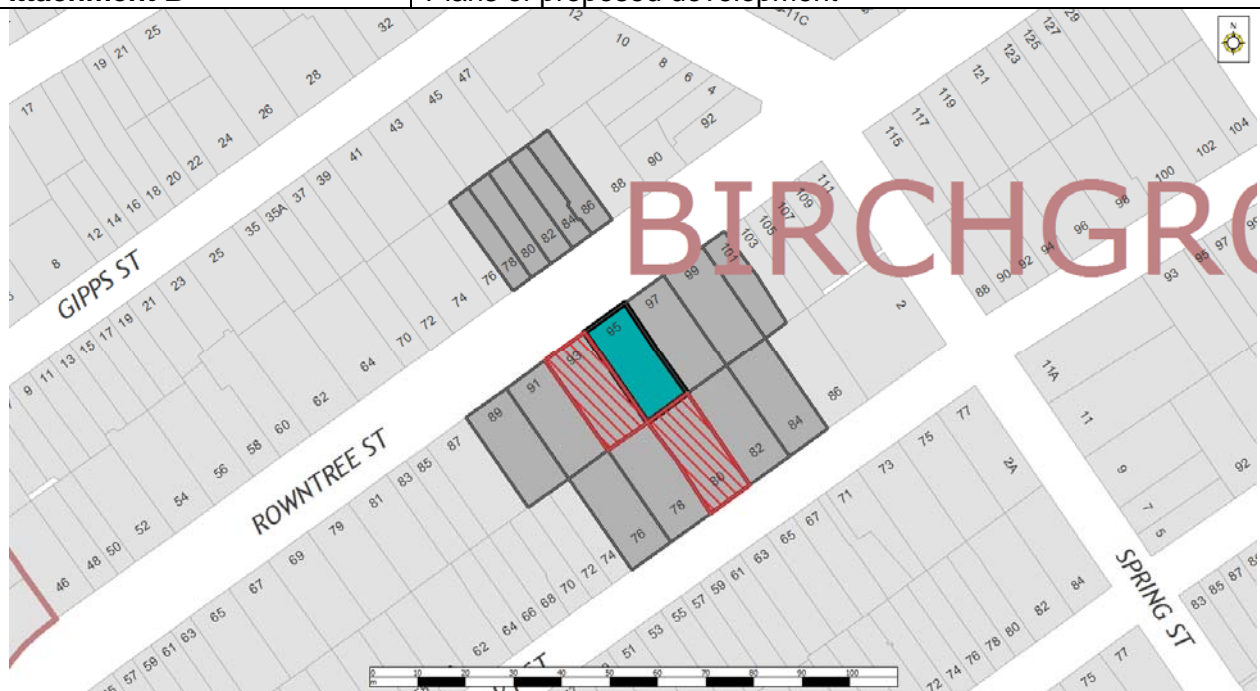




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DAREV/2016/21
<b>Address</b>	95 Rowntree Street, BIRCHGROVE NSW 2041
<b>Proposal</b>	Review of Refusal Determination of D/2016/245 for alterations and additions to existing dwelling including ground and first floor additions and ground floor deck. Review entails amended plans.
<b>Date of Receipt</b>	21 November 2016
<b>Applicant</b>	Mr L Quach
<b>Owner</b>	Mr L Quach and Mrs J J Chan
<b>Number of Submissions</b>	2
<b>Building Classification</b>	Class 1a
<b>Reason for determination at Planning Panel</b>	Previously determined by Panel as a Discretionary Referral
<b>Main Issues</b>	Heritage Impacts; Scale: Privacy
<b>Recommendation</b>	Deferred Commencement Consent
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Proposal

This application seeks consent for substantial demolition and alterations and additions to the existing dwelling and associated works at 95 Rowntree Street, Birchgrove. This proposal was considered under D/2016/245 and refused on 11 October 2016 and the DA Review application seeks reconsideration of that decision.

The following works are proposed to the existing residence:

- Substantial demolition / removal of fabric to the dwelling, including:
  - The roof to the reverse skillion form front building element (nominated as Master Bedroom);
  - Internal floors of the dwelling, including between the areas behind the front two rooms and the guest bedroom / study of the rear wing;
  - The ground floor south-east (rear) facing wall of the main form of the house associated with existing Bedroom 3 and the living room;
  - The ground floor north-east (side) facing wall of the kitchen within the rear wing;
  - Part of the north-east (side) facing wall to the existing bathroom / laundry within the rear wing;
  - The rear facing patio and stairs associated with the living area;
  - The majority of the rear facing roof over the front main form of the house;
  - The roof over the existing bathroom / laundry to the rear wing of the house;
  - Parts of the north-west (front) and south-west (side) facing walls to the first floor rear addition;
  - The roof of the first floor rear addition;
  - The chimney projecting from the front roof of the main dwelling form;
- Ground floor rear additions and alterations, including:
  - Provide a gable roof to the front reverse skillion building form;
  - Provide a new skillion roofed front verandah (with no floor except at the entry door);
  - Provide new timber framed windows to the north-eastern (side) and north-western (front) walls to the front main dwelling form to be retained;
  - Alterations within existing building footprint to provide modified bedrooms, a bathroom, a dining area, a kitchen, a water closet and a laundry;
  - New living area and elevated rear deck addition extending outside the existing dwelling / rear patio footprint;
  - New roof to rear wing forward of the existing guest room / study to be retained;
- A first floor addition comprising parent's retreat and rear facing deck, master bedroom and ensuite, the addition extending across the majority of the width of the house within a skillion form below and behind the front roof ridge and that is lower than the existing first floor addition.
- New timber picket fence to street / forward of the main building line to replace the existing high brick wall to this frontage;
- On-site landscaping works, including removal of two trees at the rear of the site, being a Flowering Gum tree and Hackberry tree.

The proposal also involves relying on the exempt provisions of the Leichhardt Local Environmental Plan 2013 to repair and replace dilapidated wall cladding to existing south-east (rear) and south-west (side) facing walls of the dwelling to be retained.

Council is in receipt of the written consent of the owner of No. 93 Rowntree Street, (provided as part of the original application D/2016/245) to the removal of the eave and gutter of the first floor that overhangs this adjoining site.

The DA Review application has responded to the reasons for refusal of D/2016/245 through the following changes, which will be addressed in this Report:

- First floor: Parents Retreat has been reduced in size to match the alignment of the neighbours first floor at No. 97 Rowntree Street. Consequently, FSR has been reduced to 0.82:1;
- First floor: new sheet metal roof has been reduced in size to match the reduction in the Parents Retreat room; and
- New rainwater tank located against eastern boundary.

## 2. Site Description

The site is approximately 232.1 square metres in area and has frontage of 10.105m to Rowntree Street. The site is located on the south-eastern side of the street.

The site presently accommodates a detached single storey weatherboard cottage with pitched main roof, a modified reverse skillion front building element, a single storey rear wing extending to the rear boundary and a first floor rear hipped roof addition that comprises side (north-east facing) deck. The dwelling extends to the south-western side boundary shared with No. 93 Rowntree Street and the eave and gutter of the first floor roof overhangs this adjoining site.

The adjoining properties consist of:

- A two storey form semi-detached terrace at No. 93 Rowntree Street; and
- A contemporary style two storey dwelling with garage at No. 97 Rowntree Street that was approved in 2005.

The site is located within the distinctive neighbourhood of Birchgrove.

The subject site is not a heritage item, however is located within a Conservation Area. The site is not identified as a flood control lot nor is it draft flood control lot.

## 3. Site History

The following table outlines the development history of the subject site.

Date	Application Details
30/05/13	<b>PREDA/2013/56 – Issued</b> – Alterations and additions to the existing dwelling.
11/11/13	<b>D/2013/439 – Withdrawn</b> - Additions and alterations to ground and first floor, including new kitchen, living room, bathrooms, deck and rumpus/garage.
18/02/15	<b>D/2014/630 – Refused</b> - Alterations and additions to the existing dwelling including a two-storey rear extension.
18/08/15	<b>DAREV/2015/12 – Refused</b> - Alterations and additions to the existing dwelling including a two-storey rear extension.
11/10/16	<b>DA/2016/245 – Refused</b> - Alterations and additions to the existing dwelling including a two-storey rear extension.

### PREDA/2013/56 and D/2013/439

These proposals involved ground and first floor additions to the dwelling, including substantial demolition of the dwelling, significant modifications to the front roof form of the dwelling and the provision of on-site car parking provision. Council subsequently issued advice raising numerous concerns relating to these proposals, including with respect to excessive demolition, adverse streetscape and heritage impacts, excessive scale and adverse amenity impacts on neighbours.

### D/2014/630 & DAREV/2015/12

These were proposals for a similar scheme to the proposal now lodged, however, with a key difference being that these proposals involved a first floor addition within a roof that extended above the existing front roof ridge. These proposals were refused on streetscape /

heritage, scale and amenity grounds and due to inadequate information being provided (relating to building retention, stormwater, tree retention and lack of justification for site coverage breach).

#### D/2016/245

This Application was publicly notified and attracted two submissions. The proposal was reported to the Panel and on the 11 October 2016 was refused primarily for the following reasons:

- Inadequate information lodged for proper consideration of the application;
- Significant breach of the floor space ratio control;
- Non-compliance with site coverage controls; and
- Proposal will have detrimental impacts on the neighbouring and local amenity.

## 4. Section 82A Review

Section 82A of the Environmental Planning and Assessment Act, 1979 allows an applicant to request Council to review the determination of an application. The review is to be carried out in accordance with the requirements discussed in the following.

A review of a determination can not be carried out on a complying development certificate, or a determination in respect of designated development, or a determination in respect of integrated development, or a determination made by the council under section 116E in respect of an application by the Crown.

The subject application was not complying development, designated development, integrated development or an application made by the Crown.

A determination cannot be reviewed after the time limit for making of an appeal under Section 97 expires, being 6 months from the original determination.

The subject application was determined on 11 October 2016. The request for review was received by Council on 21 November 2016.

The prescribed fee must be paid in connection with a request for a review.

The applicant has paid the applicable fee in connection with the request for a review.

