








|  DEVELOPMENT ASSESSMENT REPORT | |
|---|--|
| Application No. | DA/2021/1010 |
| Address | 18 Llewellyn Street BALMAIN NSW 2041 |
| Proposal | Alterations and Additions to existing terrace including upgraded living and deck to lower rear, new upper level rear roof form and balcony, new attic level rear roof extension and rear roof terrace. |
| Date of Lodgement | 18 October 2021 |
| Applicant | Ms Brigid M Readford |
| Owner | Ms Brigid M Readford |
| Number of Submissions | Initial: 2 |
| Value of works | \$590,000.00 |
| Reason for determination at Planning Panel | Clause 4.6 variation exceeds 10% |
| Main Issues | Floor Space Ratio variation Site Coverage variation |
| Recommendation | Approval with Conditions |
| Attachment A | Recommended conditions of consent |
| Attachment B | Plans of proposed development |
| Attachment C | Clause 4.6 Exception to Development Standards – Floor Space Ratio |
| Attachment D | Clause 4.6 Exception to Development Standards – Site Coverage |
|  | |
| LOCALITY MAP | |
| Subject Site |  |
| Notified Area |  |
| Objectors |  |
| Supporters |  |
|  N | |

1. Executive Summary

This report is an assessment of the application submitted to Council for Alterations and Additions to existing terrace including upgraded living and deck to lower rear, new upper level rear roof form and balcony, new attic level rear roof extension and rear roof terrace at 18 Llewellyn Street BALMAIN NSW 2041.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Breach of FSR
- Breach of Site coverage

The non-compliances are acceptable given there is an existing breach of FSR and Site coverage on the site. The proposed built form does not increase the site coverage and is mostly contained on the second and third levels of the dwelling that includes an internal reconfiguration, and new attic access to an upper floor terrace and therefore the application is recommended for approval.

2. Proposal

The proposal is to carry out alterations and additions to the rear to provide improved accommodation as follows:

Lower-ground level

- Re-align stair from Little Llewellyn Street side entry to ground floor.

Ground floor

- Rear extension to convert dining area to living area
- Rebuild rear deck in timber with operable roof
- Internal alterations to access/laundry/kitchen

First floor

- Internal alterations to convert bedroom/family room to sitting/study
- New balcony to rear

Attic level

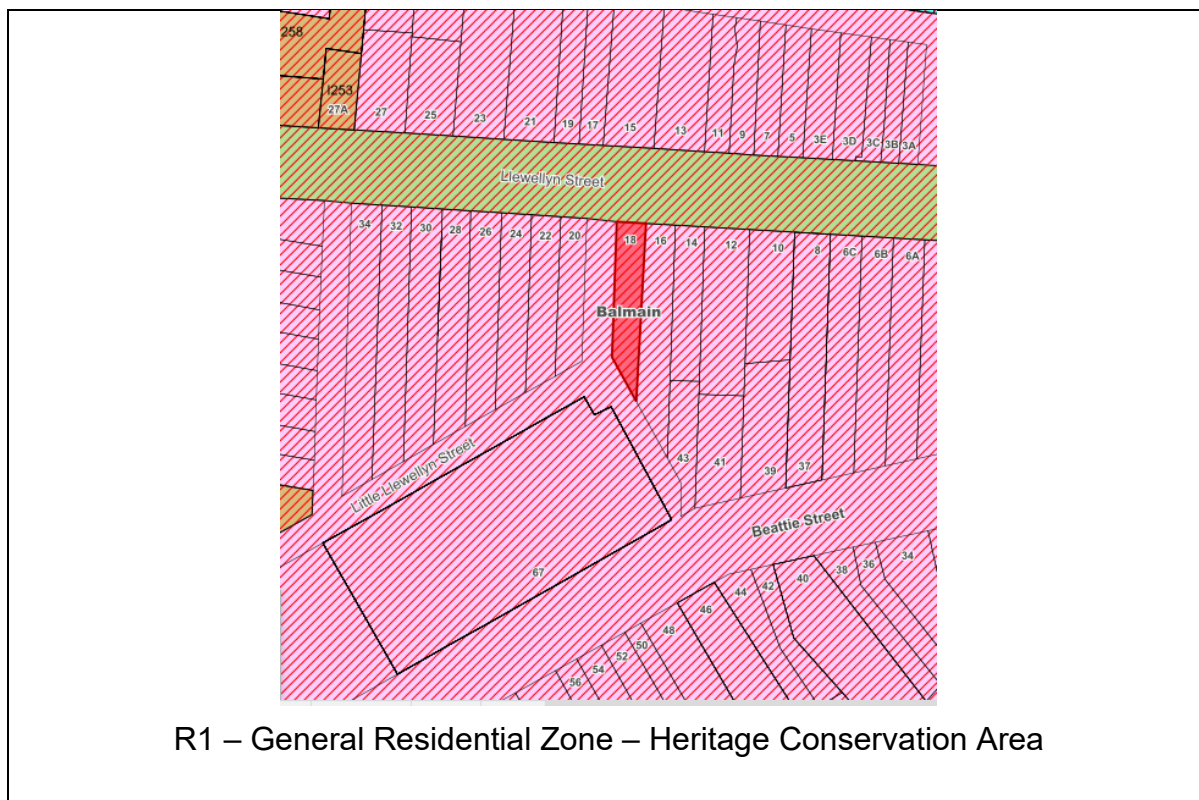
- New master bedroom with en-suite bathroom, rear roof terrace

3. Site Description

The subject site is located on the southern side of Llewellyn Street, and is a corner block with vehicle access off Little Llewellyn Street to the west. The site consists of one allotment, Lot 1 in DP 921567 and is generally rectangular in shape with a trapezium chamfer to the north rear with a total area of 191.6 sqm and is legally described as 18 Llewellyn Street BALMAIN NSW 2041.

The site is a book ended pair double storey terrace with later double storey additions to the rear. The adjoining properties support a mix of two and three storey attached and detached dwellings.

The property is located within the Balmain heritage conservation area.



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 |
|---------------|------------------------|-------------------|
| PDA/2021/0194 | PRE DA – alts and adds | Issued 31/03/2022 |

Surrounding properties – 16 Llewellyn Street

| Application | Proposal | Decision & Date |
|-------------|--|---------------------|
| D/2011/699 | Alterations and additions to existing dwelling and tree removal. SEPP 1 Objection for floor space ratio. | Approved 13/03/2012 |
| M/2012/125 | Section 96 application to modify D/2011/699 which approved alterations and additions to existing dwelling and tree removal. Modification seeks to delete conditions 42 & 43(d) relating to stormwater disposal and regrading of ground levels. | Approved 10/12/2012 |

| | | |
|---------------|---|---------------------|
| M/2013/17 | Section 96 application to modify D/2011/699 which approved alterations and additions to existing dwelling and tree removal. Modification seeks to delete conditions 32(a) and 43 (d). | Approved 18/02/2013 |
| M/2018/122 | Modification of Development Consent D/2011/699 including: additional window to attic level; amended landscape plan for rear courtyard, including pergola with green roof; and removal of 2 trees. | Approved 15/10/2018 |
| PCDC/2019/49 | Installation of a inground swimming pool - CDC No: NW18/4068 | Approved 28/03/2019 |
| OCP/2022/0124 | Occupation Certificate - Private Certifier (Default category) | Issued 18/03/2022 |

Surrounding properties – 20 Llewellyn Street

| Application | Proposal | Decision & Date |
|---------------|---|---------------------|
| PREDA/2013/63 | Alterations and additions comprising new kitchen, swimming pool, deck and laundry to ground floor and extension of rear bedroom and new deck to first floor. | Issued 10/05/2013 |
| D/2013/306 | Alterations and Additions to the existing dwelling. Construction of swimming pool, deck, fences and tree removal. The Application relies on SEPP No.1 Objections to Floor Space Ratio and Landscaped Area | Approved 04/03/2013 |
| OCP/2015/391 | Alterations and additions including demolition of existing kitchen, wc and storage areas, relocate kitchen, erect new laundry, deck, swimming pool and boundary fences. FINAL OC | Issued 23/11/2015 |

4(b) Application history

Not applicable

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 (Resilience and Hazards) 2021*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Leichhardt Local Environmental Plan 2013 (LLEP2013)*
- *Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. The SEPP 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) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities .

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

A BASIX Certificate was submitted with the application and is satisfactory.

5(a)(iv) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.9 – Preservation of trees or vegetation
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.4 – Stormwater management

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

| Standard (maximum) | Proposal | % of non compliance | Compliances |
|---|------------------|----------------------------|--------------------|
| Floor Space Ratio Required: [0.9:1] | 1.17:1 224sqm | 23% | No |
| Landscape Area | 21% | N/A | Yes |

| | | | |
|----------------------|--------|-----|----------------|
| | 40sqm | | |
| Site Coverage | 70% | 17% | No (No change) |
| | 135sqm | | |

The following provides further discussion of the relevant issues:

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)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.6 specifies that Development consent may be granted for development even though the development would contravene a development standard “*to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*”

The proposed FSR for the site will exceed the maximum permissible floor space ratio of 0.9:1 as required by Clause 4.4 of *Leichhardt Local Environmental Plan 2013*. The site currently exceeds the maximum FSR by virtue of its existing form and provides for a total floor area of 176sqm or 0.92:1.

The site area of 191.6sqm allows a gross floor area (GFA) of 172.4sqm. The proposal will increase the GFA of the house from 176sqm to 224sqm, which represents an FSR of 1.17:1 and does not comply with the standard.

