



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2017/18
Address	12 Reuss Street, BIRCHGROVE NSW 2041
Proposal	Construction of a double garage with studio above at rear of site fronting Water Street
Date of Lodgement	19 January 2017
Applicant	Mr P J Fitzgerald
Owner	Mr P J Fitzgerald and Mrs S L Fitzgerald
Number of Submissions	One (1) objection
Value of works	\$145,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds officer delegation
Main Issues	Streetscape FSR, Landscape and Site Coverage non-compliance Amenity
Recommendation	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for construction of a double garage with studio above at rear of site fronting Water Street, for 12 Reuss Street, Birchgrove. The application was notified to surrounding properties and one (1) submission was received.

The main issues that have arisen from the application include:

- Streetscape impacts
- Amenity impacts
- Floor Space Ratio
- Site Coverage
- Landscaped Area

The non-compliances are acceptable given the pattern of development and no adverse amenity impacts and therefore the application is recommended for approval.

2. Proposal

The proposal is for construction of a double garage with studio above at rear of site fronting Water Street, for the site known as 12 Reuss Street, Birchgrove. The proposal provides for 2 x single garage door openings to Water Street with a studio contained within a hipped and gabled roof form (see Figure 1 below).



Figure 1: *Water Street elevation of the proposed garage with studio above.*

3. Site Description

The subject site is located on the southwestern side of Reuss Street. The site has a second frontage to Water Street. The site consists of single allotment and is generally rectangular with a total area of 279m² and is legally described as Lot 29 DP 666695.

The site has a frontage to Reuss Street of 8.76 metres and a secondary frontage of approximate 8.76 metres to Water Street.

The site currently supports a freestanding dwelling house. The adjoining property to the northwest has been subdivided into two allotments, known as No. 5A Water Street and 14 Reuss Street. No. 14 Reuss Street contains a part 1 and 2 storey dwelling house built in

close proximity to the subject site. No. 5A Water Street contains a 2 storey building containing a garage and dwelling above. The adjoining property to the southeast is a 2-3 storey semi detached terrace with a single carport to the rear fronting Water Street, known as No. 10 Reuss Street.

The subject site is not listed as a heritage item. However, the property is located within a conservation area. The site is not a flood prone lot.

There is no significant vegetation within the subject site nor immediately adjoining the proposed garage structure.

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
D/2014/422	Demolition of existing structures and construction of a new two-storey dwelling, two car spaces and associated works was approved by the Land and Environment Court on 25 March 2015. This approval included a standard pitched roof over the main dwelling and two hard stand car parking spaces accessed from Water Street.	Approved by the Land and Environment Court on 25 March 2015
PREDA/2015/98	A new double garage and studio at the rear and provision of rooftop garden in lieu of colourbond roof to approved dwelling. This advice concluded the proposal required re-design to: <ul style="list-style-type: none"> • Delete the rooftop terrace, including the permanent access stairs, decking and balustrades and replace with a bona fide green roof in accordance with the DCP. • Lower the overall scale and height of the proposed garage and setback the studio from Water Street. 	Issued - 22 December 2015
PREDA/2016/52	Construction of a detached double garage with first floor studio, alterations to the approved dwelling including changes to front elevation and provision of a green roof. Advice concluded that the current proposal requires re-design to address the following issues: <ul style="list-style-type: none"> • Delete proposed changes to front elevation of main dwelling. • Reduce scope of green roof to centrally located area so that required balustrading is not visible from the street. • Reduce proposed floor space. • Increases provision of landscaped area of site; noting at least 13% of the ground area must be 	Issued - 9 May 2016

	<p>landscaped area and that space to grow a tree of at least 6 m must be provided.</p> <ul style="list-style-type: none"> • Ensures site coverage does not exceed 60% of the site area. • Modify the streetscape presentation of any proposed garage/studio consistent with the details outlined earlier in this letter. <p>A large studio above a double garage will not be supported on the site as it results in a development of unacceptable bulk and scale and appearance, excessive floor space ratio and site coverage and inadequate landscaped area. Consideration could be given to a single garage with studio above located on the north-western side of the Water Street frontage.</p>	
M/2016/139	Section 96 application to modify D2014/422 which approved demolition and new dwelling. Modifications include green roof above dwelling with internal access, new decking, altered front fence and altered front facade/verandah.	Approved 2 December, 2016

Surrounding properties

Application	Proposal	Decision & Date
D/2001/373	Second floor addition including dormer to 10 Reuss Street elevation, ground floor addition to rear of existing dwelling including demolition of existing laundry or bathroom, and construction of new garage to Water Street with study above providing a FSR of approximately 1.32:1	Approved - 21/2/02

4(b) Application history

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

On 17 February, 2017, Council issued a letter to the Applicant requesting withdrawal for the following reasons:

“Design Issues

§ *The proposal exceeds all development standards that apply to the site and exceeds the general pattern of development in the area and as such will not be recommended for approval.*

Consideration of these issues has concluded that considerable redesign of the proposal would be required in order for Council to support the application. As you were advised in PREDA/2016/52 a large studio above a double garage will not be supported on the site as it results in a development of unacceptable bulk and scale and appearance, excessive floor space ratio and site coverage and inadequate landscaped area. Consideration could be given to a single garage with studio above located on the north-western side of the Water Street frontage.”

On 20 February, 2017, the applicant provided written advice that the application will not be withdrawn.

While the proposal results in non-compliances with Council's FSR, Landscape and Site Coverage controls, upon further review/ assessment of the impacts of these non-compliances it is considered that, subject to conditions, the proposal is acceptable in this instance. This is further discussed within the main body of this report.