In requesting a review, the applicant may make amendments to the development described in the original application, provided that Council is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The Applicant has submitted additional information in response to the Determination's "Reasons for Refusal" and issues discussed at the original panel meeting as follows:

- First floor: Parents Retreat has been reduced in size to match the rear wall alignment of the neighbours first floor at No.97 Rowntree Street. Consequently, FSR has been reduced to 0.82:1.
- First floor: new sheet metal roof has been reduced in size to match the reduction in the Parents Retreat room; and
- Additional structural details to support contention that the demolition works can be undertaken safely.

COMMENT: The first floor modification reducing the parents retreat footprint, and roof form above, has a positive impact relating to bulk/scale and aligns the rear of this portion of the addition with the rear of the neighbouring property at No.97 Rowntree Street. This also slightly reduces the proposed floor space ratio to 0.82:1.

This modification is considered a positive outcome which responds to concerns of bulk and scale and FSR non-compliance.

The additional structural details lodged have been reviewed by Council's Building Surveyor and are now considered to be acceptable although it is noted that the onus of preserving the portion of the original cottage is with the Applicant. Further, it is noted that the proposed Demolition plans remain inconsistent with the proposed architectural drawings as works are proposed forward of the original cottage ridge and this is not indicated on the Demolition plans. This appears to be simply a drafting error in the application and is recommended to be corrected by a deferred commencement condition as part of any Determination for consent.

Although changes have been made to the development as previously determined Council is satisfied that the development will be substantially the same.

The review of determination has been notified in accordance with the regulations, if the regulations so require, or a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations.

The application was advertised for a period of 14 days. The advertising period was between 2 December to 16 December 2016 and two (2) objections were received during the advertising period. The issues raised in these objections are discussed later in this Report and are similar in nature to those lodged on D/2016/245.

Consideration of any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan.

Following public notification two (2) submissions (from the same original objectors to D/2016/245) were received and the issues are addressed at Section 6 of this Report.

As a consequence of a review, Council may confirm or change the determination.

After reviewing the determination of the application, it is recommended that Council change the determination from:

1. That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, refuse Development Application No: D/2016/245 for substantial demolition and alterations and additions to existing dwelling including ground and first floor additions at 95 Rowntree Street, BIRCHGROVE NSW 2041

TO:

2. That Council, as the consent authority pursuant to s82A(4A) of the Environmental Planning and Assessment Act 1979, approve Development Application No: D/2016/245 for substantial demolition and alterations and additions to existing dwelling including ground and first floor additions at 95 Rowntree Street, BIRCHGROVE NSW 2041

The review must not be made by the person who determined the original but is to be made by another delegate of the council who is not subordinate to the delegate who made the determination. If the original determination was made by the Council then the review is also to be considered by the Council.

The review of the application is reported to Council's Planning Panel meeting in accordance with the above requirement.

## 5. Reasons for Refusal

The original development application was refused on 18 October 2016. The reasons for refusal and discussion on how the proposed amendments address these reasons follows.

1. *Information in accordance with Clause 50(1) of the Environmental Planning and Assessment Regulation 2000 and information relating to the proposed development as deemed necessary to allow Council's proper consideration of the application pursuant to Clause 54(1) of the Environmental Planning and Assessment Regulation has not been provided.*

COMMENT: Modified plans have been lodged, including alterations to the first floor of the proposed additions and additional details on structural stability of the existing building, demolition details and procedures and measures to be implemented to prevent collapse of the original cottage remnants during demolition/construction. It is noted that the modified plans do not provide finished levels for gutter levels however, as the plans are to scale it is possible to determine these levels and thus the plans are considered to now be adequate for determination.

2. *The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*
  - a) *Clause 1.2 – Aims of the Plan;*
  - b) *Clause 2.3 – Zone Objectives and Land Use Table;*
  - c) *Clause 4.3(a)(3)(b) – Landscaped Areas for Residential Accommodation in Zone R1 (Site Coverage);*
  - d) *Clause 4.4 – Floor Space Ratio;*
  - e) *Clause 4.6 – Exception to Development Standards;*
  - f) *Clause 5.10 – Heritage Conservation.*

COMMENT: The Review documentation provides additional numerical information on the modified FSR and site coverage non-compliances and it is noted that the FSR has been marginally reduced due to proposed changes. In response to this issue the Applicant has reiterated their supportive arguments that:

*The proposal will result in a built form that is of appropriate scale and is compatible with the desired future character of the area. The first floor additions are respectful of the alignment of the neighbouring property and consequently the FSR exceedance does not result in an impact on the neighbouring properties. This proposal results in a better outcome than what was initially proposed.*

Further, consideration is also given to the Draft Leichhardt LEP-Clause 4.4 Amendment currently on exhibition which would increase the sites FSR to 0.9:1, making the proposal a compliant development, should the Draft Plan be made.

On the basis of the above consideration it is agreed that the proposed FSR is reasonable for this particular site and locality.

With regard to the Site Coverage non-compliance the Applicant has further submitted as follows:

*In terms of site coverage, the existing site coverage is 56%. The proposed is 65%. If we drop the rear deck by 100mm, site coverage is 59.5%.*

*Per Clause 4.3A(4)(b)(ii), any area greater than 500mm above ground level must be counted toward site coverage. The proposed deck is elevated 600mm off the ground and therefore must be counted toward site coverage. It is elevated to allow for a direct transition between the living space and the rear deck. If the deck is dropped by 100mm to meet the control, a stair will be necessary for the transition.*



*With the proposed deck, the transition between living space and private open space allows for considerably better amenity and ease of movement. Dropping the deck will be a worse outcome.*

*Although there is a breach in the 60% site coverage control in Clause 4.3A(3)(b) in the LLEP, it is a numerical breach rather than a planning breach. We assert that this is an acceptable variation.*

Although the percentage values are disputed (site coverage calculated as 71% with deck included and 65% without deck) the basis for this argument is acknowledged. Where the deck is designed to be 100mm lower, then the non-compliance becomes only an 8.5% variation from the standard. Additionally the required private open space area of 16m<sup>2</sup> with 3m width is readily achievable in the rear yard.

The Applicant has also reiterated the following comments with regard to the consideration of the works within a Conservation Area:

*.....a number unsympathetic alterations have been made to this dwelling, reducing its heritage value and contribution to the character of the area and its streetscape.....*

*The majority of demolition will be regarding elements that do not contribute to the heritage value of the building, or are the necessary replacement of building materials that have degraded, such as the weatherboard cladding which is barely visible from the public domain and will be replaced with similar styled weatherboard cladding to ensure it remains compatible with the period and style of the dwelling. The alterations will not incur negative impacts on the cottage contrary to the provisions in Clause 5.10 of the LLEP.*

Generally as a *planning* consideration the proposed works are considered to result in improvements to the subject site and removes the extended rear two storey structure previously prominent from the street. The new works are proposed to be located behind the original cottage building and will not be highly visible from the public domain whilst the street elevation works are offered to restore the cottage presence. On this basis it is agreed that the proposal is a reasonable planning response to conservation values for the site and locality. Nevertheless it is noted that Council's Heritage Officer raises strong objection to the proposal, see Section 6 of this Report.

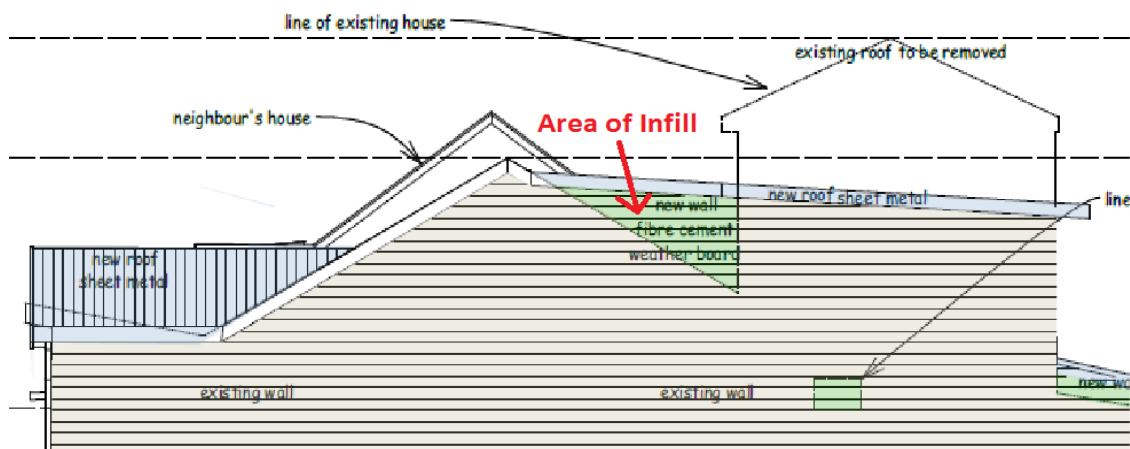
3. *The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:*
  - a) *Clause C1.0 – General Provision;*
  - b) *Clause C1.1 – Site and Context Analysis;*
  - c) *Clause C1.2 – Demolition;*
  - d) *Clause C1.3 – Alterations and Additions;*
  - e) *Clause C1.4 – Heritage Conservation Areas and Heritage Items;*
  - f) *Clause C2.2.2.6 – Birchgrove Distinctive Neighbourhood;*
  - g) *Clause C3.1 – Residential General Provisions;*
  - h) *Clause C3.2 – Site Layout and Building Design;*
  - i) *Clause C3.11 – Visual Privacy;*
  - j) *Appendix B – Building Typologies.*

COMMENT: Additional information has been submitted responding to concerns relating to demolition, structural integrity and preservation of the remnant original cottage which have satisfactorily responded to concerns previously raised and the proposal is now supported by Council's Building Officer.

The building typology for this form of development recommends a skillion roof form of development at the rear. The first floor addition will conform with these requirements whilst

the ground level addition will accommodate a hipped roof form which will not be visible from the public domain. It is noted that Council's Heritage Officer has raised objection to the proposed development considering the extent of modifications to the original structure proposed. It is also general practice to require that any proposed walls be set in 500mm from the original side façade to highlight the original roof form, in this case a gable end of the original cottage. However, in this instance such a requirement is considered unreasonable and unnecessary considering:

- The gable end is not visible from the street as has a party wall connection with 93 Rowntree Street to the south;
- Ridge of 93 Rowntree Street (RL41.3) is higher than the ridge at 95 Rowntree (RL38.6) and is forward of the subject land ridge, i.e. closer to the street;
- The existing built form, of which this southern side boundary wall is to be retained, is a gable end and then a rectangular wall leaving only a small triangular area of infill as part of the modification, see diagram below:



On the basis of the above comments it is considered that the infill of this area rather than stepping this portion in 500mm is reasonable and appropriate in this instance.