In response to the proposed floor space ratio non-compliance the following Clause 4.6 variation provision is provided.

2. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Written requests have been submitted by the applicant in compliance with Clause 4.6(3) of the LEP identifying the following key reasoning in seeking to justify the contravention of the standards:

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

- The applicant relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the site coverage area is currently in breach however, is unchanged as part of the proposal.
- The proposal will enhance existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.

- The proposed built form will maintain the contribution of the site to the streetscape of Llewellyn Street and enhance that of Little Llewellyn Street.
- In the context (two groups of separate but similar two- and three-storey terrace-type houses, several of which have similar additions), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- With regard to the other applicable development standards, the proposal complies with the landscaped area control and will not increase site coverage.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not materially increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

Clause 4.4 – Floor Space Ratio

- Clause 4.4 of LLEP 2013, in conjunction with the Floor Space Ratio Map, requires that the maximum Floor Space Ratio (FSR) of buildings for the subject site shall not exceed 0.9:1. The site has been approved with the FSR of 0.92:1 on the site and is currently in breach.
- The proposal will enhance existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.
- The proposed built form will maintain the contribution of the site to the streetscape of Llewellyn Street and enhance that of Little Llewellyn Street.
- In the context (two groups of separate but similar two- and three-storey terrace-type houses, several of which have similar additions), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- With regard to the other applicable development standards, the proposal complies with the landscaped area control and will not increase site coverage.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not materially increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

Clause 4.6(4)(a)(ii) requires the consent authority to consider 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.

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards and has adequately demonstrated that there is no change to the standards as part of the proposal in respect to site coverage.

In regard to FSR, the increase of an additional 48sqm is being proposed over four levels within the existing building footprint. 26sqm is being added to the rear first floor roof plane in the form of an eyelid dormer. The addition meets the specific DCP requirements under Clause C3.4 under the objective and is considered consistent with the unity of the paired semi, matching that approved at No. 16 Llewellyn Street. It also has been supported by Council's Heritage Specialist.

On the street level (Llewellyn Street), the existing access stair from the carport is being relocated and enclosed to create a 4sqm extension to this level providing better access and amenity to the rebuilt terrace.

The final addition of 18sqm is located on the lower ground level (Little Llewellyn Street) within the existing footprint of the dwelling by means of formalising new access vestibule, access stair and storage.

In conclusion the following environmental planning grounds are relevant:

- The proposal will enhance existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.
- The proposed built form will maintain the contribution of the site to the streetscape of Llewellyn Street and enhance that of Little Llewellyn Street.
- In the context (two groups of separate but similar two- and three-storey terrace-type houses, several of which have similar additions), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- With regard to the other applicable development standards, the proposal complies with the landscaped area control and will not increase site coverage.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not materially increase mid-winter shading to adjoining properties. The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

Therefore, compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel. In light of the above, the applicant's request to vary the development standards is considered reasonable in the circumstances and is supported.

Clause 5.10 – Heritage Conservation

The proposal is considered to satisfy the objectives of this Clause. With particular consideration of the roof terrace, it is noted that there are other similar roof top terraces approved under the current LLEP 2013, the terrace is modest and setback from the secondary street frontage and will contribute to the amenity of the dwelling with minimal environmental impacts.

In addition, a revision of the materials and finishes is considered to be consistent with LLEP and LDCP2013 objectives and controls.

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

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

The amended provisions contained in the Draft IWLEP 2020 are not particularly relevant to the assessment of the application.

5(d) Development Control Plans

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

| LDCP2013 | Compliance |
|---|-------------------|
| Part A: Introductions | |
| Section 3 – Notification of Applications | Yes |
| | |
| Part B: Connections | |
| B1.1 Connections – Objectives | Yes |
| | |
| Part C | |
| C1.0 General Provisions | Yes |
| C1.1 Site and Context Analysis | Yes |
| C1.2 Demolition | Yes |
| C1.3 Alterations and additions | Yes |
| C1.4 Heritage Conservation Areas and Heritage Items | Yes |
| C1.5 Corner Sites | Yes |
| C1.6 Subdivision | N/A |
| C1.7 Site Facilities | Yes |
| C1.8 Contamination | N/A |
| C1.9 Safety by Design | N/A |
| 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 | N/A |
| 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 | N/A |
| | |
| Part C: Place – Section 2 Urban Character | |
| C2.2.2.4 The Valley 'Balmain' Distinctive Neighbourhood | Yes |
| | |
| Part C: Place – Section 3 – Residential Provisions | |
| C3.1 Residential General Provisions | Yes |
| C3.2 Site Layout and Building Design | Yes |
| C3.3 Elevation and Materials | Yes |
| C3.4 Dormer Windows | Yes |
| C3.5 Front Gardens and Dwelling Entries | Yes |
| C3.6 Fences | N/A |
| C3.7 Environmental Performance | Yes |
| C3.8 Private Open Space | Yes |
| C3.9 Solar Access | Yes |
| C3.10 Views | N/A |
| C3.11 Visual Privacy | Yes |
| C3.12 Acoustic Privacy | Yes |
| C3.13 Conversion of Existing Non-Residential Buildings | N/A |

| | |
|---|-----|
| C3.14 Adaptable Housing | N/A |
| Part D: Energy | |
| Section 1 – Energy Management | Yes |
| Section 2 – Resource Recovery and Waste Management | |
| D2.1 General Requirements | Yes |
| D2.2 Demolition and Construction of All Development | Yes |
| D2.3 Residential Development | Yes |
| D2.4 Non-Residential Development | N/A |
| D2.5 Mixed Use Development | N/A |
| Part E: Water | |
| Section 1 – Sustainable Water and Risk Management | |
| E1.1 Approvals Process and Reports Required With Development Applications | Yes |
| E1.1.1 Water Management Statement | Yes |
| E1.1.2 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 | Yes |
| E1.2.4 Stormwater Treatment | N/A |
| 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 |

The following provides discussion of the relevant issues:

C3.11 Visual Privacy

It is considered that the proposed design satisfies the controls and objectives of the clause and as proposed is not inconsistent to surrounding approved development in terms location, siting of elevation windows, upper floor level deck and roof terrace to capture east facing city skyline views. Response to the controls and objectives of clause C.11 in addition to the two objections received is outlined below.

16 Llewellyn Street Balmain


Overlooking and conflict of privacy from adjoining roof terrace and the issue of providing screening to address this that will reduce light to skylights.

Comment: It is considered that control C4 is met. The design of the terrace was reduced in size in response to Pre-DA advice and is considered modest compared to surrounding terraces, namely No. 16 Llewellyn Street at the same location and elevation. Controls C4b states the following

Roof terraces will be considered where they do not result in adverse privacy impacts to surrounding properties. This will largely depend on the:

- a. design of the terrace;
- b. the existing privacy of the surrounding residential properties;
- c. pre-existing pattern of development in the vicinity; and
- d. the overlooking opportunities from the roof terrace.

As seen from the image below, the existing privacy of surrounding development, namely the adjoining roof terrace has a limited screening to the boundary of No. 18 Llewellyn Street and affords some overlooking to the private open space (POS) of this site and surrounding adjacent blocks. As the objector suggested, the addition of screening will reduce light amenity to skylights, which are not protected under the C3.9 of the LDCP2013, and as there is no screening to No. 16 roof terrace to the east of the west elevation, then control C4b is satisfied.

| | |
|---|---|
|  |  |
| <p>No. 16 Llewellyn Street roof terrace viewed from the Eastern boundary</p> | <p>No. 16 Llewellyn Street roof terrace viewed from the Western boundary</p> |
|  | |
| <p>No. 16 Elevation view looking northerly</p> | |



N.B at the time of writing this report No.16 Llewellyn Street had been on the market and sold 01/04/2022.

20 Llewellyn Street Balmain

Overlooking pool in back yard from terrace

Overlooking from clear windows on little Llewellyn Street elevation

Comment: It is considered that control C1 is met as the windows to the elevation on Little Llewellyn Street and the roof terrace on the third floor are separated by a road.

Control 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

In addition, the roof terrace will enjoy city skyline views that are obtain to the east of the site, not the west of No. 20 Llewellyn Street, which has a second-floor verandah to the rear and an adjacent neighbour with a third levels terraces to the west. Lastly the terrace is setback 2.5m from the Little Llewellyn Street boundary.

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

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

5(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. Two (2) submissions were received in response to the initial notification. Concerns are addressed under C3.11 Visual Privacy under Part 5(d) of this report

5(h) The Public Interest

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

The proposal is not considered contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage
- Engineering
- Urban Forrest

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 Contributions are payable for the proposal. Cost of works is \$590,000. Rate is calculated at 1.0%. Total \$5,900.00

8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining properties or the streetscape. 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 to vary Clauses 4.3A(3)(b) – Site Coverage for residential development in Zone R1 and 4.4 – Floor Space Ratio of the Leichhardt Local Environmental Plan 2013. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the variation is not inconsistent with the objectives of the standards 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. D/2021/1010 for alterations and additions to dwelling at 18 Llewellyn Street, Balmain subject to the conditions in Attachment A, below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

FEES

1. Security Deposit - Custom

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

| | |
|--------------------------|------------|
| Security Deposit: | \$2,254.00 |
| Inspection Fee: | \$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.

GENERAL CONDITIONS

2. 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.

3. Project Arborist

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

PRIOR TO ANY DEMOLITION

4. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

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

PRIOR TO CONSTRUCTION CERTIFICATE

5. 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.

