




 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2021/0176			
Address	5 Hampton Street BALMAIN NSW 2041			
Proposal	Torrens title subdivision to create two lots, accommodating the existing dwellings.			
Date of Lodgement	18 March 2021			
Applicant	Nicholas Lawler			
Owner	Ms Edda R Marbot			
Number of Submissions	Initial: 0			
Value of works	\$15,000.00			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% (Subdivision Lot Size)			
Main Issues	Non-compliance with Subdivision Lot Size development standard.			
Recommendation	Approved with Conditions			
Attachment A	Recommended conditions of consent			
Attachment B	Plans of proposed development			
Attachment C	Clause 4.6 Exception to Development Standards			
				
LOCALITY MAP				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Torrens title subdivision to create two lots, accommodating the existing houses at 5 Hampton Street, Balmain.

The application was notified to surrounding properties and no submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Non-compliance with Minimum Subdivision Lot Size and Landscape Area Development Standard

The non-compliances are acceptable as they will not result in any adverse impacts to the Heritage Conservation Area nor the subject site and surrounding properties as no physical changes are proposed externally to the existing building, and therefore the application is recommended for approval.

2. Proposal

The application proposes Torrens title subdivision into two lots and associated minor internal subdivision works including extension and fire rating of party wall.

The proposal will formalise the existing dual occupancy to 2 semi detached dwellings.

3. Site Description

The subject site is located on the north-eastern side of Hampton Street, between Darling and Addison Street. The site consists of one allotment and is generally rectangular shaped with a total area of 281.7 sqm and is legally described as Lot 11 in DP 34.

The site has frontage to Hampton Street of 11.885 metres and no secondary frontage.

The site supports a single storey dual occupancy. The adjoining properties support 2 storey detached dwellings.



The property is located within a heritage conservation area under LLEP 2013.

The site contains 4 Canopy trees and other palms however the proposed works are not in the vicinity of the subject trees.



4. Background

4(a) Site history

There is no relevant development history by way of development application for the subject site or surrounding properties with all applications predating 2004 and the current LEP and DCP.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
17/05/2021	Further information/amended plans requested to address: Design and construction methods.
28/6/2021	Partial Additional information provided by applicant.

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

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. *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) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

The application was assessed against the following relevant clauses of the *Leichhardt Local Environmental Plan 2013*:

Clause 1.2 - Aims of the Plan
 Clause 2.3 - Zone objectives and Land Use Table
 Clause 2.5 - Additional permitted uses for land
 Clause 2.6 - Subdivision
 Clause 4.1 - Minimum subdivision lot size
 Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
 Clause 4.4 – Floor Space Ratio
 Clause 4.4A - Exception to maximum floor space ratio for active street frontages
 Clause 4.5 - Calculation of floor space ratio and site area
 Clause 4.6 - Exceptions to development standards
 Clause 5.10 - Heritage Conservation
 Clause 6.1 - Acid Sulfate Soils
 Clause 6.2 - Earthworks
 Clause 6.4 - Stormwater management

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

The site is zoned R1 under the *LLEP 2011*. The development is not inconsistent with the objectives of the R1 zone as discussed in further detail below and the proposed subdivision is a permissible form of development.

(ii) Clauses 4.1, 4.3A, 4.4 – Development Standards

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

Lot 21 known as 5 Hampton Street (no changes to existing building):

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size Minimum permissible: 200 sqm	140 sqm	30% or 60 sqm	No
Floor Space Ratio Maximum permissible: 1:1 or 140 sqm	0.42:1 or 58.783 sqm	N/A	Yes
Landscape Area Minimum permissible: 15% or 21.22 sqm	19.25% or 27.24 sqm	N/A	Yes

Site Coverage Maximum permissible: 60% or 84.9 sqm	46.49% 65.779sqm	or	N/A	Yes
--	---------------------	----	-----	-----

Lot 22 known as 7 Hampton Street (no changes to existing building):

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size Minimum permissible: 200 sqm	141.5 sqm	29.25% or 58.5 sqm	No
Floor Space Ratio Maximum permissible: 1:1 or 141.5 sqm	0.49:1 or 68.92 sqm	N/A	Yes
Landscape Area Minimum permissible: 15% or 21.22 sqm	6.9% or 9.8 sqm	53.58%	No
Site Coverage Maximum permissible: 60% or 84.9 sqm	53.58% 75.82sqm	or N/A	Yes

(iii) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.1 - Minimum subdivision lot size
- Clause 4.3A - Landscaped areas for residential accommodation in R1 Zone

Clause 4.1 - Minimum subdivision lot size

The applicant seeks a variation to the minimum subdivision lot size development standard established by Clause 4.1 - Minimum subdivision lot size of LLEP 2013 by 30% or (60 sqm) for Lot 21 and 29.25% or (58.5 sqm) for Lot 22.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

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 LLEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

- The proposal complies with the amenities required for housing despite being under minimum lot size.
- The proposal retains the complementary nature of the existing semi-attached dwellings which are prevalent in the Birchgrove Distinctive neighbourhood.
- The site is zoned R1 General Residential, and currently supports two dwellings without causing unreasonable amenity impacts on the adjoining residential properties or detrimentally impacting the heritage conservation area. The proposal is seeking to retain the status quo in this regard.

- Lot sizes on Hampton Street and Birchgrove Road are of varying sizes and configurations, many of which are below the minimum lot size requirement. The existing lot size as a result of the existing built form is an anomaly in the subdivision pattern however is contextually appropriate.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of LLEP 2013 for the following reasons:

The proposal satisfies the above objectives as detailed:

- The site already contains two dwellings and the proposed subdivision will result in a development that is consistent with the housing needs of the community.
- The proposed subdivision will not result in any adverse impacts on the amenity of the subject dwellings on the site or adjoining properties;
- The subdivision in this instance is to formalise the existing pattern of development on the site and thereby maintains the character of the area.
- The proposal will not impact on the streetscape or Heritage Conservation Area nor impact on the character, style and pattern of development in the surrounding area;

It is considered the development is in the public interest because it is consistent with the objectives of the Minimum subdivision lot size development standard, in accordance with Clause 4.6(4)(a)(ii) of LLEP 2013 for the following reasons:

- The lots as proposed retain the existing dwellings ensuring the development is compatible with the locality
- The existing dwellings on the site afford a good level of amenity for current occupants
- Despite the non-compliance of the minimal lot size development standard, the proposal does comply with the Floor Space Ratio and Site Coverage development standard for both lots and Landscaped area for Lot 21, thereby ensuring that the lot sizes are able to accommodate development that is consistent with the controls

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Minimum Subdivision Lot Size and it is recommended the Clause 4.6 exception be granted.

