




 DEVELOPMENT ASSESSMENT REPORT				
<b>Application No.</b>	DA/2021/1028			
<b>Address</b>	176 Evans Street ROZELLE NSW 2039			
<b>Proposal</b>	Lower ground and ground floor alterations and additions to existing dwelling-house, new pool, modifications to garage and associated works			
<b>Date of Lodgement</b>	19 October 2021			
<b>Applicant</b>	Mr Daniel T Talbot			
<b>Owner</b>	Mr Daniel T Talbot			
<b>Number of Submissions</b>	Initial: 0			
<b>Value of works</b>	\$396,000.00			
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%			
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Non-compliance with Building Location Zone and Side setback controls.</li> <li>• Non-compliance with Landscape Area and Site coverage development standard</li> </ul>			
<b>Recommendation</b>	Approved with Conditions			
<b>Attachment A</b>	Recommended conditions of consent			
<b>Attachment B</b>	Plans of proposed development			
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards			
<b>Attachment D</b>	Statement of Heritage Significance of Heritage conservation area			
				
<b>LOCALITY MAP</b>				
Subject Site		Objectors		↑ N
Notified Area		Supporters		
Note: Due to scale of map, not all objectors could be shown.				

## 1. Executive Summary

This report is an assessment of the application submitted to Council for lower ground and ground floor alterations and additions to an existing dwelling-house, new pool, modifications to garage and associated works at 176 Evans Street, Rozelle.

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

The main issues that have arisen from the application include:

- Non-compliances with Building Location Zone and side setback controls.
- Non-compliance with landscaped area development standard.

The non-compliances are acceptable given the uniqueness of the location and topography of the site and the proposed works will not result in adverse amenity impacts to the adjoining property and therefore the application is recommended for approval.

## 2. Proposal

The proposal entails the following works:

- The demolition of the extension to the rear of the existing dwelling;
- Construction of a new kitchen, dining room, living room and master bedroom with ensuite;
- Construction of a new rumpus room with laundry and powder room;
- Alterations to the existing garage including wider roller door and stone cladding;
- New ashlar cladding to the brick boundary wall;
- Construction of a new swimming pool; and
- New landscaping

## 3. Site Description

The subject site is located on the southern side of Evans Street, between Kenniff and Victoria Street. The site consists of one allotment and is generally rectangular with a total area of 275.9 sqm and is legally described as 176 Evans Street Rozelle.

The site has a frontage to Evans Street of 9.78 metres and a secondary frontage of approximate 28.448 metres to Keniff Street and a rear frontage of approximately of 9.68 metres to Charlotte Street.

The site supports a single storey residential dwelling. The immediate area is predominantly residential in character and comprised of a mix of single dwellings of various ages and styles, including workers cottages and Victorian era terraces and row housing.

The subject site is not listed as a heritage item however is located within a conservation area.

There are no prescribed trees located on the site and no trees on adjacent sites that will be impacted.

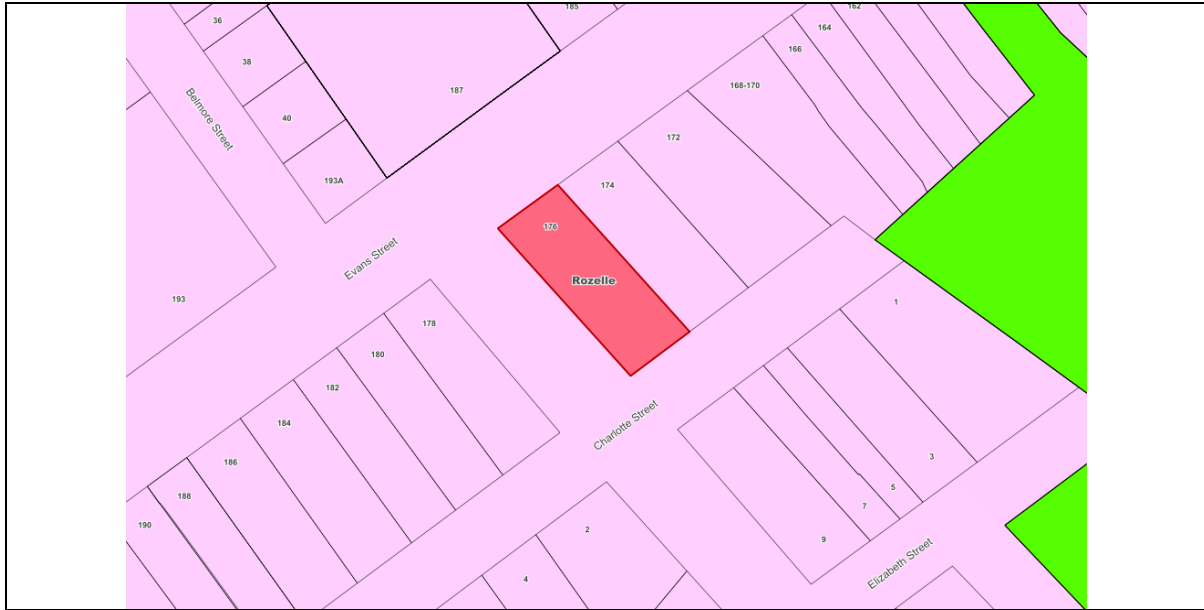


Figure 1: Zoning Map



Figure 2: View of subject site from Evans Street





Figure 3: View of subject site from the corner of Keniff and Charlotte Street

## 4. Background

### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

#### Subject Site

Application	Proposal	Decision & Date
PREDA/2019/145	Double Storey Extension and Granny Flat	06/11/2019 Issued
PDA/2020/0125	Alterations and additions to existing dwelling-house and alterations to existing garage	22/05/2020 Issued
DA/2021/0145	Alterations and additions to an existing dwelling including a new pool.	21/06/2021 Withdrawn by Applicant

#### Surrounding properties

Application	Proposal	Decision & Date
DAREV/2018/11	172 Evans Street	10/09/2019 Approved - Land and Environment Court of NSW



#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
20 December 2021	Request for information in relation to correcting the north points on the architectural drawings so that it matches the True North on the site survey.
20 December 2021	Applicant submitted amended architectural drawings with correct North Points.

Renotification was not required in accordance with Community Engagement Framework. The amended plans are the subject of this report.

### 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*

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. LDCP 2013 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.

##### 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 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid 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 LR1 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

*“Dwelling House”*

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

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

Standard	Proposal	non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 0.8:1 or 220.7 sqm	0.79:1 or 217 sqm	N/A	Yes
<b>Landscape Area*</b> Minimum permissible: 20% or 55.2 sqm	4.3% or 11.8 sqm	43.4 sqm or 78.6%	No
<b>Site Coverage</b> Maximum permissible: 60% or 165.5 sqm	66.3% or 183 sqm	17.5 sqm or 10.55%	No

\* A further Landscaped Area of 25.8sqm at least 1m wide and clear of any structures is proposed, but none of the proposed Landscaped Area is included because the proposed external ground levels are greater than 500mm above existing ground level as per Clause 4.3A(4)(b)(ii).

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(a)(ii) – Landscaped Area
- Clause 4.3A(3)(b) – Site Coverage

The applicant seeks variations to the Landscaped Area and Site Coverage development standards under Clause 4.3A of *LLEP 2013* by 78.6% (43.4sqm) and 10.55% (17.5 sqm), respectively.

The same objectives are applicable to both development standards under Clause 4.3A of the *LLEP 2013*.

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 the LLEP 2013 below.

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

#### Landscaped Area

1. *The proposed development maintains areas of existing planting along the north eastern boundary. The site does not lend itself to substantial tree planting given its size and constraints of existing dwelling, retaining wall, garage and the adjoining dwelling.*
2. *The landscaped area is predominantly deep soil which allows for the planting and growth of trees and larger shrubs.*
3. *The site maintains the ability to have a landscaped area suitable for use and enjoyment by the residents. This is evident by the fact that the DCP control for private open space is met.*
4. *The fill results in a better relationship between the internal living areas and the private open space while maintaining a level floor plate.*
5. *The available landscaping area is predominantly deep soil which allows for the planting of trees and shrubs;*
6. *The existing landscaping on the eastern boundary is maintained and able to be embellished;*
7. *The planting within the setback to Evans Street is maintained.*
8. *The proposed development does not result in adverse amenity impacts.*

#### Site Coverage

1. *The proposed development maintains areas of existing planting along the north eastern boundary. The site does not lend itself to substantial tree planting given its size and constraints of existing dwelling, retaining wall, garage and the adjoining dwelling.*
2. *The landscaped area is predominantly deep soil which allows for the planting and growth of trees and larger shrubs.*
3. *The site maintains the ability to have a landscaped area suitable for use and enjoyment by the residents. This is evident by the fact that the DCP control for private open space is met.*
4. *The proposed development does not involve an exceedance of the maximum FSR prescribed by Clause 4.4 of the LLEP.*
5. *The exceedance in site coverage is in part owing to the existing garage and its roof. The master bedroom wing is sited on top of the existing garage roof so as to enable an open area around the master bedroom wing for on-structure landscaping. This enhances amenity for both occupants and persons who will view the land from the public domain. Notwithstanding the numerical non-16 compliance with the prescribed development standard for site coverage, the siting of new structures is able to be carried out so as not to dominate the streetscape and to ensure a satisfactory level of amenity is maintained.*
6. *The built form is able to be situated on site so as to enable the retention of existing landscaping along the north eastern boundary and also maintain reasonable setbacks to Kenniff Street and Charlotte Street. The exceedance of the site coverage standard does not result in a building that dominates either the Kenniff Street or Charlotte Street streetscapes.*



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

The objectives of the Landscaped Area and Site Coverage development standards are as follows:

- *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- *to maintain and encourage a landscaped corridor between adjoining properties,*
- *to ensure that development promotes the desired future character of the neighbourhood,*
- *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,*
- *to control site density,*
- *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

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

- The proposal provides Landscaped Areas that are suitable for substantial tree planting and for the use and enjoyment of residents;
- The proposal maintains and encourages a landscaped corridor between adjoining properties and is compatible with the desired future character;
- The proposal provides adequate retention and absorption of surface drainage water on the site;
- The proposal is of an acceptable density by way of complying with the Floor Space Ratio development standard, and has a Site Coverage that is not out of character with the pattern of development in the street; and
- The proposal provides a suitable balance between private open space and built form.

The objectives of the R1 zone are as follows:

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

It is considered that 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 development provides for the housing needs of the community;
- The development as proposed and as conditioned provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas; and
- The development provides landscaped areas for the use and enjoyment of existing and future residents and does not result in any undue adverse amenity impacts.
- The proposed non-compliances will not result in any undue adverse amenity impacts on adjoining sites and result in improved on-site amenity outcomes.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning.

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

#### Clause 5.10 - Heritage Conservation

The subject property at 176 Evans Street, Rozelle, is a contributory dwelling located within The Valley Heritage Conservation Area (C7 in Schedule 5 of the Leichhardt LEP 2013).

The Statement of Significance for The Valley Heritage Conservation Area is included in Attachment D of this report.

The application was referred to Council's Heritage Specialist who provided the following comments:

*Clause 5.10: Heritage Conservation* from the Leichhardt LEP 2013 and *Sections C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C1.18: Laneways* and *C.2.2.5.2: Easton Park Distinctive Neighbourhood* from the Leichhardt DCP 2013 applies to the proposal.

The drawings prepared by platform architects, dated 3 September 2021, and the Heritage Impact Statement prepared by Architectural Projects, dated September 2021, were reviewed as part of this assessment.

A DA for alterations and additions to the existing dwelling including a new pool at the subject site (D/2021/0145) was withdrawn by the applicant because of the extent of amendments that were required.

The previous proposal was considered to be acceptable from a heritage perspective with conditions of consent. The conditions recommended for the previous scheme are reiterated below. Additional commentary is provided in respect to the revised proposal submitted with the current application and from the discussions between the applicant, Council's Planner and Heritage Specialist from the meeting held on 22 June 2021.

The form and bulk of the rear addition has been reduced from the previous proposal and will present as a linked pavilion addition to the main building form, which is a much better

heritage outcome given the visually prominent corner site. The comments below relate to the request for information provided to the applicant.

1. *Design change:*

- a. *Doors and windows in the south east and south west elevations of the rear addition must employ traditional design (timber sash) and materials (timber frame).*

**Comment:** Not mentioned in the External Finishes or annotated on the elevations. It is recommended that a condition of consent be included that doors and windows in the south east and south west elevations of the rear addition must employ traditional design (timber sash) and materials (timber frame).