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

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

- a. The stormwater drainage concept plan on Drawing No. 2101-DA-302 issue (C) dated 12 October 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 via the OSD/OSR tanks as necessary;
- 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. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. 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;
- f. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
- g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;

- i. Where a combined OSD/OSR is proposed, only roof water is permitted to be connected to storage tank. The overflow from the OSD/OSR can be connected to the kerb and gutter of a public road by gravity;
- j. Details of the 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided;
- k. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- l. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- m. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
- n. No nuisance or concentration of flows to other properties;
- o. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- p. 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;
- q. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- r. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- s. 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;
- t. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- u. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- v. No impact to street tree(s).

7. Changes to Levels

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans incorporating the following amendments:

A 150 mm step down must be provided between the finished floor level of the internal room and the finished surface level of the external area.

DURING DEMOLITION AND CONSTRUCTION

8. Tree Protection

To protect the following tree, trunk protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* and/or with Council's *Development Fact Sheet—Trees on Development Sites*:

| Botanical/Common Name/Location |
|--|
| <i>Lophostemon confertus</i> (Brush Box) - Council verge |

PRIOR TO OCCUPATION CERTIFICATE

9. 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.

10. 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.

11. Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards

have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

12. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

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

13. 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:

A minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres must be planted in a more suitable location within the property in accordance with Tree Permit TREE/2021/0739. The replacement tree should not be planted less than 2.5m from a dwelling house or garage within the property or adjoining properties and at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. 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 replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

14. Project Arborist Certification

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

ON-GOING**15. Operation and Management Plan**

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

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

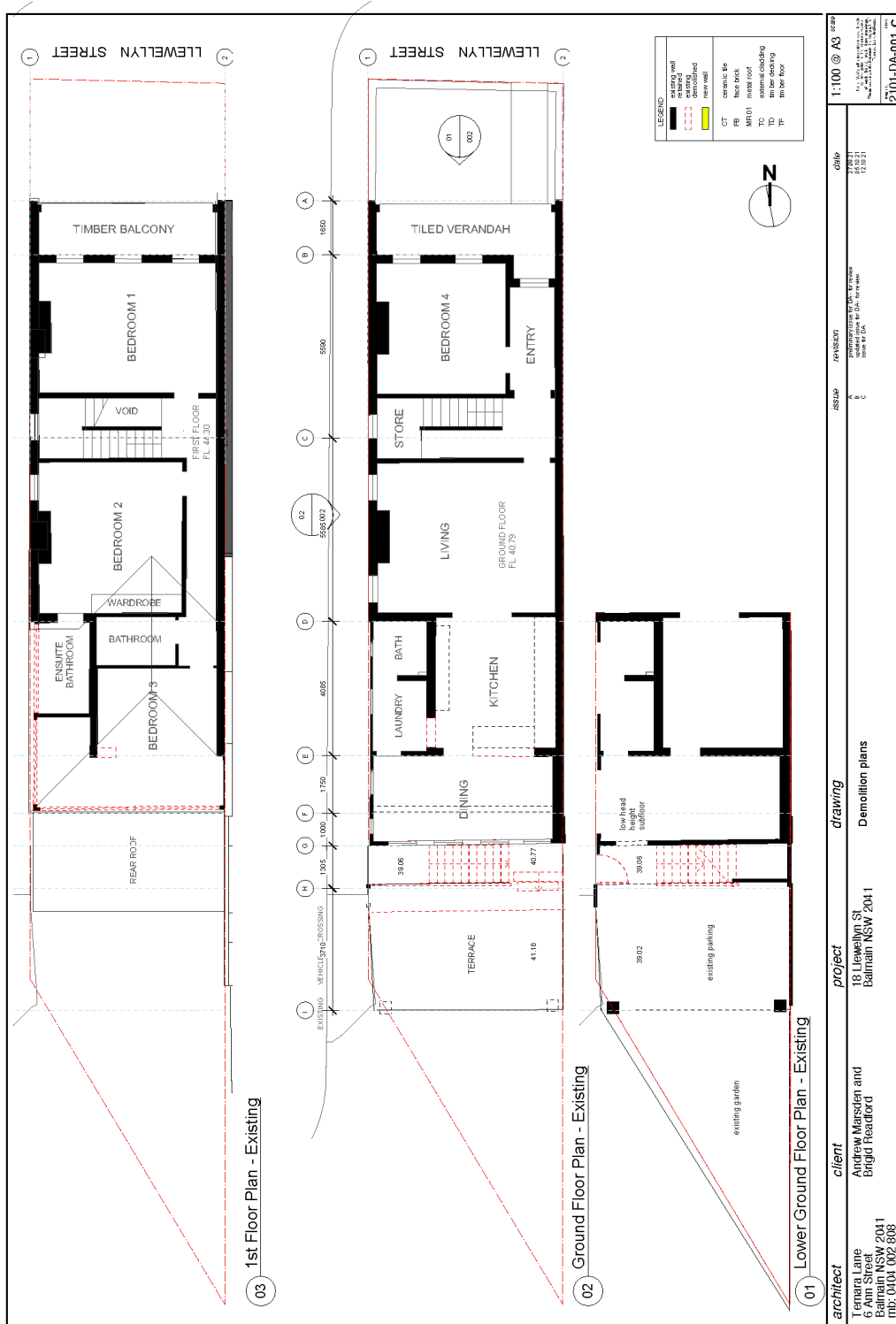
Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested

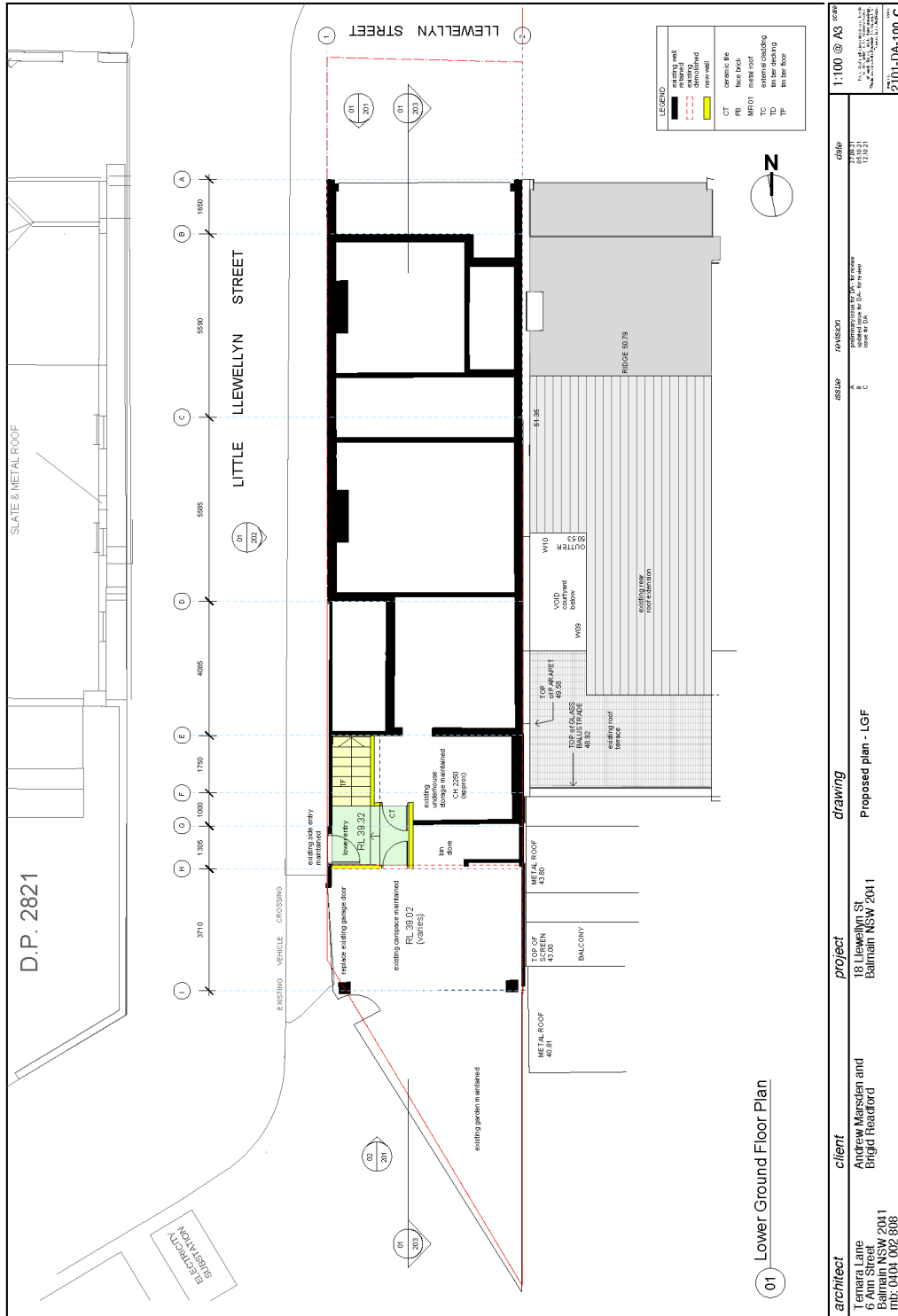
party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