The Application is subject to a Class 1 Appeal, which is pending subject to the Determination of this Application.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

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

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

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

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

A BASIX Certificate was submitted with the application.

5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 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 objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

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 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 5.9AA – Trees or vegetation not prescribed by development control plan
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.4 – Stormwater management

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

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Required: [0.7:1] [187.25m ²]	1.38:1 368.8m ²	97%	No
Landscape Area Required: [20%] [53.5m ²]	46.5m ² (17%)	13%	No
Site Coverage Required: [max. 60%] [160.5m ²]	185m ² (69%)	15%	No

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 standard/s:

- 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 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

The application requests that development consent be granted for the development even though the proposal will contravene the minimum landscaped area and maximum floor

space ratio development standards prescribed under Part 4 of Leichhardt local Environmental Plan 2013.

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

The applicant has submitted a written request outlining why compliance with the development standards is unnecessary and unreasonable in this case, and has provided sufficient environmental planning grounds to justify a variation to the development standards.

Clause 4.3A(3)(a) – Landscaped Areas for residential development in Zone R1

The following justification has been provided in relation to Landscaped Area development standard:

1. *The shortfall of 7m² relates to soft landscaping which is located above a tank.*
2. *Although through strict interpretation of the Code, this 7m² of landscaping is technically not defined as contributing to the landscape component, the soil depth above the tank has been measured at 600mm deep.*
3. *It is considered entirely appropriate to have a soil depth of 600mm for most, shrubs and plants, even some trees and therefore, while technically outside Council's description it can be argued that the 7m² does indeed contribute to soft landscaping."*

Comment: The area of non-compliance relates to the Detention Tank within the rear yard, which is located 150mm below the ground level as shown on the applicant's Drainage Plan submitted with the application. In any case, the extent of the non-compliance is considered minor given this soil depth is considered suitable to grow grass with the remainder of the rear yard capable of supporting plants; shrubs, and trees.

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

The following justification has been provided in relation to Site Coverage development standard:

"The approved development has a site coverage of 148m² or 53% of the site by virtue of the car parking not being roofed despite it being walled on three sides and used for car parking and not forming part of the landscaped area. This was required by a condition of consent. The proposed development has a site coverage of 184m² or 66% of the site.

The proposed dwelling is compliant with the landscaped area and height controls and adopts the building line and envelopes of the adjoining development. The proposal is consistent with the scale and bulk of development in the surrounding area and the consistent building form results in a site coverage in excess of the control and a Clause 4.6 exemption is required.

The proposal responds to the Water Street built form by providing a double garage with an attic level above. It is noted that the adjoining property to the north provides a garage with a full two storey dwelling on this frontage and the properties south up Water Street provide full two storeys and attics above garages.

In fact, the eastern side of Water Street is characterised by two storey development and attics above garages rather than carports. Where the desired future character seeks to retain the existing forms the proposal would be consistent with these forms.

It is noted that the Clause 4.6 register shows the former Leichhardt Council has a history and practice of utilising Clause 4.6 to set this control aside in these instances.”

Clause 4.4 – Floor Space Ratio

The following justification has been provided in relation to Floor Space Ratio development standard:

“The subject site has a floor space ratio of 0.7:1 under the provisions of Clause 4.4 Floor Space Ratio. The proposal has a floor space ratio of 0.82:1. The proposed dwelling is compliant with the landscaped area and height controls and adopts the building line and envelopes of the adjoining development. The proposal is consistent with the scale and bulk of development in the surrounding area and the consistent building form results in an FSR in excess of the control and a Clause 4.6 exemption is required.

The proposal responds to the Water Street built form by providing a double garage with an attic level above. It is noted that the adjoining property to the north provides a garage with a full two storey dwelling on this frontage and the properties south up Water Street provide full two storeys and attics above garages.

In fact, as demonstrated by the photographs below, the eastern side of Water Street is characterised by two storey development and attics above garages rather than carports. Where the desired future character seeks to retain the existing forms the proposal would be consistent with these forms.

It is noted that the Clause 4.6 register shows the former Leichhardt Council has a history and practice of utilising Clause 4.6 to set this control aside in these instances.”

Comment: Council has calculated the FSR to be 1.38:1, which includes the garage car parking as per Council's controls and Definition.

- (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.*

The proposal is considered to satisfactorily demonstrate that application of the above development standards is unreasonable and unnecessary in this instance, and that sufficient environmental planning grounds exist to justify a variation to the above development standards. The proposal does not result in any unreasonable amenity impacts to the surrounding residential properties in terms of visual and acoustic privacy, view sharing or solar access. The proposed form of the garage structure is consistent with the overall pattern of development fronting Water Street.

Due to the orientation of the site and adjoining development, the proposed works do not result in unacceptable amenity impacts to the subject site or surrounding residential properties. Accordingly the application in its current form is consistent with the objectives of the residential zoning and development standards, and is therefore supported in this regard.

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

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

The proposed variation to the development standard will not compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is no material public benefit to the enforcing of the development standards.

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

No other matters are required to be considered before granting concurrence.

5(b) Draft Environmental Planning Instruments

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

- Draft State Environmental Planning Policy (Coastal Management) 2016
- Review of FSR's – Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

State Environmental Planning Policy (Coastal Management) 2016

The application has been considered against the Draft SEPP for Coastal Management.