- b. *The walls of the addition are to be clad in horizontally laid timber weatherboards or FC sheeting with a horizontal profile.*

**Comment:** The External Finishes and elevations show horizontally laid weatherboard cladding, which is acceptable.

- c. *The extension in wall height above the garage and on the south west elevation is to be deleted. The existing rendered masonry to the garage is to be retained. The deleted wall height is to be replaced with a vertical timber paling fence no taller than 1.2m in height above the main floor height of RL30.22.*

**Comment:** As discussed at the meeting with the applicant on 22 June, a rendered wall to the south west elevation in ashlar block to the Kenniff Street elevation is acceptable as this will provide visual interest and is complementary to detail in the HCA. The south west elevation and the External Finishes provided only show horizontal lines and no vertical line to replicate blocks. The ashlar block pattern is to contain thin grooves characteristic of ashlar block patterning, not thick grooves as shown in the example in the External Finishes Schedule. The pattern is to contain both horizontal and vertical grooves to replicate the traditional ashlar block pattern.

2. *Prior to the issue of a Construction Certificate, the External Finishes Concept Board is to be amended in accordance with the following:*

- a. *The proposed charcoal is to be replaced with Dulux "Portland Stone", "Pale Stone" or "York Stone", or similar, for the wall cladding and the garage doors;*
- b. *The sandstone cladding proposed to the garage is to be deleted. The existing rendered masonry to the garage is to be retained.*
- c. *Any additional masonry construction to the south west elevation is to be rendered and painted in Dulux "Portland Stone", "Pale Stone" or "York Stone", or similar; and*
- d. *A pre-coloured traditional corrugated steel shall be used for the roofing for the addition, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby".*

**Comment:** The Colorbond Basalt steel cladding to the connection between the main building form and the rear pavilion is to be replaced with Colorbond Dune, or similar. The Colorbond Dune colour proposed for the roofing is to be replaced with a pre-coloured



traditional corrugated steel roofing finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby”. The Colorbond Gully proposed to paint the rendered walls and the garage doors are to be replaced with Colorbond Dune, or similar. The palisade fencing proposed in the south west and south east elevations above the rendered ashlar block wall is to be constructed from vertical timber pickets. The External Finishes Schedule is to be amended accordingly.

### **Recommendation**

The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of The Valley Heritage Conservation Area providing the design changes below are included as conditions of consent to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.

### **Conclusion - DA**

An assessment of the application has been completed and the conclusion of the advice is:

Acceptable with the following conditions of consent:

1. Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a revised External Finishes Schedule updated in accordance with the following:
  - a. doors and windows in the south east and south west elevations of the rear addition must employ traditional design (timber sash) and materials (timber frame).
  - b. The ashlar block pattern to the south west and north east elevations is to contain both horizontal and vertical grooves to replicate the traditional ashlar block pattern. Thin grooves characteristic of ashlar block patterning are to be used, not thick grooves as shown in the example in the External Finishes Schedule.
  - c. The Colorbond Basalt steel cladding to the connection between the main building form and the rear pavilion is to be replaced with Colorbond Dune, or similar.
  - d. The Colorbond Dune colour proposed for the roofing is to be replaced with a pre-coloured traditional corrugated steel roofing finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby”.
  - e. The Colorbond Gully proposed to paint the rendered walls and the garage doors are to be replaced with Colorbond Dune, or similar.
  - f. The palisade fencing proposed in the south west and south east elevations above the rendered ashlar block wall is to be constructed from vertical timber pickets.

### **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
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes, subject to conditions – see discussion under section 5(a)(ii)
C1.4 Heritage Conservation Areas and Heritage Items	Yes, subject to conditions – see discussion under section 5(a)(ii)
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	Yes
C1.18 Laneways	Not applicable – the rear of the site fronts Tobruk Avenue
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	Yes

<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.5.2 Easton Park Distinctive Neighbourhood	Yes, subject to conditions – see discussion under section 5(a)(ii)
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see discussion below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion below
C3.9 Solar Access	Yes – see discussion below
C3.10 Views	Yes
C3.11 Visual Privacy	Yes, subject to conditions – see discussion below
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
	N/A
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A



E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
<b>Part F: Food</b>	N/A
<b>Part G: Site Specific Controls</b>	N/A

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

*Building Location Zone*

The subject site is a corner lot and therefore C5 is applicable:

*“The BLZ of:*

- a. a corner site; and*
- b. end lots on adjoining streets*

*is to be determined by the location of the building on the adjacent property that most resembles the orientation, frontage width and site layout of the subject site. Council may exercise some flexibility in relation to the side setback to the secondary street frontage, depending upon the relative importance of this frontage and the characteristic pattern of development.”*

As shown on the aerial photo below, the properties directly to the east (i.e. No. 172 Evans and No. 174 Evans) are similar in terms of frontage width and orientation of the site.



Figure 4: Aerial of Site layout

However, the directly adjoining property to the east, i.e. No. 174 Evans Street is a built form that was constructed originally as a commercial building with a front alignment with nil setback from the Evans Street boundary and an awning that overhangs onto the footpath (as per image below):



Figure 5: View of No. 174 Evans Street

Therefore in this regard, given the difference of site layout at No.174 Evans Street, the site at No. 172 Evans Street is a closer match in terms of site similarity. The proposed works have a nil setback to the rear boundary which extends 9 metres beyond the rear alignment of No. 174 Evans Street, but is similar in nature to the approved development at No. 172 Evans Street which also contain building structures with a nil setback to the rear boundary and separation between the main dwelling and the rear building structures.

In accordance with the requirements under Control C6 of Section C3.2 of LDCP 2013, which enables a variation to the required BLZ, the proposal is considered acceptable given:

- The proposed site is a corner lot where the secondary frontage is highly visible. The non-compliance is mainly due to providing the majority of the floor area at the ground floor level with a smaller lower ground floor level to respond to the topography of the site which falls significantly towards the rear. The proposed design avoids a first floor level that would have read as a three storey structure from the rear. On balance, the current approach is seen as a more sensitive design with regard to impact to the heritage conservation area and subject to the imposition of conditions in relation to material and finishes, the proposed built form is considered to be compatible to the heritage conservation area that it is located in.
- It complies with the FSR development standard
- It does not result in any undue adverse overshadowing, visual or acoustic privacy, or visual bulk amenity impacts (as conditioned).

*Side Setbacks*

A technical non-compliance with the Side Boundary Setbacks Graph as prescribed in Part C3.2 of the DCP is proposed as outlined in the following table:

Elevation	Required Setbacks (m)	Proposed setbacks (m)	Complies
Eastern	1.79	1.065	No
Southern	1.67	1.0	No

The proposal therefore seeks side setback non-variations relating to each side boundary. Subclause C8 of Part C3.2 of the DCP states that Council may allow for a departure from the side setback control where:

- a. *the proposal is consistent with the relevant Building Typology Statement as outlined in Appendix B of the DCP;*
- b. *the pattern of development in the streetscape is not compromised;*
- c. *the bulk and scale is minimised by reduced floor to ceiling heights;*
- d. *amenity impacts on adjoining properties are minimised and / or are acceptable; and*
- e. *reasonable access is retained for necessary maintenance of adjoining properties.*

The proposed variation to the required setback is considered acceptable on merit given it:

- Retains the main original roof form of the existing building, minimises visibility from the street by providing the additional floor area in an elevated ground floor and lower ground floor level, and thereby achieves a compatible bulk, form and scale consistent with the existing and desired future character along this section of Evans Street;
- Complies with the permitted FSR, provides acceptable Site Coverage, Landscaped Area and private open space, and maintains reasonable ceiling heights;
- Does not result in any undue adverse overshadowing, visual or acoustic privacy (as conditioned) or view loss amenity impacts.



### C3.9 Solar Access

The following solar access controls under C3.9 apply to the proposal in relation to impacts to glazing on the surrounding sites:

- *C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is*

The submitted shadow diagrams illustrate that due to the orientation of the subject and surrounding lots, the proposed works will not result in any additional overshadowing impacts to any north-facing glazing serving the main living room at winter solstice between 9am and 3pm.

The following solar access controls under C3.9 apply to the proposal in relation to impacts to private open spaces on the surrounding sites:

- *C16 Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9am and 3pm to 50% of the total area during the winter solstice*
- *C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

Having regard to the orientation of the subject and surrounding lots, the proposed works will not result in any additional overshadowing impacts to the private open spaces of the adjoining properties at winter solstice between 9am and 2pm. The only overshadowing that will occur is at 3pm at winter solstice to No. 174 Evans Street where the amount of solar access at No. 174 Evans Street is reduced from 3.5 sqm to 2.4 sqm. As there is only a reduction of 1.1 sqm of solar access in total between 9am and 3pm, this is considered to be a negligible impact and therefore satisfactory and compliant with the prescribed control.

C3.9 also requires the private open space of the subject site under C4 to receive a minimum of 3 hours of direct sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice. From the shadow diagrams, it is evident that the proposed Landscaped area will not receive the required solar access. However, it is considered that the proposal is acceptable in this regard for the following reasons:

- the built form and associated proposed private open space is located in such a location to reduce the visual bulk impact to the secondary street frontage
- it is generally difficult to achieve the solar access requirements for south-facing private open spaces
- the proposed private open space equinox will receive direct sunlight to over 50% of the required private open space between 12pm and 3pm.

### C3.11 Visual Privacy

The following controls are applicable in C3.11

- *C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.*
- *C4 Roof terraces will be considered where they do not result in adverse privacy impacts to surrounding properties. This will largely depend on the:*
  - *Design of the terrace;*

- *The existing privacy of the surrounding residential properties;*
- *Pre-existing pattern of development in the vicinity; and*
- *The overlooking opportunities from the roof terrace.*
- *C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).*

The elevated ground floor windows on the eastern elevation (i.e. W8, W9 and W10) have the potential to overlook the windows and private open spaces of the adjoining property at 174 Evans Street. While noting that opaque louvres are proposed for W8 and W9, a standard privacy condition will be recommended to ensure that sightlines from W8, W9, W10 up to 1.6 metres from the finished floor level will be adequately restricted.

#### 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 the Community Engagement Framework for a period of 14 days to surrounding properties.

No submissions were received in response to 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.

- Engineers – No objections subject to conditions
- Urban Forest – No objections subject to the imposition of conditions which require one tree capable of growing to 6 metres to be provided on site.
- Heritage – Discussed in detail in an earlier section of the report, no objections subject to conditions.

### 6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid – No objections.

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$3,960 would be required for the development under Section 7.12 Development Contributions Plan for the Former Leichhardt Area. A condition requiring that contribution to be paid is included in the recommendation.

## 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*.

Subject to the imposition of the recommended conditions, the development will not result in any significant impacts on the amenity of the adjoining properties and 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 the *Leichhardt Local Environmental Plan 2013* to vary Clauses 4.3A(3)(a)(ii) and 4.3A(3)(b) of the LEP. 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/2021/1028 for Lower ground and ground floor alterations and additions to existing dwelling-house, new pool, modifications to garage and associated works at 176 Evans Street, Rozelle 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:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
02, Revision A	Site Plan	14.09.21	Platform Architects
06, Revision A	Demolition Plan	14.09.21	Platform Architects
07, Revision A	Roof Demolition Plan	14.09.21	Platform Architects
08, Revision A	Proposed Floor Plans	14.09.21	Platform Architects
09, Revision A	Proposed Floor Plans	14.09.21	Platform Architects
10, Revision A	Proposed Roof Plan	14.09.21	Platform Architects
11, Revision A	Proposed Elevations	14.09.21	Platform Architects
12, Revision A	STH/West Elevations	14.09.21	Platform Architects
13, Revision A	NTH EAST ELEVATION + SECTION AA	14.09.21	Platform Architects



14, Revision A	SECTION BB + SECTION CC	14.09.21	Platform Architects
18, Revision A	LANDSCAPE PLAN	14.09.21	Platform Architects
19, Revision A	EXTERNAL FINISHES	14.09.21	Platform Architects
A431422	BASIX Certificate	14 September 2021	Eco Certificates PTY LTD
Drawing No. C01	DRAINAGE LAYOUT PLAN & CALCULATIONS	02/03/2021	GILCON STRUCTURAL ENGINEERS
Drawing No. C02	DRAINAGE DETAILS	02/03/2021	GILCON STRUCTURAL ENGINEERS

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.

<b>Security Deposit:</b>	\$2,254.00
<b>Inspection Fee:</b>	\$241.50

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 initial 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 *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

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\*:

\$3,960

\*Indexing of the Section 7.12 contribution payment:

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 **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions); cash (to a maximum of \$10,000)**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **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. 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.

#### **6. External Finishes Schedule**

Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a revised External Finishes Schedule updated in accordance with the following:

- a. Doors and windows in the south east and south west elevations of the rear addition must employ traditional design (timber sash) and materials (timber frame).
- b. The ashlar block pattern to the south west and north east elevations is to contain both horizontal and vertical grooves to replicate the traditional ashlar block pattern. Thin grooves characteristic of ashlar block patterning are to be used, not thick grooves as shown in the example in the External Finishes Schedule.
- c. The Colorbond Basalt steel cladding to the connection between the main building form and the rear pavilion is to be replaced with Colorbond Dune, or similar.

- d. The Colorbond Dune colour proposed for the roofing is to be replaced with a pre-coloured traditional corrugated steel roofing finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby".
- e. The Colorbond Gully proposed to paint the rendered walls and the garage doors are to be replaced with Colorbond Dune, or similar.
- f. The palisade fencing proposed in the south west and south east elevations above the rendered ashlar block wall is to be constructed from vertical timber pickets.

#### 7. 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.

#### 8. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Windows W8, W9 and W10 being amended in the following manner:

- a. Fixed and obscure glazing to a minimum level of 1.6 metres above the floor level; or
  - b. Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level; or
- Note: The louvers are to individual opening more than 30mm wide and a total area of opening that is less than 30% of the surface area of the screen and made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position.*

**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 property at 174 Evans Street 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 Neighbours 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. 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.

**19. Stormwater Drainage System – Minor Developments (OSD is not required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The Stormwater Drainage Concept plan on Drawing No. C01-C02 prepared by GILCON STRUCTURAL ENGINEERS and dated 20 March 2021, must be amended to comply with the following;
- b. 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 any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. 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;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage. The proposed downpipe connection to the rainwater tank using charged pipe system is not permitted;
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- 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. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- i. No nuisance or concentration of flows to other properties;
- j. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- k. The design 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;
- l. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;

- m. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- n. 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 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;
- o. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- p. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- q. No impact to street tree(s);
- 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.

#### 20. 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 garage slab or 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;
- d. The garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width) and a door opening width of 3000 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;

- f. 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;
- g. The parking space must be set back from the property boundary by a minimum of 1000mm to [improve sight distance to pedestrians and/or accommodate a transition between the parking space and the boundary]; and
- h. The external form and height of the approved structures must not be altered from the approved plans.

#### **21. 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.

#### **22. 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*

#### **23. 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 lower ground floor level, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s). The report and plans must be prepared/ amended to make provision for the following:

- a. All components of the basement, including footings, must be located entirely within the property boundary;
- b. No adverse impact on surrounding properties including Council's footpath and road;
- c. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;

- d. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- e. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

#### **DURING DEMOLITION AND CONSTRUCTION**

##### **24. 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.

##### **25. 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**

##### **26. 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/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter. and
- c. 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".

##### **27. 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.

#### **28. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

#### **29. Parking Signoff – Minor Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

#### **30. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that they have planted :

A minimum of 1 x 45 litre size tree, which will attain a minimum mature height of six (6) metres and / or a minimum mature canopy spread of three (3) metres. The tree must be planted in deep soil in a suitable location within the property at a minimum of 1 metre from any boundary and 2.2 metres from the dwelling wall and in consideration of the 'no climb zone' associated with the pool. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Controls, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the tree is found dead or dying before it reaches the dimensions whereby it is protected by Council's Tree Management Controls, it must be replaced in accordance with the requirements of this condition.

### **ON-GOING**

#### **31. Tree Establishment**

The tree planted as part of this consent is to be maintained in a healthy and vigorous condition. If the tree is found dead or dying before it reaches the dimensions whereby it is protected by Council's Tree Management Controls, it must be replaced in accordance with the requirements of this condition.



**ADVISORY NOTES****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.

**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.

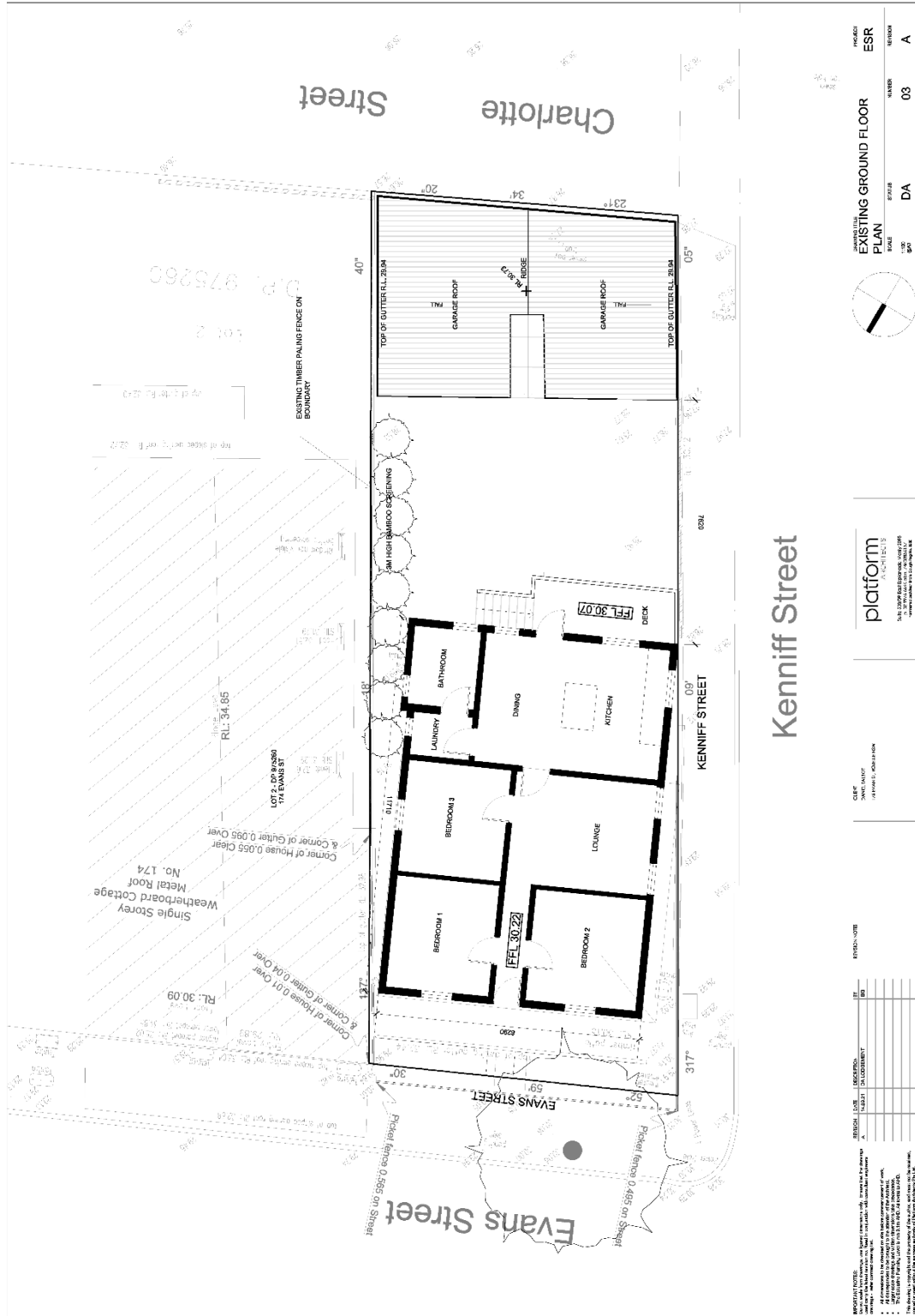
**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"

Long Service Corporation	Payments 131441	<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - Environmental Solutions	SITA 1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development





NUMBER TITLE  
 ESR  
 PLAN  
 NUMBER  
 DA 03 A



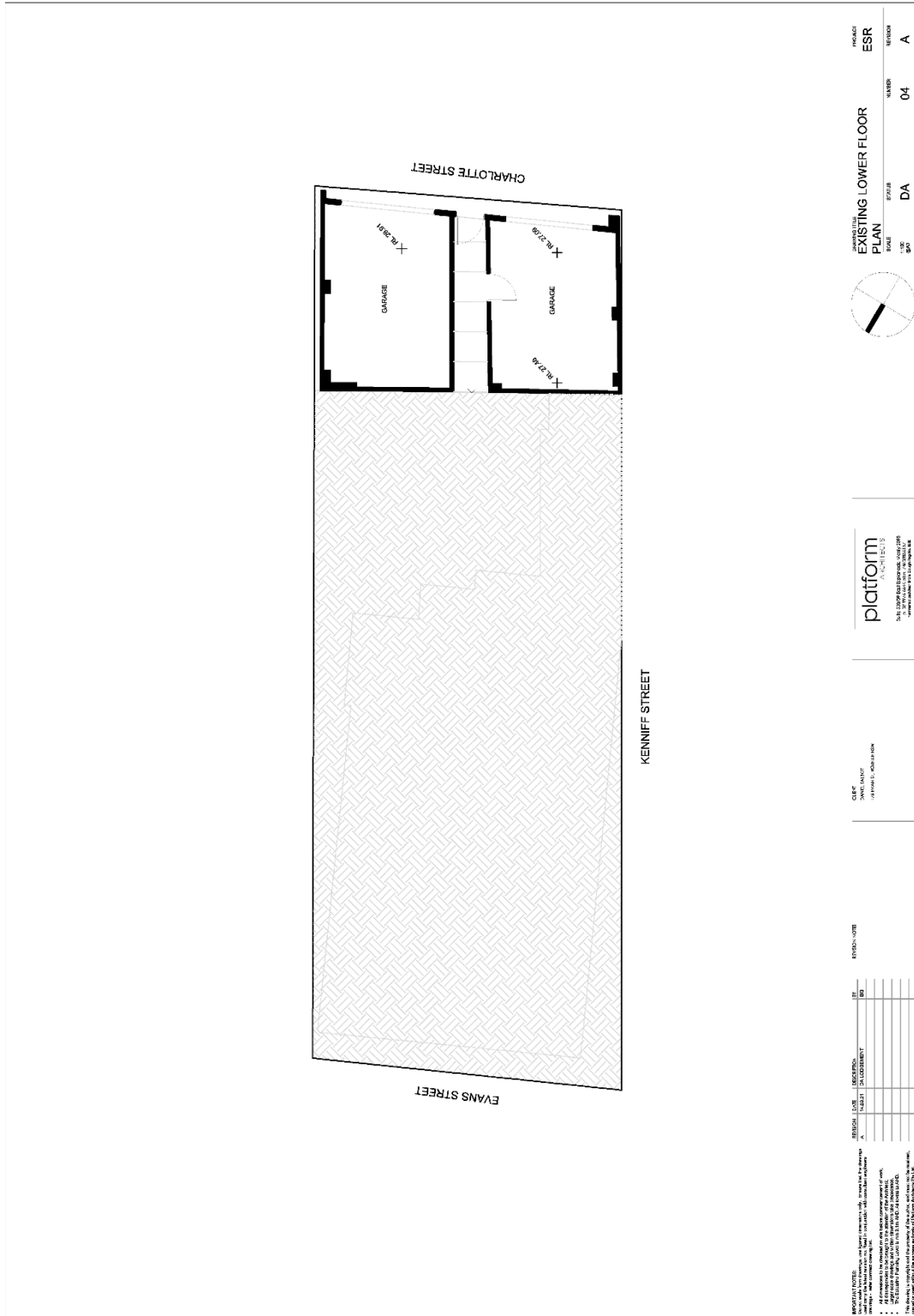
platform  
 ARCHITECTS  
 11/11111, 1000 STATION  
 SUITE 100, 1000 STATION  
 SYDNEY NSW 1570

CLIENT  
 TITLE (UNIT)  
 11/11111, 1000 STATION

EXISTING HOUSE  
 11/11111, 1000 STATION

REVISION	DATE	DESCRIPTION
1	11/11/11	11/11111, 1000 STATION

IMPORTANT NOTES:  
 1. This drawing is to be used for the construction of the proposed development only.  
 2. All dimensions are to be taken from the finished ground level unless otherwise stated.  
 3. All dimensions are to be taken from the finished ground level unless otherwise stated.  
 4. The drawing is to be used for the construction of the proposed development only.  
 5. The drawing is to be used for the construction of the proposed development only.