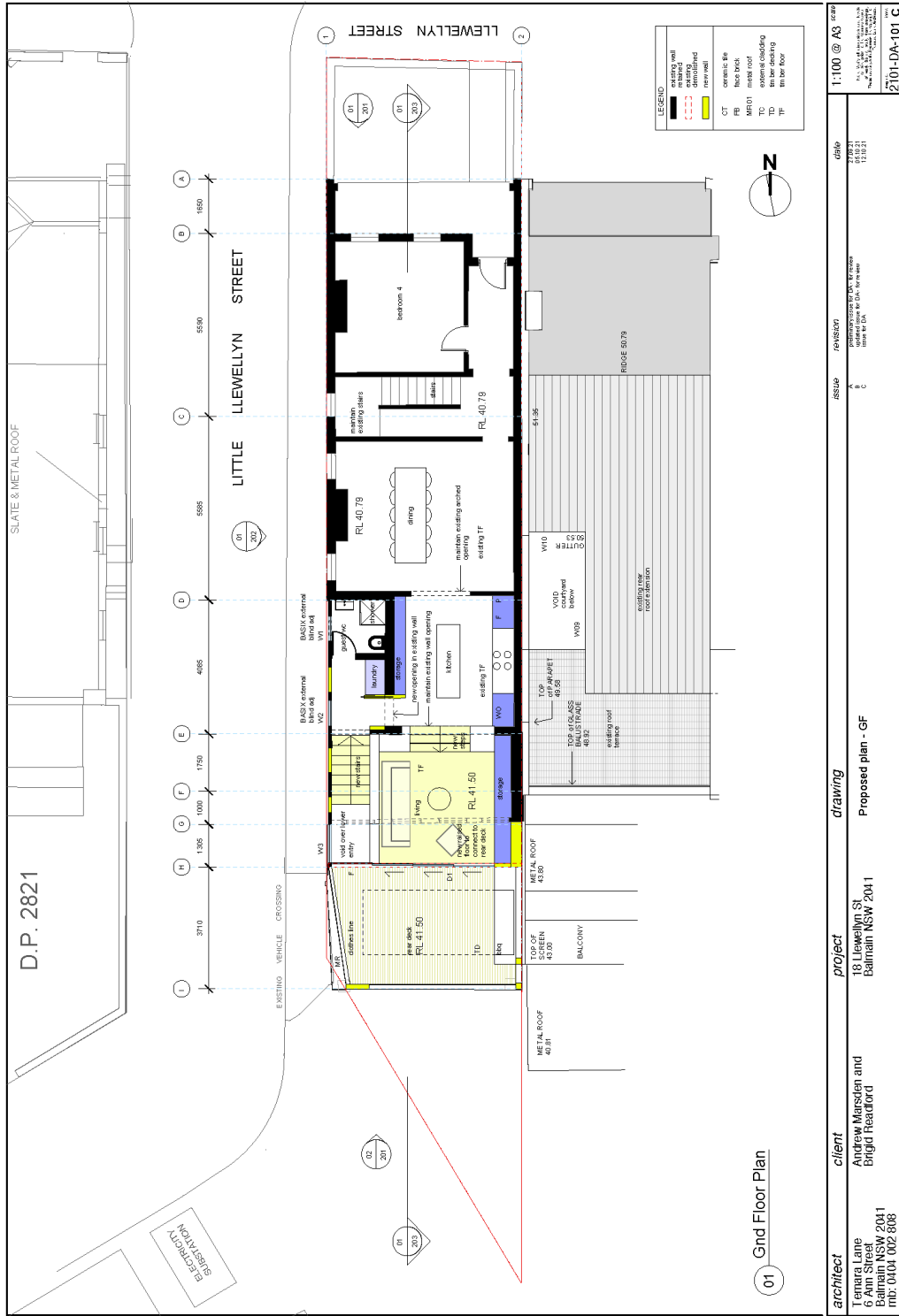
Tree Protection Works

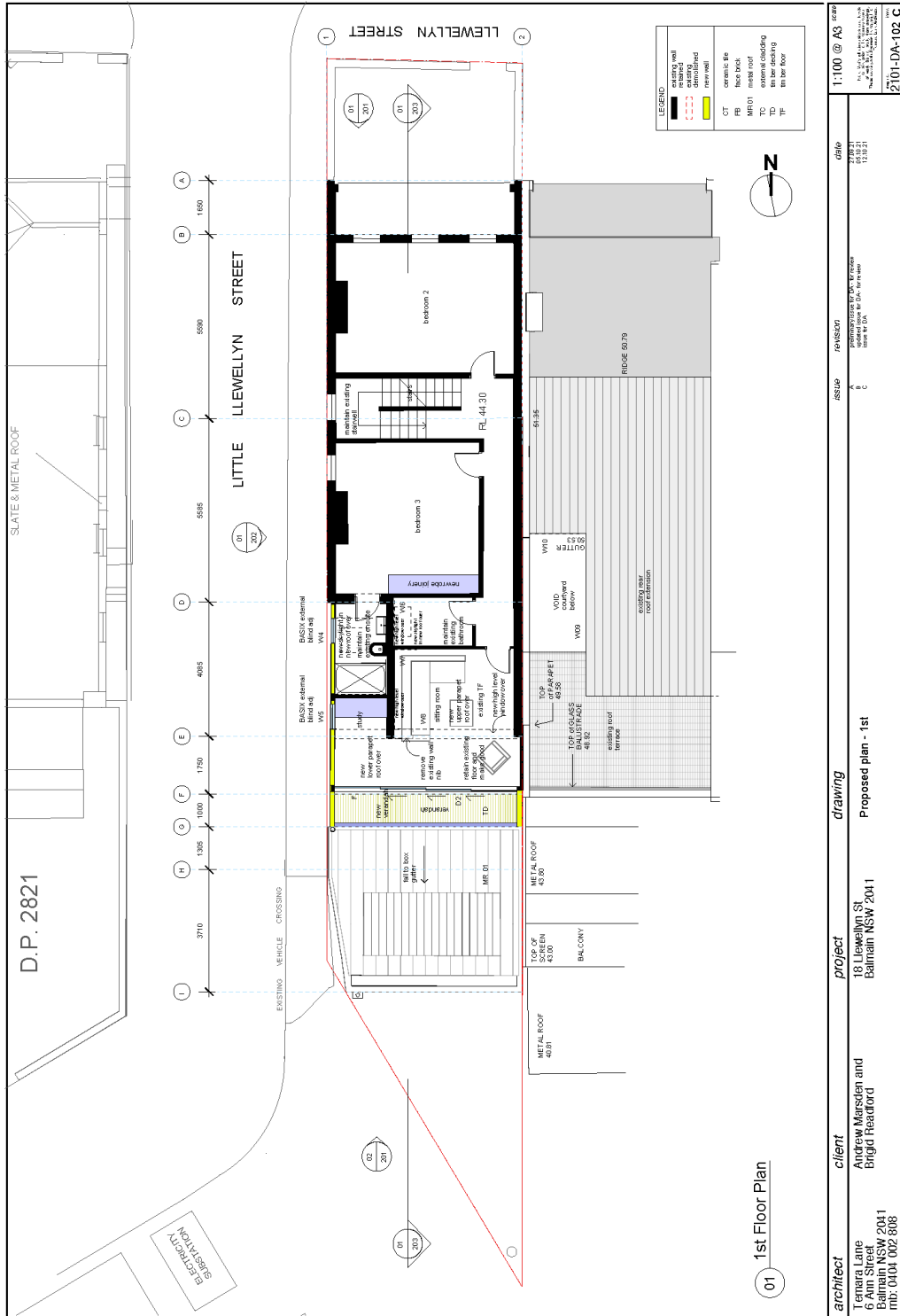
All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

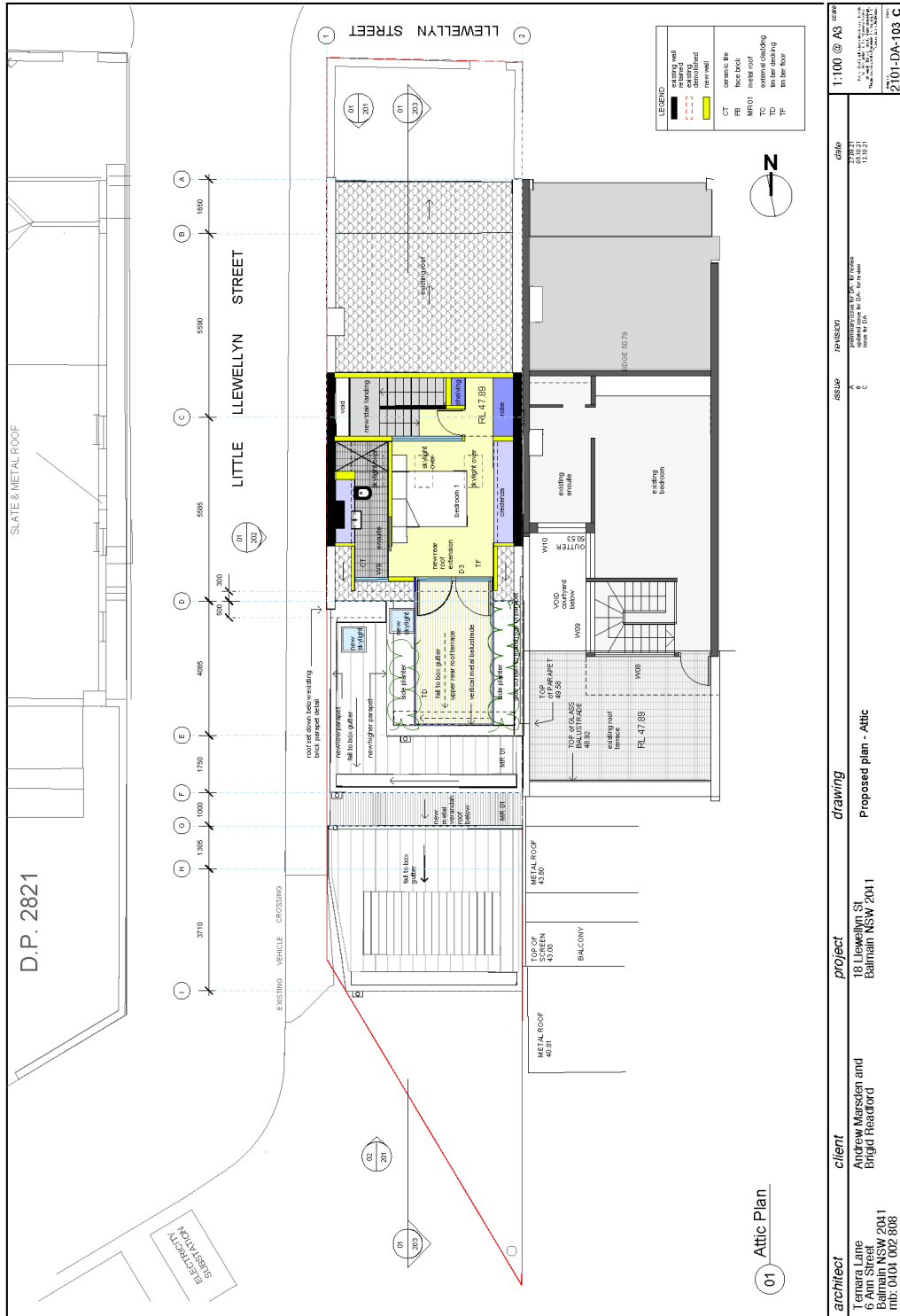
Attachment B – Plans of proposed development