Clause 4.3a - Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the Landscaped Areas development standard under Clause 4.3A of LLEP 2013 by 53.83% or (11.425 sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

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 LLEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

- The proposal complies with the amenities required for housing despite the non-compliance with the minimum landscaping standard.
- The proposed lot and dwelling configuration are able to support the retention of existing canopy trees, with opportunity for additional planting to be provided for at the rear of the dwelling.
- The proposal retains the complementary nature of the existing semi-attached dwellings which are prevalent in the Birchgrove Distinctive neighbourhood.
- The site is zoned R1 General Residential, and currently supports two dwellings without causing unreasonable amenity impacts on the adjoining residential properties or detrimentally impacting the heritage conservation area. The proposal is seeking to retain the status quo in this regard.
- The sites are able to maintain a landscaped corridor between the proposed new lots and rear dwellings.
- The proposal does not seek to alter the existing site density and provides ample opportunity for the provision of private open space.
- The proposal does not alter the size of the rear yard or inhibit the ability to use this space functionally for recreation.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 Zone, in accordance with Clause 4.6(4)(a)(ii) of LLEP 2013 for the following reasons:

- The proposal provides for the housing needs of the community.
- The subdivision does not alter the extent of the existing dwellings on site which are compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, and landscaped areas.
- To proposal maintains existing landscaped areas for the use and enjoyment of the existing residents.
- The proposed subdivision does not result in any adverse impacts to neighbouring development

It is considered the development is in the public interest because it is consistent with the objectives of the Landscaped Area development standard, in accordance with Clause 4.6(4)(a)(ii) of LLEP 2013 for the following reasons:

- The existing landscaped areas maintain existing tree planting and can serve for the use and enjoyment of residents,
- Existing onsite planting is retained thereby the proposal maintains the existing landscaped corridor between adjoining properties,
- The retention of the existing dwelling ensures that development maintains the desired future character of the neighbourhood.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Landscaped Area development standard and it is recommended the Clause 4.6 exception be granted.

(iv) Clause 5.10 – Heritage Conservation

The property is located within Iron Cove Heritage Conservation Area under LLEP 2013.

It is considered the proposed subdivision is unlikely to have any impact on the conservation area as the only physical works proposed relate to the provision a party wall, thereby the physical changes are not visible from the street. The subdivision seeks to formalise the existing pattern of development and maintain the appearance of the existing dwellings and a such is unlikely to have any impact on the HCA. The proposal is therefore satisfactory having regard to the provisions of Clause 5.10 of LLEP 2013.

5(b) 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 relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes - Party wall extensions including footings.
C1.4 Heritage Conservation Areas and Heritage Items	Yes The proposal does not alter the visual appearance of the dwellings or their continuing residential use.
C1.5 Corner Sites	N/A
C1.6 Subdivision	Yes - see discussion
C1.7 Site Facilities	Yes

C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
Part C: Place – Section 2 Urban Character	
C2.2.2.6 Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
Part C: Place – Section 4 – Non-Residential Provisions	
	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes - Remain as existing
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes - No Change to existing
E1.2.3 On-Site Detention of Stormwater	Yes - No Change to existing
Part F: Food	
	N/A
Part G: Site Specific Controls	
	N/A

The following provides discussion of the relevant issues:

C1.6 Subdivision

It is noted that the proposed subdivision associated with each dwelling will not meet the requirements of 200 sqm under C1.

C2 requires new lots to be consistent with the prevailing subdivision pattern. The street is comprised of a mix of lot sizes, however the proposed subdivision is generally consistent with 12 and 14 Mullens Street to the east of the subject site and dwellings to the south east on the adjacent side of Mullens Street thereby complying with the provisions of C2.

In addition given the unique circumstance in that there are already two dwelling-houses currently existing on this site, it is considered that the proposed subdivision will not result in adverse impacts on the streetscape or to surrounding properties and that the proposal generally complies with the objectives of this part for the following reasons:

- In this instance, as there are already two dwelling houses located on this this site, the creation of the Torrens lots will not result in a development that is incompatible with the surrounding area.
- Despite the non-compliance of the minimum lot size requirement, the proposal complies with the Floor Space Ratio and Site Coverage development standards and allows a residential development that is consistent with the other controls within Leichhardt DCP 2013.
- Despite the non-compliance, the proposed subdivision will provide adequate amenity to the associated dwellings that currently existing on site.
- The proposed subdivision is a formalisation of the existing pattern of development and would have no new impact to the locality.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with Council's Community Engagement Framework for a period of 14 days to surrounding properties.

No submissions were received in response to the initial notification.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Building Certification: No objections subject to conditions

6(b) External

The application was not required to be referred to any external bodies.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable given the proposed subdivision relates to two existing dwellings and does not generate any additional demand. Section 7.12 levies are also not payable given the proposed cost of works for the subdivision do not exceed \$100,000.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and no adverse impacts on the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of *Leichhardt Local Environmental Plan 2013* to vary Clause 4.1- minimum subdivision lot size and Clause 4.3A- landscaped area of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and 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*, grant consent to Development Application No. DA/2021/0176 for Torrens title subdivision to create two lots, accommodating the existing houses. at 5 Hampton Street, Balmain subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

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
Ref: 201091-2	Plan of Proposed Subdivision	24/9/2020	Total Surveying Solutions
Project No. J20014, Plan No 00	Site Plan	27/02/2021	Studio for Architecture & Interior Design
Project No. J20014, Plan No 01	Floor Plan	27/02/2021	Studio for Architecture & Interior Design
Project No. J20014, Plan No 02	Roof Plan	27/02/2021	Studio for Architecture & Interior Design
Project No. J20014, Plan No 03	Elevations and Section Plans	27/02/2021	Studio for Architecture & Interior Design
Project No. J20014, Plan No 04	S-E & N-W Elevations	27/02/2021	Studio for Architecture & Interior Design
Project No. J20014, Plan No 05	Section B-B	15/06/21	Studio for Architecture & Interior Design

As amended by the conditions of consent.

FEES**2. 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**3. 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.

4. 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.

5. Works Outside the Property Boundary

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

6. Completion of Fire Separation Works

Prior to the issue of a Occupation Certificate or Subdivision Certificate (whichever occurs first), the Certifying Authority is required to be provided with evidence that the Fire separation works (including party wall extension and footings) have been completed in accordance with the National Construction Code.

PRIOR TO ANY DEMOLITION**7. 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.

8. 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.

PRIOR TO CONSTRUCTION CERTIFICATE**9. 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.

10. 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

DURING DEMOLITION AND CONSTRUCTION

11. 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.

12. Stormwater Drainage System

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

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

13. 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.

ADVISORY NOTES

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 Corporation Payments 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.diysafe.nsw.gov.au

Information on asbestos and safe work practices.

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	1300 651 116
Environmental Solutions	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.

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.

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.

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.

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.

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.