The subject site is not located within “the coastal zone” pursuant to CI 5 of the draft SEPP, as identified on the map to the SEPP. Consequently, the draft SEPP is not applicable.

Review of Floor Space Ratio – Leichhardt Local Environmental Plan 2013

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Required: 0.9:1 240m ²	1.38:1 368.8m ²	53.19%	No

The application does not satisfy the provisions of the above Draft Leichhardt Local Environment Plan 2013 (Housekeeping amendment). However, as the area of additional floor space relates to a garage and studio within a pitched roof form, located at the rear of the site, the proposal is considered generally acceptable in this instance for the reasons outlined within this report.

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.

Part	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
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
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	N/A
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	N/A
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	N/A
C1.18 Laneways	Yes
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	
Suburb Profile	
C2.2.2.6 Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
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	Yes
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	Yes
E1.1 Approvals Process and Reports Required With Development Applications	
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	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

The following provides discussion of the relevant issues:

C1.18 Laneways

While Water Street is not a Laneway, the proposal has been assessed under Part C1.18 as it is a garage with studio above, which traditionally fronts a laneway. Water Street has a similar width to a ‘Wide Laneway’ as defined within Council’s DCP, which requires development to maintain a height that is consistent with the prevailing height of existing development fronting the ‘lane’. The proposal has been designed to present as a single storey building with pitched roof form and dormer windows, which is similar to other garage developments fronting Water Street. In addition, the proposal has been built to the street alignment; is of a similar bulk and scale to other garage / studio developments in the street; does not dominate the main dwelling house on the same allotment; as well as provides for a pitched roof form with dormer windows that are sympathetic to the character of the locality.

Furthermore, the proposed dormer windows to Water Street provide for casual surveillance opportunities. The proposed garage parking does not result in the loss of on-street parking availability as the site has the benefit of 2 x approved hardstand parking spaces in generally the same location. The location of the garage development fronting Water Street maintains a landscaped area between the main dwelling and the garage building to be maintained, which will enhance the local area and provide a green corridor to facilitate biodiversity and to assist in providing habitats and green corridors for local native fauna to traverse.

C2.2.2.6 Birchgrove Distinctive Neighbourhood

The proposed garage / studio development is considered to be generally consistent with the relevant objective and controls within the Birchgrove Distinctive Neighbourhood. That is, the proposal has been designed with respect of the existing pitched / gabled roof forms; presents as a single storey building with hipped roof form to Water Street; and maintains the existing subdivision pattern. In addition, the proposal has been designed to be complementary to similar existing garage development along Water Street. However, to further improve the contribution of the proposal to the Water Street streetscape, it is recommended that the south-western garage opening be increased in height to match/ align with the adjoining garage door height within the development. This is to reduce to amount of blank façade / area between the garage door and gutter line of the proposal. A condition is included.



Figure 3: *Photomontage prepared by Utz Banby Architects to accompany the Application. No. 5A Water Street is located to the left (foreground) of the photomontage; proposal (centre); and similar garage developments further along Water Street.*

C3.2 - Site Layout & Building Design

Building Location Zones:

The proposed garage structure projects beyond the rear alignment of the garage structure at No. 10 Reuss Street, but is well setback behind the rear alignment of the 2 storey building at No. 5A Water Street (see Figure 2 below). Accordingly, the proposal complies with Council's BLZ controls.

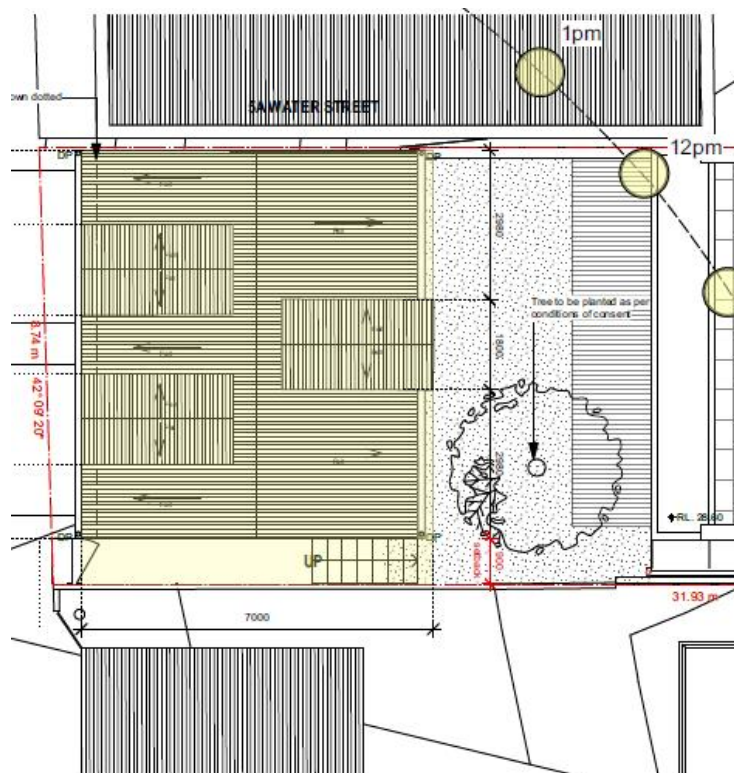


Figure 2: Site Plan showing the BLZ established by the adjoining buildings at No. 10 Reuss Street and No. 5A Water Street, as well as the relationship of the proposed garage/ studio development on the subject site.