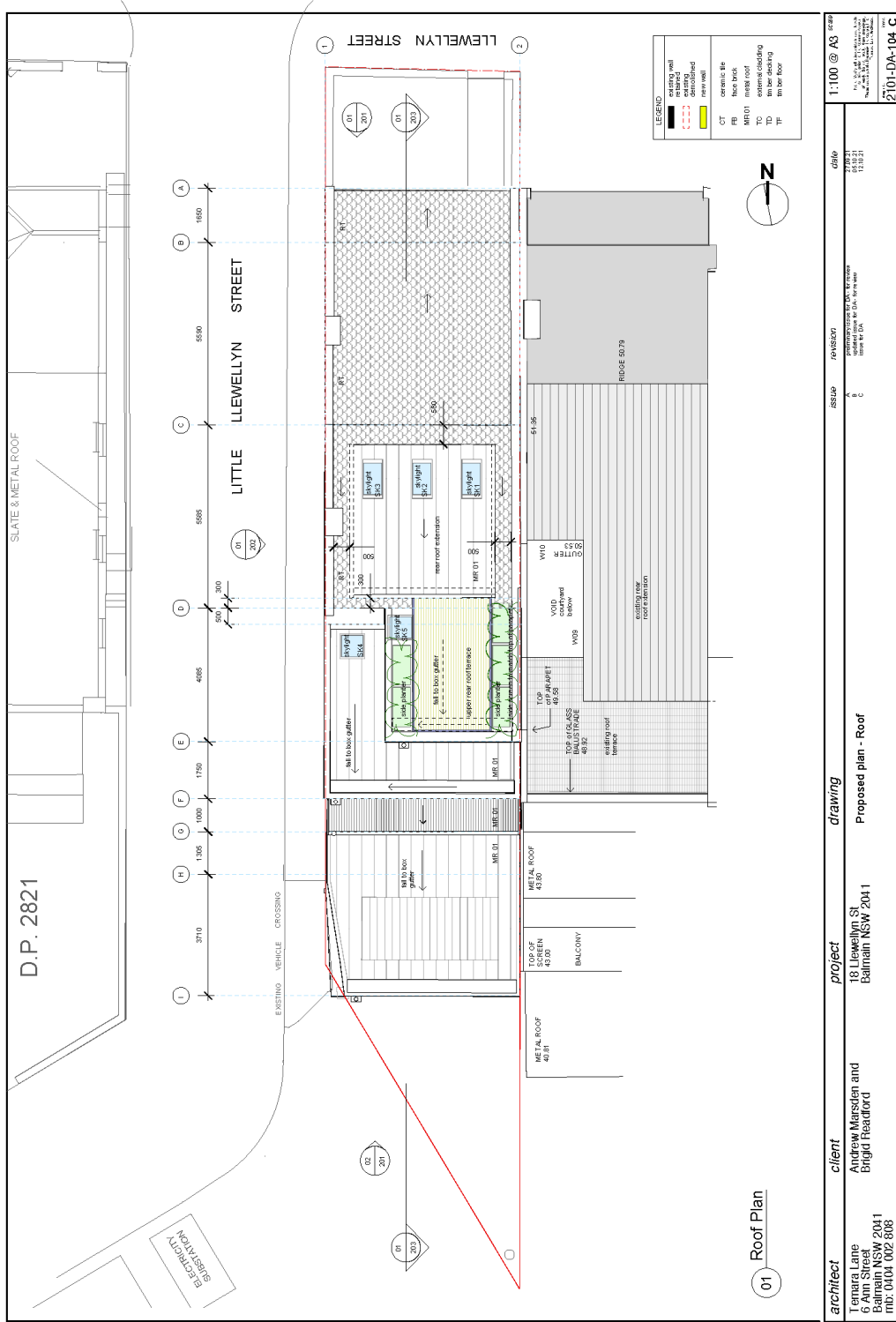


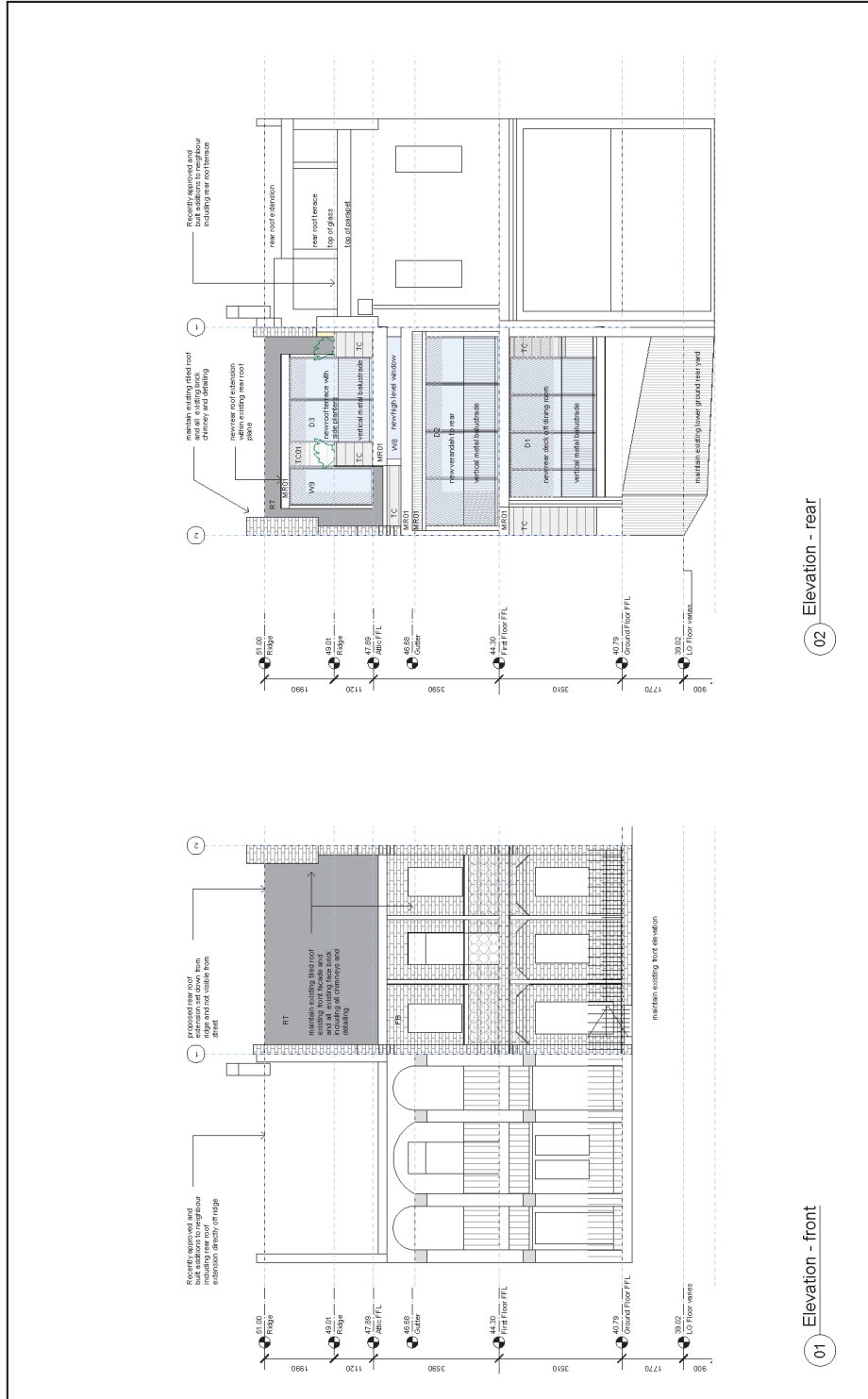




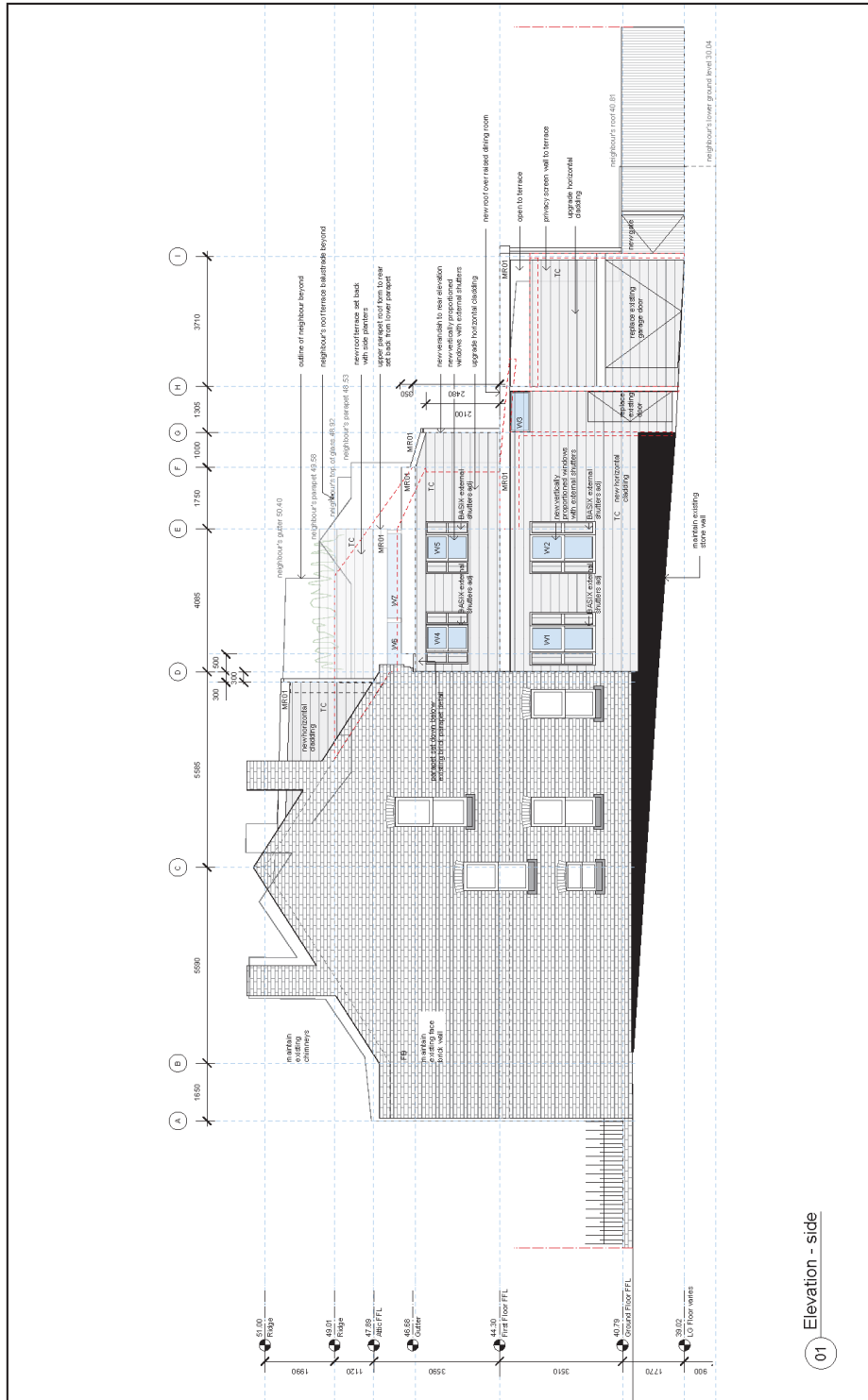








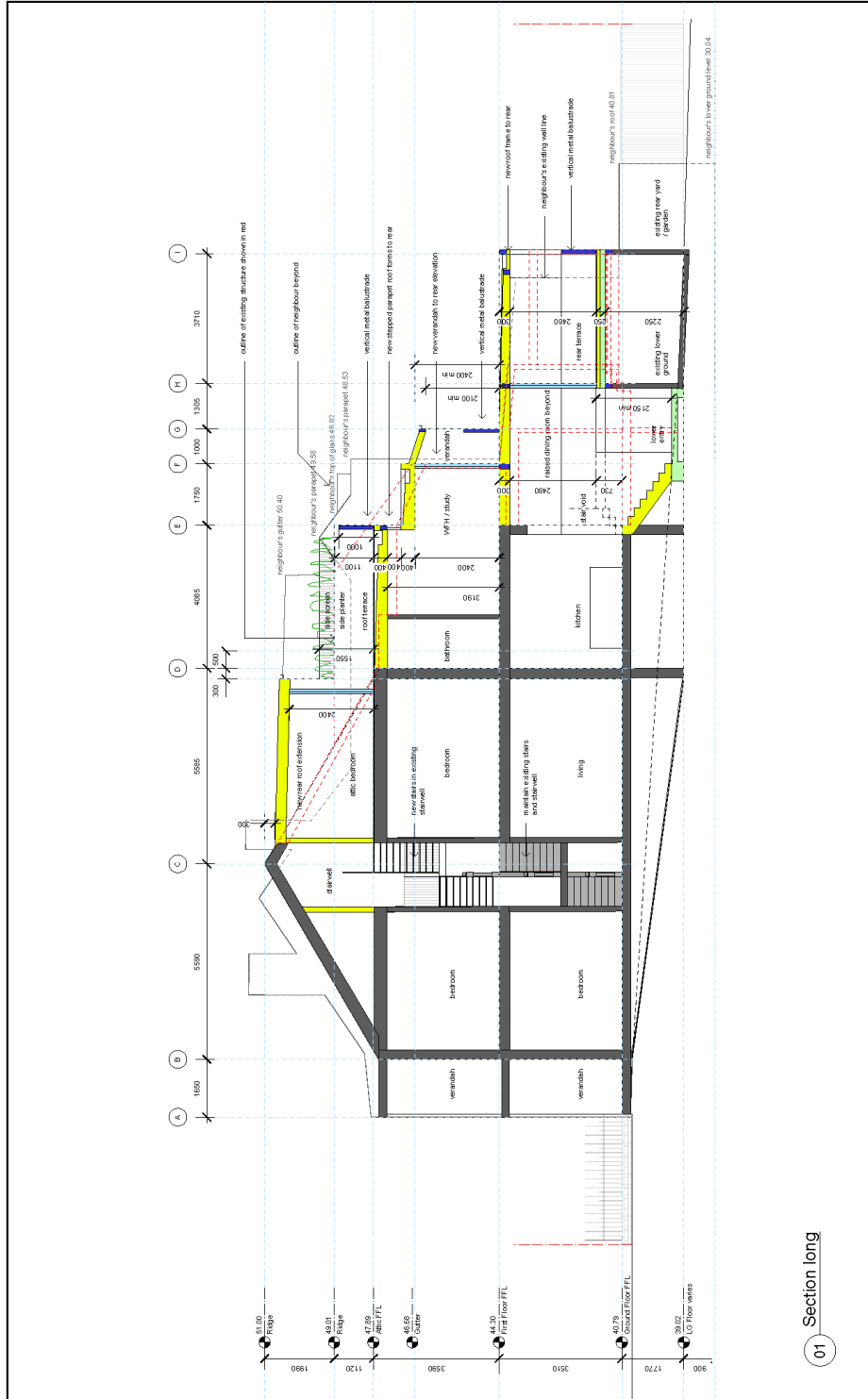
| | | | | | |
|--|--|---|---|-------------------------------------|----------------------------|
| architect Ternara Lane 6 Ann Street Balmain NSW 2041 IND. ORU 002 808 | client Andrew Marsden and Brigid Readford | project 18 Llewellyn St Balmain NSW 2041 | drawing Proposed Elevations and Sections 01 | date 15/02/21 12/02/21 | scale 1:100 @ A3 |
| ASSUB B C | | | | 2701-DA-201 C | |