EXISTING LOWER FLOOR  
PLAN



DATE: 04/04/2014  
DRAWN BY: DA  
SCALE: 1:100

platform  
ARCHITECTS  
15/11-15/13 KENNIFF STREET  
MARRICKVILLE NSW 2204  
PH: (02) 9550 1234  
WWW.PLATFORMARCHITECTS.COM.AU

CLIENT  
SUNSHINE COAST CITY COUNCIL

REVISION	DATE	DESCRIPTION
1	04/04/2014	ISSUED FOR PERMIT

NO.	DATE	DESCRIPTION

**IMPORTANT NOTES:**  
 1. This drawing is the property of Platform Architects Pty Ltd. It is to be used only for the project and site for which it is prepared. It is not to be used for any other project or site without the written consent of Platform Architects Pty Ltd.  
 2. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 3. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 4. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 5. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 6. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 7. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
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 9. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.  
 10. This drawing is not to be used for any other purpose without the written consent of Platform Architects Pty Ltd.



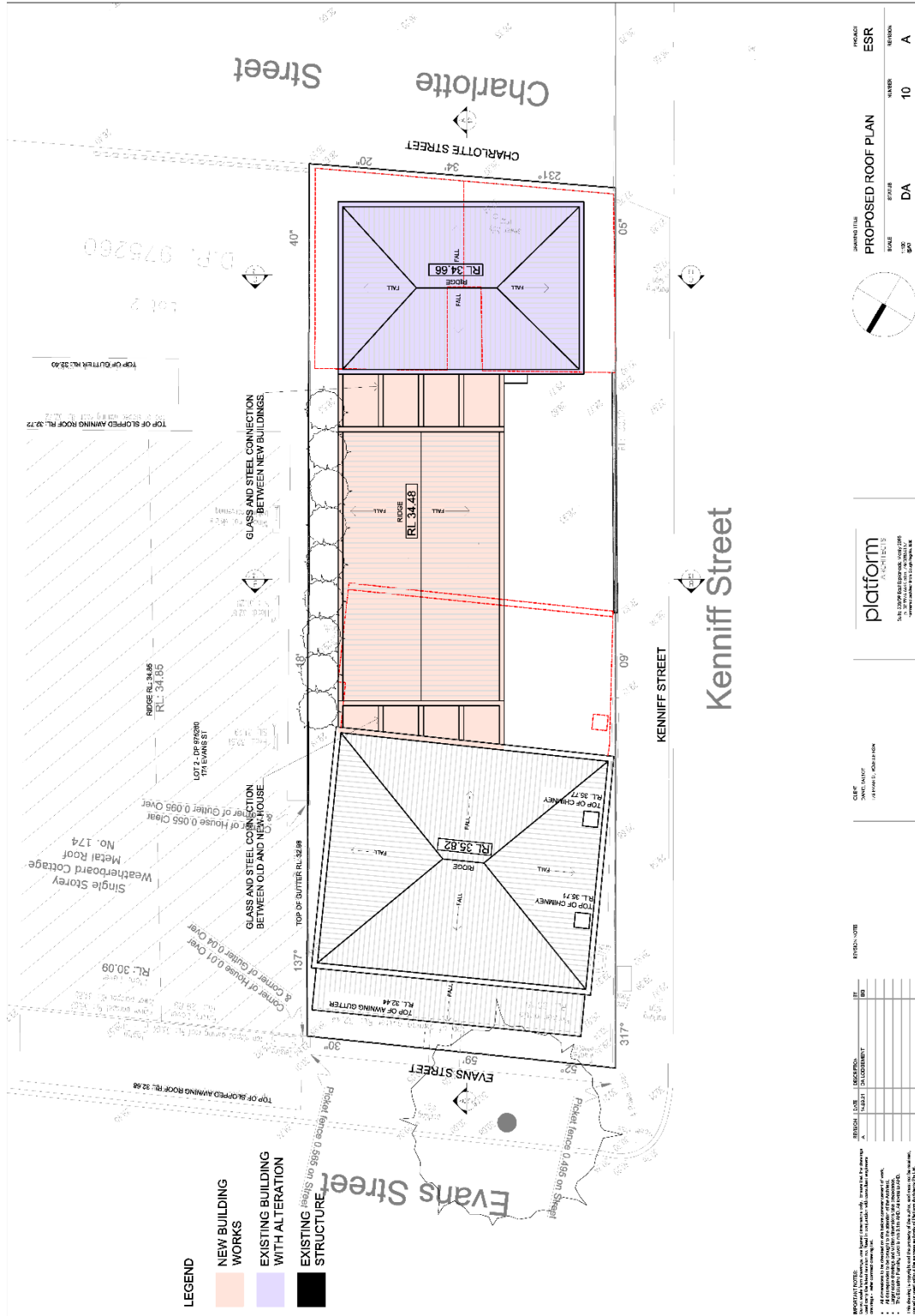


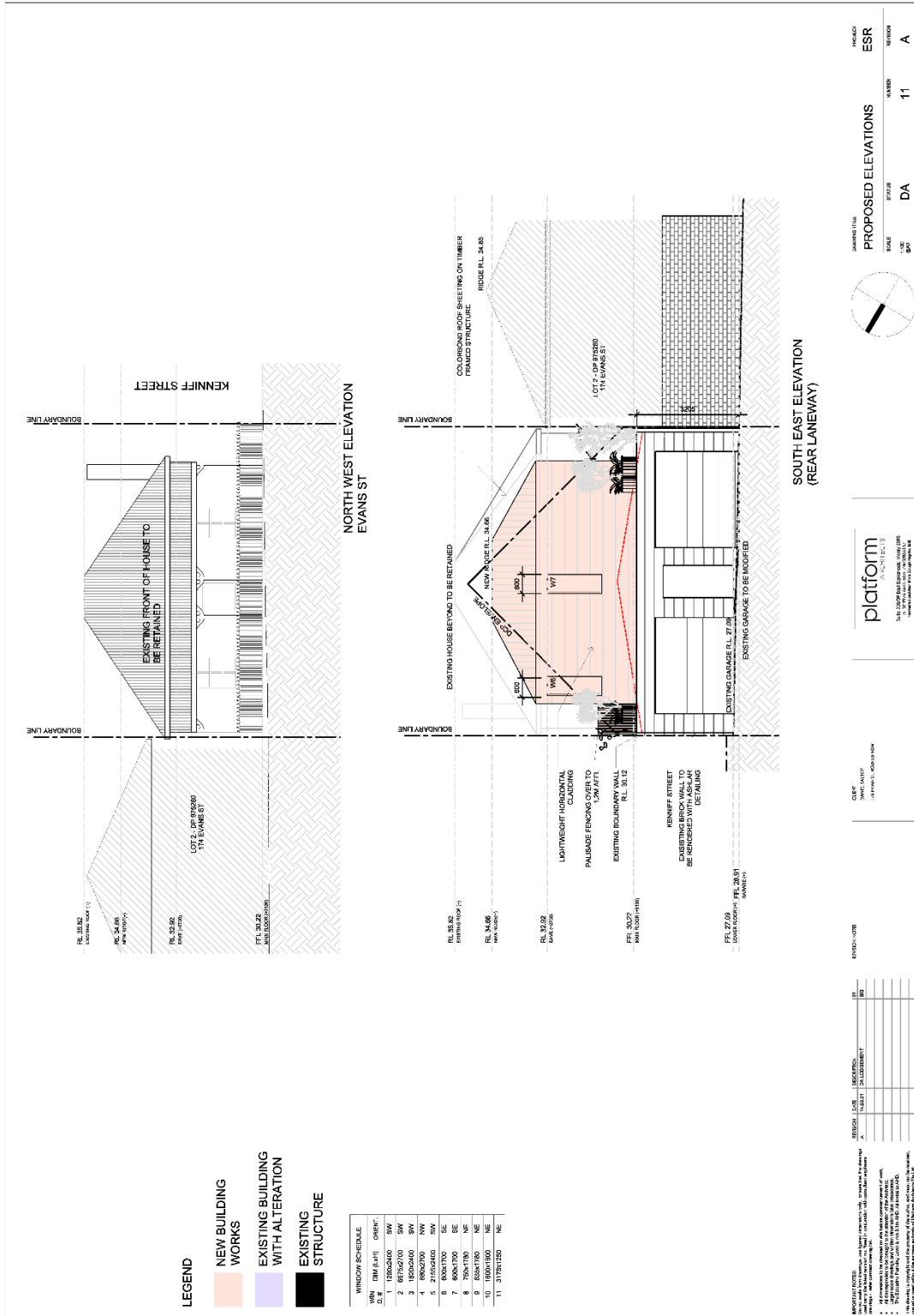


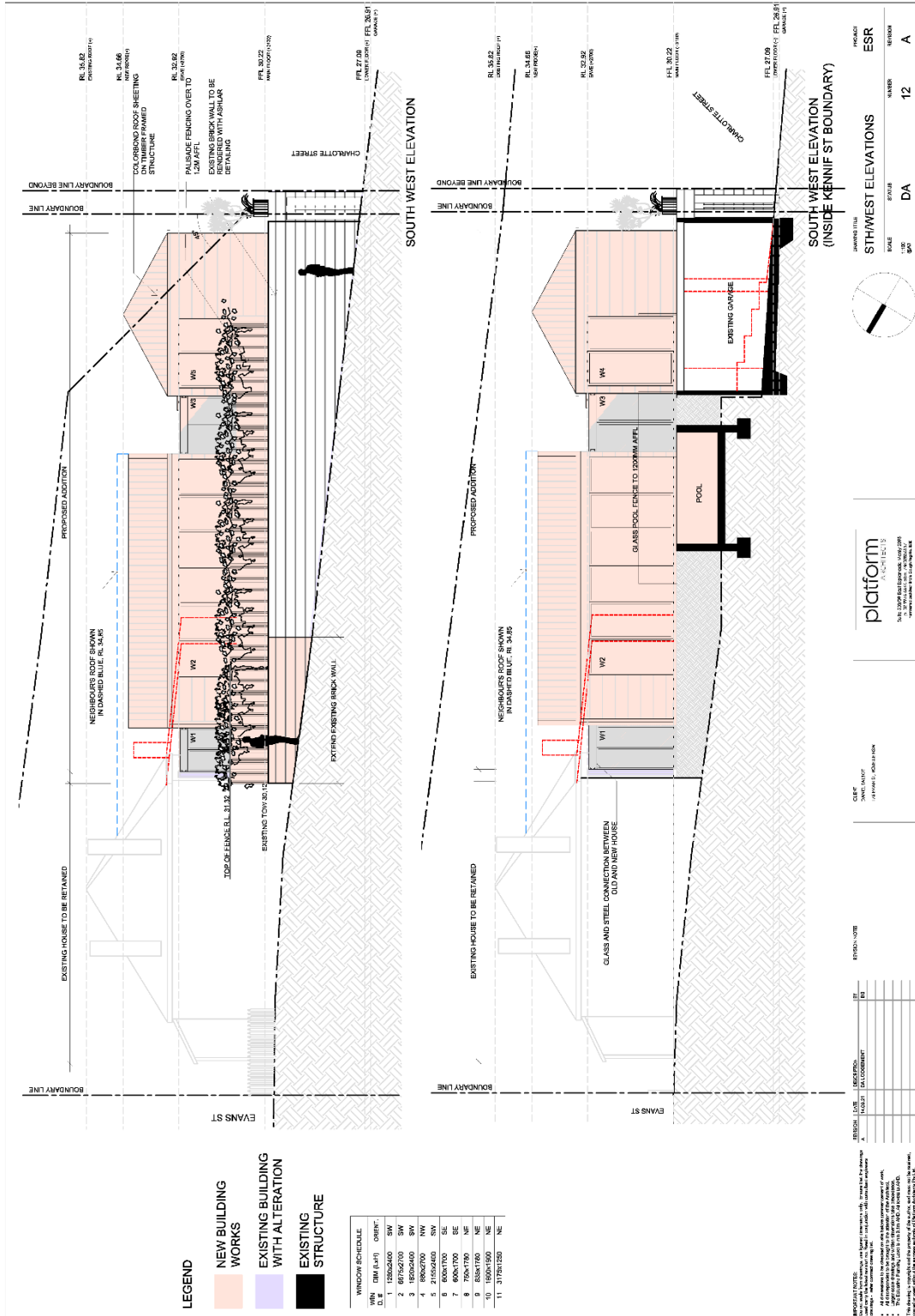












**LEGEND**

- NEW BUILDING WORKS
- EXISTING BUILDING WITH ALTERATION
- EXISTING STRUCTURE

**WINDOW SCHEDULE**

WIN	RM (L/R)	ORIENT
1	1200x2400	SW
2	607x2670	SW
3	1800x2400	SW
4	1800x2700	W
5	1800x2700	W
6	1800x2700	SE
7	800x1700	SE
8	800x1700	SE
9	750x1700	NE
10	850x1700	NE
11	3175x1250	NE

**REVISIONS**

NO.	DATE	DESCRIPTION
1	14/02/21	ISSUE FOR PERMIT

**NOTES**

1. All dimensions are in millimeters unless otherwise stated.
2. All work to be done in accordance with the Australian Standard AS/NZS 1170:2009.
3. All work to be done in accordance with the Australian Standard AS/NZS 1170:2009.
4. All work to be done in accordance with the Australian Standard AS/NZS 1170:2009.
5. All work to be done in accordance with the Australian Standard AS/NZS 1170:2009.