Side Setbacks:

The proposal does not comply with the side boundary setbacks specified in the graph, having wall heights of up to 5.5 m on the boundary where the graph permits a maximum height of 2.8m on the boundary. The proposed height and setback are considered to be acceptable in this instance as:

- The dwelling is built to the northwestern side boundary with a 900mm side setback from the southeastern boundary thus the pattern of development in the streetscape is not compromised.
- The proposal has been designed to present as a single storey building with pitched roof form to reduce visual bulk and scale impacts on the streetscape as well as adjoining properties.
- The proposal does not result in significant adverse impacts for surrounding residents in terms of sunlight, privacy, or bulk and scale.

Accordingly, the proposal is considered acceptable in regards to setbacks for the reasons outlined above.

C3.9 Solar Access

Solar Access diagrams were prepared to accompany the Application. These diagrams indicate that due to the orientation of the site and location of the proposed building at the southeastern end of the allotment, at 9am mid-winter the likely additional shadows will fall over Water Street carriageway. At 12noon mid-winter, the diagrams provided indicate that the likely additional shadow will fall over the Water Street carriageway and the roof of the adjoining garage at No. 10 Reuss Street. At 3pm mid-winter the diagrams provided indicate that the likely additional shadow will fall over part of the rear yard of No. 10 Reuss Street adjoining the garage.

Subclause C14 of Part C3.9 of Council's DCP states that, "Where the surrounding allotments side boundary is 45 degrees from true north and therefore the allotment is not orientated north/south or east/west, glazing serving main living room shall retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice." The proposed garage development will not reduce the existing level of solar access to the living room glazing of the adjoining properties.

Subclause C16 of Part C3.9 of Council states that, "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."

The proposed garage structure is unlikely to result in additional overshadowing at 9am and 12noon mid-winter. However, there will be a minor increase in additional overshadowing at 3pm, measuring approximately 1m² in area (see Figure 3 - Solar Access plan below).

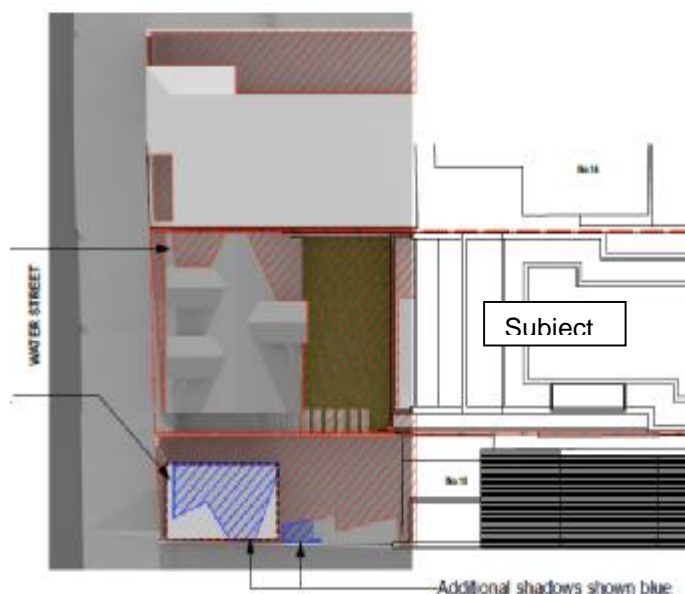


Figure 3: Solar Access diagram (3pm mid-winter) prepared by Utz Sanby Architects.

While subclause C19 states that "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", the increase in additional overshadowing is minor; is likely to result between 2-3pm only; and is within the area adjoining the existing garage at No. 10 Reuss Street rather than the area immediately adjoining the rear living room of No. 10. Accordingly, given the aforementioned the proposal is considered acceptable in regards to solar access.

C3.10 – Views

Due to the topography of the site, the proposed garage structure is 780mm above the 2 storey structure at No. 5A Waters Street. The existing surrounding development, including 5A Waters Street currently obscures any potential views from the lower levels and rear yard of No. 10 Reuss Street. The upper level balcony and windows at No. 10 Reuss Street are located above the ridgeline of the proposed garage development at No. 10 Reuss Street and currently enjoy views across the side boundaries of the subject site rather than over the proposed garage. The current views enjoyed by No. 10 Reuss Street will remain unaffected (see Photographs 1-3). An assessment against the Land and Environment Court (LEC) View Sharing Principle has not been undertaken as there is not considered likely to be any view

loss based on the direction of the existing views across the site rather than to the rear; topography of the site; and location and design of the proposed garage structure.



Photograph 1: Photograph taken from the upper level balcony of No. 10 Reuss Street, view towards proposed garage structure location, across the side boundary of the subject site.



Photograph 2: Photograph taken from the upper level side window of No. 10 Reuss Street, view towards the Bay across the side boundary of the subject site. The proposed garage location is to the left and will not impact this view.



Photograph 3: Photograph taken from the upper level of No. 10 Reuss Street, view towards the Bay across the side boundary of the subject site (proposed garage structure location out of the photo to the left).

C3.11 – Visual Privacy & C3.12 – Acoustic Privacy

The proposal provides a dormer window within the rear roof plane of the proposed garage structure, providing light and ventilation into the studio above the garage. Clause C1 of Part C3.11 states: *“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.”* As the proposed dormer window is located off a rumpus/ living area and has potential to result in views towards the private open space and living areas of the immediately adjoining properties, it is recommended that this window be provided with fixed obscure glazing to a height of 1.6m above the finished floor level. A condition is included.

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

The site is zoned R1 Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with Council’s Policy for a period of 14 days to surrounding properties. A total of one (1) submission was received.