5. *The proposal will significantly breach the 0.7:1 floor space ratio development standard applicable to the site as prescribed in Clause 4.4 of the Leichhardt Local Environmental Plan 2013, and the Exceptions to the Development Standards request pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013 is not deemed to be well founded.*

With the modification of the proposal, by the reduction of the Parents Retreat area, it is contended that the FSR is reduced to 0.82:1 for a variation of 17% from the permissible FSR. It is also appropriate to consider the proposed FSR for this site under the Draft LEP- Clause 4.4, discussed further in this Report, where the permissible FSR is proposed to be increased to 0.9:1 for a site of this size. This Draft Plan is on public exhibition until 7 April 2016 and thus should be considered in accordance with the requirements of the Environmental Planning & Assessment Act.

Giving due consideration to the reduction in first floor floorspace/bulk, the proposed increase in permissible FSR under the Draft Plan and generally the reasonable amenity impacts of the proposal, it is considered that the FSR proposed is now reasonable for this site.

6. *The proposal will result in detrimental environmental impacts in the locality, pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act 1979.*

COMMENT : With due consideration to the proposed modification of the development and the imposition of appropriate conditions of consent, including the setback of the first floor



addition and removal of the rear first floor deck, amenity impacts that may have eventuated can now be minimised in nature.

7. *The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979.*

COMMENT: See comments at 6 above.

8. *The approval of this application is considered contrary to the public interest, pursuant to Section 79C (1)(e) of the Environmental Planning and Assessment Act 1979.*

COMMENT: See comments at 5 & 6 above.

## 6. Section 79c(1) 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.

### (a)(i) 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 modified application, and the imposition of appropriate conditions of consent, will generally satisfy the provisions of the above Environmental Planning Instruments with the exception of the proposals non-compliance with FSR and Site Coverage requirements under Leichhardt Local Environment Plan 2013. These issues are discussed as follows:

#### Clauses 4.3A and 4.4 – Site Coverage and Floor Space Ratio

The following table summarises the assessment of the proposal against applicable development standards of the LLEP2013.

LLEP 2013 Development Standard	Proposal m <sup>2</sup>	Proposal ratio / %	Compliance	% of Non-compliance
Floor Space Ratio <i>Maximum 0.7:1</i>	189.5m <sup>2</sup>	0.82:1	No	17.2%
Landscaped Area <i>Minimum 15% of site area</i>	40.4m <sup>2</sup>	17.4%	Yes	N/A
Site Coverage <i>Maximum 60% of Site Area</i>	164.5m <sup>2</sup> -Deck 12.35m <sup>2</sup>	71% 65.6%	No No	18.3% 9.3%

#### Clause 4.6 of Leichhardt Local Environment Plan 2013

Clause 4.6 of LLEP 2013 makes development standards more flexible. They allow Councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. The proposal has been considered against the following assessment criteria:

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(b) – Site Coverage for Residential Development in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.6(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.*

As noted in Council's original assessment of the proposal D/2016/245, concern is particularly raised relating to:

- The adequacy of submitted information;
- Building retention and loss of building fabric;
- Inappropriate and unsatisfactory form, scale and detail and detrimental impacts on the cottage and Conservation Area; and
- The proposal's failure to demonstrate compliance with applicable amenity tests and / or the proposal's unnecessary amenity impacts on adjoining properties.

Following consideration of the modifications made to the original proposal the proposed breach of the floor space ratio development standard sought in this instance is supported in the circumstances of this case as the proposal will meet the objectives of Clause 4.6 of the LLEP2013 and will be consistent with the proposed FSR of 0.9:1 as exhibited under the Draft Plan.

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 as the proposal will result in an acceptable variation to the maximum Site Coverage and Floor Space Ratio standards prescribed under Clauses 4.3A(3)(b) and 4.4 Floor Space Ratio of LLEP2013.

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 originally submitted a written request providing reasons as to why compliance with the site coverage and floor space ratio development standards would be unnecessary and unreasonable in this case. Council's original assessment concluded that the Applicants justification of the non-compliances was inadequate.

The modified application is supported by additional written advice in support of the non-compliances and the submissions are addressed as follows:

- The proposal results in a site coverage of 65%, and the increase in dwelling footprint is minor and compatible with the pattern of development in the area.

Council response: Based on the submitted floor plans, the site coverage, including the elevated rear deck which is greater than 500mm above rear yard levels (and hence is required to be included as site coverage as per the site coverage provisions of the LLEP2013), has been calculated at around 71% (or 164.5sqm). This compares to an existing site coverage of approximately 62.2% (or 144.3sqm), and the proposed increase was not deemed to be "minor". Notwithstanding the above, the proposed site coverage is considered to be not out of character with other development in the vicinity.

It is contended that the non-compliance is made worse due to the rear deck being more than 500mm above ground level, being 600mm. In order to reduce this non-compliance the deck could be conditionally lowered to 500mm which requires the introduction of a step access to the dwelling. Hence, where the deck is excluded from the site coverage calculation, should it be lowered 100mm, then the non-compliance would reduce to 65.6% only. In the context of the subject proposal this variation has no direct impact on the amount of landscaped area and thus the minor reduction in height of 100mm is not considered necessary.

- Notwithstanding the site coverage breach, the proposal provides numerical compliant landscaped area that demonstrates an appropriate area of landscaped open space to accommodate the needs of the site and provides opportunities for the establishment of substantial landscape plantings commensurate with the scale of the dwelling.

Council response: Noted and agreed.

- The removal of the existing solid masonry fence on the front boundary and replacement with a low timber picket fence will provide significant improvement to the landscaped setting of the streetscape and enhancing the desired character of the street.

Council response: Noted and agreed.

The following justification has been provided regarding floor space ratio breach:

- Despite the reconfiguration and alterations to the ground floor, the footprint of the ground floor level will only be marginally increased and will be compatible with the established pattern of development in the area and the proposal provides an improved numerical and qualitative provision of landscaped area.

Council Response: As previously noted, the extent of the site coverage non-compliance is technical in nature as should the deck be reduced 100mm in height above ground level then the non-compliance is reduced to 65.6% only. Notwithstanding the site coverage non-compliance, the increase in landscaped area provision is acknowledged and noted.

- The first floor addition will be lower than the existing first floor and below the maximum permissible height plane for this precinct and the existing front roof ridge. Resultantly, the overall silhouette and character of the dwelling will be improved by the removal of an uncharacteristic and detracting element and the simplification and rationalisation of the roof form. The proposed additions will be contributory and be entirely concealed from view behind the front roof form, reinforcing and re-establishing the traditional form of the dwelling.

Council Response: As noted in this report, the modified proposal is supported by documentation/plans dealing with the demolition and structural stability of the original cottage. It is also acknowledged that certain proposed works will be beneficial to the

streetscape and cottage appearance. This additional information has been reviewed by Council's Building Officer and accepted in principle.

- The non-compliance does not unreasonably diminish the amenity of neighbouring properties, retaining an equitable level of solar access and visual privacy.

Council Response: The scale of the additions are considered to be compatible with the scale of other buildings in this locality and is therefore a reasonable scale of development, notwithstanding the proposals non-compliance with the FSR and site coverage controls. The proposal does not result in unreasonably adverse solar access or overlooking concerns, where suitable conditions are imposed.

It is noted that the first floor additions include a Parents Retreat with 4m wide bi-fold doors and 7m<sup>2</sup> deck which provides for a potential entertaining area of 27.5m<sup>2</sup> for this Parents Retreat. Unlike a balcony off a bedroom, being generally limited in its use and size (1.2 x 2m), this area is self contained and has potential for much greater use. The modified plans have stepped the room/deck back into the building, however this area still provides opportunity to overlook neighbouring lands. Due to the size of the deck and the potential for use as an entertainment area off the Parents Retreat, creating concerns for overlooking, light and noise generation, it is recommended that the deck be excluded from the development.

The conditionally modified proposal is unlikely to result in any significant environmental amenity concerns for neighbouring lands.

Considering the above assessment, It is concluded that there are sufficient environmental planning grounds to vary the floor space ratio standard on this occasion.

- (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 objectives of:

- The site coverage standard prescribed in Clause 4.3A(3)(b) is to control density and limit building footprints to ensure that adequate provision is made for landscaped area and private open space; and
- The floor space ratio control prescribed in Clause 4.4 of the LLEP2013 are to ensure that development is compatible with the desired future character of the area in relation to building bulk, form and scale and / or be of an acceptable bulk and scale.

Council is satisfied that the applicants modified development, and imposition of suitable amenity conditions, has satisfactorily addressed the matters required under Clause 4.6 Exceptions to development standards, and considers the exception requests to be well founded. The proposal will result in improved bulk, form and scale outcomes for this modified cottage site, and therefore, Council is satisfied that the objectives of the floor space ratio / site coverage development standards and R1 General Residential zoning have been met for reasons identified in this assessment. The approval of the application would therefore be in the public interest.

The breach to the site coverage standard, where the deck remains more than 500mm above ground level, is not deemed to be minor, however, the proposal is not deemed to be contrary to the objectives of the site coverage standard.

Compliance with the FSR and site coverage development standards is considered in this instance to be unreasonable and unnecessary given:

- The existing development currently does not comply with the site coverage 60% standard, being 62%, and thus, where the deck is excluded the non-compliance would only increase to 65.6%, or a 9% increase;
- The proposed increase in site coverage does not result in a non-compliance with the landscaped area requirement and also achieves a complying private open space area;
- The FSR non-compliance results in a built form which is comparable to other housing development in the locality;
- Under the Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment the recommended FSR for this site is 0.9:1 and thus the current proposal would comply;
- The modification to the original plans has reduced the first floor footprint and its intrusion into the rear yard areas by limiting the works to an alignment with the neighbouring property first floor rear wall; and
- With the modifications proposed, and the conditional changes recommended, the proposed works should not significantly adversely impact neighbouring amenity.