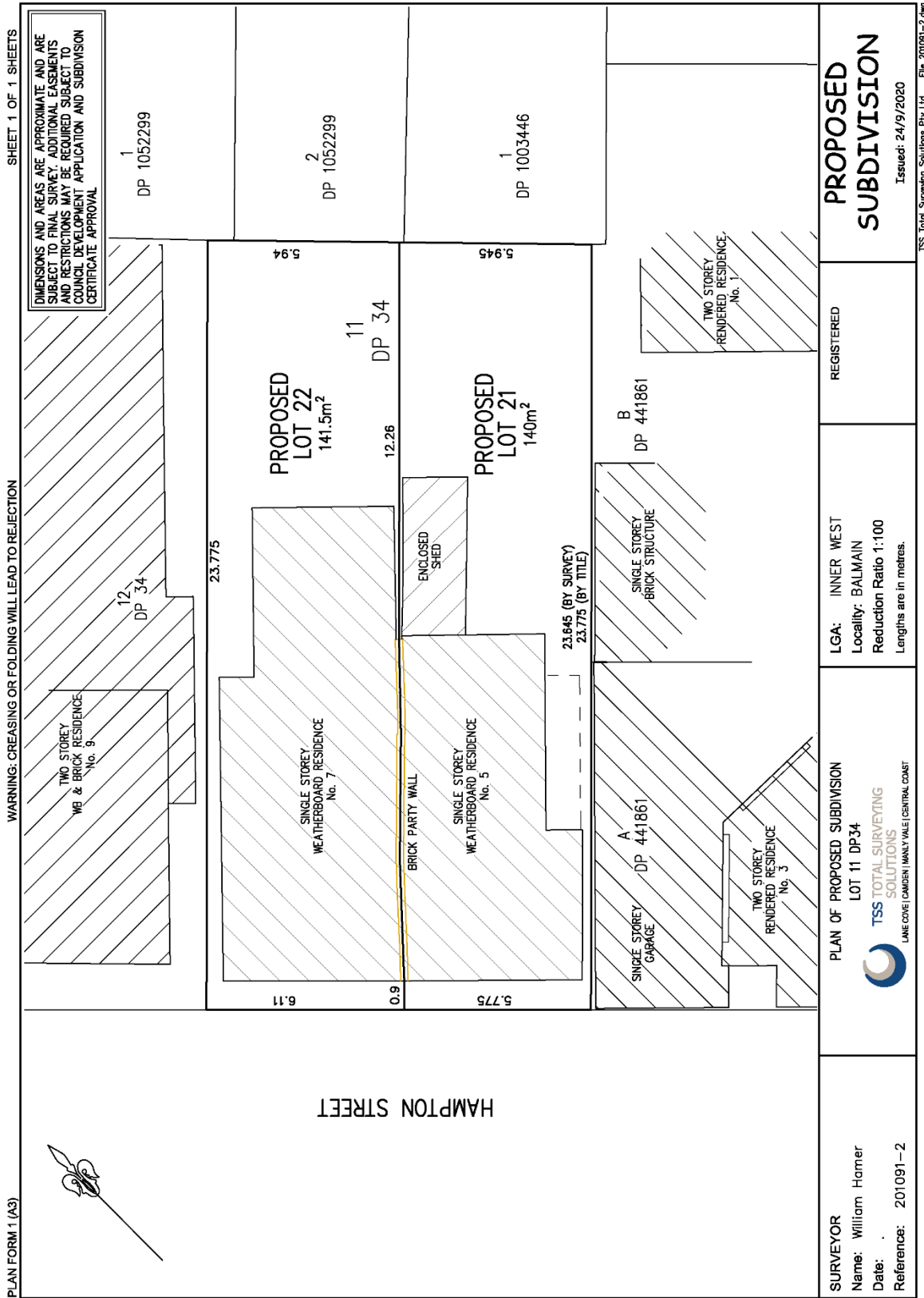
Dial before you dig

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

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 – Plans of proposed development



5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013

DRAWING SCHEDULE

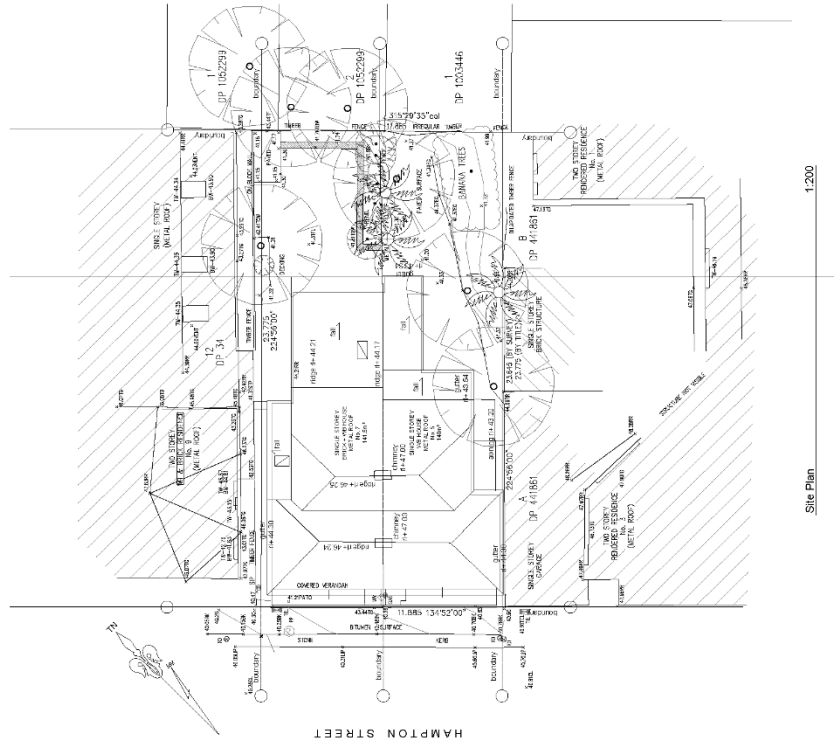
Drawing number	Drawing Title	Scale	Abbreviations
DA00	Abbreviations, Building Data, Drawing Schedule, Site Plan	N/A	ch chimney
DA01	Floor Plan	1:100	cos check on site
DA02	Roof Plan	1:100	exg existing
DA03	Elevations	1:100	fl finished floor level
DA04	Elevations	1:100	fp fireplace
			gl glazing
			gr gutter
			ldry laundry
			lft lift
			rel relative level
			ski skylight
			tbr timber
			uno unless noted otherwise

BUILDING DATA	
Inner West Council	
Leichhardt LEP (2013)	
Leichhardt DCP (2013)	
Existing Site Area	261.7 m ²
Subdivision Lots	no. 7
Minimum Lot size	141.5 m ²
Maximum Permissible FSR	0.1
Maximum Permissible GFA	1132 m ²
Existing GFA	71.5 m ²
Existing FSR	0.551
Proposed FSR	0.551
Proposed GFA	71.5 m ²

Site Coverage	60%
Maximum Permissible (building footprint)	60%
Existing	76 m ²
Proposed	76 m ²
Soil Lushness	15%
Existing	21 m ²
Proposed	21 m ²

R1 General Residential	
Iron Cove Heritage Conservation Area Significance Local	
Class 5 Acid Sulfate Soils	