The following issues raised in submissions have been discussed in this report:

- The increase in visual bulk from the development – see Section 5(c) – C3.9
- Privacy implications from the new dormer window within the rear roof plane of the garage/studio development – see Section 5(c) – C3.11 & C3.12

- Heritage Impacts – see Section 6(a) – Council’s Heritage Officers comments
- FSR, Site Coverage and Landscaping non-compliance – see Section 5(a) – Clause 4.6 Exception assessment. It is worth noting that Council’s Assessment report for No. 10 Reuss Street (D/2001/373) states that the approved (as built) dwelling provides a GFA 199.22m², and based on the site area of 151m², provides for an FSR of 1.32:1 calculated in accordance with Council’s requirements at the time of assessment.

In addition to the above issues, the submissions raised the following concerns, which are discussed under the respective headings below:

Issue: Conversion of studio to separate occupancy once approved

Comment: Standard conditions of consent are included stating the studio above the garage is not be used as a separate occupancy and is not to contain kitchen/ cooking facilities. Should the studio not comply with the conditions of consent this should be referred to Council’s Compliance Officers for investigation.

Issue: Air flow restrictions due to existing large dwelling at No. 12 Reuss Street

Comment: This issue refers to the approved main dwelling house and does not form part of the current application.

Issue: Should the application proceed to the Land and Environment Court it is requested the Commissioner determine the application and not settled by negotiation during a Section 34 conference, which is fairer to all parties.

Comment: This is not a consideration for determining this application.

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.

- Heritage Officer:

Council’s Heritage Officer reviewed the proposal and provided the following comments:

“The following advice has been made with regard to the description, significance and relevant statutory and non-statutory aims, objectives and controls set out in the previous internal heritage referrals for the proposal.

Subject to design changes the proposal would be acceptable on heritage grounds.

Following are recommended conditions of consent regarding the front façade composition and its impact on the conservation streetscape with regard to supporting and enhancing its heritage values.

Conditions of consent are also recommended regarding roof sheet profile, wall and window materials and all external colours in the absence of an external materials, finishes and colours schedule.

- *Dormer windows to Water Street to be centred on garage doors below. Sill of dormer window to align with adjacent gutter level and fixed triangular glass pane to be deleted and replaced by wall.*
- *Height of garage door adjacent to no. 14 to be raised to align with proposed garage door head height adjacent to no. 10*
- *Profile of new roof sheeting to be similar in profile to traditional corrugated steel roof sheet and similar in colour to Colorbond Windspray or Wallaby*
- *External walls to Water Street to be rendered masonry and windows to be timber framed. All new external wall, window and garage door colours to be a light shade of a neutral colour”*

- Development Engineer:

On 20 March, 2017, Council's Engineers provided the following advice:

“1. The proposed garage and studio design is not supported in its current form for the following reasons:

- a) *The levels on the architectural plans and sections are not consistent with the levels on the drawings prepared by Alan L Wright & Associates dated 18 January 2-17.*
 - b) *The garage floor level of RL 21.56m AHD used on the architectural section does not provide a suitable representation of the headroom available in the garage to demonstrate compliance with AS/NZS 2890.1-2004 in relation to the minimum headroom requirement of 2200mm. This is in relation to the headroom below the stairs to the Studio and at the door to the southern garage.*
 - c) *A north-south cross section is required through the garage/studio, passing through the proposed stairs and showing the step(s) between the two garages.*
2. *The proposed vehicle crossings must be amended to show 900mm wide wings on both sides of the crossings in accordance with Council's specifications. This will necessitate the power pole being relocated clear of the vehicle crossing, as a condition of consent. “*

On 29 March, 2017, Council's Engineers provided the following further advice:

“Reference is made to the Engineers referral dated 20 March 2017. You have advised that the application has been reviewed and is acceptable subject to conditions on Planning grounds, and is to be recommended for approval.

Concerns remain regarding the encroachment of the stairs between the rear yard and the studio into headroom clearance required over the Parking Space 2 in accordance with the requirements of AS/NZS 2890.1-2004. Given the details on the submitted survey this could be addressed by lowering the parking space to a maximum level of RL 21.1m beneath the stairs. This provides for the required 2200mm headroom and a slab thickness of 250mm.

Note that, given the level difference between the two parking spaces, a structural barrier will be required between the two parking spaces.

As previously advised, the construction of the proposed vehicle crossings in accordance with Council's specifications will require the relocation of the existing power pole at the Water Street frontage.”

6(b) External

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

7. Section 94 Contributions

Section 94 contributions are not payable for the proposal.

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 adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The variation to Clause 4.3A(3)(a) Landscape Area, 4.3A(3)(b) Site Coverage and 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2017/18 for Construction of a double garage with studio above at rear of site fronting Water Street for property known as 12 Reuss Street, Birchgrove subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. D/2017/18 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Alterations and additions – Floor Plans, Drawing A01-01	Utz Sanby Architects	17/1/17
Alterations and additions – Elevations + Sections, Drawing A02-01	Utz Sanby Architects	17/1/17
Stormwater Plans	Prepared By	Dated
Long sections, Sheet C3C, Issue C	Alan L Wright & Associates	18-01-2017
Long sections, Sheet C4C, Issue C	Alan L Wright & Associates	18-01-2017
Drainage Concept Plan and Details, Sheet C1F, Issue G	Alan L Wright & Associates	18-01-2011
BASIX Certificate A269315	Partners Energy Management	16-12-16
Driveway Plan and Long Sections, Sheet C2C	Alan L Wright & Associates	18-01-2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

2. Consent is granted for the demolition of the following currently existing on the property, subject to strict compliance with the following conditions:

Elements	Location
Rear fence and structures	Rear yard

- a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every

premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.

- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
- i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
 - ii) A *final* inspection when the demolition works have been completed.

NOTE: If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied

by Council against the demolisher and/or owner for failure to comply with this condition.

- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
 - i) A WorkCover licensed contractor must undertake removal of all asbestos.
 - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
 - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
 - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
 - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

3. Amended plans are to be submitted incorporating the following amendments:
- a) The floor level of Car Space 2 must be no higher than RL 21.1m AHD along the northwestern side of the parking space to provide for a minimum headroom clearance of 2200mm below the underside of the stairs to the studio above.
 - b) The proposed vehicle crossings must be amended to show 900mm wide wings on both sides of the crossings in accordance with Council's specifications. This will necessitate the power pole being relocated clear of the vehicle crossing.
 - c) Height of garage door adjacent to No. 14 Reuss Street to be raised to align with proposed garage door head height adjacent to No. 10 Reuss Street.
 - d) The dormer glazing within the rear (north-eastern) roof plane of the garage development is to be fixed obscure glazing to a height of 1.6m above the finished floor level.
 - e) Dormer windows to Water Street to be centred on garage doors below. Sill of dormer window to align with adjacent gutter level and fixed triangular glass pane to be deleted and replaced by wall.
 - f) Profile of new roof sheeting to be similar in profile to traditional corrugated steel roof sheet and similar in colour to Colorbond Windspray or Wallaby.
 - g) External walls to Water Street to be rendered masonry and windows to be timber framed. All new external wall, window and garage door colours to be a light shade of a neutral colour.

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

4. A stormwater drainage design, incorporating on site stormwater detention and on-site retention/ re-use facilities (OSR/OSD), prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:
- a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. C1 Revision F prepared by Alan L Wright & Associates and dated 16 December 2016.
 - b) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
 - c) A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a

reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings.

- d) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3.2003 Plumbing and Drainage – Stormwater Drainage*.
- e) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- f) 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.
- g) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- h) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- i) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.
- j) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- k) The proposed on-site retention 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.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

5. Any air conditioning unit on the site must be installed and operated at all times so as not to cause “Offensive Noise” as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
 - i) 10:00pm to 7:00am on Monday to Saturday: and
 - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the

background $L_{A90, 15\text{min}}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an $L_{Aeq, 15\text{min}}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

6. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
7. In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
 - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
 - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
 - c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

8. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
 - a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

9. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy 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. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

10. Materials and finishes must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
11. The existing unpainted brick surfaces are not to be painted, bagged or rendered but to remain as original brick work. The Construction Certificate plans must clearly depict all original brickwork with a notation that they are to remain unpainted to the satisfaction of the Principal Certifying Authority.
12. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
- a) Must preserve and protect the adjoining building from damage
 - b) Must, at least seven (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.
 - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

13. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
- The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on

or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the application prior to the issuing of a for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

14. 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*. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:
 - a) The floor level of Car Space 2 must be no higher than RL 21.1m AHD along the northwestern side of the parking space to provide for a minimum headroom clearance of 2200mm below the underside of the stairs to the studio above.
 - b) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary are 225mm above the adjacent road gutter invert for 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.
 - c) 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.
 - d) The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004.
 - e) 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.
 - f) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

The design must be certified by a suitably qualified Civil Engineer as complying with the above requirements.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate and

provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

15. A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall 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.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

16. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at www.environment.nsw.gov.au and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:

- a) Minimise the area of soils exposed at any one time.
- b) Conservation of top soil.
- c) Identify and protect proposed stockpile locations.
- d) Preserve existing vegetation. Identify revegetation technique and materials.
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
- f) Control surface water flows through the site in a manner that:
 - i) Diverts clean run-off around disturbed areas;
 - ii) Minimises slope gradient and flow distance within disturbed areas;
 - iii) Ensures surface run-off occurs at non erodable velocities;
 - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences.
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

17. The approved plans must be checked online with Sydney Water Tap In 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. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

The Certifying Authority must ensure that the appropriate approval has been provided prior to the issue of a Construction Certificate.

18. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
- a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
 - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
 - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
 - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
 - b) Noise and vibration
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) www.epa.nsw.gov.au for guidance and further information.
 - c) Occupational Health and Safety
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.

- d) Toilet Facilities
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
- e) Traffic control plan(s) for the site
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

19. The applicant must bear the cost of construction of the following works:

- a) Construction of two concrete vehicle crossings at the Water Street frontage of the site.
- b) Reconstruction of the sandstone kerb and gutter and asphalt footpath with grass verge for the remainder of the Water Street frontage of the site.
- c) Relocation of the existing power pole at the Water Street frontage of the site.

Development Consent does NOT give approval to undertake any works on Council property. **An application must be made to Council and a Roadworks Permit issued under Section 138 of the Roads Act 1993 prior to construction of these works.**

The Roadworks Permit must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of an Occupation Certificate.

Note: The cost of adjustment or relocation of any public utility service shall be borne by the owner/applicant. Where the finished levels of the new works will result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.

20. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:

- a) Estimated volume (m³) or weight (t) of materials that are reused, recycled or removed from site.

- b) On site material storage areas during construction.
- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

21. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued (whichever occurs first), a security deposit to the value of \$13,300 must be paid to Council to cover the costs associated with the road, footpath and drainage works required by this consent.