Concurrence issued by the Secretary has been obtained.

(5) *In deciding whether to grant concurrence, the Director-General 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 public benefit will be maintained due to the proposal's acceptable impacts on neighbouring lands and the locality.

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

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

#### Clause 5.10 – Heritage Conservation

The objectives of Clause 5.10 of the LLEP2013 – *Heritage Conservation* seek to ensure that the heritage significance of Conservation Areas, including associated fabric and settings, are conserved so that the streetscape impacts on the area are appropriate. In short, the controls seek to ensure that development is compatible with the setting or relationship of the building with the Heritage Conservation Area in terms of scale, roof form, materials and detailing and conforms with the Burra Charter.

As noted later in Section 4(a)(iii) of this report, the proposal as submitted will result in significant demolition and acceptable alterations to the form, scale, appearance and character of the existing cottage. Notwithstanding the comments by Council's Heritage Officer, see comments in this Report, it is concluded that the modified proposal generally is compatible with the provisions and objectives of Clause 5.10 of the LLEP2013 and is likely to result in an improved streetscape outcome.

**(a)(ii) Draft Environmental Planning Instruments**

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

- Draft State Environmental Planning Policy (Competition) 2010
- Draft Leichhardt Local Environment Plan 2013 – Housekeeping Amendment
- Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment

The proposal raises no issues that are contrary to the amended provisions of the above Draft Leichhardt Local Environment Plan 2013 (Housekeeping Amendment).

Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment

The Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment commenced exhibition on 10 March 2016 and is therefore a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

<b>Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
Clauses 4.4 (2D) FSR areas bound “Green”	Yes	Under the Draft Clause the subject land would permit an FSR of 0.9:1. The proposal seeks an FSR of 0.82:1

The application satisfies the provisions of the above Draft Leichhardt Local Environment Plan 2013 – Clause 4.4 Amendment.

**(a)(iii) Development Control Plans**

The application has been assessed against the relevant Development Control Plans listed below:

- Leichhardt Development Control Plan 2013

**Leichhardt Development Control Plan 2013**

The application has been assessed against the following relevant clauses of the Leichhardt Development Control plan 2013 (LDCP2013):

Part A: Introductions

Section 3 – Notification of Applications

Part B: Connections

- B1.1 Connections – Objectives

Part C: Place – Section 1 General Provisions

- C1.0 General Provisions
- C1.1 Site and Context Analysis
- C1.2 Demolition
- C1.3 Alterations and Additions
- C1.4 Heritage Conservation Areas and Heritage Items
- C1.7 Site Facilities
- C1.8 Contamination
- C1.12 Landscaping
- C1.14 Tree Management

Part C: Place – Section 2 Urban Character



#### Suburb Profile

- Clause 2.2.2.6 – Birchgrove Distinctive Neighbourhood

#### Part C: Place – Section 3 – Residential Provisions

- C3.1 Residential General Provisions
- C3.2 Site Layout and Building Design
- C3.3 Elevation and Materials
- C3.5 Front Gardens and Dwelling Entries
- C3.6 Fences
- C3.7 Environmental Performance
- C3.8 Private Open Space
- C3.9 Solar Access
- C3.10 Views
- C3.11 Visual Privacy
- C3.12 Acoustic Privacy

#### Part D: Energy

##### Section 1 – Energy Management

##### Section 2 – Resource Recovery and Waste Management

- D2.1 General Requirements
- D2.2 Demolition and Construction of All Development
- D2.3 Residential Development

#### Part E: Water

##### Section 1 – Sustainable Water and Risk Management

##### E1.1 Approvals Process and Reports Required With Development Applications

- E1.1.1 Water Management Statement
- E1.1.3 Stormwater Drainage Concept Plan

##### E1.2 Water Management

- E1.2.1 Water Conservation
- E1.2.2 Managing Stormwater within the Site
- E1.2.5 Water Disposal

#### Appendix B: Building Typologies

The modified application, and as modified by the proposed conditions recommended in this Report, now generally satisfies the provisions of the above Development Control Plans. The Original proposal was considered to be inconsistent with various provisions of the DCP and these matters are addressed again as follows:

#### C1.1 Site and Context Analysis

For reasons discussed in this report, the modified proposal is now considered to adequately respond to the heritage conservation and desired future character controls of the LLEP2013 and LDCP2013 contrary to Objective 6 of this Clause. In particular it is accepted that the works will provide an improved streetscape outcome through front façade treatments and fencing modifications and the removal of the existing second floor addition which projects above the original cottage ridge line.

#### C1.2 – Demolition; C1.3 – Alterations and Additions; and C1.4 Heritage Conservation Areas and Heritage Items

The subject dwelling is a modest Victorian era weatherboard cottage with pitched main front roof form that has been the subject of past additions and alterations to the street and rear. Notwithstanding the previous alterations to the cottage, the dwelling contributes to the historical / heritage values of the Conservation Area in which the site is located through what

remains of the original form and fabric of the main front cottage form (with pitched roof) to the street.

#### *Demolition*

The demolition/removal of fabric works have been outlined in Section 1 of this report.

One of the objectives of Clause C1.2 of the LDCP2013 is to ensure that the cultural significance and character of the area is enhanced by encouraging appropriate management of existing buildings, while the controls of this clause seek to ensure that contributory buildings are not demolished.

The submissions received from neighbours note or raise concern with respect to the poor condition of the south-east facing wall (adjacent to No. 80 Short Street at rear) and south-west facing wall (adjacent to No. 93 Rowntree Street). The applicant has submitted a letter dated 30<sup>th</sup> August 2016 from Flourish Architectural Services advising that these existing walls are dilapidated in sections and the existing weatherboards will be replaced with similar material and repainted under the exempt development maintenance provisions in Schedule 2 of the LLEP2013 – reference to this letter should be included in any approval determination notice should the application be approved, see draft condition 2.

The applicant has not provided demolition plans that are either consistent with each other or the submitted architectural plans as they do not depict the full extent of works. It is apparent through the architectural plans that additional works will be required under the roof of the original cottage in order to accommodate the proposed works. The overall works and demolition/construction methodology submitted as part of the Review Application now, following assessment by Council's Building Officer, adequately addresses this issue and can be conditionally resolved.

Given the above, Council is satisfied that the objectives and controls of Clause C1.2 of the LDCP2013 have now been adequately met.

#### *Proposed Alterations and Additions – Heritage Considerations*

Apart from the concerns raised regarding the extent of demolition and removal of building fabric, the primary heritage concern related to the first floor rear addition. Regarding first floor additions, the primary alterations and additions and streetscape / heritage controls are contained in Clause C1.3 and C1.4 of the LDCP2013.

Under the heading *Background* to Clause C1.3 of the LDCP2013, it states that, when considering alterations and additions in a Heritage Conservation Area, there are generally two approaches:

- The original building and roof form is left intact, and the new addition provided as a separate, linked element (which could be contemporary and different in style) or;
- If the addition is to merge with the existing building and roof form, then it should retain the integrity of the original elevation treatment and roof form.

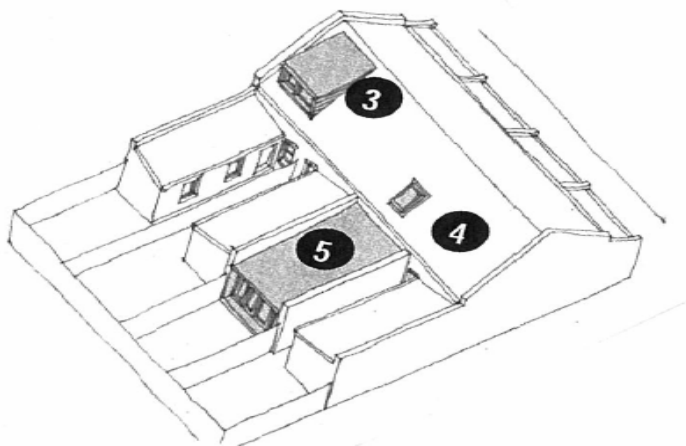
Originally concern was raised regarding the proposed first floor additions resultant loss of original front building form / fabric as well its excessive scale and proportion at the rear that will be unsympathetic and detrimental to the form, scale, appearance and character of the existing dwelling. Approval would then result in consequential undesirable incremental change and adverse impacts on the contributory heritage value of the subject property.

In order to better respond to the controls prescribed in Clauses 1.2-1.4 of the LDCP2013, Council's Heritage Advisor originally recommended that the following amendments would need to be undertaken:

- “The proposal retains the footings, floors and / or floor joists, walls and / or wall framing, and the roof of the front dwelling form (i.e. the front portion of the dwelling with pitched roof that currently comprises the front bedrooms and living room) intact; and
- Any first floor extension is reduced in scale to ensure that it is located wholly behind the front pitched roof form i.e. behind the rear gutter line to the front pitched roof form. Council would therefore recommend that the existing first floor portion of the house be retained and any addition to its east (i.e. of the existing first floor) be located wholly behind the rear gutter line to the front pitched roof form. Further, any such first floor extension should not extend beyond the rear alignment of the existing first floor of the house and be as low in form and scale as possible.”

The modified proposal depicts that the front two bedrooms will be retained intact, apart from the replacement of a skillion roof over the master bedroom, and part removal of Bedroom 2. This will ensure that part of the floors, floor joists, walls, framing and roofing of the original cottage are retained along with the ridge line.

With respect to the rear first floor additions it was recommended that the works should adopt the controls in Appendix B of the LDCP2013 – *Building Typologies* for skillion dormers for single storey terraces identified in Figure 15 in Section 6.1 (see below), when designing the parent’s retreat. This would involve cutting back the length of the first floor parent’s retreat so that its rear wall and / or deck (if a deck was pursued) is behind the rear gutter line of the main dwelling form or a minimum of 200mm inside the rear wall plate of the original cottage, this design change is best depicted as Point 3 on the below Building Typology extract.



Appendix B Figure of LDCP2013: Single storey terrace design approach

The modified design submission has repositioned the southern wall of the Parents Retreat to align with the rear wall of the neighbouring property first floor, being No.97 Rowntree Street, and this has co-incidentally also aligned the wall 200mm behind the original cottage rear wall plate, thus complying with the requirement above.