**CLIENT**  
 [Name]  
 [Address]

**platform**  
 ARCHITECTS  
 111/113 STURGEON STREET, SYDNEY NSW 2000  
 TEL: 02 9239 4444  
 WWW.PLATFORMARCHITECTS.COM.AU



**ST/WEST ELEVATIONS**

FRAME	SCALE	DATE	NO.	REVISION
ESR	DA	12	A	







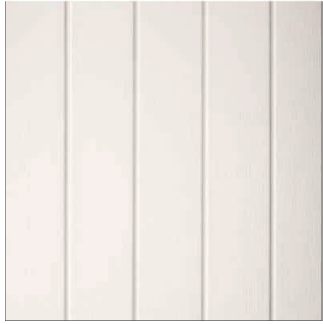









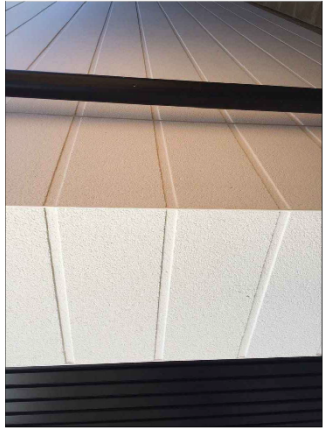
**EXAMPLE OF LIGHT TONE WEATHERBOARD CLADDING**



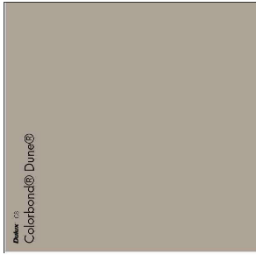
**EXAMPLE OF HORIZONTAL BOARDS GARAGE DOOR - COLOUR TO MATCH RENDER**



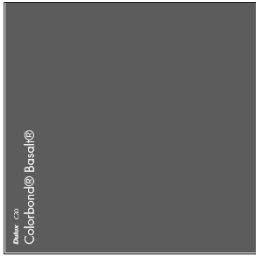
**EXAMPLE OF RENDEROED WALL WITH ASHLAR DETAILING**



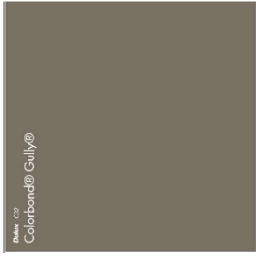
**COLORBOND DUNE TO ROOF SHEETING AND WEATHERBOARDS CLADDING**



**COLORBOND BASALT TO STEEL CONNECTION BETWEEN PAVILIONS**



**COLORBOND GULLY TO RENDEROED WALLS**



**PROPOSAL NOTES:**

1. All materials to be used in the proposal are to be used in accordance with the relevant Australian Standards.
2. All materials to be used in the proposal are to be used in accordance with the relevant Australian Standards.
3. All materials to be used in the proposal are to be used in accordance with the relevant Australian Standards.
4. All materials to be used in the proposal are to be used in accordance with the relevant Australian Standards.

The above is a summary of the proposal. All relevant details are to be provided in the relevant drawings.

**REVISION LOG**

NO.	DESCRIPTION

**GROUP DRAWING**

19/001/001

**EXTERNAL FINISHES**

NO.	FINISH	NO.	FINISH
1	DA	19	A

**ESR**

NO.	FINISH
19	A

**platform**

ARCHITECTS

15/1500/001/001/001

15/1500/001/001/001







## Attachment C- Clause 4.6 Exception to Development Standards

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### APPENDIX A

#### CLAUSE 4.6 VARIATION LANDSCAPED AREA

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## Purpose

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This Clause 4.6 variation request has been prepared in support of a Development Application for alterations and additions to a dwelling house No.176 Evans Street, Rozelle.

This Clause 4.6 variation request relates to a breach of the development standard established under Clause 4.3A of the Leichhardt Local Environmental Plan 2013 (the "LLEP") for *Landscaped areas for residential accommodation in Zone R1*.

This request has been prepared in accordance with *Varying Development Standards: A Guide* published by the Department of Planning and Environment dated August 2011. This request has had regard to judgements in:

- *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118*;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191*; and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*

Together, these cases provide a useful guide as to the relevant matters that must be addressed in a Clause 4.6 variation request and how such matters should be considered.

## 1. The statutory framework

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### 1.1 The relevant planning instrument

The environmental planning instrument to which this variation relates is the Leichhardt Local Environmental Plan 2013 ("LLEP").

### 1.2 Zoning and zone objectives

The subject land is zoned R1 General Residential under the LLEP. The development is permissible with consent on land so zoned.

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

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- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

### 1.3 The objectives of the control to which a variation is sought

The objectives that underpin Clause 4.3A of the LLEP are:

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

### 1.4 The numerical values of the development standard sought to be varied and the development

Clause 4.3A(3)(a)(ii) of the LLEP is the standard that is sought to be varied and states:

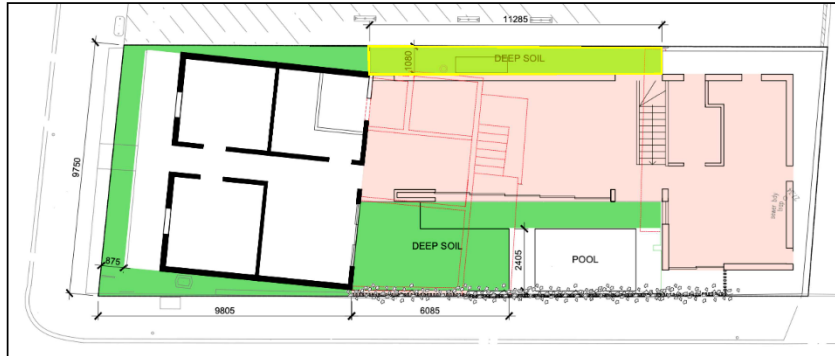
- (3) Development consent must not be granted to development to which this clause applies unless—
  - (a) the development includes landscaped area that comprises at least—
    - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
    - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
  - (b) the site coverage does not exceed 60% of the site area.

The subject land is 275.9m<sup>2</sup> in size.

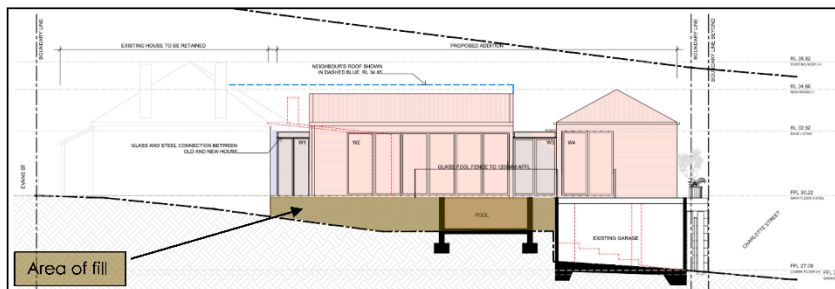
The landscaped area is 57.8m<sup>2</sup> in size, which is 20% of the site area however much of the landscaped area does not satisfy the requirements of Clause 4.3A(4)(b) which states:

- (4) For the purposes of subclause (3)—
  - .....
  - (b) any area that—
    - (i) has a length or a width of less than 1 metre, or
    - (ii) is greater than 500mm above ground level (existing),
 is not to be included in calculating the proportion of landscaped area

As a result, the landscaped area able to be included under Clause 4.3A(4)(b) is 12.188m<sup>2</sup> as shown in yellow below. Other areas are either less than the required 1m dimension or are filled to higher than 500mm above natural ground level (NGL).



The depth of fill is shown below.



As a result, the area of the site that is landscaped area in accordance with Clause 4.3A(4)(b) is 4.4%.

**1.5 Matters to be demonstrated under Clause 4.6(3) of the Leichhardt Local Environmental Plan 2013**

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied of the matters required to be addressed by Clause 4.6(3), which states:

- (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:*

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- (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.*

These matters are addressed below at Sections 2 and 3 of this document respectively.

#### **1.6 Matters for consideration under Clause 4.6(4) of the Leichhardt Local Environmental Plan 2013**

Clause 4.6(4) outlines the matters that a consent must satisfy itself of prior to the granting of consent and states:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

These matters are addressed below at Section 4 of this document.

## **2. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))**

The Land and Environment Court of NSW has provided guidance on this issue in *Wehbe v Pittwater Council [2007] NSWLEC 827* where it was found that consideration must be given to "5 tests" noting that it is not necessary to meet all tests. The following discussion provides a response to each of the 5 tests.

- **Test 1 – The objectives of the development standard are achieved notwithstanding the noncompliance with the standard**

The variation is not contrary to the objectives that underpin Clause 4.3A of the LLEP and does not hinder the achievement of those objectives. Those objectives are:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents

The proposed development maintains areas of existing planting along the north eastern boundary. The site does not lend itself to substantial tree planting given its size and constraints of existing dwelling, retaining wall, garage and the adjoining dwelling.

The landscaped area is predominantly deep soil which allows for the planting and growth of trees and larger shrubs.

The site maintains the ability to have a landscaped area suitable for use and enjoyment by the residents. This is evident by the fact that the DCP control for private open space is met.

*(b) to maintain and encourage a landscaped corridor between adjoining properties*

The subject land has a landscaped screen along the eastern boundary which adjoins with landscaping on No.174 Evans Street.

The proposed development purposely provides space to that boundary so as to allow that landscaping to be maintained.

This objective is not hindered by the proposed site coverage.

*(c) to ensure that development promotes the desired future character of the neighbourhood*

A similar GFA could be achieved with a lesser site coverage if the alterations and additions were to be provided with a 2 storey element. While this might provide numerical compliance, it would be antipathetic to this objective.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in removal of the original roof form and chimneys as well as the original modest form of the cottage being absorbed into the 2 storey building.

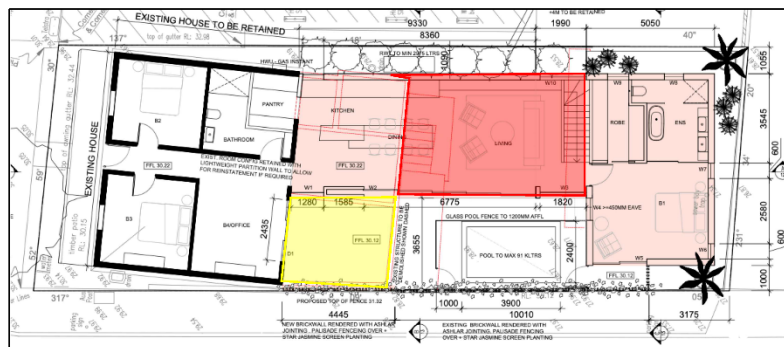
A 2 storey element on top of the garage would be unsatisfactory given that part of the site is elevated.

The role of this objective has greater weight in a heritage conservation area where there is value in maintaining character of the conservation area.

*(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*

The proposed development maintains areas of deep soil for absorption of surface water.

The diagram below demonstrates the areas of existing site coverage gained by the development in yellow and those newly created areas of coverage in red.



It should be noted that the master bedroom component of the addition is proposed above the garage which is an area of existing site coverage. Taking into consideration the areas of existing coverage, there is a net increase in site coverage of approximately 19m<sup>2</sup>.

(e) to control site density

The proposed development does not involve an exceedance of the maximum FSR prescribed by Clause 4.4 of the LLEP.

The GFA is not excessive, noting that the FSR is compliant.

(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space

The provision of landscaped areas is considered adequate noting that the private open space area complies with the requirements of the LDCP in terms of size, amenity and functionality.

The proposed alterations and additions satisfy the objectives of Clause 4.3A of the LLEP notwithstanding the exceedance in site coverage.

- **Test 2 – The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

We accept that there is a purpose to the standard but say that strict compliance is unnecessary in the circumstances. We do not rely on this reason.

- **Test 3 – The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

A similar GFA could be achieved with a compliant landscaped area if the alterations and additions were to include a 2 storey element and the land was not filled to create a level open space area. While ensuring compliance, this would be antipathetic to objective (c)

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above which is to ensure that development promotes the desired future character of the neighbourhood.

The resulting private open space area would also have a lesser relationship to the internal living areas.

The role of that objective has greater weight in a heritage conservation area where character is of greater importance.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in the original roof form and chimneys being removed as well as the modest form of the cottage being absorbed into the 2 storey building.

- **Test 4 – The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and thus compliance with the development standard is unnecessary and unreasonable**

While we do not rely on this reason, it is a matter for Council to consider how it has applied similar variations previously, based on the individual circumstances of those cases and if those circumstances are comparable to this application.

- **Test 5 – Compliance with the development standard is unreasonable or inappropriate as the zoning of the land is inappropriate and as such, the development standard is similarly inappropriate**

We do not rely on this reason.

In summary, strict compliance with the development standard is therefore considered unreasonable and unnecessary in the circumstances as the development is not contrary to the relevant objectives underpinning the development standard (**Test 1**) and that strict compliance may result in a lesser outcome for the site and neighbourhood (**Test 3**).

### 3. The environmental grounds justifying contravention of the development standard (Clause 4.6(3)(b))

---

The application of Clause 4.6(3)(b) is best outlined at paragraph 88 of *Initial Action v Woollahra Municipal Council [2018] NSWLEC118*:

*"...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."*

It is not necessary to demonstrate a benefit resulting from the breach, only that there are sufficient environmental planning grounds to support the variation. Those grounds are as follows.



**i. The fill results in a better relationship between the internal living areas and the private open space while maintaining a level floor plate**

The rear of the existing cottage is approximately 1.2m above the lowest point of the existing ground level of the rear yard and level with the top of the garage.

Lowering the central wing of the proposed building would require stairs between the existing cottage and the central wing, as well as stairs from the central wing to the proposed master suite. This would result in a loss of usable floor space to accommodate those stairs and would also detract from the level floor plate that is currently proposed.

The provision of fill allows for the entire dwelling and the private open space areas to be at the one level which contributes to the amenity and functionality of the dwelling.

This is consistent with Control C1 of C3.8 Private Open Space of the LDCP which provides:

*Private open space should be:*

- a. *located at ground level consistent with the location of private open space on the surrounding properties and the siting controls within this Development Control Plan;*
- b. *has a minimum area of 16sqm and minimum dimension of 3m;*
- c. *is connected directly to the principal indoor living areas; and*
- d. *where ground level is not accessible due to the existing constraints of the site and/or existing development, above ground private open space will be considered.*

Other options have been considered, such as filling to a height of no greater than 500mm, however this would result in a difference in levels of approximately 700mm between the FFL of the living area and the FGL of the private open space. Alternatively, filling to a height of no greater than 500mm and lowering the FFL of the living area would result in a difference in levels of approximately 700mm between the FFL of the existing cottage and proposed master suite with the FFL of the living area.

It is the increased RL of the open space area (i.e. filling above 500mm over existing ground level) that results in the breach of the development standard.

While the filling results in a non-compliance with the development standard, it provides an appropriate relationship between the internal spaces as well as between the living area and the private open space.

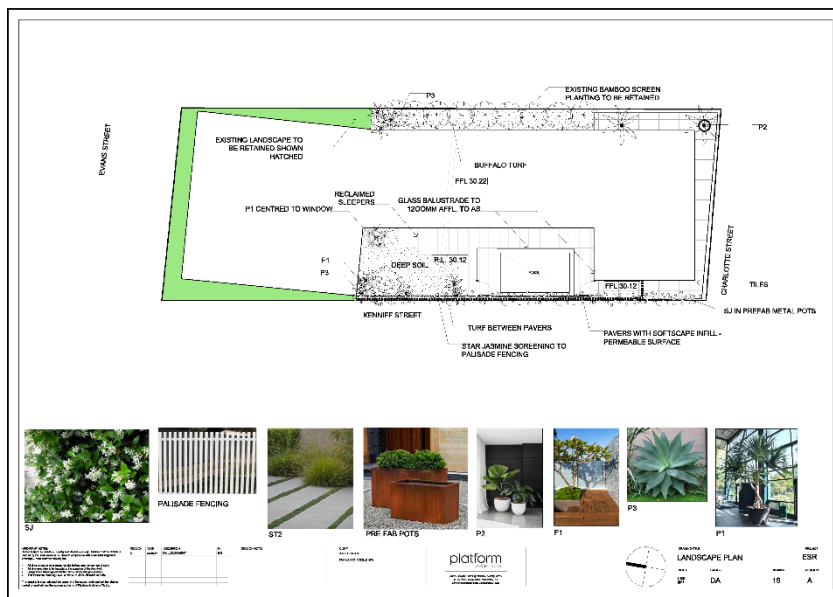
**ii. The variation does not result in a poor landscaped outcome**

The variation to the development standard for landscaped area is not the result of excessive structures, but the provision of the fill to level to rear yard. The variation does not result in a poor landscaped outcome. There remains 20% of the site area available for planting and recreation purposes.

In particular:

- the available landscaping area is predominantly deep soil which allows for the planting of trees and shrubs;
- the existing landscaping on the eastern boundary is maintained and able to be embellished; and
- the planting within the setback to Evans Street is maintained.

The following landscape plan demonstrates the appropriateness of the landscaping to provide an attractive and usable private open space area and the ability to enhance the development.



The ability to provide a quality, attractive landscaped outcome for the development is not hindered by the provision of fill.

**iii. The proposed development avoids an uncharacteristic 2 storey form**

The proposed development could achieve compliance with the landscaping standard by relocating the floor space to a second storey.

While ensuring compliance, this would be antipathetic to objective (c) of Clause 4.3A which is to ensure that development promotes the desired future character of the neighbourhood.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in the original roof form and chimneys being removed and the

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original modest form of the cottage being absorbed into the 2 storey building. A 2 storey element further to the rear of the site would result in a 3 storey form including the existing garage which would be uncharacteristic in the zone and neighbourhood.

The proposed layout avoids uncharacteristic and unsympathetic 2 storey forms on the site.

**iv. The development satisfies the objectives and controls of the LDCP**

The proposed development achieves the objectives of the LDCP and is reasonably compliant with the provisions of the LDCP notwithstanding the exceedance in site coverage.

**v. The proposed development does not result in amenity impacts**

The proposed development does not result in adverse amenity impacts. This is evident by the satisfaction of the controls in the LDCP and the achievement of all relevant objectives.

**4. The proposed development is in the public interest (Clause 4.6(4)(a)(ii))**

Clause 4.6(4)(a)(ii) requires consideration of whether 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.

This Clause 4.6 variation request has already demonstrated above that the proposed development is consistent with the objectives that underpin the control and it is not necessary to repeat those points. Rather, we can now turn to the objectives of the zone.

The proposed development responds to the objectives of the R1 General Residential zone as follows:

- To provide for the housing needs of the community.

This is a higher order objective of the zone aimed at setting aside land for the purposes of housing. The proposed development is consistent with this objective in that it avails itself of the purpose of the zone and seeks consent for the alterations and additions to an existing dwelling.

- To provide for a variety of housing types and densities.

The proposed development is consistent with this objective in that it achieves alterations and additions to an existing dwelling which provides accommodation to meet the needs of the owner.

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

Not applicable to this development.

- To improve opportunities to work from home.

The proposed addition allows for a 4 bedroom dwelling which offers flexibility of the use of one of those rooms for the purpose of a home office which is currently unavailable in the current floorplan.

- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.

The proposed development provides accommodation that is compatible with the general character and pattern of surrounding buildings, streetscapes, landscaping and the public domain.

In particular the proposed development seeks the retention of the existing cottage which contributes to the fabric of the heritage conservation area.

- To provide landscaped areas for the use and enjoyment of existing and future residents.

The proposed development provides landscaped areas in accordance with the provisions of the LDCP which provide for the use and enjoyment of the residents of the land. The landscaped areas and private open space achieve a reasonable level of amenity and recreational opportunities for the residents.

- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.

Not applicable as the proposed development does not involve the subdivision of land.

- To protect and enhance the amenity of existing and future residents and the neighbourhood.

The proposed development properly protects and enhances the amenity of the land and the neighbourhood as demonstrated by reasonable compliance with the provisions of the LDCP.

The proposed development achieves the objectives of the R1 General Residential zone as demonstrated above and likewise achieves the objectives that underpin the development standard.

By virtue of those objectives being achieved, the proposed development is considered to be in the public interest notwithstanding the non-compliance with Clause 4.3A(3)(b) of the LLEP.

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#### 5. Concurrence of the Secretary of the Department of Planning and the Environment (Clause 4.6(4)(b) and Clause 4.6(5))

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Planning Circular PS18-003 issued on 21 February 2018 has delegated the Secretary's concurrence role to each consent authority.

A consent authority must consider the matters in Clause 4.6(5) which are listed as follows:

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

Comment: Contravention of the development standard does not raise any matter of significance for State or regional planning.

- (b) *the public benefit of maintaining the development standard*

Comment: As demonstrated by this Clause 4.6 variation request, approval of the variation does not compromise issues of public interest as the variation meets the objectives of the zone and the development standard.

There is therefore no public benefit gained from strict adherence to the development standard.

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

Comment: There are no other relevant matters to be taken into consideration.

#### 6. Conclusion

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This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the LLEP that:

- Strict compliance with the development standard would be unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify the variation;
- The variation is consistent with the objectives of the development standard and the objectives of the zone;
- The breach of the development standard does not result in a development that is incompatible with the desired planning outcomes for the neighbourhood, or the amenity of the neighbourhood; and

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- The variation does not raise any matter of state or regional significance, and does not hinder the objectives of the Environmental Planning and Assessment Act, 1979 particularly:

(c) *to promote the orderly and economic use and development of land,*

(g) *to promote good design and amenity of the built environment.*

The variation is considered to be well founded and support for the variation to the minimum landscaped area standard is appropriate in the circumstances.

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**APPENDIX B**

**CLAUSE 4.6 VARIATION  
SITE COVERAGE**

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## Purpose

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This Clause 4.6 variation request has been prepared in support of a Development Application for alterations and additions to a dwelling house No.176 Evans Street, Rozelle.

This Clause 4.6 variation request relates to a breach of the development standard established under Clause 4.3A of the Leichhardt Local Environmental Plan 2013 (the "LLEP") for *Landscaped areas for residential accommodation in Zone R1*.

This request has been prepared in accordance with *Varying Development Standards: A Guide* published by the Department of Planning and Environment dated August 2011. This request has had regard to judgements in:

- *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118*;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191*; and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*

Together, these cases provide a useful guide as to the relevant matters that must be addressed in a Clause 4.6 variation request and how such matters should be considered.

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## 1. The statutory framework

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### 1.1 The relevant planning instrument

The environmental planning instrument to which this variation relates is the Leichhardt Local Environmental Plan 2013 ("LLEP").

### 1.2 Zoning and zone objectives

The subject land is zoned R1 General Residential under the LLEP. The development is permissible with consent on land so zoned.

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*



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- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

**1.3 The objectives of the control to which a variation is sought**

The objectives that underpin Clause 4.3A of the LLEP are:

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

**1.4 The numerical values of the development standard sought to be varied and the development**

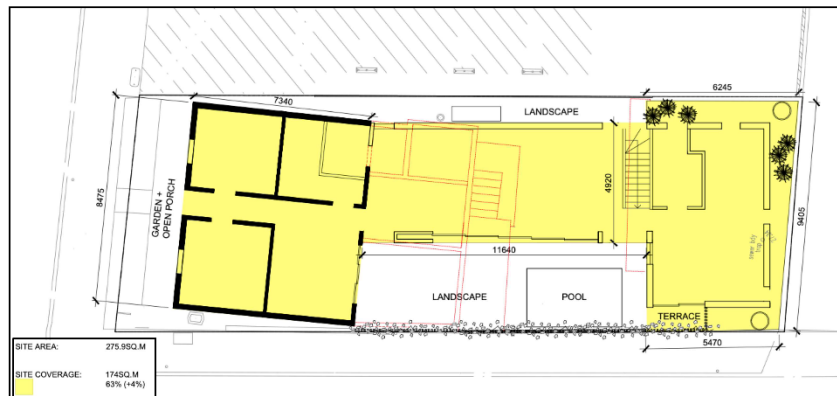
Clause 4.3A(3)(b) of the LLEP is the standard that is sought to be varied and states:

- (3) Development consent must not be granted to development to which this clause applies unless—
  - (a) the development includes landscaped area that comprises at least—
    - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
    - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
  - (c) the site coverage does not exceed 60% of the site area.

The subject land is 275.9m<sup>2</sup> in size.

The site coverage is shown in the figure below and is 174m<sup>2</sup> which is 63% and breaches Clause 4.3A(3)(b).

This figure includes the deck area which sits atop the existing garage as shown below.



Site coverage is defined by the LLEP as:

**site coverage** means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage—

- (a) any basement,
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,
- (c) any eaves,
- (d) unenclosed balconies, decks, pergolas and the like.