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

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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)

22. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below must be 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.

Security Deposit (FOOT)	\$2401.20
Inspection fee (FOOTI)	\$219.00

Payment will be accepted in the form of cash, bank cheque or 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 Council to determine the condition of the adjacent road reserve & footpath prior to & 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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

23. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
5A Water Street, Birchgrove	Whole building

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable

steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

24. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
- a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
 - b) A concrete pump across the roadway/footpath. – A Standing Plant permit
 - c) Mobile crane or any standing plant – A Standing Plant Permit
 - d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
 - e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
 - f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
 - g) Awning or street verandah over footpath. – Road works Application
 - h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

PRIOR TO THE COMMENCEMENT OF WORKS

25. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must

be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

a) location of the building with respect to the boundaries of the site;

26. The site must be 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 property 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. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

27. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

28. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt 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.

29. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builders intending to carry out the approved works.
30. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
31. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
 - a) Unauthorised entry to the work site is prohibited.
 - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
 - c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

DURING WORKS

32. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

33. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.

- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

- 34. The site must be appropriately secured and fenced at all times during works.
- 35. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority.

- 36. Excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
 - a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
 - c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

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.

37. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
38. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
39. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
40. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
41. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained must be checked and certified by a Licensed Plumber or qualified practicing Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily, it must be upgraded.

42. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

The requirements of the Soil and Water Management Plan must be maintained at all times during the works and shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

43. 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 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.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

44. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

45. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must

be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

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 Principle Certifying Authority stamped Construction Certificate plans.

46. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
47. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
48. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on site detention and on-site retention/re-use facilities. 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.
 - b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

The Plan must be prepared by a suitably qualified professional and provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

49. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

50. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
 - the approved plans;
 - BASIX certificate (where relevant),
 - approved documentation (as referenced in this consent); and
 - conditions of this consent.
51. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance the development consent and with relevant Australian Standards must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

52. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with Council Roadworks Permit approval.

Written notification from Council that the works approved under the Roadworks Permit have been completed to its satisfaction and in accordance with the conditions of the Permit, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

ONGOING CONDITIONS OF CONSENT

53. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
54. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
55. The Operation and Management Plan for the on-site detention and on-site retention/re-use facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
56. The proposed studio is ancillary to the residential use of the premises and is to be used by the permanent residents of the dwelling only. The studio must not incorporate kitchen facilities. No approval is given for the use of the studio as a self contained dwelling or secondary dwelling. The studio shall not be separately leased.
57. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. garage and studio associated with the main dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a garage with studio on a single residential allotment, is defined under the *Leichhardt Local Environmental Plan 2013*.

PRESCRIBED CONDITIONS**A. BASIX Commitments**

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
 - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

C. Home Building Act

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
 - 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, or
 - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

D. Site Sign

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.

E. Condition relating to shoring and adequacy of adjoining property

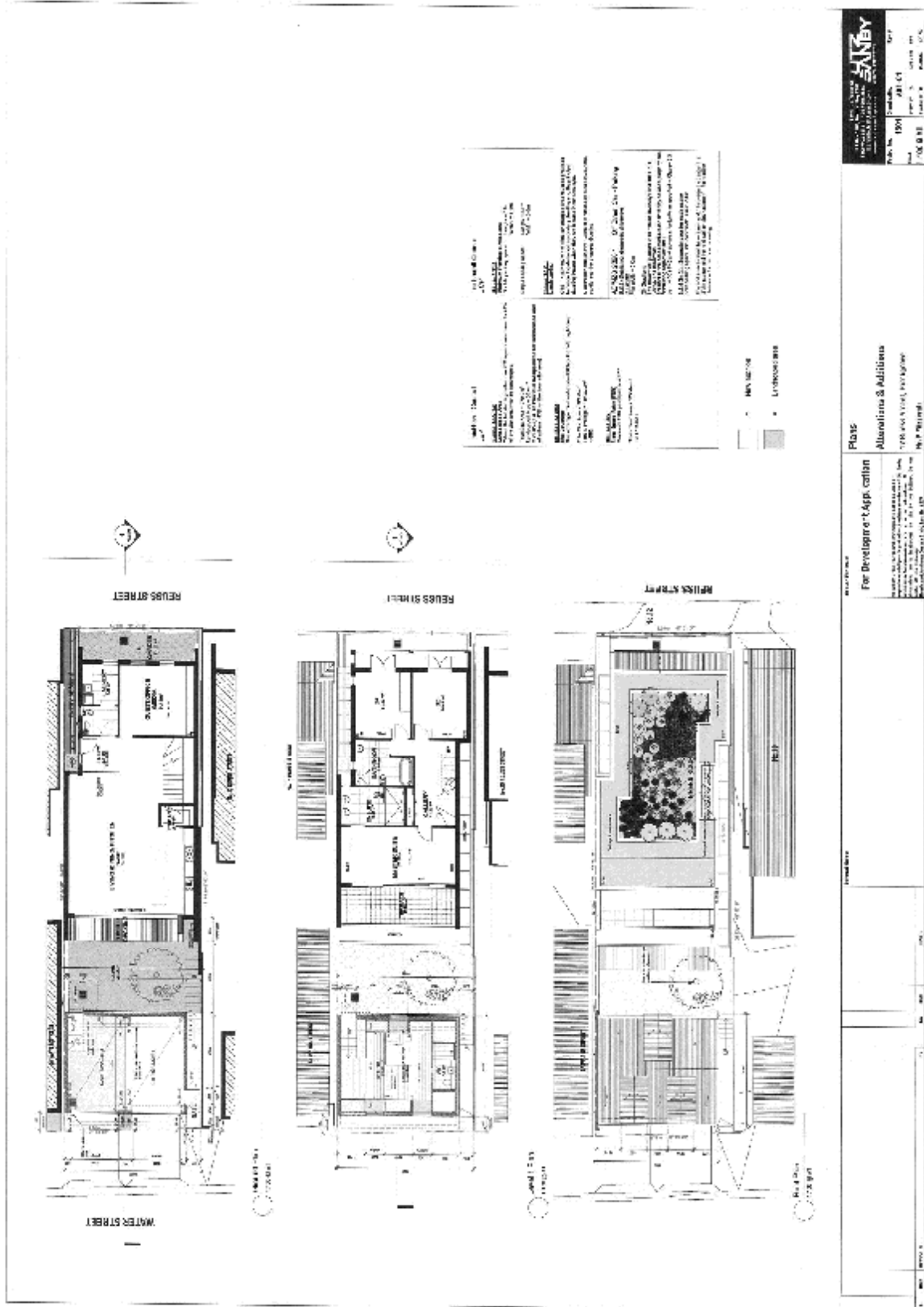
- (1) For the purposes of section 80A (11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (a) protect and support the adjoining premises from possible damage from the excavation, and
 - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