Further heritage conservation considerations and assessment of Heritage Officer comments:

- The proposal involves providing a gable roof form to the existing reverse skillion roofed front section of the house and providing new timber windows to the street, along with a timber picket fence, associated with this existing addition. Council’s Heritage Officer does not support these front changes on heritage grounds given the form of the building dates back prior to 1943. However, a detailed search of Council’s Records suggests that this element has been modified since 1943, and is currently a detrimental element in the streetscape in its modified form. Council Planning staff therefore consider that the proposed works to the skillion roofed front section of the house would result in positive impacts on the streetscape (providing a more sympathetic gable roof and complementary timber framed windows to the street), and hence, no objection is raised to these works on planning grounds; and

- Council's Heritage Officer also does not support the new front verandah element given the front form of the building appears on the 1943 aerial as not comprising a front verandah. However, Council Planning staff support the front verandah element subject to a timber deck / floor being provided to this element (which is readily conditionable) as it will be a complementary addition to the dwelling and will complement the front verandah forms that dominate the street.
- Council Heritage Officer noted that the south-western wall of the first floor addition forward of the existing first floor (adjacent to the ensuite and part of the walk-in-wardrobe) would also need to be inset 500mm inside the south-western gable wall to the front portion of the house in the aim of ensuring that the original south-western gable wall remains intact and clearly distinguishable from the proposed first floor works. Stepping this area in would raise potential concerns with drainage of this triangular portion. Further the triangular portion of this wall would not be visible from the public domain. It is considered that the infill of this small triangular area is preferred (as discussed at Section 3 of this Report) rather than stepping this portion in 500mm as it is a reasonable and appropriate design outcome in this instance.

The remaining changes to the house and the new front fence are satisfactory on streetscape / heritage grounds.

### C3.11 – Visual Privacy

The objective of this Clause is to ensure that spaces are designed with a high level of consideration to protecting visual privacy, particularly the main living room and private open space, of both the subject site and nearby residential uses, and provides guidelines for when privacy mitigation measures should be provided.

The modified proposal involves providing a first floor level rear deck accessed via a new parent's retreat at this level. The deck would be orientated to the rear (south-east) with approximate dimensions of 1.7m depth and 4 width, with minimum approximate setbacks of 1.9m from the north-eastern boundary and 9m from the rear boundary, and would have a privacy screen comprising horizontal louvres erected to its north-eastern (side) end while glass balustrading is proposed to its south-eastern edge. This deck would replace an existing unscreened bedroom balcony orientated to the north-east (the side boundary) approximately 3.5m wide and 900mm depth and with approximate setbacks of 5.4m from the north-eastern boundary and 7.4m from the rear boundary.

Under Control 9 of Clause C3.11 of the LDCP2013 a first floor balcony should not exceed 1.2m (depth) by 2m (width) and should include 75% obscured privacy screening and balustrading, with the aim of restricting its use and mitigating adverse privacy impacts. Given the proposed deck's direct access via / association with the parent's retreat (rather than a bedroom), the deck at this level is not recommended to be supported. There is a high potential that the proposed deck would have greater propensity for use for entertainment purposes than if it was directly off a bedroom. This would create amenity concerns relating to noise, lighting and overlooking.

The deck as proposed potentially creates unnecessary adverse privacy impacts for adjoining properties that will be contrary to the objectives of this Clause and is recommended to be conditionally deleted from the proposal with the bi-fold doors converting to windows.

### **(a)(iv) Environmental Planning and Assessment Regulation 2000**

The application has been assessed against the relevant clauses of the Environmental Planning and Assessment Regulation 2000. The application fully complies with the Environmental Planning and Assessment Regulation 2000.

As part of the original application assessment (D/2016/245) deficiencies were raised with the submitted plans as follows:

- The plan depicting the rear elevation does not depict ground levels accurately;
- Lack of adequate levels information to Australian Height Datum of proposed eaves and ridge levels.

The modified development plans identify that the rear ground levels are to remain as existing as surveyed whilst the levels shown on the plans are consistent with the AHD levels used on the survey plan. The proposed gutter levels can be readily determined by scale as the plans are prepared at 1:100 scale.

Clause 92(1)(b) of the Regulation Council to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. In the event that the application is approved, the demolition works would need to be carried out in accordance with a modified demolition management plan to be submitted prior to the issue of a Construction Certificate, which can be readily conditioned.

**(b) The likely environmental both natural and built environment, social and economic impacts in the locality**

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

**(c) The suitability of the site for the development**

The site is zoned R1 General Residential and the modified proposal is permissible development within the zone. 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 this assessment of the application.

**(d) Any submissions made in accordance with the Act or the regulations**

The application was notified for a period of 14 days. The notification period was from 2 December 2016 to 16 December 2016. The notification of the application included:

- Letters sent to 24 properties.
- A site notice placed on the site.
- Listing under the notification section on Council's website.

Two (2) objections were received during the advertising period.

The following information is provided in response to the issues raised in objections.

- **Encroachment over No. 93 Rowntree Street**

*On the Site diagram it appears that a box gutter along the front section of 95 Rowntree encroaches onto my property, albeit in the airspace. Nonetheless, the gutter is shown abutting my building, or so close as to make no difference. I don't believe that it is reasonable for this gutter to encroach. I am also concerned about the potential for the dampness to occur on my wall on the southern side of the box gutter in what must be a very small gap, and in an area that is perpetually in shade. I am also concerned about potential for water damage due to any overflows from this gutter.*

*The owners of 95 have provided us with documentation that this encroachment was legally permitted in the distant past and has obtained our signature to the removal of this encroachment. I am unaware whether this work has in fact been carried out or if the intention is for it to be carried out as part of the general construction. I would ask*

that Council includes this as a Condition of any approval of this DA, otherwise the concerned originally noted will remain unaddressed.

Comment: Council is in receipt of the written consent of the owner of No. 93 Rowntree Street to the removal of the eave and gutter of the first floor that overhangs this adjoining site. The wall is now proposed to extend flush along the boundary with no need for a box gutter to be used to service a small alcove in the wall as would have resulted where a 500mm triangular setback was enforced.

Modifications to the existing encroachment Easements affecting the two properties is not a valid consideration during this assessment as they are normally civil matters. In effect, if the new works are constructed, any works would be subject to a standard condition that works are contained within the site boundaries, then the easement would become superfluous in any case.

In the event that the application is approved, conditions could be imposed on any consent granted to ensure that on-site drainage and stormwater control requirements of Council's Engineers are met and so that the proposal does not result in any undue adverse drainage implications for any neighbours.

- **Dilapidated state of existing walls abutting No. 93 Rowntree Street and No. 80 Short Street.**

The western wall of 95 Rowntree forms a virtual 'fence' along the eastern boundary of my property. It appears from the DA documents that this wall is to be retained in its existing state. The existing wall is extremely dilapidated. See attached photographs, taken today.

I have contacted the owner previously regarding boards falling off and into my property. I am concerned that this wall will not stay in place during any construction work. I believe it highly likely that it will cause damage to my property either by the existing wall or by its removal and replacement.

In any event, I do not believe it is in anyone's interests for this wall to be left in its current state, when major works are being done to the property.

At the very least, if any DA was approved, I would seek indemnities from the owner regarding any damage caused to my property. I would be grateful if you could advise me of any mechanisms in place to deal with an issue such as this.

Comment: As previously noted, while Council is concerned relating to the extent of demolition works to the dwelling, the proposal involves relying on the exempt provisions of the LLEP2013 to repair and replace dilapidated wall cladding to existing south-east and south-west facing walls of the dwelling to be retained.

In the event that the application is approved, conditions could be imposed on any consent granted with the aim of mitigating or avoiding the potential of adjoining property damage, such as requiring pre-construction and post-construction dilapidation reports being prepared. Any damage to No. 93 Rowntree Street during demolition and construction is a civil matter to be resolved between the respective parties and is also dealt with by standard conditions for a dilapidation report to be prepared by the Applicant.

- **Asbestos on the site.**

...the existing structures to the rear of 95 Rowntree I believe are constructed entirely of asbestos-fibro. These too originally formed the fence to my property. During my renovation in 2010 (with the then owner's permission) we attached battens to their walls / structures and



attached sheets of colourbond, both as a feature of my garden but also to mask the asbestos-fibro structures. I am very concerned (a) at the asbestos content of these structures in relation to any works being carried out and (b) that my 'fence' will be damaged by any works carried out on 95 Rowntree Street.

Comment: The south-eastern wall adjacent to No. 80 Short Street is nominated as being retained and the applicant proposes to rely on the exempt provisions of the LLEP2013 to replace any dilapidated cladding to this wall.

In the event that the application is approved, conditions would be imposed on any consent granted relating to control of demolition and the appropriate removal of asbestos, including the requirement that an asbestos survey prepared by a qualified occupational hygienist be undertaken, and that if asbestos is present then:

- A WorkCover licensed contractor must undertake removal of all asbestos;
- 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;
- Waste disposal receipts must be provided to Council / Certifying Authority as proof of correct disposal of asbestos laden waste;
- All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council; and
- An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

Issues relating to adjoining property damage and access to adjoining properties to carry out any demolition, building alterations and work are civil matters between respective property owners.

- **Access via No. 93 Rowntree Street**

Relatedly, I cannot see how works can be carried out on 95 Rowntree Street unless they have access to my property. There is no access to their Western wall via the street and I doubt any works can be carried out from inside the property. Therefore all access to the western wall needs to come from my property, and any access to my garden and 95 Rowntree must come through my house, as I have no street access either. This would clearly not be a satisfactory situation.

Regarding the western wall of No 95, the owners have sought my views on whether the wall should be replaced with new weatherboards or a new masonry wall – please see copy correspondence attached, which expressed my views.

The Builder's Methodology Report included under DAREV/2016/21 appears to assume that the weatherboards only will be replaced (from the inside). This would resolve or minimise the issue of access and potential damage / indemnity to my property but it assumes the structural elements of this wall are undamaged. I am advised that this is extremely unlikely given the dilapidated state of the wall and the fact that it has not been weatherproof for many years.