01 Elevation - side

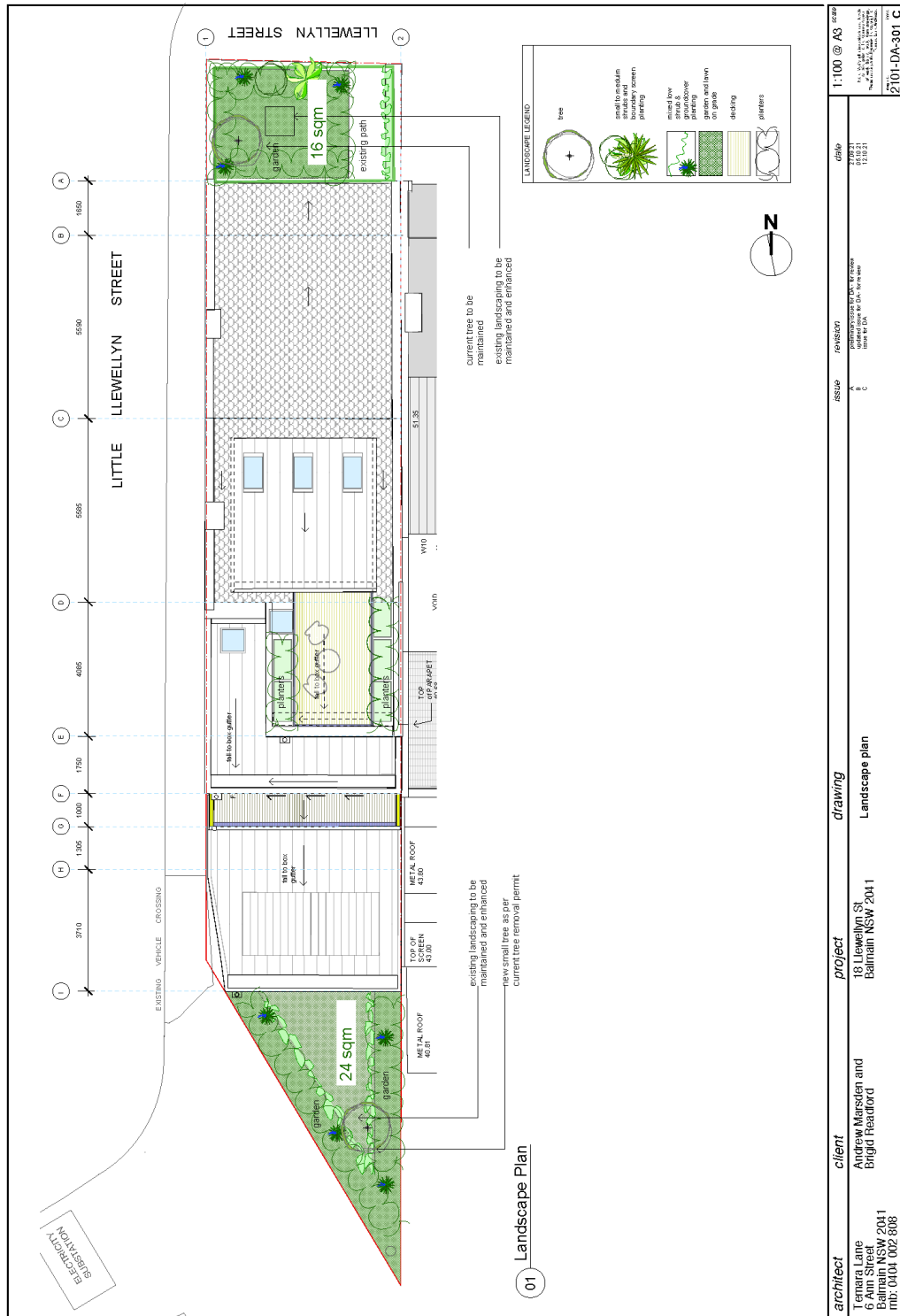
| | | | | | |
|---|--|---|---|-------------------------------------|----------------------------|
| architect Temara Lane 6 Ann Street Balmain NSW 2041 IND. ORU 002 808 | client Andrew Marsden and Brigid Readford | project 18 Llewellyn St Balmain NSW 2041 | drawing Proposed Elevations and Sections 02 | date 25/02/21 12/02/21 | scale 1:100 @ A3 |
|---|--|---|---|-------------------------------------|----------------------------|

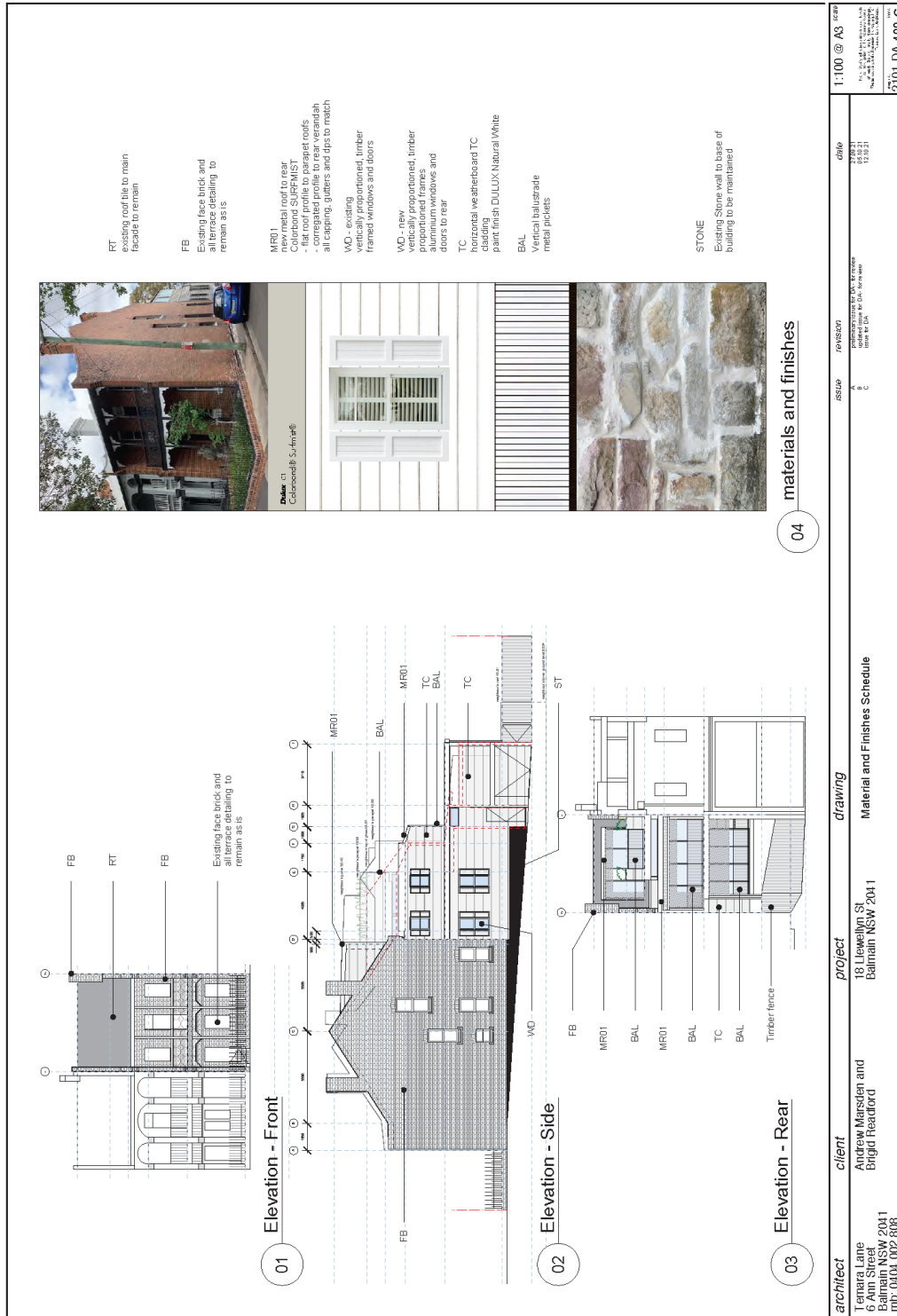
2701-DA-202 C



01 Section long

| | | | | | |
|---|---------------------------------------|-------------------------------------|-------------------------------------|----------------------|--------------|
| architect | client | project | drawing | date | scale |
| Temara Lane 6 Ann Street Balmain NSW 2041 IND. URA 002 808 | Andrew Marsden and Brigid Readford | 18 Llewellyn St Balmain NSW 2041 | Proposed Elevations and Sections 03 | 25/03/21 12/02/21 | 1:100 @ A3 |
| | | | | 2701-DA-203 C | |





Attachment C – Clause 4.6 Variation – Floor Space Ratio

CLAUSE 4.6 SUBMISSION (floor space ratio)

for
Proposed alterations and additions to dwelling house

at
18 Llewellyn Street, Balmain

for
Andrew Marsden and Brigid Readford

prepared by
John Pagan

Burrell Threlfo Pagan Pty Ltd
TOWN PLANNING CONSULTANTS
48 Victoria Road, Rozelle 2039

phone: 9818 8333
email: john@btpplan.com.au

October 2021

18 Llewellyn Street, Balmain : Clause 4.6 Submission (floor space ratio)

1. INTRODUCTION

This submission accompanies a development application for alterations and additions to the existing house at 18 Llewellyn Street, Balmain, as shown in the drawings numbered 2101 DA001C, DA100C-DA104C and DA201C-DA203C dated 12 October 2021 prepared by Temara Lane, Architect. As set out in the Statement of Environmental Effects accompanying the application, the proposal will increase the floor space ratio (FSR) of the building on the site above the maximum of 0.9:1 allowed under *Leichhardt Local Environmental Plan 2013* (the LEP). Because the building as proposed to be extended exceeds the development standard for FSR, a submission under clause 4.6 of the LEP is required seeking an exception to the standard.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Floor space ratio

The site is shown edged red on the Floor Space Ratio Map, by reference to which clause 4.4(2B)(b)(ii) provides that a lot with an area between 150 and 300m² is subject to a maximum floor space ratio (FSR) of 0.9:1. The site area of 191.6m² allows a gross floor area (GFA) of 172.4m².

The Architect has calculated that the proposed additions will increase the GFA of the existing building by 48m² to 224m², which represents an FSR of 1.17:1 and exceeds the standard. The extent of the non-compliance is 52m², a 30% variation to the standard.

Because the proposal does not comply with the development standard for floor space ratio, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Floor space ratio)

Clause 4.6 allows consent to be granted for development that would contravene a development standard if:

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(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 and*
- the consent authority is satisfied that
 - (4)(a)(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*
- the concurrence of the Secretary has been obtained

18 Llewellyn Street, Balmain : Clause 4.6 Submission (floor space ratio)

The FSR control contained in clause 4.4 of the LEP is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6. In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Chief Justice Preston outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The judgment in *Wehbe* identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases including *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 have confirmed that these ways are equally applicable under the clause 4.6 regime.

The first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Wehbe* at 42 and 43).