The above figure is properly includes:

- the built form of the dwelling and extension; and
- the garage area under the terrace.

The above figure properly excludes:

- the awning that adjoins Evans Street;
- the area under eaves; and
- the pool.

It is appropriate to exclude the pool as site coverage noting the definition of site coverage excludes "...unenclosed balconies, decks, pergolas and the like". The pool area is an open area and considered to comprise a hardstand outdoor recreation space that is akin to a deck and therefore falls into paragraph (d) by virtue of the words "...and the like".

**1.5 Matters to be demonstrated under Clause 4.6(3) of the Leichhardt Local Environmental Plan 2013**

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied of the matters required to be addressed by Clause 4.6(3), which states:

- (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:*
- (b) *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.*

These matters are addressed below at [Sections 2 and 3](#) of this document respectively.

**1.6 Matters for consideration under Clause 4.6(4) of the Leichhardt Local Environmental Plan 2013**

Clause 4.6(4) outlines the matters that a consent must satisfy itself of prior to the granting of consent and states:

- (5) *Development consent must not be granted for development that contravenes a development standard unless:*
- (b) *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*
  - (c) *the concurrence of the Secretary has been obtained.*

These matters are addressed below at [Section 4](#) of this document.

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## 2. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

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The Land and Environment Court of NSW has provided guidance on this issue in *Wehbe v Pittwater Council [2007] NSWLEC 827* where it was found that consideration must be given to "5 tests" noting that it is not necessary to meet all tests. The following discussion provides a response to each of the 5 tests.

- **Test 1 – The objectives of the development standard are achieved notwithstanding the noncompliance with the standard**

The variation is not contrary to the objectives that underpin Clause 4.3A of the LLEP and does not hinder the achievement of those objectives. Those objectives are:

*(a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents*

The proposed development maintains areas of existing planting along the north eastern boundary. The site does not lend itself to substantial tree planting given its size and constraints of existing dwelling, retaining wall, garage and the adjoining dwelling.

The landscaped area is predominantly deep soil which allows for the planting and growth of trees and larger shrubs.

The site maintains the ability to have a landscaped area suitable for use and enjoyment by the residents. This is evident by the fact that the DCP control for private open space is met.

*(b) to maintain and encourage a landscaped corridor between adjoining properties*

The subject land has a landscaped screen along the eastern boundary which adjoins with landscaping on No.174 Evans Street.

The proposed development purposely provides space to that boundary so as to allow that landscaping to be maintained.

This objective is not hindered by the proposed site coverage.

*(c) to ensure that development promotes the desired future character of the neighbourhood*

A similar GFA could be achieved with a lesser site coverage if the alterations and additions were to be provided with a 2 storey element. While this might provide numerical compliance, it would be antipathetic to this objective.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in removal of the original roof form and chimneys as well as the original modest form of the cottage being absorbed into the 2 storey building.

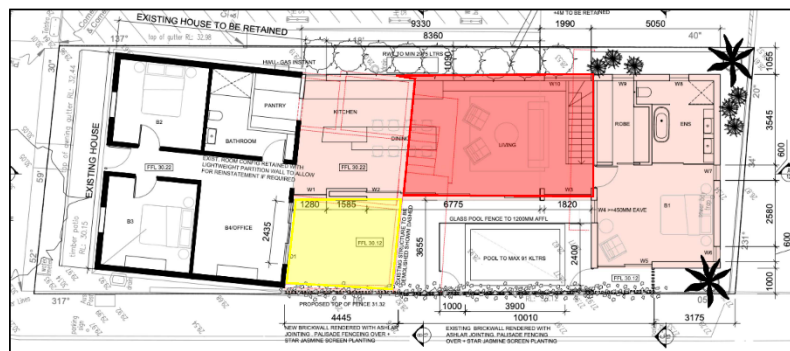
A 2 storey element on top of the garage would be unsatisfactory given that part of the site is elevated.

The role of this objective has greater weight in a heritage conservation area where there is value in maintaining character of the conservation area.

*(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*

The proposed development maintains areas of deep soil for absorption of surface water.

The diagram below demonstrates the areas of existing site coverage gained by the development in yellow and those newly created areas of coverage in red.



It should be noted that the master bedroom component of the addition is proposed above the garage which is an area of existing site coverage. Taking into consideration the areas of existing coverage, there is a net increase in site coverage of approximately 19m<sup>2</sup>.

*(e) to control site density*

The proposed development does not involve an exceedance of the maximum FSR prescribed by Clause 4.4 of the LLEP.

The GFA is not excessive, noting that the FSR is compliant.

*(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

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The provision of landscaped areas is considered adequate noting that the private open space area complies with the requirements of the LDCP in terms of size, amenity and functionality.

The proposed alterations and additions satisfy the objectives of Clause 4.3A of the LLEP notwithstanding the exceedance in site coverage.

- ***Test 2 – The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

We accept that there is a purpose to the standard but say that strict compliance is unnecessary in the circumstances. We do not rely on this reason.

- ***Test 3 – The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable***

A similar GFA could be achieved with a lesser site coverage if the alterations and additions were to include a 2 storey element. While ensuring compliance, this would be antipathetic to objective (c) above which is to ensure that development promotes the desired future character of the neighbourhood.

The role of that objective has greater weight in a heritage conservation area where character is of greater importance.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in the original roof form and chimneys being removed as well as the modest form of the cottage being absorbed into the 2 storey building.

- ***Test 4 – The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and thus compliance with the development standard is unnecessary and unreasonable***

While we do not rely on this reason, it is a matter for Council to consider how it has applied similar variations previously, based on the individual circumstances of those cases and if those circumstances are comparable to this application.

- ***Test 5 – Compliance with the development standard is unreasonable or inappropriate as the zoning of the land is inappropriate and as such, the development standard is similarly inappropriate***

We do not rely on this reason.

In summary, strict compliance with the development standard is therefore considered unreasonable and unnecessary in the circumstances as the development is not contrary to the relevant objectives underpinning the development standard (**Test 1**) and that strict compliance may result in a lesser outcome for the site and neighbourhood (**Test 3**).

**3. The environmental grounds justifying contravention of the development standard (Clause 4.6(3)(b))**

The application of Clause 4.6(3)(b) is best outlined at paragraph 88 of *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118*:

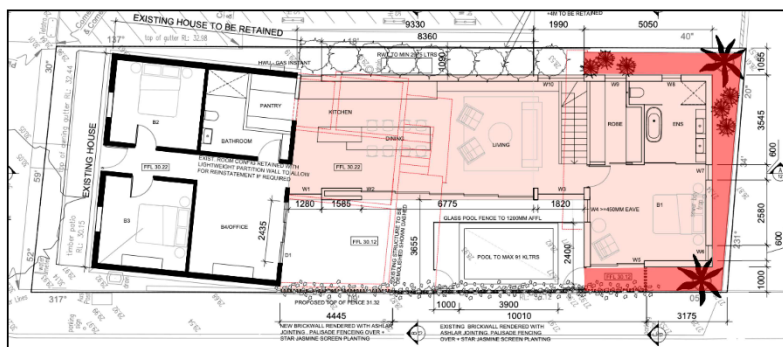
*"...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."*

It is not necessary to demonstrate a benefit resulting from the breach, only that there are sufficient environmental planning grounds to support the variation. Those grounds are as follows.

**i. The site coverage includes the existing garage roof, part of which is not built upon**

The site coverage calculation includes the open area on top of the existing garage roof surrounding the master bedroom wing. That space has been included as the garage contributes to the coverage of the site however the garage roof is not completely taken up by structures at the upper level open area allows for the master bedroom wing to be set back so as not to dominate the streetscape as one views the property looking northwest on Kenniff Street.

The master bedroom wing structure does not take up the entirety of the garage roof. There is an area of 16m<sup>2</sup> of the existing garage coverage that is unbuilt upon as shown shaded in red below.



The 16m<sup>2</sup> area shaded red above does not contribute to a built form on top of the existing garage and allows for modulation of the built form and opportunities for feature planting with potted plants.

**ii. The exceedance in the site coverage does not result in poor siting of new structures**

The exceedance in site coverage is in part owing to the existing garage and its roof. The master bedroom wing is sited on top of the existing garage roof so as to enable an open area around the master bedroom wing for on-structure landscaping.

This enhances amenity for both occupants and persons who will view the land from the public domain.

Notwithstanding the numerical non-16 compliance with the prescribed development standard for site coverage, the siting of new structures is able to be carried out so as not to dominate the streetscape and to ensure a satisfactory level of amenity is maintained.

**iii. The exceedance in the site coverage does not prevent the building from taking a recessive position on the land**

The built form is able to be situated on site so as to enable the retention of existing landscaping along the north eastern boundary and also maintain reasonable setbacks to Kenniff Street and Charlotte Street.

The exceedance of the site coverage standard does not result in a building that dominates either the Kenniff Street or Charlotte Street streetscapes.

**iv. The breach does not result in increased density**

The exceedance of the prescribed site coverage development standard does not result in an increased density over the land.

The proposed development remains compliant with the prescribed maximum FSR under Clause 4.4 of the LLEP and achieves the minimum private open space area required under the LDCP.

This demonstrates that the development application does not seek an unreasonable gross floor area. The development seeks to provide that floor area in such a way as to not impact on the usability or amenity of the land and surrounding land.

**v. The GFA is appropriate and a reduction is not feasible without adding a second storey**

The existing cottage cannot be further reduced in floor space to reduce the site coverage given it contributes to the character of the heritage conservation area.

A reduction in the floor space of the master bedroom wing would not reduce the site coverage as that element is situated above the existing garage which already contributes to the site coverage.

The only part of the building where a reduction in floor space could be considered is in the central link which contains the kitchen/living/dining areas. This link cannot be reduced in

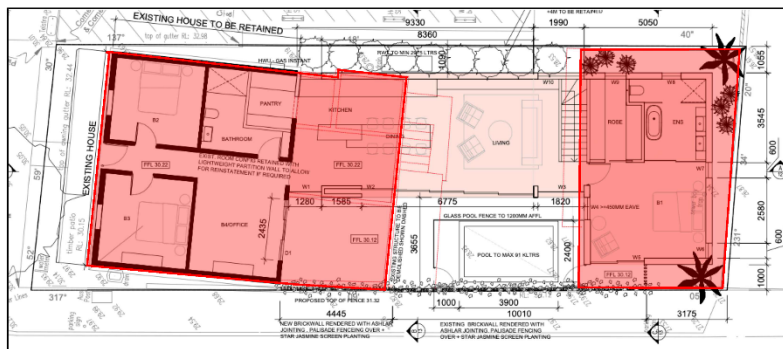


depth any further without unreasonably and unnecessarily impacting on amenity for the residents and the ability to furnish that space.

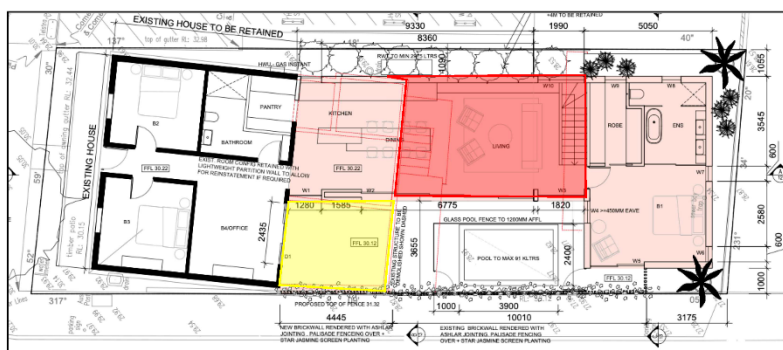
The proposal avoids the addition of a second storey to the existing cottage which would detract from its contributory role to the character and values of the conservation area.

**vi. The proposed development proposes a minor increase in site coverage**

The site coverage of the existing development is 155m<sup>2</sup> as shown below. The existing site coverage is 56.1%.



The proposed site coverage is an increase of 19m<sup>2</sup> as shown below. That additional floor space is situated on the land in a position that is visually recessive and does not dominate the Kenniff Street frontage and maintains reasonable amenity to the adjoining neighbour.



**vii. The proposed development avoids an uncharacteristic 2 storey form**

The proposed development could achieve compliance with the site coverage standard by relocating the floor space to a second storey.

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While ensuring compliance, this would be antipathetic to objective (c) of Clause 4.3A which is to ensure that development promotes the desired future character of the neighbourhood.

A 2 storey extension fronting Evans Street would detract from the character of the original cottage as it would result in the original roof form and chimneys being removed and the original modest form of the cottage being absorbed into the 2 storey building. A 2 storey element further to the rear of the site would result in a 3 storey form including the existing garage which would be uncharacteristic in the zone and neighbourhood.

The proposed layout avoids uncharacteristic and unsympathetic 2 storey forms on the site.

**viii. The development satisfies the objectives and controls of the LDCP**

The proposed development achieves the objectives of the LDCP and is reasonably compliant with the provisions of the LDCP notwithstanding the exceedance in site coverage.

**ix. The proposed development does not result in amenity impacts**

The proposed development does not result in adverse amenity impacts. This is evident by the satisfaction of the controls in the LDCP and the achievement of all relevant objectives.

**4. The proposed development is in the public interest (Clause 4.6(4)(a)(ii))**

Clause 4.6(4)(a)(ii) requires consideration of whether 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.

This Clause 4.6 variation request has already demonstrated above that the proposed development is consistent with the objectives that underpin the control and it is not necessary to repeat those points. Rather, we can now turn to the objectives of the zone.

The proposed development responds to the objectives of the R1 General Residential zone as follows:

- To provide for the housing needs of the community.

This is a higher order objective of the zone aimed at setting aside land for the purposes of housing. The proposed development is consistent with this objective in that it avails itself of the purpose of the zone and seeks consent for the alterations and additions to an existing dwelling.

- To provide for a variety of housing types and densities.

The proposed development is consistent with this objective in that it achieves alterations and additions to an existing dwelling which provides accommodation to meet the needs of the owner.

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

Not applicable to this development.

- To improve opportunities to work from home.

The proposed addition allows for a 4 bedroom dwelling which offers flexibility of the use of one of those rooms for the purpose of a home office which is currently unavailable in the current floorplan.

- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.

The proposed development provides accommodation that is compatible with the general character and pattern of surrounding buildings, streetscapes, landscaping and the public domain.

In particular the proposed development seeks the retention of the existing cottage which contributes to the fabric of the heritage conservation area.

- To provide landscaped areas for the use and enjoyment of existing and future residents.

The proposed development provides landscaped areas in accordance with the provisions of the LDCP which provide for the use and enjoyment of the residents of the land. The landscaped areas and private open space achieve a reasonable level of amenity and recreational opportunities for the residents.

- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.

Not applicable as the proposed development does not involve the subdivision of land.

- To protect and enhance the amenity of existing and future residents and the neighbourhood.

The proposed development properly protects and enhances the amenity of the land and the neighbourhood as demonstrated by reasonable compliance with the provisions of the LDCP.

The proposed development achieves the objectives of the R1 General Residential zone as demonstrated above and likewise achieves the objectives that underpin the development standard.

By virtue of those objectives being achieved, the proposed development is considered to be in the public interest notwithstanding the non-compliance with Clause 4.3A(3)(b) of the LLEP.

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## 5. Concurrence of the Secretary of the Department of Planning and the Environment (Clause 4.6(4)(b) and Clause 4.6(5))

---

Planning Circular PS18-003 issued on 21 February 2018 has delegated the Secretary's concurrence role to each consent authority.

A consent authority must consider the matters in Clause 4.6(5) which are listed as follows:

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

Comment: Contravention of the development standard does not raise any matter of significance for State or regional planning.

(e) *the public benefit of maintaining the development standard*

Comment: As demonstrated by this Clause 4.6 variation request, approval of the variation does not compromise issues of public interest as the variation meets the objectives of the zone and the development standard.

There is therefore no public benefit gained from strict adherence to the development standard.

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

Comment: There are no other relevant matters to be taken into consideration.

## 6. Conclusion

---

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the LLEP that:

- Strict compliance with the development standard would be unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify the variation;
- The variation is consistent with the objectives of the development standard and the objectives of the zone;
- The breach of the development standard does not result in a development that is incompatible with the desired planning outcomes for the neighbourhood, or the amenity of the neighbourhood; and

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- The variation does not raise any matter of state or regional significance, and does not hinder the objectives of the Environmental Planning and Assessment Act, 1979 particularly:

(f) *to promote the orderly and economic use and development of land,*

(g) *to promote good design and amenity of the built environment.*

The variation is considered to be well founded and support for the variation to the maximum site coverage standard is appropriate in the circumstances.

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## Attachment D – Statement of Heritage Significance

Godden Mackay Logan

### Area 12 The Valley (Rozelle and Balmain)

#### Landform

This conservation area comprises a large but tightly formed valley which falls south and east from the Darling Street ridge towards White Bay affording enclosed views to industrial workings of the port city in the bay.

It includes a number of subdivisions/part subdivisions around the highest land in the Leichhardt Municipality on either side of the Darling Street ridge and across Victoria Road. It includes land east of Wellington Street to White Bay. It also includes the civic buildings and the commercial zone of Rozelle on both sides of Victoria Road, the land east of the Darling Street ridge beyond the commercial zone, the civic and commercial buildings of Balmain retail centre, small groups of shops along Darling Street and the former retail area of Evans and Beattie Streets.

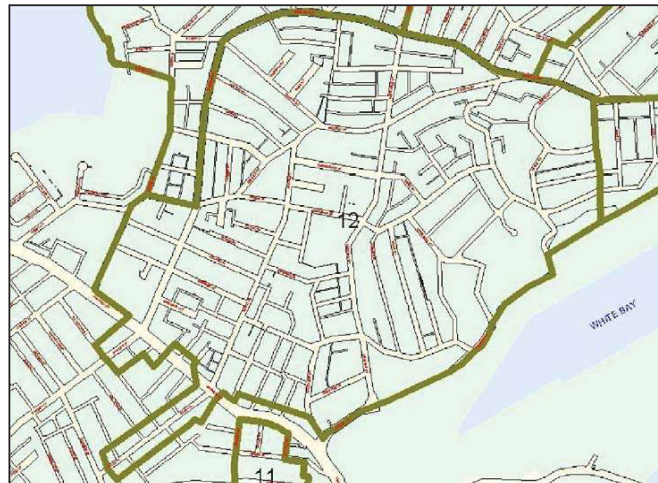


Figure 12.1 The Valley Conservation Area Map.

#### History

When sales of John Gilchrist's Balmain 550-acre grant were resumed in 1852, Surveyor Charles Langley subdivided the remaining acres into 46 (later 47) sections, using existing routes such as Darling Street, and other contour-hugging tracks, such as Beattie Street and Mullens Street to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

The largest of the estates put together from Langley's subdivisions was the 19 acres of the Merton Estate purchased by piano importers Paling and Starling, druggists George and Frederick Elliott and estate agent Alfred Hancock. It occupied the land between Terry Street and Evans Street. It was subdivided by its owners into 197 allotments generally 30ft x 100ft with 50ft-wide grid

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pattern of roads, and was auctioned by local agent and developer, Alfred Hancock from 1874.

A miscellaneous collection of service and consumer trades servicing these new dwellings appeared along Evans Street in the 1870s making it the main commercial thoroughfare along the upper reaches of the Balmain peninsula.

By the 1880s the growth of industry, including noxious industry, in White Bay and along Whites Creek, made the south and east-facing slopes of the Darling Street ridge unattractive for a more affluent residential market. Those who could find employment in these industries would seek housing within walking distance, as public transport – then the horse drawn bus or later the steam tram – were too expensive. Canny speculators, such as Hancock (later Mayor of Balmain) sold to small builders who constructed very dense workers' housing for rentees or purchasers on small budgets. By 1891 a large part of this area had been built upon.

The arrival of the government-owned steam tram at the junction of Darling Street and Victoria Road in 1892, provided relatively more affluent residents along its route with transport to the city, and a greater choice of employment away from places within immediate walking distance from home. The advent of the tramway probably explains the major impetus to growth in the area particularly to the west of Evans Street, so that in the 1890s much of Terry, Wellington, Merton and Nelson Streets were built upon with one-storey brick semis, pairs or small groups of terraces (two to an allotment) and double-fronted single-storey houses (one to an allotment). Most of these buildings were constructed by local builders such as Robert Gordon, William Whitehorn and James Gibson, whose small-scale operations are indicated by the small groups of similar houses or terraces.

From the 1850s, Booth's Saw Mill on White Bay provided a cheap source of timber and weatherboards, promoting weatherboard houses as the norm for workers' housing throughout Balmain until brick terrace housing became prevalent in the late nineteenth century.

The extension of the steam tram service along Darling Street by 1900 encouraged shopkeepers to relocate there to catch the passing trade, and Evans Street was superseded as a commercial centre.

The Metropolitan Detail Survey Sydney Water Archive<sup>1</sup> suggests that almost all the land east of Wellington Street was built upon by 1905.

By 1907 the precinct was generally known as Rozelle.

#### Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Further information provided by Max Solling.

#### Significant Characteristics

- Contour hugging main roads – Evans, Beattie and Reynolds.

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- Outline of subdivisions, size and aspect of allotments, determined by route of main roads.
- Wider residential roads off Darling Street ridge, with grid subdivision pattern, but
- Generally narrow roads between main access roads.
- Narrow, often shallow allotments.
- Back lanes are rare.
- Dense urban environment.
- Continuous lines of buildings create sharply defined lineal spaces.
- Buildings stepped up and down hill, following the topography.
- Houses sited close to road near Darling Street ridge; and sited onto the road alignment nearer to White Bay.
- Small front gardens near Darling Street; there are fewer gardens towards White Bay.
- Tree planting is minimal except where wider main access roads provide enough room – Langley, Roseberry, Llewelyn and Reynolds Street.
- Large stands of trees in parks and open spaces.
- Small range of housing types: single-fronted, single-storey timber terraces, two-storey terraces, free-standing timber or stone single-storey cottages.
- Some larger villas on high land around Smith Street, and more generous terraces in similar locations.
- Scale predominantly limited to one or two storeys.
- Pubs with verandahs act as punctuation marks in the streetscape.
- Corner stores.
- Commercial premises (and former commercial premises) with attached dwellings along Evans and Darling Streets.
- Small industrial/warehouse buildings occur throughout the area.
- Variety of materials – large number of timber, plastered brick, some later (1890s+) face brick and a few stone buildings.
- Roof materials vary – iron is common, terracotta tiles, some slate.
- Stone retaining walls.
- Remnants of iron palisade fences define some street frontages.
- Suspended awnings to commercial facades along Darling and Evans Streets.
- Sandstone kerbs and gutters.



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#### Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area is important for illustrating development for workers' and artisan housing particularly from 1871-1891 which forms the major element of its identity. It is significant for its surviving development from that period and the later infill development up to World War II (ie pre-1939).
- Retains evidence of all its layers of growth within that period from the late-1870s.
- Through its important collection of weatherboard buildings, including the now rare timber terraces, it continues to demonstrate the nature of this important/major construction material in the fabric of early Sydney suburbs, and the proximity of Booth's saw mill and timber yards in White Bay.
- Through the mixture of shops, pubs and industrial buildings it demonstrates the nature of a Victorian suburb, and the close physical relationship between industry and housing in nineteenth century cities before the advent of the urban reform movement and the separation of land uses.
- Demonstrates through the irregular pattern of its subdivision the small-scale nature of the spec builders responsible for the construction of the suburb.
- Demonstrates the nature of some private subdivisions before the introduction of the Width of Streets and Lanes Act of 1881 required roads to be at least one chain wide.

#### Maintenance of Heritage Values

##### Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

##### Retain

- Existing width and alignment of streets: avoid chicanes which cut diagonally across the carriageway.
- Existing back lanes.
- All buildings pre-1939 and particularly all timber buildings
- All original plaster finishes to external walls - reconstruct where necessary.
- All original unplastered face brick walls.
- All original external architectural detail, decorative tiles, plaster mouldings, chimneys, roof ridges and finials, commercial signs etc.

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Encourage replacement of lost elements, but only where evidence is available.

- All remaining sandstone kerbs and gutters.
- All corner stores, corner pubs and industrial buildings within the residential areas, and encourage their restoration. Consider small-scale commercial or professional uses for these buildings, if original uses no longer operate, as a reference to their original uses.
- Street and park planting; reinstate where necessary

#### Avoid

- Amalgamation that might lead to a change in the densely developed streetscape.
- Demolition of any pre-1939 building, particularly those pre-1910.
- Demolition of any remaining timber building.
- Additional storeys above the existing form of the building.
- Posted-verandahs over footpaths to commercial premises where no evidence can be provided to support their reconstruction. Encourage restoration of verandahs where evidence exists.
- Removal of plaster to external walls, where part of the original construction. Removal of original architectural details.
- Additional architectural detail for which there is no evidence.
- Inappropriate fences such as high brick walls, new iron palisades on high brick bases.
- Interruption to the almost continuous kerb and gutter line.

#### Endnotes

- <sup>1</sup> Solling & Reynolds, p 81.
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