Comment: Any required access to No. 93 Rowntree Street by future builder's to facilitate building construction is a civil matter between the respective owners of No's. 93 and 95 Rowntree Street. Currently the Applicant has submitted a Builders Report that the servicing/treatment of the boundary wall can be suitably carried out from within the dwelling/property.

- **Stormwater disposal and impacts on No. 80 Short Street.**

We have previously expressed our objection to the previous development plan which was to slow release roofwater across our property rather than directing it to the street.....  
If this development proposal still includes a plan not to direct roof water to the street and to release it in whatever form across our property, with regret, we maintain our objection.

Comment: As previously noted, in the event that the application is approved, conditions could be imposed on any consent granted to ensure that on-site drainage and stormwater control requirements of Council's Engineers are met and so that the proposal does not result in any undue adverse drainage implications for any neighbours.

#### **(e) 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 modified, and conditionally amended, proposal is not contrary to the public interest.

## **6. Section 94 Contributions**

Section 94 contributions are not payable for the proposal.

## **7. Internal Referrals**

The application was referred to the following Council Officers:

### Building

Council's Building Officer has provided the following comments on the Review proposal:

*.....the structural detailing shows a ridge beam to support the roof structure during demolition in conjunction with columns and bracing for the existing walls. Structural ply will be added to the walls to ensure stability during the demolition works.*

*The applicant should be made aware that the approved plans and extent of demolition is part of the consent and any issues that arise during demolition would need to be referred to Council in case of voiding the consent if the side wall is of such a condition that it can not be retained.*

On the basis of these comments the proposal is considered to be acceptable, however, due to the age and condition of the structures being retained the Applicant should be conditionally, see draft condition 3, made aware that the works undertaken in accordance with the approved plans should be continually monitored during works.

### Drainage Engineer

Council's Development Engineer has reviewed the amended stormwater plans of 31 January 2017 and considers them acceptable subject to standard conditions.

### Heritage Officer

Council's Heritage Officer has reiterated the original comments provided for D/2016/245 as the current DAREVIEW proposal is substantially the same as previous applications.

Heritage viewpoint towards this current proposal remains unchanged on the key issues of extent of demolition and location and form of additions.

On this basis the original comments were reiterated for the DA Review proposal:

*The subject application has been assessed with regard to relevant heritage LLEP2013 and LDCP2013 aims, controls and objectives, and as such, we note the following:*

- *Proposed modification to roof form to front façade not supported including proposed gable form and verandah, we note form as is appears on 1943 aerial photograph.*
- *Gutter to ridge is less than 2.4 metres and as such the rear first floor addition to the main form is not supported; its scale and proportion, and associated demolition of rear roof form, would have an adverse impact on the heritage contributory value of the subject property. Any new first floor addition is to be set back behind the existing main roof form in full.*
- *All new external materials and colours to be provided.*
- *We recommend the application be withdrawn and subsequent application address the above heritage matters.”*

An assessment of the Heritage Officers comments/concerns has been undertaken in the body of this Report and it is noted that the modified application is now considered to be reasonable and acceptable.

The application was not required to be referred to any other Council department for comment.

## 8. External Referrals

No external referrals were required.

## 9. Conclusion

This review application has been assessed under Section 82A of the Environmental Planning and Assessment Act, 1979 and is considered to be satisfactory on the basis that:

- The review application was accompanied by plans which reduced the extent of works proposed at the first floor level, minimising bulk/scale and overlooking concerns;
- The modified plans reduced the proposed FSR to 0.82:1 only;
- The modified plans further clarified the extent of works and demolition proposed;
- Supporting documentation further justified the proposals non-compliance with FSR and site coverage standards; and
- Supporting documentation further addressed the proposals compatibility with heritage provisions of the LEP and DCP.

Therefore the application is recommended for approval subject to the amendments listed below.

## 10. Recommendation

That Council as the consent authority pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 change the original determination of Development Application No. D/2016/245 in the following way:

DELETE:

1. That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, refuse Development Application No: D/2016/245 for substantial demolition and alterations and additions to existing dwelling including ground and first floor additions at 95 Rowntree Street, BIRCHGROVE NSW 2041 (inclusive of the reasons for refusal);

And

INSERT:

2. That Council, as the consent authority pursuant to s82A(4A) of the Environmental Planning and Assessment Act 1979, grant deferred commencement consent to Development Application No: D/2016/245 for substantial demolition and alterations and additions to existing dwelling including ground and first floor additions at 95 Rowntree Street, BIRCHGROVE NSW 2041, subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### DEFERRED COMMENCEMENT

The following ‘Deferred Commencement’ condition must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

1. Amended plans are to be submitted ensuring that the demolition plans are consistent with the architectural plans and that the demolition works accurately reflect the true extent of demolition works to the building.

The following conditions of consent including any other conditions that may arise from resolution of matters listed in the above conditions, will be included in an operational Development Consent. The operational Development Consent will be issued by Council after the applicant provides sufficient information to satisfy Council in relation to the condition of the deferred commencement consent.

### CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No.D/2016/245 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Drawing #: 1301/DA01 Issue AD Site and Context Plan	Flourish Architectural Services	02/02/17
Drawing #: 1301/DA02 Issue AD Floor Plans	Flourish Architectural Services	02/02/17
Drawing #: 1301/DA03 Issue AD Elevations	Flourish Architectural Services	02/02/17
Drawing #: 1301/DA04 Issue AD Elevation and Section	Flourish Architectural Services	02/02/17
Drawing #: 1301/DA05 Issue AD Section C-C	Flourish Architectural Services	02/02/17
Drawing #: 1301/DA10 Issue I Demolition Floor Plans	Flourish Architectural Services	10/11/16
Drawing #: 1301/DA11 Issue G Elevations Demolition	Flourish Architectural Services	25/02/16
Document Title	Prepared By	Dated
Structural Engineer's Certification	Dynamic Structural Engineering Group P/L	12/08/16
Construction/Demolition Methodology Statement	Ross Engineers	16/11/16
Weatherboard Replacement Method Report	Bailey the Builder	04/11/16
Weatherboard Replacement Commitment Letter	Flourish Architectural Services	30/08/16
BASIX certificate Certificate #: A173144_05	Flourish Architectural Services	14/11/16
Drawing #: 16-3999-1 Issue A Timber Frame Strengthen Plan	Ross Engineers	11/11/16
Sample Board	Flourish Architectural Services	Undated
Drawing #: 15-2707 Ver. C Stormwater Design and details	Ross Engineers	17/11/16
Arborist Report and	Apex Tree and Garden	30/08/16

Supplementary Report	Experts	11/10/16
Site Waste Minimisation and Management Plan	Lam Quach	6/6/16

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.

- 3. The demolition works specified as part of the approved plans listed in Condition 2 of this consent shall be strictly complied with, particularly relating to works associated with the preservation of the original cottage form, including the side boundary walls. Any proposed variation from the areas identified for demolition would require referral via a Section 96 Application for approval by Council prior to the continuation of any works or the operational consent would be void.**

The demolition works specified as part of the approved plans shall be carried out in accordance with the following conditions:

- 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](http://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.

4. Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Celtis australis</i> (Hackberry)	Removal
<i>Eucalyptus ficifolia</i> (Flowering Gum)	Removal
<i>Persea americana</i> (Avocado)	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

5. The trees identified below are to be retained:

Tree/location
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the property.
<i>Callistemon viminalis</i> (Weeping Bottlebrush) located at the rear of the property
<i>Plumeria spp.</i> (Frangipani) located at the rear of the property.

Details of the trees to be retained must be included on the Construction Certificate plans

**PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE**

6. 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.

7. Amended plans are to be submitted incorporating the following amendments:
- a) The front verandah shall be provided with a timber deck / floor;
  - b) The rear (southern) wall of the proposed Parents Retreat shall be designed to position 200mm behind the original cottage rear wall;

- c) The proposed deck at first floor off the Parents Retreat shall be deleted from the plans and the Bi-Fold doors replaced with windows;
- d) Replacement roofing shall be either 1. Traditional corrugated 'Heritage barrel rolled' galvanised steel; or 2. Pre-coloured traditional corrugated steel finished in a colour equivalent to Colorbond colours - "Windspray" or "Wallaby" which are suitable modern equivalents of the form and finishes of traditional roofing within the Leichhardt District;
- e) Rear first floor balustrade to be changed from glass to more sympathetic vertical metal or timber pickets;

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.

8. 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. 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.

9. 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  $L_{A90, 15min}$  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  $L_{Aeq, 15min}$  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.

10. 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.

11. 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.

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. 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](http://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.

15. Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under Clause 5.9 of Leichhardt Local Environmental Plan 2013, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the Local Environment Plan 2013 shall be prepared. 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.

16. A stormwater drainage design, incorporating on site stormwater detention facilities (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. 15-2707, Sheet No. 1 & 2, Issue D, prepared by Ross Engineers and dated 31 January 2017.
- b) Comply with Council's Stormwater Drainage Code.
- c) Charged or pump-out stormwater drainage systems are not permitted.
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- e) 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.
- f) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3.2003 Plumbing and Drainage – Stormwater Drainage*.
- g) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- h) 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.
- i) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) 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.
- l) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

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.

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

- a) Closure of the redundant vehicle crossing(s) at the Rowntree Street frontage of the site and replacement with concrete kerb and gutter and concrete footpath.

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.

18. The following replacement trees must be planted:

- a) A minimum of 1 x 75 litre size additional tree, which will attain a minimum mature height of 6 metres, shall be planted in a more suitable location within the property. The tree is to conform to AS2303—*Tree stock for landscape use*.

Details of the species and planting locations of the replacement plants must be included on the landscape plan and site plan prior to the issue of a Construction Certificate.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Council’s Tree Management Controls, they must be replaced with the same species.

All advanced trees are to be planted in holes at least 450mm square and 450mm deep, containing good quality soil and humus. In lawn areas, grass is to be kept back for a radius of at least 450mm from stems and trunks, a depression should be formed for the collection of water and the area mulched. The mulch is to be installed to a depth of 75-90mm to all mass planted garden areas and around the base of the trees in lawn areas.

19. 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.

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

20. 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	\$ 2,708.14
Inspection fee	\$ 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.