The objectives of the floor space ratio standard are set out in clause 4.4(1) of the LEP:

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

Objective (a)

- (i) *Bulk, form and scale compatible with desired future character:*

The proportion of built form to open area will remain typical of that in the neighbourhood and represents contemporary development compatible with surrounding built form in Llewellyn Street and consistent with the relevant desired future character provisions set out in part 2.2.2.4 The Valley Distinctive Neighbourhood of *Leichhardt Development Control Plan 2013*.

18 Llewellyn Street, Balmain : Clause 4.6 Submission (floor space ratio)

(ii) *Balance between landscaped area and built form:*

The proposed development will not affect the existing landscaped area or building footprint and complies with Council's control for landscaped area.

(iii) *Impact of bulk and scale:*

The proposal is designed to minimise impacts on streetscape and neighbouring amenity due to bulk and scale, which will be consistent with that surrounding. In particular, the proposed additions are at the rear and will not materially affect the access to sunlight, privacy or viewlines of surrounding properties.

Objective (b)

Compatibility of non-residential development with the desired future character of the area in relation to building bulk, form and scale:

Consistent with the second method in *Wehbe*, this objective, relating to non-residential development, is not relevant to the development.

The arguments set out above show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the relevant objectives of the development standard will be achieved by the proposed development despite the numerical non-compliance.

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

The following environmental planning grounds are relevant:

- The proposal will enhance existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.
- The proposed built form will maintain the contribution of the site to the streetscape of Llewellyn Street and enhance that of Little Llewellyn Street.
- In the context (two groups of separate but similar two- and three-storey terrace-type houses, several of which have similar additions), the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact.
- With regard to the other applicable development standards, the proposal complies with the landscaped area control and will not increase site coverage.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not materially increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

18 Llewellyn Street, Balmain : Clause 4.6 Submission (floor space ratio)

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

Any proposed development that achieves the objectives of a development standard must also be consistent with the objectives of the standard, as the threshold for consistency is lower than that for achievement. The discussion above in response to clause 4.6(3)(a) has demonstrated that the proposed development will achieve the objectives of the standard; therefore it will also be consistent with those objectives.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

By enhancing the standard of accommodation on the site, the proposed alterations and additions will contribute towards meeting the demand for housing in the locality.

- *to provide for a variety of housing types and densities*

By providing additional accommodation, the proposal will contribute towards the variety of available housing types and densities.

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

This objective is not applicable to the proposed development.

- *to improve opportunities to work from home*

The proposal will provide enhanced 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*

The proposal is designed to be compatible in pattern, orientation and character with the existing and surrounding buildings in Llewellyn Street and Little Llewellyn Street and is consistent with Council's planning controls relating to desired future character.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposed development maintains the existing landscaped areas at the front and rear of the site that are suitable for the use and enjoyment of 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*

This objective is not relevant to the proposal.

- *to protect and enhance the amenity of existing and future residents and the neighbourhood*

The proposal will provide an improved standard of housing on the site without material adverse impacts on neighbouring properties.

18 Llewellyn Street, Balmain : Clause 4.6 Submission (floor space ratio)

Concurrence of the Secretary

The concurrence of the Secretary can be assumed by Council. The implications of a single house development not complying with a floor space ratio development standard of the Leichhardt LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The non-compliance is justified as set out above. The variation sought will enhance the utility and amenity of the development, furthering the objectives of the *Environmental Planning and Assessment Act 1979*, without material adverse impacts on neighbouring amenity or the public domain.

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R1 General Residential zone.

John Pagan BTP MPIA
Town Planner

12 October 2021

Attachment D – Clause 4.6 Variation – Site Coverage

CLAUSE 4.6 SUBMISSION (site coverage)

for
Proposed alterations and additions to dwelling house

at
18 Llewellyn Street, Balmain

for
Andrew Marsden and Brigid Readford

prepared by
John Pagan

Burrell Threlfo Pagan Pty Ltd
TOWN PLANNING CONSULTANTS
48 Victoria Road, Rozelle 2039

phone: 9818 8333
email: john@btpplan.com.au

October 2021

18 Llewellyn Street, Balmain : Clause 4.6 Submission (site coverage)

1. INTRODUCTION

This submission accompanies a development application for alterations and additions to the existing house at 18 Llewellyn Street, Balmain, as shown in the drawings numbered 2101 DA001C, DA100C-DA104C and DA201C-DA203C dated 12 October 2021 prepared by Temara Lane, Architect. As set out in the Statement of Environmental Effects accompanying the application, the proposal will not affect the existing site coverage; however, that already exceeds the maximum of 60% allowed under *Leichhardt Local Environmental Plan 2013* (the LEP). Because the proposal involves building work that will exceed the development standard for site coverage, a submission under clause 4.6 of the LEP is required seeking an exception to the standard.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Site coverage

For residential accommodation in the R1 General Residential zone, clause 4.3A(3)(b) sets a maximum site coverage of 60%.

The Architect has calculated that the existing site coverage (which will not be increased by the proposal) is 70%, which does not comply with the standard. The extent of the non-compliance represents a 17% variation to the standard.

Because alterations and additions are proposed and the site coverage does not comply with the standard, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Site coverage)

Clause 4.6 allows consent to be granted for development that would contravene a development standard if:

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(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 and*
- the consent authority is satisfied that
 - (4)(a)(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*
- the concurrence of the Secretary has been obtained

18 Llewellyn Street, Balmain : Clause 4.6 Submission (site coverage)

The clause 4.3A site coverage control is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

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

In the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Chief Justice Preston outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision Preston CJ noted:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The judgment in *Wehbe* identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases including *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 have confirmed that these ways are equally applicable under the clause 4.6 regime.

The first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Wehbe* at 42 and 43).

The objectives of the site coverage standard are set out in clause 4.3A:

- (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*

18 Llewellyn Street, Balmain : Clause 4.6 Submission (site coverage)

Objective (a)

Provide landscaped areas suitable for substantial tree planting and for the use and enjoyment of residents

The proposed development maintains the existing landscaped areas, which meet Council's dimensional requirements and are suitable for the use and enjoyment of residents as well as the retention of one small tree and the planting of another.

Objective (b)

Maintain and encourage a landscaped corridor between adjoining properties

The proposal maintains the existing landscaped area on the site and will continue the landscaped corridor that includes adjoining properties.

Objective (c)

Promote the desired future character of the neighbourhood

The proposal will maintain the existing housing style, built form and setbacks consistent with Council's relevant desired future character provisions.

Objective (d)

Maximise the retention and absorption of drainage water; minimise obstruction to the underground flow of water

The proposed development will maintain the existing permeable area and will not affect any underground flow of water.

Objective (e)

Control site density

This objective is not strictly relevant to the site coverage standard, but is addressed in the Statement of Environmental Effects and the other Clause 4.6 submission accompanying the application.

Objective (f)

Limit building footprint to provide adequate landscaped areas and private open space

The proposed development complies with Council's dimensional and locational controls for the provision of landscaped area and private open space.

The arguments set out above show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the relevant objectives of the development standard will be achieved by the proposed development despite the numerical non-compliance.

18 Llewellyn Street, Balmain : Clause 4.6 Submission (site coverage)

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

The following environmental planning grounds are relevant:

- The proposal will enhance existing built form consistent with heritage conservation values and the qualitative criteria for development in the neighbourhood.
- The proposed built form will maintain the contribution of the site to the streetscape of Llewellyn Street and enhance that of Little Llewellyn Street.
- In the context (two groups of separate but similar two- and three-storey terrace-type houses, several of which have similar additions), the proposal will provide a typical proportion of open area to built form.
- The proposal complies with the landscaped area development standard.
- The proposal will provide a good contemporary standard of inner-suburban accommodation on the subject site.
- The proposal will not materially increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal will not affect views.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

Any proposed development that achieves the objectives of a development standard must also be consistent with the objectives of the standard, as the threshold for consistency is lower than that for achievement. The discussion above in response to clause 4.6(3)(a) has demonstrated that the proposed development will achieve the objectives of the standard; therefore it will also be consistent with those objectives.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

By enhancing the standard of accommodation on the site, the proposed alterations and additions will contribute towards meeting the demand for housing in the locality.

- *to provide for a variety of housing types and densities*

By providing additional accommodation, the proposal will contribute towards the variety of available housing types and densities.

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

This objective is not applicable to the proposed development.

18 Llewellyn Street, Balmain : Clause 4.6 Submission (site coverage)

- *to improve opportunities to work from home*

The proposal will provide enhanced 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*

The proposal is designed to be compatible in pattern, orientation and character with the existing and surrounding buildings in Llewellyn Street and Little Llewellyn Street and is consistent with Council's planning controls relating to desired future character.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposed development maintains the existing landscaped areas at the front and rear of the site that are suitable for the use and enjoyment of 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*

This objective is not relevant to the proposal.

- *to protect and enhance the amenity of existing and future residents and the neighbourhood*

The proposal will provide an improved standard of housing on the site without material adverse impacts on neighbouring properties.

Concurrence of the Secretary

The concurrence of the Secretary can be assumed by Council. The implications of a single house development not complying with a site coverage development standard of the Leichhardt LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The site coverage will not be increased and is justified as set out above. The variation sought will enhance the utility and amenity of the development, furthering the objectives of the *Environmental Planning and Assessment Act 1979*, without material adverse impacts on neighbouring amenity or the public domain.

3. CONCLUSION

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R1 General Residential zone.

John Pagan BTP MPIA
Town Planner
12 October 2021

Burrell Threlfo Pagan Pty Ltd
Town Planning Consultants

5