LEGEND	
	Existing structures retained

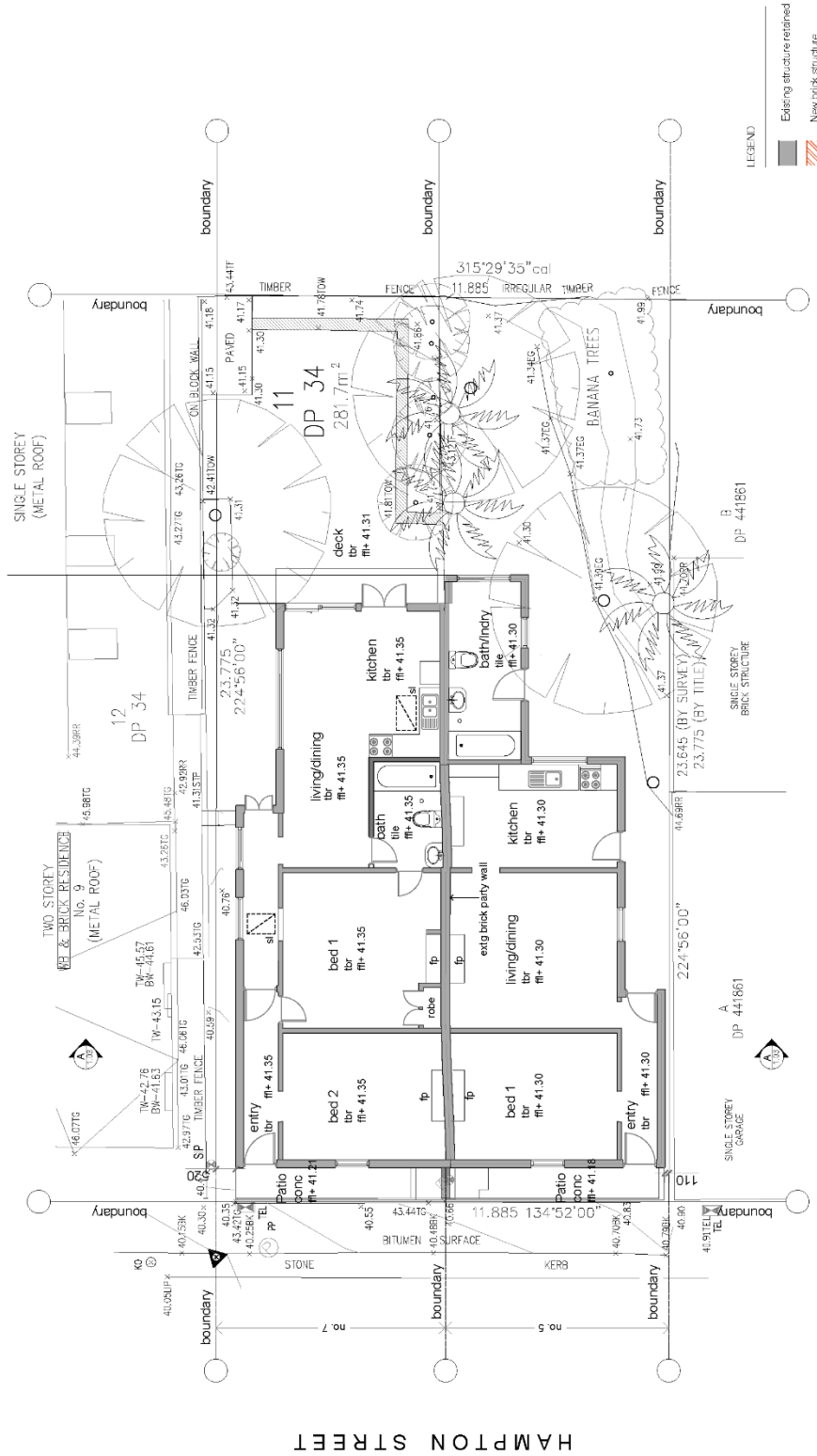


Client:	Lucchini Studio for Architecture Oprescu & Interior Design	Project No:	J20014	Project Address:	5-7 Hampton St Balmain	Drawn by:	RL	Checked by:	DO	ISSUE:	Amend No.	Issued to	TITLE:	Time Page
9 Harris Street Pyrmont NSW 2009	D: 041 0 115 001	F: 0404 025 952	e: projects@lucchinostudio.com.au	Copyright - all rights reserved. No part of this design is to be altered or reproduced without written permission. ABN: 44 614 516 824										
										AMENDMENTS: Revision Date Amendment Description		SCALE: @A3 TYPE NUMBER 1 00 AMENDT 1		PURPOSE DA PLOT DATE 27/02/2021

5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013



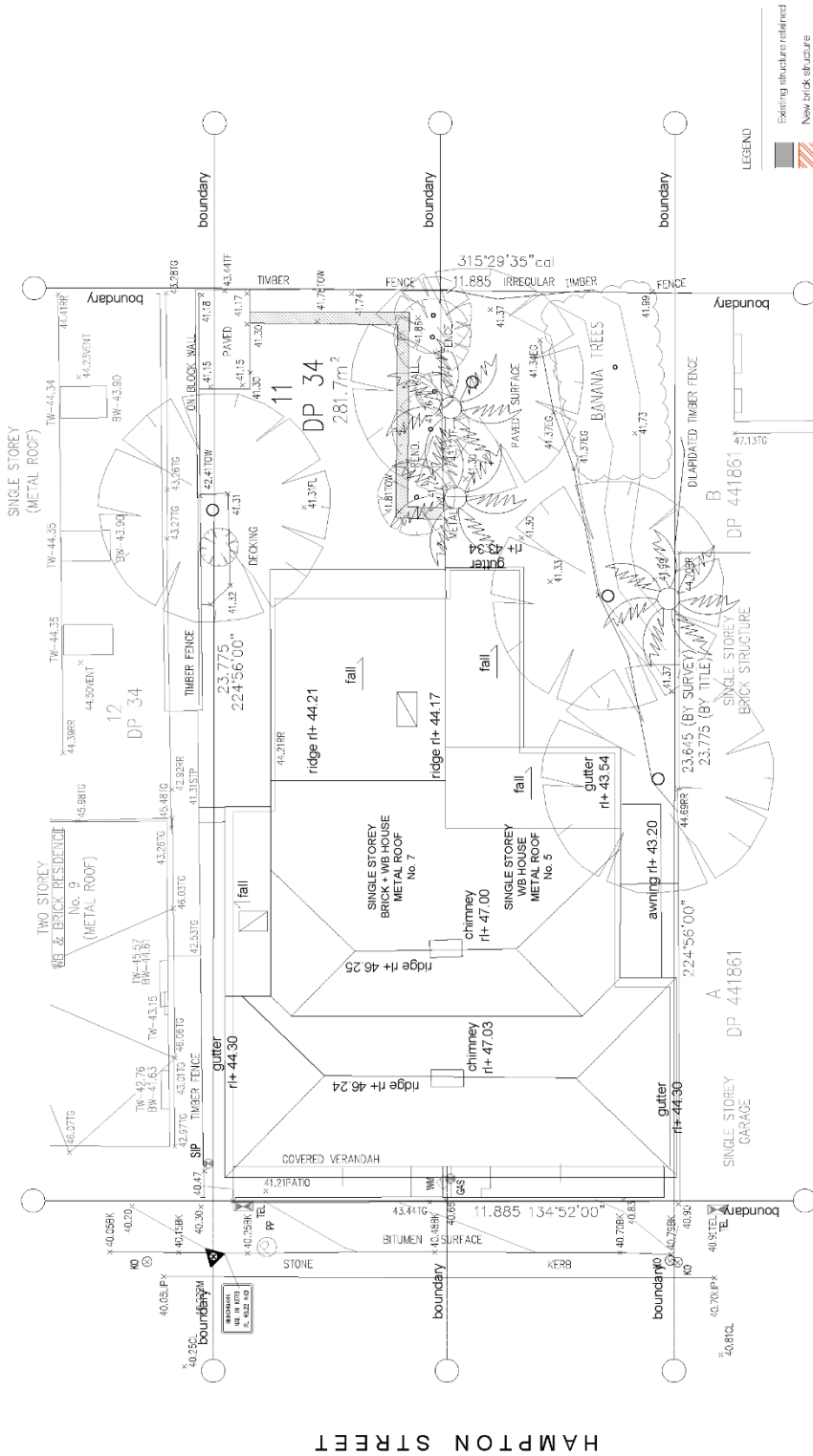
Floor Plan 1:100

Client: Marcel Marbot		Project No: J20014		ISSUE: AMENDMENT 1	
Lucchini Studio for Architecture Oprescu & Interior Design		Project Address: 5-7 Hampton St Balmain		Date: 27/02/2021	
9 Haies Street Pyrmont NSW 2009		D: 041 0115 001 R: 0404 025 952 E: projects@lucchinistudio.com.au		Purpose: DA	
Drawn by: RL		Checked by: DO		Amend No: 1	
DN		TN		Type Number: 01	
DP 441861		DP 441861		Plot Date: 27/02/2021	

5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013



Roof Plan

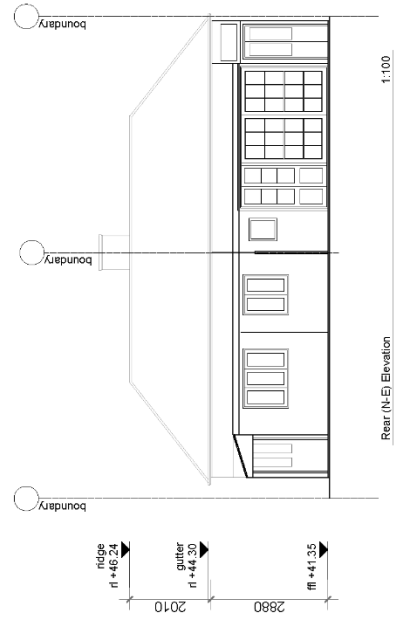
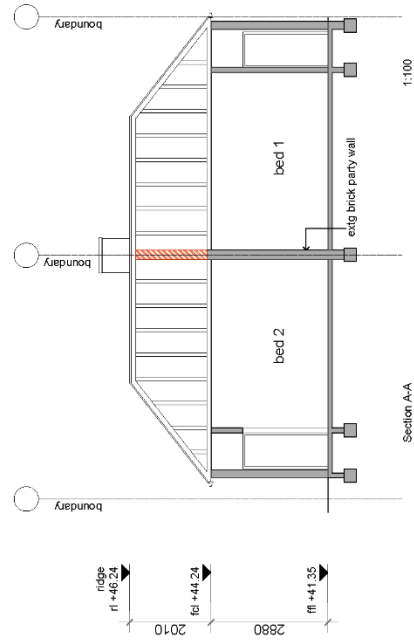
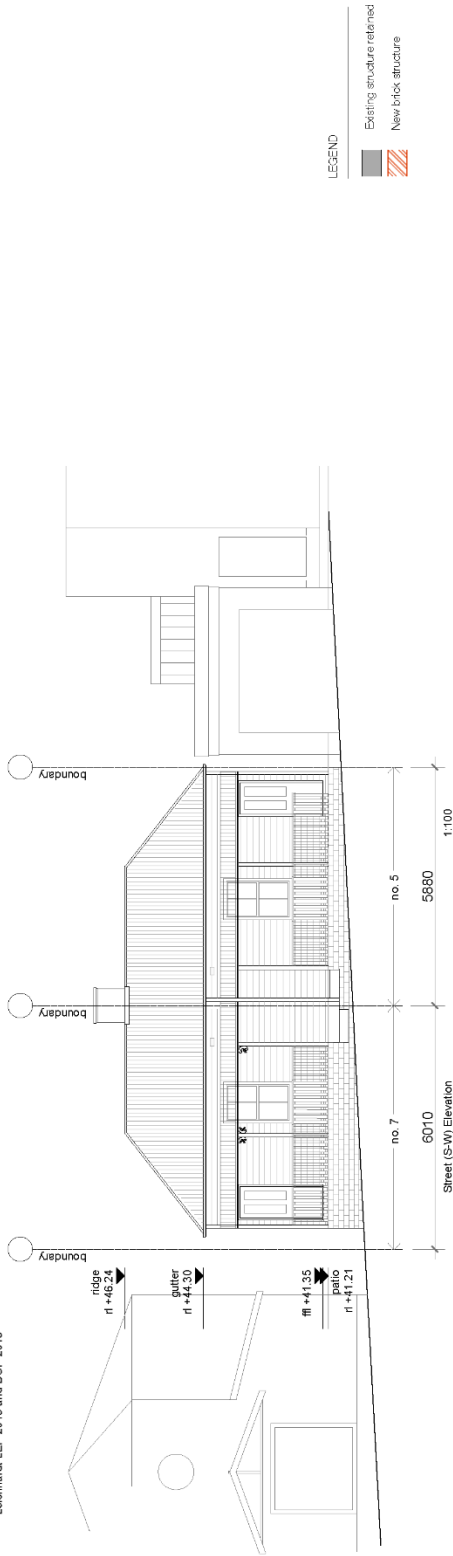
1:100

Client: Marcel Marbot	Project No: J20014	Project Address: 5-7 Hampton St Balmain	Client: TN	ISSUE: Date	Amend No. Issued to
Lucchini Studio for Architecture Oprescu & Interior Design	Drawn by: RL	Checked by: DO	AMENDMENTS: Revision Date Amendment Description	23.775 (BY SURVEY)	DP 441861
9 Harris Street Pyrmont NSW 2009	D: 041 0 115 001	F: 0404 025 952	e: projects@lucchinistudio.com.au	Copyright - all rights reserved. No part of this design is to be altered or reproduced without written permission. ABN: 44 614 516 624	
TITLE: Roof Plan SCALE: 1:100 TYPE NUMBER: 1 AMENDMENT: 02 PURPOSE: DA DATE: 27/02/2021			TITLE: Roof Plan SCALE: 1:100 TYPE NUMBER: 1 AMENDMENT: 02 PURPOSE: DA DATE: 27/02/2021		

5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013

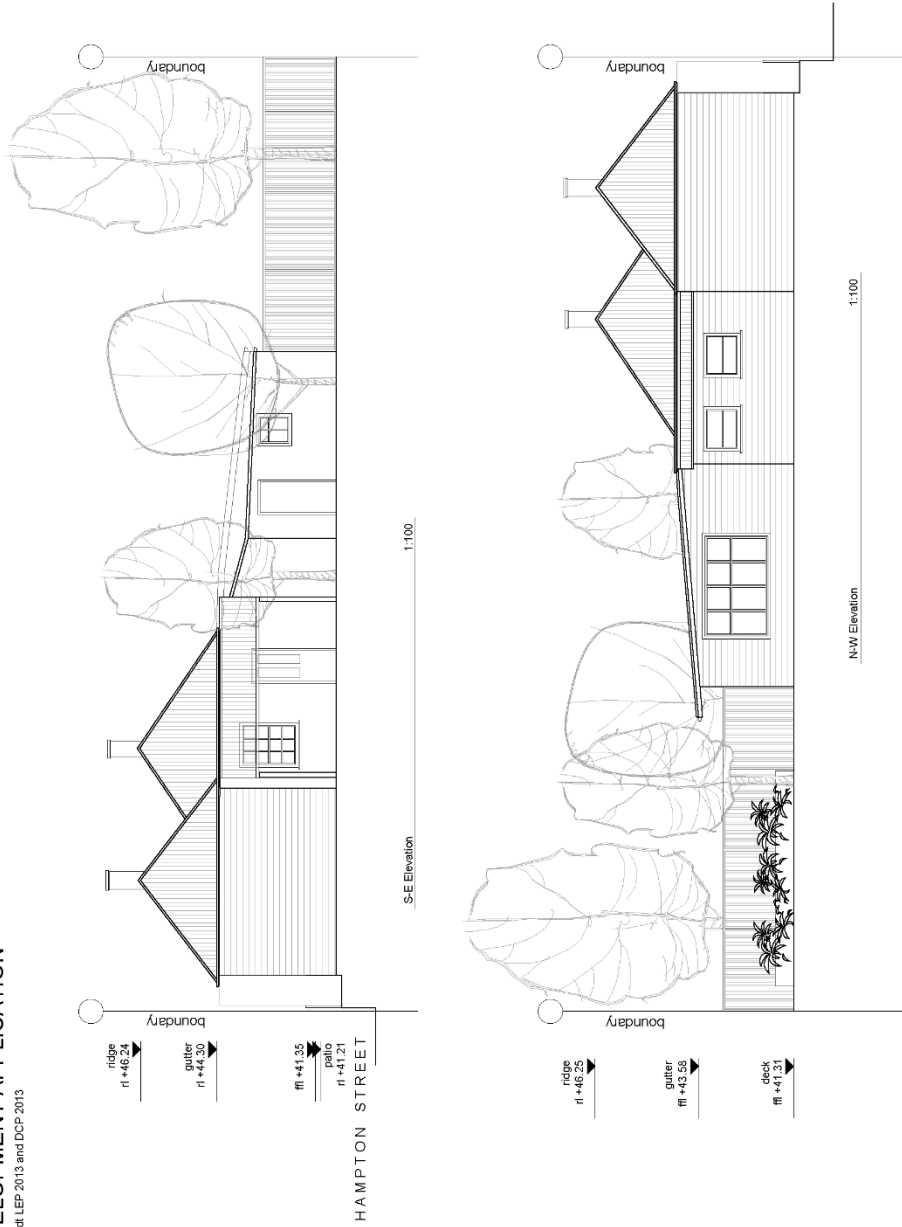


<p>Client: Marcel Marbot</p> <p>Project No: J20014</p> <p>Project Address: 5-7 Hampton St Balmain</p>		<p>Drawn by: RL</p> <p>Checked by: DO</p>													
<p>Client: Luccini Studio for Architecture Oprescu & Interior Design</p> <p>9 Harris Street Pyrmont NSW 2009</p>		<p>Copyright © 2009. All rights reserved. No part of this design is to be altered or reproduced without written permission. ABN: 44 614 518 624</p>													
<p>AMENDMENTS:</p> <table border="1"> <thead> <tr> <th>Revision</th> <th>Date</th> <th>Amendment Description</th> <th>Issue Date</th> <th>Amend No.</th> <th>Issued to</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Revision	Date	Amendment Description	Issue Date	Amend No.	Issued to	1						<p>TITLE: Elevations + Section</p> <p>SCALE: 1:100</p> <p>TYPE NUMBER: 1 03</p> <p>AMEND: 1</p> <p>PURPOSE: DA</p> <p>PLOT DATE: 27/02/2021</p>	
Revision	Date	Amendment Description	Issue Date	Amend No.	Issued to										
1															

5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013

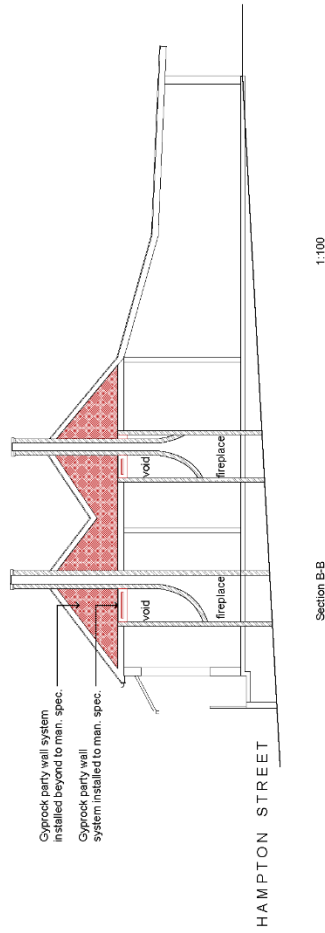
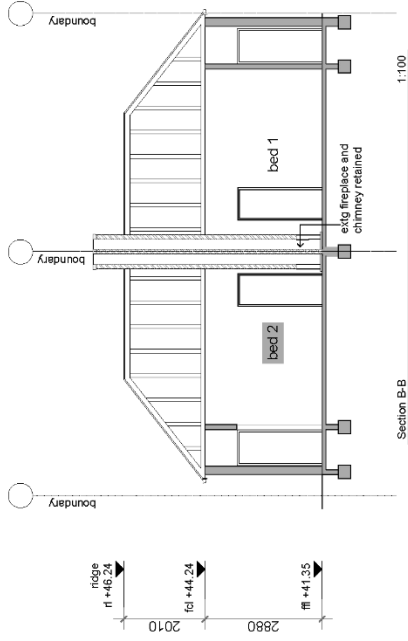


Client: Marcel Marbot Project No: J20014 Project Address: 5-7 Hampton St Balmain		Drawn by: RL Checked by: DO		AMENDMENTS: Revision Date Amendment Description		ISSUE: Date Amendt No. Issued to	
Luzzini Studio for Architecture Oprescu & Interior Design 9 Harris Street Pyrmont NSW 2009		Project: 041 0 115 001 R: 0404 025 952 e: projects@lucchioprescu.com.au Copyright - all rights reserved. No part of this design is to be altered or reproduced without written permission. ABN: 44 614 516 624		Title: Elevations Scale: 1:100 @A3 Type Number: 1 04 Amendt: 1		Purpose: DA Plot Date: 27/02/2021	

5-7 Hampton St Balmain

DEVELOPMENT APPLICATION

Leichhardt LEP 2013 and DCP 2013




Client: Marcel Marbot		Project No: J20014		Drawn by: RL		Issue Date: 15/06/21	
Luccini Studio for Architecture Oprescu & Interior Design		Project Address: 5-7 Hampton St Balmain		Checked by: DO		Title: Sections B-B + C-C	
9 Harris Street Pyrmont NSW 2009		D: 041 0115 001 R: 0404 025 952		e: projects@lucchiniooprescu.com.au		Scale: 1:100	
© Copyright 2021		All rights reserved. No part of this design is to be altered or reproduced without written permission.		ABN: 44 614 518 624		Type Number: 1 05	
Amendment 1		Description:		Issued to:		Plot Date: 15/06/21	

Attachment C- Clause 4.6 Exception to Development Standards

Clause 4.6 Variation Request
Minimum Subdivision Lot Size
Development Standard

5-7 Hampton Street, Balmain
March 2021

Document status

Revision No	Revision Date	Name	Signature
A	07.03.2021	Nicholas Lawler	

Contact Details

Item	Details
Company	Nicholas Lawler Development Consulting (ABN 20 631 287 601)
Postal Address	12/18 Carr St, Waverton, NSW 2060
Email	nicholas.lawler@outlook.com
Phone	+ 61 424 072 571

Disclaimer

This clause 4.6 exception to development standard has been prepared with reasonable effect made to ensure that this document is correct at the time of printing, Nicholas Lawler Development Consulting make no representation, undertake no duty and accepts no responsibility to any third party who use or rely upon this document or the information contained in it.

Contents

1. INTRODUCTION	4
2. EXTENT OF VARIATION	4
3. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL. 4.6(3)(A)]	5
3.1 Achieves the objectives of the standard	5
3.2 A better planning outcome	5
4. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]	6
5. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL. 4.6(4)(A)(II)]	7
6. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]	8
7. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD [CL. 4.6(5)(B)]	8
8. CONCLUSION	8

1. Introduction

This formal written Clause 4.6 Variation request has been prepared on behalf of the owners of 5-7 Hampton Street, Balmain in accordance with Clause 4.6 of the *Leichhardt Local Environmental Plan 2013 (LLEP 2013)*. It has been prepared in support a development application submitted to Inner West Council which seeks consent for Torrens title subdivision in order to create two lots.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The development standard that this request seeks approval to vary the minimum subdivision lot size outlined in Clause 4.1 of the LLEP 2013.

The minimum lot size allowable under LLEP 2013 is 200sqm. The proposal is seeking consent for the creation of two lots, with proposed lot sizes of 140sqm and 141.5 sqm respectively.

The development standard is not specifically excluded from the operation of Clause 4.6 of LLEP 2013.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal.

In **Sections 3** and **4** of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In **Sections 4, 5, 6** and **7** we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

2. Extent of Variation

The subject site has a minimum lot size requirement of 200sqm. The proposed development is seeking to vary the development standard as demonstrated in the table below:

Proposed lot	Proposed Sqm	% Non-compliance
21	140	30
22	141.5	29.25

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

3.1 Achieves the objectives of the standard

As per *Wehbe v Pittwater Council* (2007) 156 LGERA 446 at [42]-[43], the applicant may establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. As outlined in Table 1 (below), this written exception seeks to demonstrate that the objectives of the development standard are still able to be achieved, notwithstanding the non-compliance with the standard.

Objective	Discussion
<i>(a) to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,</i>	The existing site area is able to accommodate two existing dwellings. The proposed subdivision seeks to formalise the existing site area of each dwelling, which as demonstrated in the supporting SoEE, is consistent with the relevant residential controls of LDGP.
<i>(b) to ensure that lot sizes are capable of supporting a range of development types.</i>	The subject site is zoned R1 General Residential. The proposed lot size is capable of supporting a range of residential and ancillary developments, which are permissible within the zone.

3.2 A better planning outcome

In *Moskovich v Waverly Council* [2016] NSWLEC 1015 the Court accepted that compliance with the development standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone in a way that addressed the circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development.

It has been demonstrated earlier that the proposal achieves the objectives of the standard and respective land use zone, that despite the non-compliance. It has also been demonstrated that the proposal achieves a 'better planning outcome'. Specifically, the proposed non-compliance with minimum subdivision lot size requirement allows for the retention of the two-existing dwelling, whilst still providing an appropriate level of landscaped area and private open space for the occupants of the two lots. It is evident that the site has and will continue to be able to support two dwellings, consistent with the objectives and controls of LDGP 2013.

4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

The proposed breach with the minimum subdivision lot size development standard is considered acceptable on merit as there are sufficient environmental planning grounds to justify a contravention to the development standard, as outlined below:

- The proposal complies with the amenities required for housing despite being under minimum lot size.
- The proposal retains the complementary nature of the existing semi-attached dwellings which are prevalent in the Birchgrove Distinctive neighbourhood.
- The site is zoned R1 General Residential, and currently supports two dwelling without causing unreasonable amenity impacts on the adjoining residential properties or detrimentally impact the heritage conservation area. The proposal is seeking to retain the status quo in this regard.
- Lot sizes on Hampton Street and Birchgrove Road are of varying sizes and configurations, many of which are below the minimum lot size requirement. The existing lot size is an anomaly in the subdivision pattern, as seen in the below figure.



Figure 1. Aerial image showing prevailing lot sizes on the southwestern side of Hampton Street, ranging between 110sqm and 210sqm. (Source: Six Maps)

The objectives of this particular standard are to ensure that any new lots are sufficient in size to allow for proper amenities for the dwellings. It is demonstrated that this is achieved as there is adequate private open space and landscaping, the existing FSR and site coverage are compliant and similar to the surrounding context.

The supporting SEE has thoroughly assessed the potential for adverse amenity impacts resulting from this proposed non-compliance and determined that the scheme will retain an acceptable level of amenity to the subject dwellings. The proposal seeks to formalise the existing historical arrangement of two dwellings being present, which has demonstrated for decades it can support both dwellings and their occupants.

Therefore, whilst absence of environmental impact does not, by itself, represent sufficient environmental planning grounds to justify contravening a development standard, it is a notable reference in this case. In light of the above, this request provides that there are sufficient environmental planning grounds to justify the contravention

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

In Section 2 (above), it was demonstrated that the proposal is consistent with the objectives of the development standard, notwithstanding the proposed non-compliance with the development standard. The below table also demonstrates that proposal is consistent with the objectives of the zone:

Objective	Discussion
<ul style="list-style-type: none"> To provide for the housing needs of the community. 	The proposal is seeking to retain the existing dwelling arrangement on the site, which comfortably supports the provision of two modest houses that are capable of meeting the day to day housing needs of the occupants, and broader community as an extension.
<ul style="list-style-type: none"> To provide for a variety of housing types and densities. 	The proposal will retain the existing dwellings in situ, which assists in the provision of varied housing types and densities.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	As demonstrated in the SEE, the existing dwellings will continue to be provided with all the necessary facilities required of a modern dwelling, including the retention of POS, and dedicated laundry, storage and bin store areas. The site is located within close proximity to local services to meet the day to day needs of the residents.
<ul style="list-style-type: none"> To improve opportunities to work from home. 	N/A
<ul style="list-style-type: none"> To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. 	The existing dwelling will not be altered as a result of proposed subdivision, and as such retain their compatibility and contribution with distinctive neighbourhood and heritage conservation area.
<ul style="list-style-type: none"> To provide landscaped areas for the use and enjoyment of existing and future residents. 	The proposed lots will be serviced by an adequate level of landscaped area, located adjacent to the principal living areas in order to maximise the use and enjoyment for occupants of the dwelling.
<ul style="list-style-type: none"> To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation 	The proposed lots are consistent with the prevailing subdivision patterns found along the southwestern side of Hampton Street and Birchgrove Road, and retain an orientation and lots size capable of supporting two

<i>and pattern of the surrounding area.</i>	existing dwellings consistent with the suite of DCP controls and pattern of surrounding development.
<ul style="list-style-type: none"> <i>To protect and enhance the amenity of existing and future residents and the neighbourhood.</i> 	As outlined in the SEE, the proposed variation does not contribute to any adverse amenity impacts to the occupants of the adjoining properties and neighbourhood in terms of visual and acoustic privacy, solar access or view sharing.

As can be seen from **Table 2**, the proposal was found to be consistent with the objectives of the zone, and as such is considered to be in the public interest.

6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application. The variation to the site coverage development standard would not raise any matters of state or regional planning significance.

7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]

There is no public benefit in this instance to maintaining strict compliance with the development standard, given the proposal was found to be consistent with the objectives of the development standard and zone, despite the proposed non-compliance with the standard. Furthermore, this written request has demonstrated that there are sufficient environmental grounds to warrant a variation to the minimum subdivision lot size development standard and, hence, there are no public disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage to not achieving compliance, and as such there is no public benefit to maintaining the standard in this instance.

8. Conclusion

The proposal to exercise the flexibility afforded by Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* results in a better outcome, being an appropriate lot size to support the retention of varied housing styles and densities. This variation request demonstrates, as required by Clause 4.6 of LLEP 2013, that:

- Compliance with the development standard is unreasonable and unnecessary,


as the development will continue to achieve the objectives of the standard, despite the non-compliance,

- That there are sufficient environmental planning grounds to justify a contravention to the development standard,
- The development achieves the objectives of the development standard and is consistent with the objectives of the R1 General Residential land use Zone,
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard in this instance, and
- The variation does not raise any matter of State or Regional Significance. On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

Clause 4.6 Variation Request
Landscaped Area Development
Standard

5-7 Hampton Street, Balmain
August 2021

Document status

Revision No	Revision Date	Name	Signature
A	01.08.2021	Nicholas Lawler	

Contact Details

Item	Details
Company	Nicholas Lawler Development Consulting (ABN 20 631 287 601)
Postal Address	12/18 Carr St, Waverton, NSW 2060
Email	nicholas.lawler@outlook.com
Phone	+ 61 424 072 571

Disclaimer

This clause 4.6 exception to development standard has been prepared with reasonable effect made to ensure that this document is correct at the time of printing, Nicholas Lawler Development Consulting make no representation, undertake no duty and accepts no responsibility to any third party who use or rely upon this document or the information contained in it.

Contents

1. INTRODUCTION	4
2. EXTENT OF VARIATION	4
3. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL. 4.6(3)(A)]	5
3.1 Achieves the objectives of the standard	5
3.2 A better planning outcome	5
4. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]	6
5. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL. 4.6(4)(A)(II)]	7
6. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]	8
7. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD [CL. 4.6(5)(B)]	8
8. CONCLUSION	8

1. Introduction

This formal written Clause 4.6 Variation request has been prepared on behalf of the owners of 5-7 Hampton Street, Balmain in accordance with Clause 4.6 of the *Leichhardt Local Environmental Plan 2013 (LLEP 2013)*. It has been prepared in support a development application submitted to Inner West Council which seeks consent for Torrens title subdivision in order to create two lots.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The development standard that this request seeks approval to vary is the landscaped area standard outlined in Clause 4.3A (3)(a)(i) of the LLEP 2013.

The minimum landscaped area on a lot size of less than or equal to 235sqm is 15% of the total site area.

The development standard is not specifically excluded from the operation of Clause 4.6 of LLEP 2013.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal.

In **Sections 3 and 4** of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In **Sections 4, 5, 6 and 7** we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

2. Extent of Variation

The proposed Lot 22 will have a total site area of 141.5sqm, and as such is required to provide a minimum 15% landscaped area in accordance with the development standard. The proposed development is seeking to vary the development standard as demonstrated in the table below:

Proposed lot	Proposed landscaped area	% Non-compliance
22	9.8sqm or 7%	46%

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

3.1 Achieves the objectives of the standard

As per *Wehbe v Pittwater Council* (2007) 156 LGERA 446 at [42]-[43], the applicant may establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. As outlined in Table 1 (below), this written exception seeks to demonstrate that the objectives of the development standard are still able to be achieved, notwithstanding the non-compliance with the standard.

Table 1. Achievement of Development Standard Objectives	
Objective	Discussion
<i>(a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,</i>	The proposal retains the existing landscaped area, which currently caters for several canopy trees. The proposed lot maintains suitable opportunity for the retention and growth of substantial tree planting.
<i>(b) to maintain and encourage a landscaped corridor between adjoining properties,</i>	N/A
<i>(c) to ensure that development promotes the desired future character of the neighbourhood,</i>	As outlined in the supporting SEE, the proposed development is consistent with the desired future character of Birchgrove Distinctive Neighbourhood and retains the specific characteristics of the heritage conservation area.
<i>(d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,</i>	The proposal does not seek to alter the existing density and built form found on the proposed lot, and as such maintains adequate opportunity for the retention and absorption of surface water.
<i>(e) to control site density,</i>	The proposal does not result in any change to the existing site density.
<i>(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.</i>	The proposed scheme is able to provide adequate areas of hard landscaping and private open space in the rear yard of the subject dwelling at proposed lot 22 and does not seek to alter the existing building footprint.

3.2 A better planning outcome

In *Moskovich v Waverly Council* [2016] NSWLEC 1015 the Court accepted that compliance with the development standard (FSR in that case) was unreasonable and

unnecessary because the design achieved the objectives of the standard and the respective zone in a way that addressed the circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development.

It has been demonstrated earlier that the proposal achieves the objectives of the standard and respective land use zone, that despite the non-compliance. It has also been demonstrated that the proposal achieves a 'better planning outcome'. Specifically, the proposed non-compliance with minimum landscaped area for one of the proposed lots is acceptable on merit, given the current provisions of landscaped area and private open space provided for the dwelling occupants will remain unchanged by the proposal. It is evident that the site has and will continue to be able to support the existing dwelling, consistent with the objectives and controls of LDCP 2013.

4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

The proposed breach with the minimum landscaped area development standard is considered acceptable on merit as there are sufficient environmental planning grounds to justify a contravention to the development standard, as outlined below:

- The proposal complies with the amenities required for housing despite being the non-compliant with the minimum landscaping standard/
- The proposed lot and dwelling configuration are able to support the retention of existing canopy trees, with opportunity for additional planting to be provided for in the rear of the dwelling.
- The proposal retains the complementary nature of the existing semi-attached dwellings which are prevalent in the Birchgrove Distinctive neighbourhood.
- The site is zoned R1 General Residential, and currently supports two dwelling without causing unreasonable amenity impacts on the adjoining residential properties or detrimentally impact the heritage conservation area. The proposal is seeking to retain the status quo in this regard.
- The sites are able to maintain a landscaped corridor between the proposed new lots and rear dwellings.
- The proposal does not seek to alter the existing site density and provides ample opportunity for the provision of private open space, as well as the absorption of water into groundwater.

Therefore, whilst absence of environmental impact does not, by itself, represent sufficient environmental planning grounds to justify contravening a development standard, it is a notable reference in this case. In light of the above, this request provides that there are sufficient environmental planning grounds to justify the contravention

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

In Section 2 (above), it was demonstrated that the proposal is consistent with the objectives of the development standard, notwithstanding the proposed non-compliance with the development standard. The below table also demonstrates that proposal is consistent with the objectives of the zone:

Objective	Discussion
<ul style="list-style-type: none"> To provide for the housing needs of the community. 	The proposal is seeking to retain the existing dwelling arrangement on the site, which comfortably supports the provision of two modest houses that are capable of meeting the day to day housing needs of the occupants, and broader community as an extension.
<ul style="list-style-type: none"> To provide for a variety of housing types and densities. 	The proposal will retain the existing dwellings in situ, which assists in the provision of varied housing types and densities.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	As demonstrated in the SEE, the existing dwellings will continue to be provided with all the necessary facilities required of a modern dwelling, including the retention of POS, and dedicated laundry, storage and bin store areas. The site is located within close proximity to local services to meet the day to day needs of the residents.
<ul style="list-style-type: none"> To improve opportunities to work from home. 	N/A
<ul style="list-style-type: none"> To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. 	The existing dwelling will not be altered as a result of proposed subdivision, and as such retain their compatibility and contribution with distinctive neighbourhood and heritage conservation area.
<ul style="list-style-type: none"> To provide landscaped areas for the use and enjoyment of existing and future residents. 	The proposed lots will be serviced by an adequate level of landscaped area, located adjacent to the principal living areas in order to maximise the use and enjoyment for occupants of the dwelling.
<ul style="list-style-type: none"> To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation 	The proposed lots are consistent with the prevailing subdivision patterns found along the southwestern side of Hampton Street and Birchgrove Road, and retain an orientation and lots size capable of supporting two

<i>and pattern of the surrounding area.</i>	existing dwellings consistent with the suite of DCP controls and pattern of surrounding development.
<ul style="list-style-type: none"> <i>To protect and enhance the amenity of existing and future residents and the neighbourhood.</i> 	As outlined in the SEE, the proposed variation does not contribute to any adverse amenity impacts to the occupants of the adjoining properties and neighbourhood in terms of visual and acoustic privacy, solar access or view sharing.

As can be seen from Table 2, the proposal was found to be consistent with the objectives of the zone, and as such is considered to be in the public interest.

6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application. The variation to the site coverage development standard would not raise any matters of state or regional planning significance.

7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]

There is no public benefit in this instance to maintaining strict compliance with the development standard, given the proposal was found to be consistent with the objectives of the development standard and zone, despite the proposed non-compliance with the standard. Furthermore, this written request has demonstrated that there are sufficient environmental grounds to warrant a variation to the minimum subdivision lot size development standard and, hence, there are no public disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage to not achieving compliance, and as such there is no public benefit to maintaining the standard in this instance.

8. Conclusion

The proposal to exercise the flexibility afforded by Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* results in a better outcome, being an appropriate lot size to support the retention of varied housing styles and densities. This variation request demonstrates, as required by Clause 4.6 of LLEP 2013, that:

- Compliance with the development standard is unreasonable and unnecessary,

as the development will continue to achieve the objectives of the standard, despite the non-compliance,

- That there are sufficient environmental planning grounds to justify a contravention to the development standard,
- The development achieves the objectives of the development standard and is consistent with the objectives of the R1 General Residential land use Zone,
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard in this instance, and
- The variation does not raise any matter of State or Regional Significance. On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.