- 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 \$3,300 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 an 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.

- 22. 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
No. 93 Rowntree Street, Birchgrove	Dwelling and fence

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 arising 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.

23. 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.

24. To preserve the following tree/s, no work shall commence until their Protection Zone (in accordance with AS4970-*Protection of trees on development sites*) is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/location	Radius in metres
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the property.	7.2
<i>Callistemon viminalis</i> (Weeping Bottlebrush) located at the rear of the property	3.6
<i>Plumeria spp.</i> (Frangipani) located at the rear of the property.	2.4

A minimum 1.8m high barrier (Chain wire mesh panels, plywood or wooden paling fence panels: refer to AS4687-*Temporary fencing and hoardings* for fencing requirements) shall be erected around the perimeter of the stated Protection Zone as measured from the base of the tree (or where practical). Shade cloth or similar should be attached to reduce the transport of dust, other particulate matter and liquids into the protected area. Fence posts and supports should have a diameter greater than 20mm and be located clear of roots. The barrier shall be constructed so as to prevent pedestrian and vehicular entry into the protection zone. The barrier shall not project beyond the kerb onto the roadway or any adjacent footpath.

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.

25. Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority is required to verify that tree protection measures comply with all relevant conditions.

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.

26. Prior to works commencing or release of a Construction Certificate (whichever occurs first) and throughout construction, the area of the tree protection zone being mulched to a depth of 100mm with composted organic material being 75% Eucalyptus leaf litter and 25% wood.

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.

27. Prior to works commencing or release of a Construction Certificate (whichever occurs first), tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metre intervals or closer where the

fence changes direction. Each sign shall contain in a clearly legible form (Lettering should comply with AS 1319-*Safety signs for the occupational environment*), the following information:

- a) Tree protection zone;
- b) This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted;
- c) Any encroachment not previously approved within the tree protection zone shall be the subject of an arborist's report;
- d) The arborist's report shall provide proof that no other alternative is available;
- e) The arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council; and
- f) The name, address and telephone number of the builder and project arborist.

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**

28. 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.

29. 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.

30. 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.

31. 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.
32. 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/builder intending to carry out the approved works.
33. 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.
34. 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**

35. 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.
36. 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.

37. 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.

38. The site must be appropriately secured and fenced at all times during works.
39. 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.

40. 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.

41. 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.
42. 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.
43. 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.

44. If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

45. The trees to be retained shall be inspected, monitored and treated by a qualified Arborist during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the Arborist to the Principal Certifying Authority are required at the following times or phases of work:

Schedule	
Tree/location	Time of Inspection
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the property.	<ul style="list-style-type: none"> <li>• Directly following installation of protective fencing,</li> <li>• During excavation within the <i>Tree Protection Zone</i>,</li> <li>• At any time fencing is required to be altered,</li> <li>• At project completion to verify that protection measures have been undertaken.</li> </ul>
<i>Callistemon viminalis</i> (Weeping Bottlebrush) located at the rear of the property	
<i>Plumeria spp.</i> (Frangipani) located at the rear of the property.	

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

Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

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

46. No tree roots of 30mm or greater in diameter located within the specified radius of the trunk(s) of the following, tree(s) shall be severed or injured in the process of any works during the construction period.

Schedule	
Tree/location	Radius in metres
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the property.	7.2
<i>Callistemon viminalis</i> (Weeping Bottlebrush) located at the rear of the property	3.6
<i>Plumeria spp.</i> (Frangipani) located at the rear of the property.	2.4

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

47. All excavation within the specified radius of the trunk(s) of the following tree(s) being hand dug:

<b>Schedule</b>	
<b>Tree/location</b>	<b>Radius in metres</b>
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the property.	7.2
<i>Callistemon viminalis</i> (Weeping Bottlebrush) located at the rear of the property	3.6
<i>Plumeria spp.</i> (Frangipani) located at the rear of the property.	2.4

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

48. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
49. 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**

50. 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.
51. 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.

52. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
53. 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.

54. 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/or 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.

55. 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.

56. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.
57. 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.
58. 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.

#### **ONGOING CONDITIONS OF CONSENT**

59. The Operation and Management Plan for the on site detention and/or 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.

60. 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.
61. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
62. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling 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 dwelling, is defined under the *Leichhardt Local Environment Plan 2013*.

## PRESCRIBED CONDITIONS

### A. BASIX Commitments

Under clause 97A(3) 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 the 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**

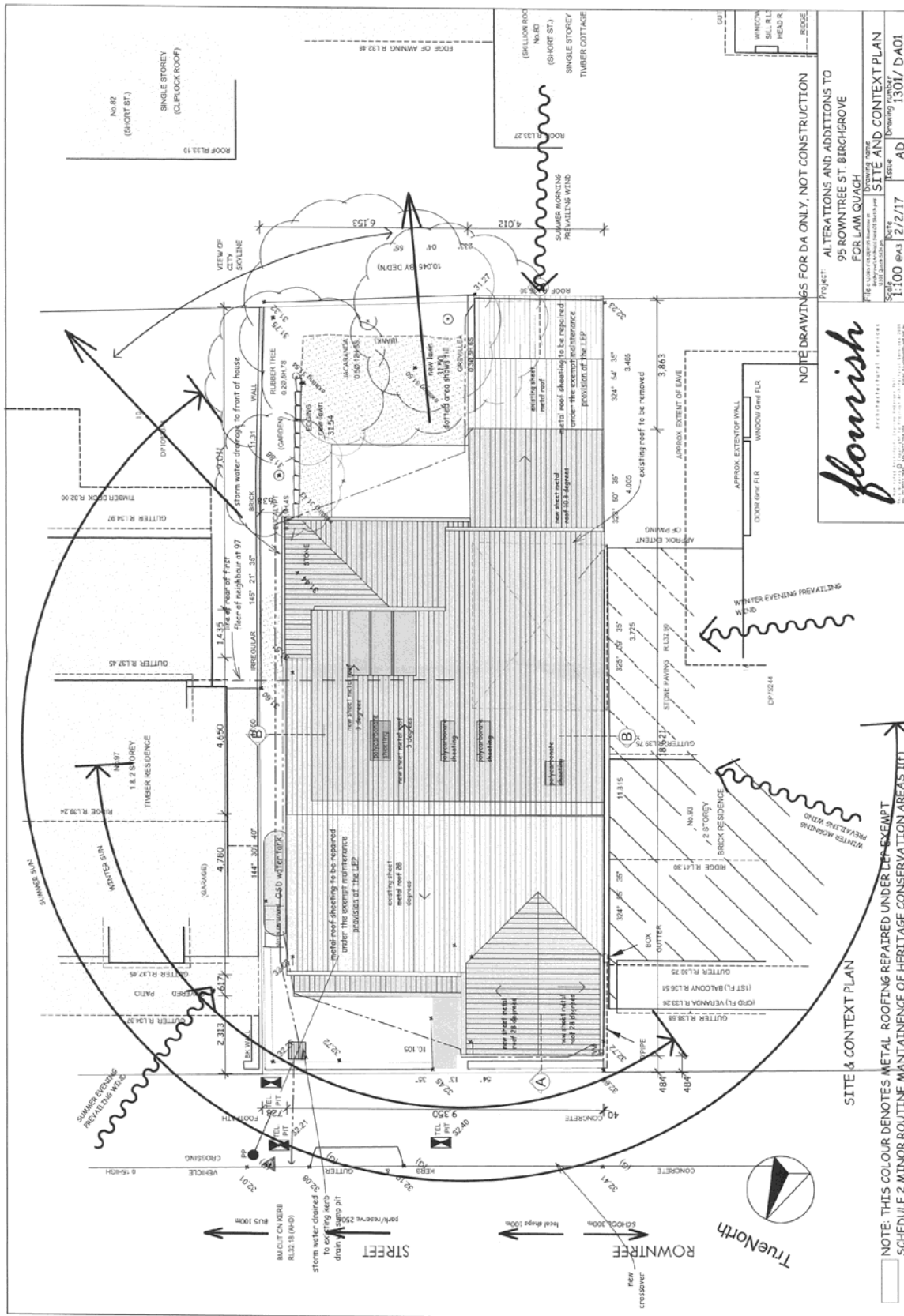
- 1) For the purposes of section 80A (11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, 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.

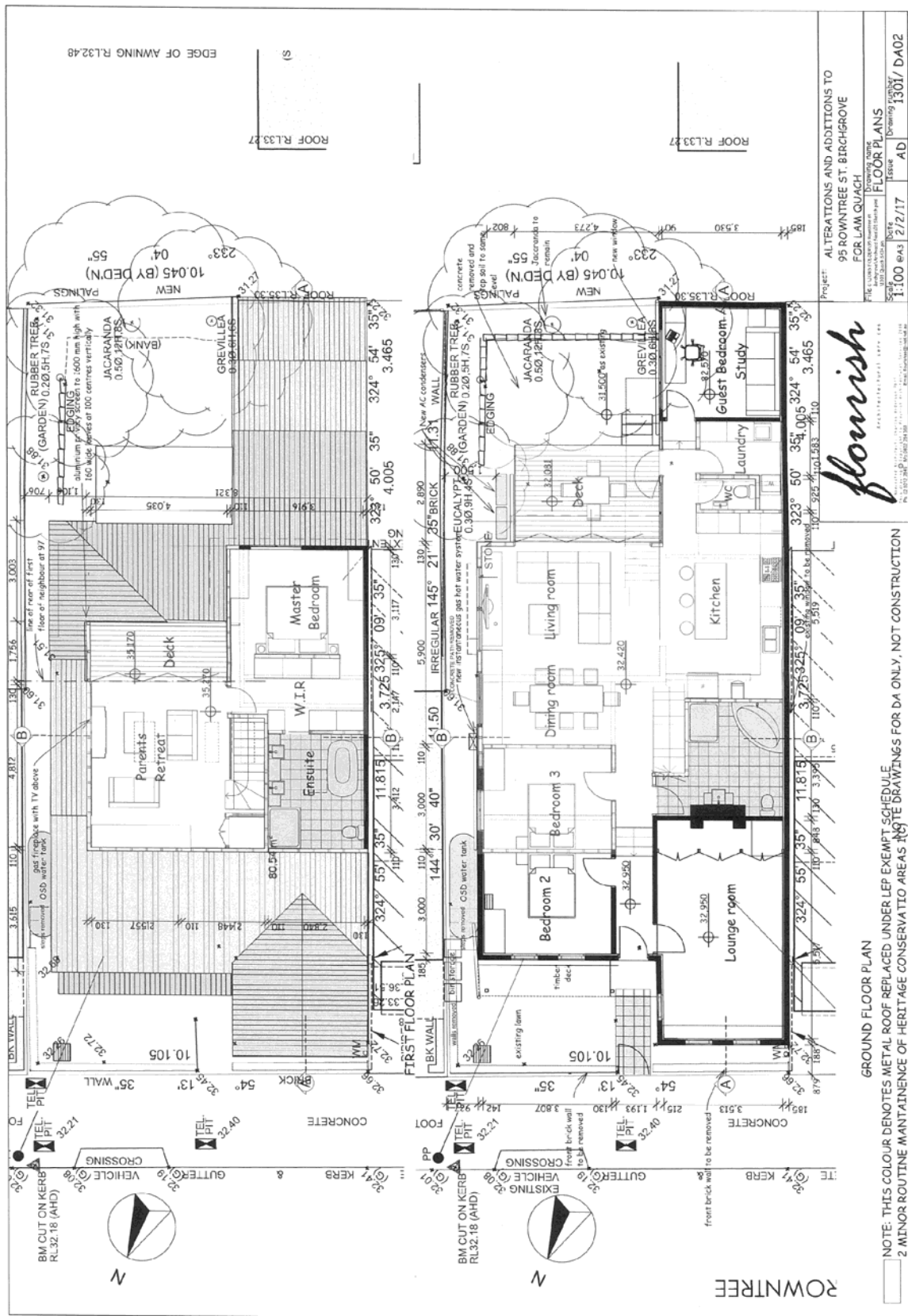
## NOTES

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) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
  - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
  - f) Development Application for demolition if demolition is not approved by this consent.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) 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.

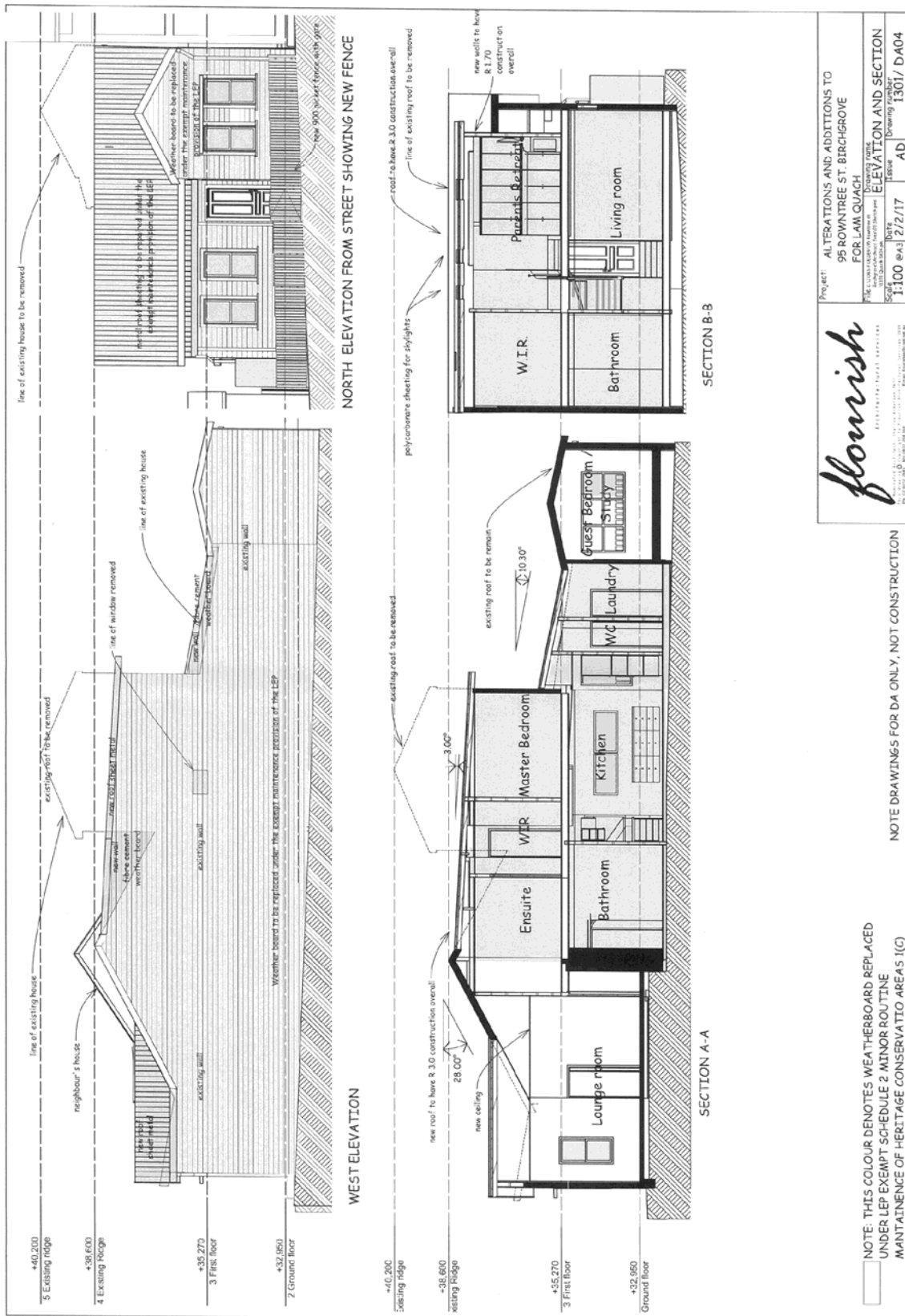
Attachment B – Plans of proposed development

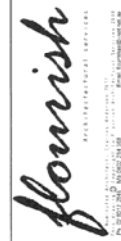
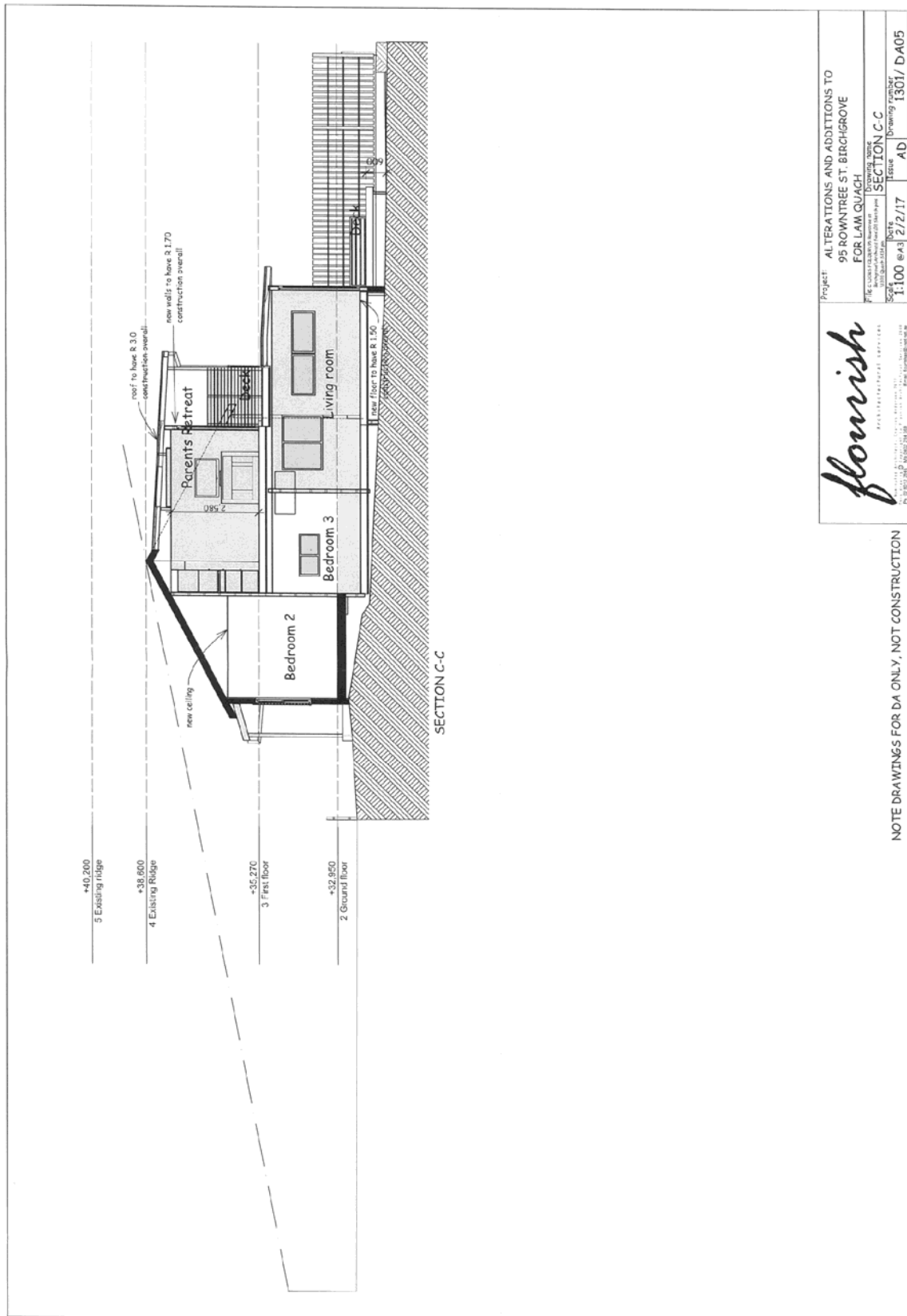












Project:	ALTERATIONS AND ADDITIONS TO 95 ROWNTREE ST. BIRCHGROVE
Fig. No.:	FOR LAM QUACH
Scale:	As Shown
Scale:	1:100 @A3
Date:	2/2/17
Issue:	AD
Boarding number:	1301/ DA05

NOTE DRAWINGS FOR DA ONLY, NOT CONSTRUCTION