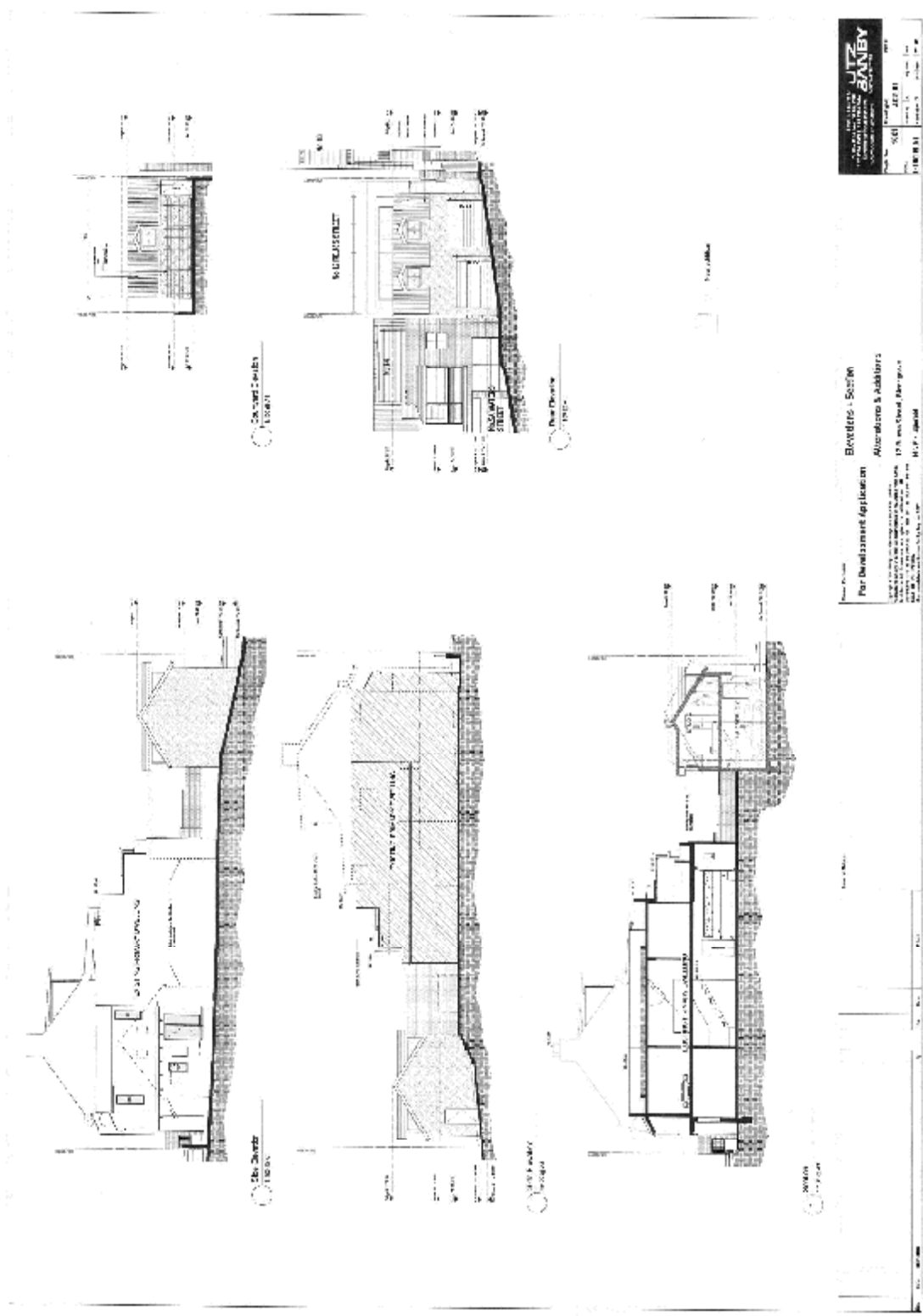
NOTES

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 82A of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development, integrated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 82A.
3. If you are unsatisfied with this determination, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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 96 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
 7. 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) Development Application for demolition if demolition is not approved by this consent.
 - e) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
 8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

Attachment B – Plans of proposed development





NOTES: