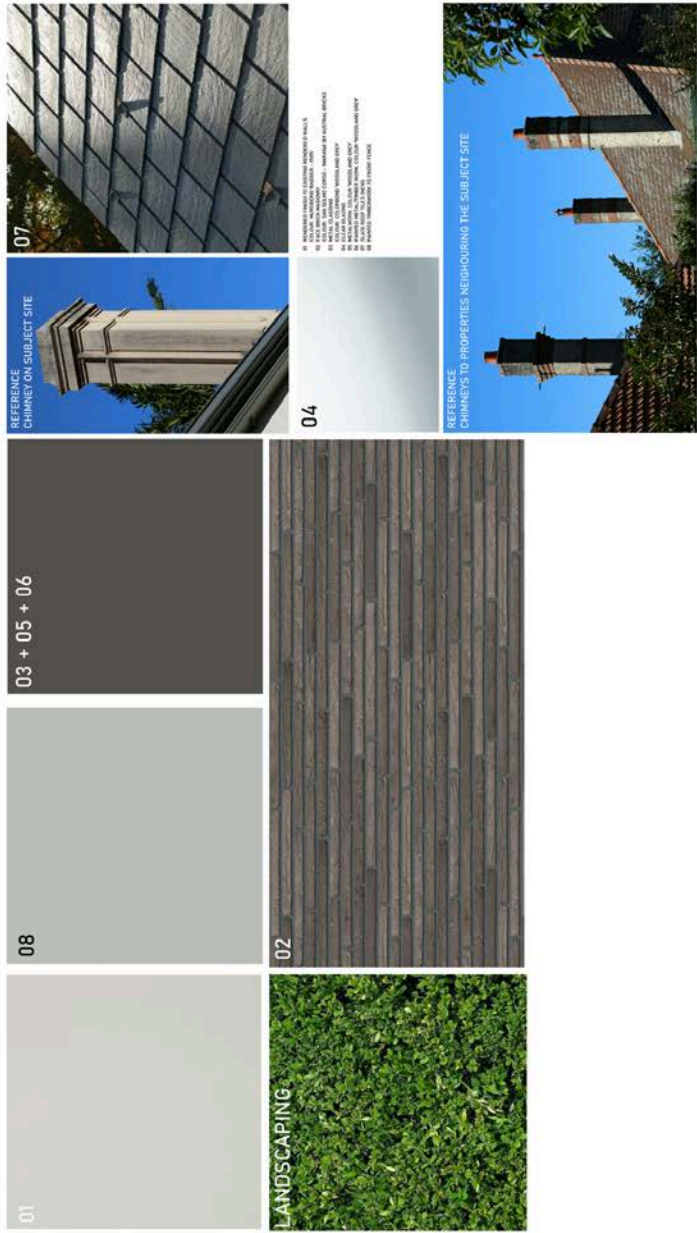








DATE: 15/06/2018
DRAWN BY: ALVARO
CHECKED BY: ALVARO
PROJECT: 14 FORREST ST HABERFIELD
SCALE: 1:500
SHEET: 1 OF 1



ALVARO

14 FORREST ST
HABERFIELD

MATERIAL AND FINISHES
SCHEDULE

Attachment C- Clause 4.6 Exception to Development Standards

**14 Forrest Street, Haberfield****REQUEST FOR VARIATION TO DEVELOPMENT ON LAND IN
HABERFIELD HERITAGE CONSERVATION AREA DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD LEP 2013****Clause 6.5 – Development on land in Haberfield Conservation Area**

Clause 6.5 of the Ashfield LEP 2013 sets out the following development standards:

- (3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that—
 - (a) if the development involves an existing building—
 - (i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and
 - (ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and
 - (b) the development will not involve excavation in excess of 3 metres below ground level (existing), and
 - (c) the development will not involve the installation of dormer or gabled windows, and
 - (d) at least 50% of the site will be landscaped area.

The proposal seeks to provide a dwelling with a basement, which will exceed the 25% gross floor area control, will involve excavation of 3.6m and overall will provide a landscaped area of less than 50%.

The proposal therefore seeks to vary these development standards. This written submission deals with the variation relating to the depth of excavation development standard (Clause 6.5(3)(b)) as the proposal seeks to undertake excavation to a depth of 3.6m.

The objective of Clause 6.5 is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.

Studio 9 | The Interchange | 13-29 Nichols Street | Surry Hills | NSW 2010
telephone: 02 9360 0989 | www.a2p.com.au

The zoning of the land is R2. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
 - (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*
 - (4) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by Commission Morris in. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance². All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with³. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposal, irrespective of the depth of excavation will provide a single storey dwelling as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.
- The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.
- The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.

² *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

³ see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The proposed basement is not sited below the significant front portion of the existing dwelling, which is to be retained and the depth of excavation will not affect the structural stability of this portion.
- Exceedance of the depth control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

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

Given the consistency of the proposal against the zone objectives and the objective of Clause 6.5 (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁴.

The depth proposed beyond the 3m depth is:

- 600mm

There are sufficient environmental planning grounds in that the proposed basement floor area can be achieved without adverse impacts in terms of the environmental amenity of adjoining properties. Given this is located below ground, the amenity of adjoining properties will not be affected by the additional depth of 600mm proposed beyond the standard.

Overall, the proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The aspect of the development that breaches the depth of excavation development standard can be justified as the proposal meets the objective of the control and provides a suitable built form within the locality. This can be described as an environmental planning ground. In addition, the lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁵.

⁴ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]
⁵ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the development standard, which seeks to maintain the single storey appearance of dwellings in the Haberfield Conservation Area.

Comment: The dwelling as proposed to be altered will present as a single storey dwelling within the streetscape and will provide an overall FSR control below the FSR development standard for the site. The proposal will allow for suitable contemporary living on a site of this size whilst maintaining the single storey presentation.

Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with the zone objectives, as it will provide a single storey dwelling house, being low density.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objective of the development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁶.

Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment by maintaining the single storey nature as required by the development standard.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

⁶ *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118 at Para [28]



Jennie Askin
Director
aSquare Planning Pty Ltd

21 July 2020

Attachment D – Statement of Heritage Significance**14 Forrest Street, Haberfield****REQUEST FOR VARIATION TO DEVELOPMENT ON LAND IN
HABERFIELD HERITAGE CONSERVATION AREA DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD LEP 2013****Clause 6.5 – Development on land in Haberfield Conservation Area**

Clause 6.5 of the Ashfield LEP 2013 sets out the following development standards:

- (3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that—
 - (a) if the development involves an existing building—
 - (i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and
 - (ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and
 - (b) the development will not involve excavation in excess of 3 metres below ground level (existing), and
 - (c) the development will not involve the installation of dormer or gable windows, and
 - (d) at least 50% of the site will be landscaped area.

The proposal seeks to provide a dwelling with a basement, which will exceed the 25% gross floor area control, will involve excavation of 3.6m and overall will provide a landscaped area of less than 50%.

The proposal therefore seeks to vary these development standards. This written submission deals with the variation relating to the landscaped area development standard (Clause 6.5(3)(d)).

Landscaped area is defined as:

Studio 9 | The Interchange | 13-29 Nichols Street | Surry Hills | NSW 2010
telephone: 02 9360 0989 | www.a2p.com.au

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

In accordance with this definition, the proposal will provide a landscaped area of 256m², which provides a non-compliance with the required area of 357.6m². However, additional soft landscaping, with structure below will be provided with suitable depth to allow for adequate planting and when considered with the landscaped area as per the definition, will provide an area of 315m² with the area above the basement equating to 59m².

The objective of Clause 6.5 is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.

The zoning of the land is R2. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant*

that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) 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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that 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; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by Commission Morris in. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance². All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with³. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposal will provide a single storey dwelling within a landscaped setting as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

² *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

³ see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.
- The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.
- The non-compliant landscaped area is not as the result of a non-compliant FSR as the proposal will provide a gross floor area significantly below the FSR development standard.

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

Given the consistency of the proposal against the zone objectives and objective of Clause 6.5 (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁴.

The proposed shortfall in 'landscaped area' is:

- 101.65m²

Additional soft landscaping, with structure below, will be provided with suitable depth to allow for adequate planting and when considered with the landscaped area as per the definition, will provide an area of 59m².

There are sufficient environmental planning grounds in that the proposal will provide a single storey dwelling within a landscaped setting as viewed from the public domain and from adjoining properties.

The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.

⁴ see *SJD DB2 Pty Ltd v Woolahra Municipal Council* [2020] NSWLEC 1112 at [90]

The non-compliant landscaped area is not as the result of a non-compliant FSR as the proposal will provide a gross floor area significantly below the FSR development standard.

Overall, the proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The shortfall in terms of the development can be justified as the proposal meets the objective of the control and provides a suitable built form within the locality within a landscaped setting. This can be described as an environmental planning ground.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the development standard, which seeks to maintain the single storey appearance of dwellings in the Haberfield Conservation Area.

Comment: The dwelling as proposed to be altered will present as a single storey dwelling within a landscaped setting. The proposal will allow for suitable contemporary living on a site of this size whilst maintaining the single storey presentation.

Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

- To provide for the housing needs of the community within a low-density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with the zone objectives, as it will provide a single storey dwelling house, being low density.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objective of the development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁵.

Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment by maintaining the single storey nature as required by the development standard.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit

⁵ *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118 at Para [28]

in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Jennie Askin
Director
[aSquare Planning Pty Ltd](#)

21 July 2020

Attachment E - Statement of Heritage Significance

as an Urban Conservation Area by the National Trust in 1978, and has been included on the Register of the National Estate since 1990.

Why Haberfield is important - a statement of significance

Haberfield has historic significance as the first successful comprehensively planned and marketed Garden Suburb in Australia. Designed and developed by real estate entrepreneur and town planning advocate, Richard Stanton, its subdivision layout and tree lined streets, its pattern of separate houses on individual lots (the antithesis of the unhealthy crowded inner suburbs of the period) and its buildings and materials, clearly illustrate his design and estate management principles. Haberfield pre-dates the first Garden Suburbs in Britain by some five years.

It is significant in the history of town planning in NSW. The separation of land uses, exclusion of industry and hotels, designation of land for community facilities and its comprehensive provision of utility services and pre-development estate landscaping profoundly affected housing trends, state subdivision practice and planning legislation in 20th century Australia.

It is significant in the history of Australian domestic architecture for its fine ensemble of Federation houses and their fences, and shops, most with their decorative elements intact.

It is outstanding for its collection of modest Federation houses displaying skilful use of materials and a high standard of workmanship of innovative design and detail particularly reflective of the burgeoning naturalistic spirit of the Federation era in which they were built.

The form, materials, scale and setback of buildings and their landscaped gardens fronting tree lined streets together provide mature streetscapes of aesthetic appeal.

Haberfield is a major research repository of the Federation era, garden design and plant material, architectural detail, modest house planning, public landscaping and utility provision.

Haberfield and its history

The present day suburb of Haberfield occupies all the land north of Parramatta Road between Iron Cove and Long Cove Creeks granted to Nicholas Bayly in 1803. It was purchased in 1805 by emancipist and successful businessman and land owner, Simeon Lord, for 850 pounds. Lord named these 480 acres "Dobroyde" for his cousin's home in Lancashire. When his eldest daughter, Sarah, married Mr David Ramsay in 1825, the Dobroyd Estate was part of her marriage settlement.

Mr Ramsay died in 1860, leaving his widow to dedicate land for church, manse, school and cemetery (St David's, Dalhousie Street) and to divide the rest of the Dobroyd Estate amongst their ten children.

Three of the Ramsay children put portion of their land up for sale in the 1880s. Louisa's land was subdivided into villa allotments in 1885. However, despite the extension of the tramway from Leichhardt along Ramsay Street to Five Dock, it would appear that very few villas were constructed, probably because of the restraints put on investment and development by the Depression of the 1890s.

Haberfield owes its reputation today as Australia's first Garden Suburb to the successive purchase and development of much of the Ramsay children's estates by R Stanton and W H Nicholls, real estate agents of Summer Hill.

Stanton was a friend of John Sulman, British immigrant and dominant figure in the town planning debate in Australia at the turn of the century. Australia's urban areas, particularly Sydney, faced problems of health and poverty as the rapidly growing post-Gold Rush population crowded into the cities. People were housed in unsewered terrace buildings and household drains often flowed into the back lanes. Debate about the state of our cities led to a Royal Commission in 1909, which Sulman addressed. He was aware of the British Garden City Movement which was concerned about the unhealthy effects of crowded industrial cities. It sought to design and build self-sufficient cities where industrial, commercial and residential land uses were separated, where houses were set in gardens and adequate space for agriculture and parkland was provided. Sulman lectured about town planning and architecture at Sydney University in the 1880s and gave public lectures about towns and planning. In 1914 he brought leaders of the



Attachment F - Conditions of Consent (in the event that the development is approved)

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
SK1200 Rev K	Site Plan	20/7/20	Domenic Alvaro
SK2201 Rev K	Floor Plans	20/7/20	Domenic Alvaro
SK3000 Rev J	Elevations	20/7/20	Domenic Alvaro
SK3001 Rev G	Elevations & Sections	20/7/20	Domenic Alvaro
SK9000 Rev F	Material and Finishes Schedule	20/7/20	Domenic Alvaro

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$4,452.00
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

3. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Ashfield Section 94A Development Contributions Plan 2009 – Amendment No.3*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$4,886.75

*Indexing of the Section 7.12 contribution payment:

Former Ashfield LGA & Former Marrickville LGA:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either in cash; by unendorsed bank cheque (from an Australian Bank only); via EFTPOS (Debit only); or credit card (to a maximum of \$10,000 - Note: A 1% credit card transaction fee applies to all credit card transactions). It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions.

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid 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.

GENERAL CONDITIONS**5. Tree Protection**

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

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

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent and Tree Protection Plan, Section 10, prepared by Earthscape Horticultural Services, dated 11 May 2020, throughout the development.

Tree No.	Botanical/Common Name	Location
1	<i>Lophostemon confertus</i> (Brush Box)	In road Forrest Street
3	<i>Washingtonia robusta</i> (Washington Palm)	Front
4	<i>Plumeria acutifolia</i> (Frangipani)	Front
5	<i>Plumeria acutifolia</i> (Frangipani)	Front - to be transplanted

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

Reference should be made to the Arboricultural Impact Assessment Report prepared by Earthscape Horticultural Services, dated 11 May 2020, for tree numbering and locations.

6. Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

7. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree No	Tree	Approved works
5.	<i>Plumeria acutifolia</i> (Frangipani)	Transplant tree
6.	<i>Plumeria acutifolia</i> (Frangipani)	Remove
7.	<i>Laurus nobilis</i> (Bay Tree)	Remove
8.	<i>Archontophoenix cunninghamiana</i> (Bangalow)	Remove

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

8. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

9. Noise Levels and Enclosure of Pool/spa Pumping Units

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

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

10. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

11. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

12. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

13. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

PRIOR TO ANY DEMOLITION**14. Hoardings**

The person acting on this consent must ensure the site is 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 roads or Council controlled lands 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. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

15. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties and or structures to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

16. Advising Neighbors Prior to Excavation

At least 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.

17. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE

18. Tree Protection Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with the detailed site-specific Tree Protection Plan (TPP) prepared by Earthscape Horticultural Services.

The trees identified below are to be protected throughout the development:

Tree No.	Botanical/Common Name	Location
1	<i>Lophostemon confertus</i> (Brush Box)	In road - Forrest Street
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front No 12 Forrest Street
3	<i>Washingtonia robusta</i> (Washington Palm)	Front
4	<i>Plumeria actinophylla</i> (Frangipani)	Front
5	<i>Plumeria actinophylla</i> (Frangipani)	Front - to be transplanted
9	<i>Harphyllum cafrum</i> (Kaffir Plum)	Rear No 12 Forrest Street

The tree protection measures contained in the TPP must be shown clearly on the Construction Certificate drawings, including the Construction Management Plan.

The Certifying Authority must ensure the construction plans and specifications submitted fully satisfy the tree protection requirements identified in the TPP.

A Project Arborist is to be appointed prior to any works commencing to monitor tree protection for the duration of works in accordance with the requirements identified in the TPP.

All tree protection measures as detailed in the approved Tree Protection Plan must be installed and certified in writing as fit for purpose by the Project Arborist.

19. Tree Transplant Method Statement

Tree No.	Botanical/Common Name	Location
5	<i>Plumeria acutifolia</i> (Frangipani)	Front

Prior to the issue of the Construction Certificate, the Certifying Authority, must also be provided with a Transplantation Method Statement prepared by a Consultant Arborist or Landscape Architect detailing the following:

- a. Pre-transplantation methodology;
- b. Preparation of transplantation site;
- c. Transplantation method; and
- d. Post-transplantation establishment and maintenance programme (including duration).

20. Dilapidation Report – Pre-Development – Minor

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

21. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and on site re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 200405-H1 and H2 prepared by Tall Ideas Pty Ltd and dated 4 May 2020, as amended to comply with the following;
- b. It appears the orifice size shown on the plan is oversized;
- c. Basement drainage design shall be based on a Geotechnical report.
- d. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from the rainwater tank, by gravity to the kerb and gutter of a public road via the OSD tanks as necessary;
- e. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- f. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank;
- g. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- j. The design must make provision for the existing natural flow of stormwater runoff from upstream properties;
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- l. 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;
- m. A stormwater silt arrester pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- o. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm

and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;

- p. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- q. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated; and
- r. Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system.

22. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The construction of light duty vehicular crossings and removal of all redundant vehicular crossing;
- b. Installation of a stormwater outlet to the kerb and gutter.

All works must be completed prior to the issue of an Occupation Certificate.

23. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that 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 and the following specific requirements:

- a. The driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements; and
- d. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004.

24. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a 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. The certificate must 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.

25. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program 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.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

26. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) [who holds current Chartered Engineer qualifications with the Institution of Engineers Australia \(CEng\)](#) or [current Registered Professional Engineer qualifications with Professionals Australia \(RPEng\)](#). The report and plans must be prepared/ amended to make provision for the following:

- a. The basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;
- d. All components of the basement, including footings, must be located entirely within the property boundary;
- e. No adverse impact on surrounding properties including Council's footpath and road;
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

27. Structural Certification for Existing Building – Alterations and Additions

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a structural certification prepared by a qualified practising certified structural engineer verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of Part B1 (Vol 1) and Part 2.1 (Vol 2) of the Building Code of Australia.

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. The certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without resulting in demolition of elements marked on the approved plans for retention.

DURING DEMOLITION AND CONSTRUCTION

28. Tree Protection Zone

To protect the following tree/s, no work shall commence until its/their Protection Zone is fenced off to prevent any activities, storage or the disposal of materials within the fenced area in accordance with the Tree Protection Plan and Council's *Development Fact Sheet—Trees on*

Development Sites. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	as per Section 10 and Appendix 6, Tree Protection Plan
3	<i>Washingtonia robusta</i> (Washington Palm)	
4	<i>Plumeria acutifolia</i> (Frangipani)	
9	<i>Harphyllum caffrum</i> (Karrir Plum)	
5	<i>Plumeria acutifolia</i> (Frangipani)	To be transplanted

29. Inspections by Project Arborist

The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at peak phases of work:

Tree No./ Location	Botanical/ Common Name/	Time of Inspection	Key stage/ Hold point
1. <i>Lophostemon confertus</i> (Brush Box) 2. <i>Jacaranda mimosifolia</i> (Jacaranda) 3. <i>Washingtonia robusta</i> (Washington Palm) 4. <i>Plumeria acutifolia</i> (Frangipani) 5. <i>Plumeria acutifolia</i> (Frangipani) 9. <i>Harphyllum caffrum</i> (Kaffir Plum)			<ul style="list-style-type: none"> In accordance with the approved Tree Protection Plan and section 4 of AS4970—<i>Protection of trees on development sites</i>.

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

30. Canopy and Root Pruning

Canopy and/or root pruning of the following tree/s which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.

Tree No.	Botanical/Common Name	Radius in metres
9	<i>Harphyllum caffrum</i> (Kaffir Plum)	Sections 9.1.7 and 10.9 TPP

The person acting on this consent has approval under Council's Tree Management Controls to; reduction prune Tree 9, following consent from the tree owner, to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 40 mm.

31. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

32. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

PRIOR TO OCCUPATION CERTIFICATE**33. Project Arborist Certification**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist that the requirements of the conditions of consent related to the canopy replenishment trees, landscape plan and the role of the project arborist have been complied with.

All tree stock is to conform to AS2303—*Tree stock for landscape use*.

34. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Light duty concrete vehicle crossing at the vehicular access location;
- b. Any redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site if damaged must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

35. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

36. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

37. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and any pumps installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

38. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention, re-use facilities and and pumps. The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

ON-GOING**39. Maintenance of tree plantings**

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

40. Operation and Management Plan

The Operation and Management Plan for the on-site detention, re-use and pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

ADVISORY NOTES**Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with *AS4373—Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and *AS4970—Protection of trees on development sites*.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

Permits

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Toilet Facilities

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

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.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

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; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.
- h.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- 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.
- 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.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926.2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

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

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;

- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

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.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Construction of Vehicular Crossing

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660

To purchase copies of Volume One of "Soils and Construction"

Long Service Payments Corporation	131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.dysafe.nsw.gov.au
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

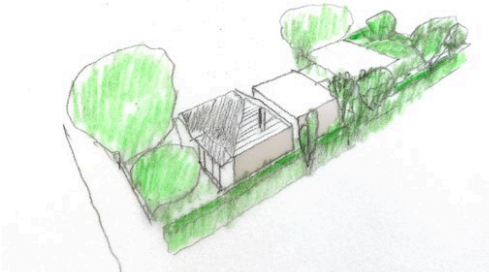
If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Amended Plans

DA/2020/0346

05.09.20

14 FORREST STREET HABERFIELD NSW 2045
 RESPONSE TO DEVELOPMENT ASSESSMENT REPORT

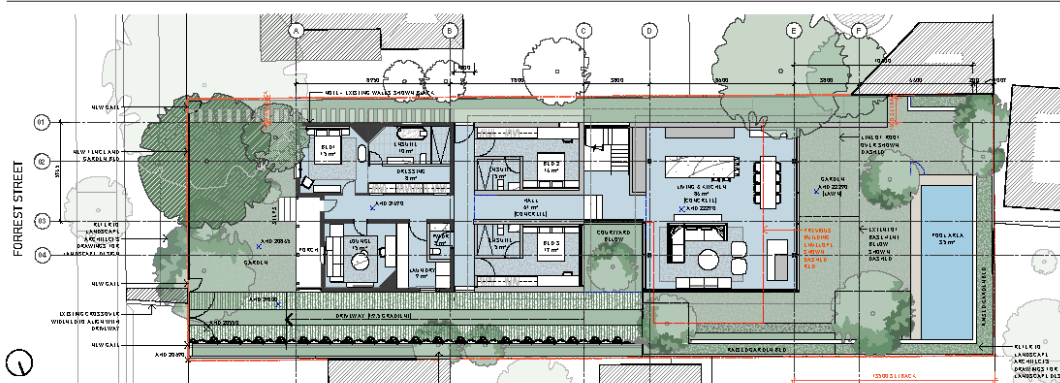


NOTES

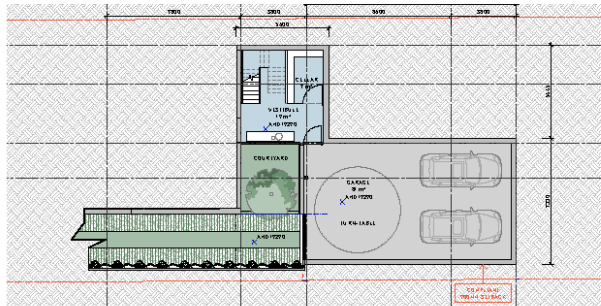
REVISED LANDSCAPE AREA:
 DEEP SOIL 270M² (38%)
 ABOVE BASEMENT 53M² (7%)
 TOTAL LANDSCAPE AREA 323M² (45%)

GROSS FLOOR AREA (GFA):
 BASEMENT 18M²
 GROUND FLOOR 244M²
 TOTAL GFA 262M² (FSR 0.37:1)

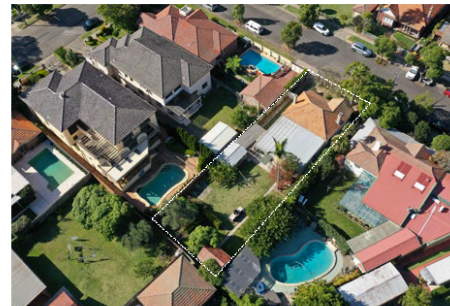
REVISED EXCAVATION DEPTH - 3M



REVISED GROUND LEVEL PLAN



REVISED BASEMENT LEVEL PLAN



AERIAL PHOTO OF SUBJECT SITE



REVISED NORTH ELEVATION

Attachment C – Clause 4.6 Exception to Development Standards – Gross floor area below the existing ground floor level



14 Forrest Street, Haberfield

REQUEST FOR VARIATION TO DEVELOPMENT ON LAND IN HABERFIELD HERITAGE CONSERVATION AREA DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD LEP 2013

Clause 6.5 – Development on land in Haberfield Conservation Area

Clause 6.5 of the Ashfield LEP 2013 sets out the following development standards:

- (3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that—
 - (a) if the development involves an existing building—
 - (i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and
 - (ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and
 - (b) the development will not involve excavation in excess of 3 metres below ground level (existing), and
 - (c) the development will not involve the installation of dormer or gable windows, and
 - (d) at least 50% of the site will be landscaped area.

The proposal seeks to provide a dwelling with a basement, which will exceed the 25% gross floor area control and overall will provide a landscaped area of less than 50%.

The proposal therefore seeks to vary these development standards. This written submission deals with the variation relating to the 25% of the ground floor area development standard (Clause 6.5(3)(a)(ii)) as the proposed footprint of the basement represents 116m², which is 76.3% of the footprint of the dwelling.

In terms of gross floor area as per the definition in the LEP, the basement provides 18m², being one car parking space and this represents 11.6% of the gross floor area of the existing dwelling.

The objective of Clause 6.5 is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.

The zoning of the land is R2. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 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:*
 - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that 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; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by Commissioner Morris². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with⁴. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposal will provide a single storey dwelling as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.
- The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.
- The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting.
- The proposed basement is not sited below the significant front portion of the existing dwelling, which is to be retained.

² *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

³ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁴ see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The proposal will comply with the FSR control for the site and provides a floor area which is significantly below the FSR control.
- Exceedance of the basement floor area control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

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

Given the consistency of the proposal against the zone objectives and the objective of Clause 6.5 (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

The components proposed above the 25% of the ground floor development standard are:

- 77.5m² of GFA

However, in terms of gross floor area as per the definition in the LEP, the basement provides 18m², being one car parking space and this represents 11.6% of the gross floor area of the existing dwelling.

There are sufficient environmental planning grounds in that the proposed basement floor area can be achieved without adverse impacts in terms of the environmental amenity of adjoining properties. Given this is located below ground, the proposal will not affect visual bulk, solar access to, privacy or views from adjoining properties.

The proposed FSR, even with the inclusion of one parking space at basement level (18m²), is 0.34:1 (247m²), which is significantly below the FSR control of 0.5:1 (357.65m²).

Reducing the basement area would not allow for below ground parking and parking would then be provided along the northern side of the site towards the rear. This would conflict with the private open space area and would affect solar access to the private open space. Parking further forward within the site

⁵ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

would affect the presentation of the dwelling to the streetscape. Therefore, the provision of the basement has a positive outcome in terms of the significance of the conservation area and the amenity of the subject site and adjoining properties.

Overall, the proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The aspect of the development that breaches the basement floor area development standard can be justified as the proposal meets the objective of the control and provides a suitable built form within the locality. This can be described as an environmental planning ground. In addition, the lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁶.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the development standard, which seeks to maintain the single storey appearance of dwellings in the Haberfield Conservation Area.

Comment: The dwelling as proposed to be altered will present as a single storey dwelling within the streetscape and will provide an overall FSR control below the FSR development standard for the site. The proposal will allow for suitable contemporary living on a site of this size whilst maintaining the single storey presentation and the new addition to the rear and not visible from the public domain.

⁶ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with the zone objectives, as it will provide a single storey dwelling house, being low density.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objective of the development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁷.

Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage

⁷ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at Para [28]

of the built environment by maintaining the single storey nature as required by the development standard.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Jennie Askin
Director
[aSquare Planning Pty Ltd](#)

3 September 2020

Attachment D – Clause 4.6 Exception to Development Standards – Landscaped area



14 Forrest Street, Haberfield

REQUEST FOR VARIATION TO DEVELOPMENT ON LAND IN HABERFIELD HERITAGE CONSERVATION AREA DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD LEP 2013

Clause 6.5 – Development on land in Haberfield Conservation Area

Clause 6.5 of the Ashfield LEP 2013 sets out the following development standards:

- (3) Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that—
- (a) if the development involves an existing building—
 - (i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and
 - (ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and
 - (b) the development will not involve excavation in excess of 3 metres below ground level (existing), and
 - (c) the development will not involve the installation of dormer or gable windows, and
 - (d) at least 50% of the site will be landscaped area.

The proposal seeks to provide a dwelling with a basement, which will exceed the 25% gross floor area control and overall will provide a landscaped area of less than 50%.

The proposal therefore seeks to vary these development standards. This written submission deals with the variation relating to the landscaped area development standard (Clause 6.5(3)(d)).

Landscaped area is defined as:

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

In accordance with this definition, the proposal will provide a landscaped area of 270m², which provides a non-compliance with the required area of 357.6m². However, additional soft landscaping, with structure below, will be provided with suitable depth to allow for adequate planting and when considered with the landscaped area as per the definition, will provide an area of 323m² with the area above the basement equating to 53m².

The objective of Clause 6.5 is to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.

The zoning of the land is R2. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant*

that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) 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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that 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; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by Commissioner Morris². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with⁴. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposal will provide a single storey dwelling within a landscaped setting as viewed from the public domain and from adjoining properties and is therefore compatible with surrounding development and the desired future character for the locality.

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

² *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

³ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁴ see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The dwelling as proposed to be altered will improve its contribution to the Forrest Street streetscape and the conservation area as a whole.
- The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with the depth of excavation allowing for soft landscaping above the basement footprint within the proposed rear garden.
- The non-compliant landscaped area is not as the result of a non-compliant FSR as the proposal will provide a gross floor area significantly below the FSR development standard.

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

Given the consistency of the proposal against the zone objectives and objective of Clause 6.5 (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

The proposed shortfall in 'landscaped area' is:

- 87.6m²

Additional soft landscaping, with structure below, will be provided with suitable depth to allow for adequate planting. This will provide an area of 53m² and when considered with the landscaped area as per the definition will provide a total area of 323m² (45%) reducing the shortfall to 34.6m².

There are sufficient environmental planning grounds in that the proposal will provide a single storey dwelling within a landscaped setting as viewed from the public domain and from adjoining properties. The proposed rear addition will not be visible from the public domain with the principle form of the existing dwelling presented to the street.

The built form of the proposed new dwelling is sited and designed to maintain the predominance of soft landscaped areas on the site and provides a suitable built form within a landscaped setting with soft landscaping above the basement footprint within the proposed rear garden.

⁵ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

The non-compliant landscaped area is not as the result of a non-compliant FSR as the proposal will provide a gross floor area significantly below the FSR development standard.

Overall, the proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The shortfall in terms of the development can be justified as the proposal meets the objective of the control and provides a suitable built form within the locality within a landscaped setting. This can be described as an environmental planning ground.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the development standard, which seeks to maintain the single storey appearance of dwellings in the Haberfield Conservation Area.

Comment: The dwelling as proposed to be altered will present as a single storey dwelling within a landscaped setting. The proposal will allow for suitable contemporary living on a site of this size whilst maintaining the single storey presentation of the existing dwelling.

Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

- To provide for the housing needs of the community within a low-density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with the zone objectives, as it will provide a single storey dwelling house, being low density.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objective of the development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁶.

Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment by maintaining the single storey nature as required by the development standard.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit

⁶ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at Para [28]

in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Jennie Askin
Director
aSquare Planning Pty Ltd

3 September 2020