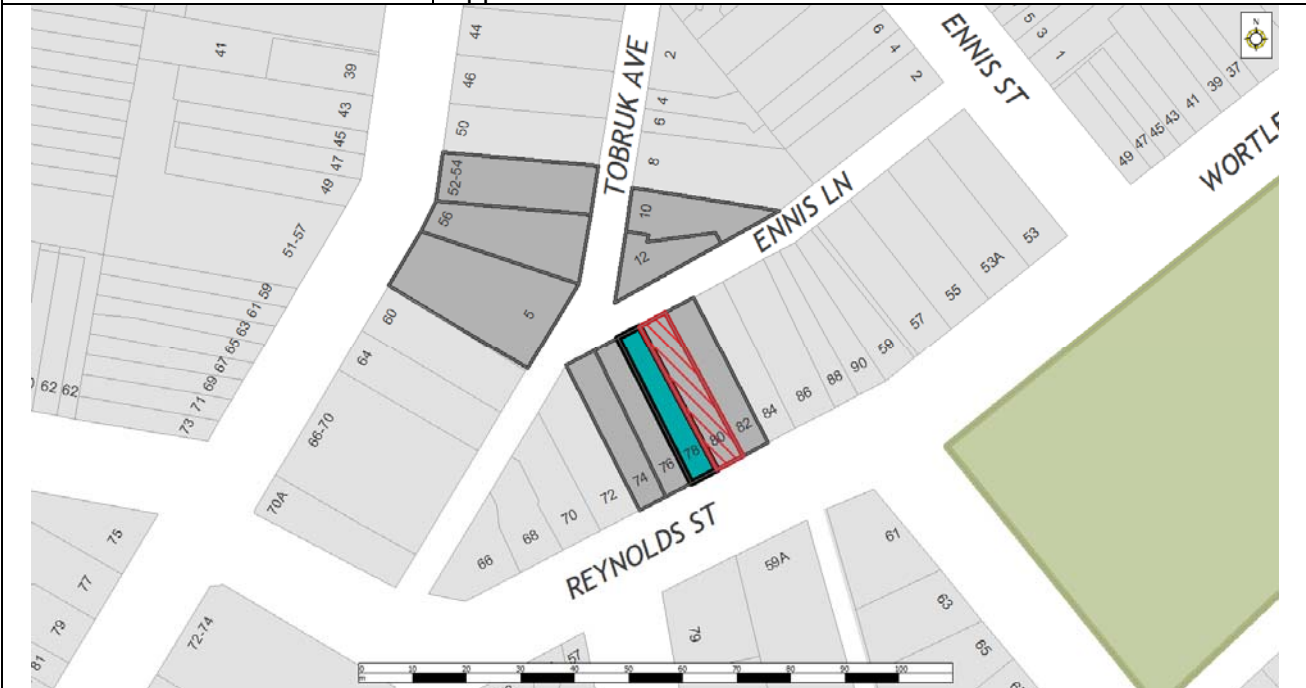




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2016/650
<b>Address</b>	78 Reynolds Street, BALMAIN NSW 2041
<b>Proposal</b>	Construction of green house in rear garden of property.
<b>Date of Lodgement</b>	5 December 2016
<b>Applicant</b>	Mr P J D'Olier
<b>Owner</b>	Mr P J D'Olier
<b>Number of Submissions</b>	One
<b>Value of works</b>	\$2,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation to floor space ratio
<b>Main Issues</b>	Non-compliance with development standards. Insufficient landscaped area.
<b>Recommendation</b>	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for construction of a green house in the rear garden of 78 Reynolds Street, Balmain. The application was notified to surrounding properties and one submission was received.

The main issues that have arisen from the application include:

- Non-compliance with development standards;
- Inadequate landscaping in the rear yard;
- Concerns from neighbour regarding the proposed greenhouse.

The non-compliances regarding floor space ratio and site coverage are acceptable given the site characteristics and the provision of a compliance amount of landscaping in the rear yard is required by a condition of development consent; therefore the application is recommended for approval.

## 2. Proposal

It is proposed to:

- Remove an existing greenhouse adjacent to the eastern boundary and replace with open courtyard;
- Erect a new greenhouse adjacent to an existing covered pergola and the western boundary. It is noted that the greenhouse cannot be constructed as exempt development as it is located within 900 mm of the property boundary.

## 3. Site Description

The subject site is located on the northern side of Reynolds Street, between Rosser Street and Wortley Street. The site consists of one allotment and is generally rectangular with a total area of 152.6 m<sup>2</sup> and is legally described as Lot 1 DP 905428.

The site has a frontage to Reynolds Street of 5.4 metres and a secondary frontage of 5.02 metres to Ennis lane at the rear.

The site supports a two storey terrace with an additional attic level within the roof. The adjoining properties support similar attached terraces.

The property is located within a heritage conservation area. Street trees (bottle brushes/Callistemon spp.) are located in front of the site.

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
DA/1995/462 BA/1995/794	Attic level addition to dwelling, including a front balcony	Approved 27 February 1996
T/2008/295	Removal of two Eucalypts from rear of property.  Note: one of the trees was required to	Approved 2 January 2009

	be replaced with a native species capable of achieving a minimum mature height of 6 metres. No such tree was observed in the site inspection.	
CDC/2010/37	Construction of a new carport to the rear of property.	Approved 16 September 2010

**Surrounding properties**

80 Reynolds Street, Balmain

Application	Proposal	Decision & Date
D/2000/115	Alterations and additions to the rear of an existing dwelling including the erection of a double garage to the rear lane.	Approved 4 July 2000
D/2008/118	Conversion of the existing roof space into an attic and the inclusion of a new dormer window.	Approved 20 May 2008

82 Reynolds Street, Balmain

Application	Proposal	Decision & Date
D/2012/115	Alterations and additions to existing dwelling including additions at ground floor, attic level, skylights, solar panels and demolition of existing carport. The application relies on SEPP1 objections to floor space ratio and landscaped area.	Approved 4 September 2012

84 Reynolds Street, Balmain

Application	Proposal	Decision & Date
D/2006/745	Alterations and additions to existing dwelling and associated works.	Approved 8 March 2007
D/2011/367	Alterations and additions to rear of existing dwelling including outbuilding, covered walkway and courtyard. The application relies on SEPP1 objections to floor space ratio and landscaped area.	Approved 26 August 2011

**4(b) Application history**

Not applicable

**5. Assessment**

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

**5(a) Environmental Planning Instruments**

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

- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

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

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

**5(a)(ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

**5(a)(iii) Leichhardt Local Environment Plan 2013 (LLEP 2013)**

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

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

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

Standard (maximum)	Proposal	% of non-compliance	Compliance
<b>Floor Space Ratio</b> Maximum permissible: [0.7:1]	1.14:1	64%	No
<b>Landscape Area</b> Minimum permissible: [15%]	7.4%	50.6%	No
<b>Site Coverage</b> Maximum permissible: [60%]	78.6%	31%	No

The following provides further discussion of the relevant issues:

**Clause 4.6 Exceptions to Development Standards**

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

- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

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

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

Comment: As discussed below in subclauses (3) and (4), it is considered that the contravention to the development standards for site coverage and floor space ratio are acceptable in this instance.

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.*

Comment:

#### Floor space ratio

The site is subject to a maximum floor space ratio (FSR) of 0.7:1. As currently proposed the works would result in a FSR of 1.14:1. The current structures on site result in a FSR of 1.09:1; the proposed floor green house has a gross floor area of 8.3 sqm and thus results in an increase in FSR of 0.05:1.

The 'key' reasons submitted by the applicant as justification for the contravention of this standard are:

- The bulk, form and scale of the main building are not altered by the proposal, being a two storey terrace with an additional attic level one of a group of six similarly sized terraces in this part of Reynolds Street.
- *The proposal only marginally increases the existing FSR and will result in a development similar in scale to neighbours in the immediate vicinity.*
- Proposed work not visible from any public place.
- The design and location of the greenhouse has minimal impact on adjoining properties
- Provides a suitable balance of landscaped areas and built form.

Council being the consent authority in this instance, is satisfied that the applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and the objection with regard to floor space ratio is considered to be well founded in this instance.

#### Landscaped area

The 'key' reasons submitted by the applicant as justification for the contravention of this standard are:

- The purpose of the proposed greenhouse is to be part of, and support the use of, the outdoor private open space and landscaped area.
- Substantial trees are better suited to larger sites, where they can grow relatively unhindered by buildings and adjoining property walls and buildings.

- A group of attached terrace houses with narrow properties do not allow provision of landscaped corridors between adjoining properties.
- Whilst the actual area of landscaping on the site is approximately 16% of the site area, this landscaping does not strictly comply with the requirement for landscape widths of more than 1m as this width is not practical in narrow terrace house properties.
- The proposal has no change to the existing landscaping in Reynolds St and minimal change to existing landscaping in the private open space.
- The purpose of the proposed greenhouse is to be part of, and support the use of the outdoor landscaped area and private open space.
- The proposal will have minimal effect on the existing retention and absorption of surface drainage water on site given the small amount of affected raised garden beds and replacement planting.
- An appropriate mix of landscaped and courtyard areas is required for best use of private open space.

It is considered that this submission does not justify non-compliance with the landscaped area requirement as it involves the replacement of the only area that meets the definition of landscaped area in the rear yard with hard surfaces. The site could comply with the landscaped area development standard by providing 11.6 sqm of turf or similar in the proposed courtyard in the rear yard, thus the justification to reduce the landscaped area in this instance is not supported and it is recommended that a condition of development consent be imposed to require this.

It is noted that this will allow all of the objectives of the control to be met whereas as currently proposed, the landscaped areas on site do not provide landscaped areas that are suitable for substantial tree planting or maximise the retention and absorption of surface drainage water on site.

#### Site Coverage

The 'key' reasons submitted by the applicant as justification for the contravention of this standard are:

- The proposal has a slight increase to site coverage.
- The purpose of the proposed greenhouse is to grow plants and will be part of, and support the use of the outdoor landscaped area and private open space
- The proposal has no impact on adjoining property landscaped areas and vegetation.

Council being the consent authority in this instance, is satisfied that the applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and the objection with regard to site coverage is considered to be well founded in this instance.

- (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 Secretary has provided concurrence.

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

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

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

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

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

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

### 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

### 5(c) Development Control Plans

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

Part	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Not applicable
B3.1 Social Impact Assessment	Not applicable
B3.2 Events and Activities in the Public Domain (Special Events)	Not applicable
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Not applicable
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Not applicable
C1.6 Subdivision	Not applicable
C1.7 Site Facilities	Not applicable
C1.8 Contamination	Not applicable
C1.9 Safety by Design	Not applicable
C1.10 Equity of Access and Mobility	Not applicable
C1.11 Parking	Not applicable
C1.12 Landscaping	No
C1.13 Open Space Design Within the Public Domain	Not applicable
C1.14 Tree Management	Not applicable
C1.15 Signs and Outdoor Advertising	Not applicable
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Not applicable
C1.17 Minor Architectural Details	Not applicable
C1.18 Laneways	Not applicable

C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Not applicable
C1.20 Foreshore Land	Not applicable
C1.21 Green Roofs and Green Living Walls	Not applicable
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.2.4(b), Palmer Street Sub Valley, The Valley (Balmain) distinctive neighbourhood, Balmain	No
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Not applicable
C3.5 Front Gardens and Dwelling Entries	Not applicable
C3.6 Fences	Not applicable
C3.7 Environmental Performance	Not applicable
C3.8 Private Open Space	Yes
C3.9 Solar Access	Not altered
C3.10 Views	Yes
C3.11 Visual Privacy	Not applicable
C3.12 Acoustic Privacy	Not applicable
C3.13 Conversion of Existing Non-Residential Buildings	Not applicable
C3.14 Adaptable Housing	Not applicable
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
Not applicable	
<b>Part D: Energy</b>	
Section 1 – Energy Management	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Not applicable
D2.5 Mixed Use Development	Not applicable
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	No
E1.1.2 Integrated Water Cycle Plan	Not applicable
E1.1.3 Stormwater Drainage Concept Plan	No
E1.1.4 Flood Risk Management Report	Not applicable
E1.1.5 Foreshore Risk Management Report	Not applicable
E1.2 Water Management	
E1.2.1 Water Conservation	Not applicable
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Not applicable
E1.2.4 Stormwater Treatment	Not applicable
E1.2.5 Water Disposal	Not applicable
E1.2.6 Building in the vicinity of a Public Drainage System	Not applicable
E1.2.7 Wastewater Management	Not applicable
E1.3 Hazard Management	Not applicable



E1.3.1 Flood Risk Management	Not applicable
E1.3.2 Foreshore Risk Management	Not applicable
<b>Part F: Food</b>	
Section 1 – Food	
F1.1 Food Production	Not applicable
F1.1.3 Community Gardens	Not applicable
<b>Part G: Site Specific Controls</b>	
	Not applicable

The following provides discussion of the relevant issues:

### Landscaping

Essentially, only the front yard would be landscaped area under the proposal, with the rear yard essentially hard paving occupied by a carport, pergola, green house and paving for the proposed courtyard and access to the dwelling. While “new planting” is specified on the plans it is not dimensioned (scaling off at 250 mm x 3000 mm), appearing to be of insufficient dimensions to permit the ongoing growth of significant vegetation.

Such a proposal is contrary to the objectives and C4 and C9 of Part C1.12 Landscaping of Leichhardt Development Control Plan 2013 and C2 of Part C2.2.2.4(b), Palmer Street Sub Valley, The Valley (Balmain) distinctive neighbourhood, Balmain of Leichhardt Development Control Plan 2013, which state the following:

- O1 Development includes on-site landscaped open space that:*
- a. enhances the visual setting of buildings;*
  - b. contributes to the distinct landscape character within the neighbourhoods and preserves, retains and encourages vegetation and wildlife that is indigenous to the municipality and Sydney; ...*
  - e. maximises vegetation to regulate and increase rainwater infiltration, thereby increasing nutrient recycling and reducing surface runoff; ...*
  - j. is designed to encourage the retention and enhancement of green corridors.*

*C4 Provide for the retention of existing and/or planting of additional canopy trees.*

*C9 Semi-mature trees and vegetation that are capable of contributing to landscape amenity are provided in open space along boundaries adjacent to neighbouring open space*

*C2 Preserve and enhance the mature gardens to the rear of dwellings along laneways, which contribute to the amenity of the area.*

As outlined in Part 5(a)(iii) of this report above, it is considered that providing no soft surfaces in the rear yard is not acceptable, notwithstanding the proposed to use part of this area as a green house. A condition of consent will require the provision of an additional 11.6 sqm of soft landscaping on the site to ensure compliance with the landscaped area development standard; compliance with this standard will also increase compliance with the landscaped area controls of Leichhardt Development Control Plan 2013.

### C3.10 Views

While a submission has been received stating that *the height of the greenhouse, will block views of tree lines and sky with views of greenhouse walls when viewed from 80 Reynolds Street, Balmain*, this part of Leichhardt Development Control Plan 2013 states that *in this plan, a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Sydney Tower)*. A site inspection revealed that any view obtained from the

adjoining property that is likely to be impacted by the proposal would consist of vegetation and sky outlook only. As such the objectives of this part are met.

#### Part E – Water

A water management statement was not provided with the application; however this is acceptable in this instance due to the nature of the proposed development. Council's Engineers have advised that a condition should be imposed on any consent to require stormwater runoff from the proposed greenhouse to be collected in a system of gutters, pits and pipelines and be discharged by gravity to the site drainage system. This condition has been included in the draft conditions.

#### 5(d) The Likely Impacts

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

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

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

#### 5(f) Any submissions

The application was notified in accordance with Section 3 of Part A of Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. One submission was received.

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

- The height of the greenhouse, will block views of *tree lines and sky with views of greenhouse walls* when viewed from 80 Reynolds Street, Balmain . – see Section 5(c) – C3.10

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

Issue: Errors in plans.

*The hand-drawn measurement of 3000mm on the “Southern Elevation (Towards Lane)” plan with 5% fall towards No 76 existing Garage and boundary wall is inconsistent with other details provided: the height of current boundary wall between number 76 and 78 according to the ‘statement of environmental effects’ is approximately 2.5m. A 5% rise from this boundary wall over 2000mm should only add an additional 175mm to this boundary height – resulting in a maximum height of 2675mm, not 3000mm.*

*The statement of environmental effects notes that the greenhouse is to be built close to the adjacent western property line and refers to this property as No. 80. However No. 80 is on the eastern side, not the western side.*

Comment: The maximum height of the structure is 3000mm. The proposed greenhouse is to be located adjacent to the western boundary of the site i.e. the boundary shared with 76 Reynolds Street, Balmain; this is correctly labelled on the submitted plans.

Issue: *The proposed use of the space for an enlarged greenhouse will increase the mosquito presence, and possible toxic chemicals to reduce the mosquito numbers. Both the increased 24/7 presence of mosquitoes in the back courtyard, and potential chemical usage impacts the usage of outdoor space in adjacent properties.*

Comment: There is no evidence to suggest that an increased mosquito population is likely to result from the construction and use of a greenhouse.

### 5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Development Engineer

### 6(b) External

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

## 7. Section 94 Contributions

Section 94 contributions are not payable for the proposal.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2016/650 for Construction of green house in rear garden of property at 78 Reynolds Street, Balmain subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

1. Development must be carried out in accordance with Development Application No. D/2016/650 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Dated
Plan, Side elevation, Northern and Southern elevations Rev. 1	19/1/2017
Waste Management Plan	5/12/2016

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

### PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

2. Amended plans are to be submitted incorporating the following amendments:
  - a) A full site plan is to be provided showing the location of landscaped areas on the site. Landscaped areas must demonstrate compliance with Clause 4.3A(3)(a) of Leichhardt Local Environmental Plan 2013 whereby 15% of the site is used for growing plants, grasses and trees, not including any building, structure or hard paved area, and has a width of 1 metre or more.

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.

3. 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.

4. 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.

5. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:
  - a) Minimise the area of soils exposed at any one time.
  - b) Conservation of top soil.
  - c) Identify and protect proposed stockpile locations.
  - d) Preserve existing vegetation. Identify revegetation technique and materials.
  - e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
  - f) Control surface water flows through the site in a manner that:
    - i) Diverts clean run-off around disturbed areas;
    - ii) Minimises slope gradient and flow distance within disturbed areas;
    - iii) Ensures surface run-off occurs at non erodable velocities;
    - iv) Ensures disturbed areas are promptly rehabilitated.
  - g) Sediment and erosion control measures in place before work commences.
  - h) Materials are not tracked onto the road by vehicles entering or leaving the site.
  - i) Details of drainage to protect and drain the site during works.

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

6. 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)**

- 7. 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	\$2075.00
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.

- 8. 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
76 Reynolds Street, Balmain	Wall on boundary between 76 and 78 Reynolds Street, Balmain.

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

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

9. 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.

10. 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.
11. 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.
12. 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**

13. 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.
14. 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.

15. 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.

16. The site must be appropriately secured and fenced at all times during works.
17. Any 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.

18. 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.

19. 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.
20. 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.
21. 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.
22. 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.
23. Stormwater runoff from the proposed greenhouse must be collected in a system of gutters, pits and pipelines and be discharged by gravity to the site drainage system.

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

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

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

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

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

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

25. 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**

26. 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.

27. 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.
28. 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.

29. 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**

30. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. greenhouse used in association with a dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling house is defined under the *Leichhardt Local Environmental Plan 2013*.

#### **PRESCRIBED CONDITIONS**

##### **A. BASIX Commitments**

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

In this condition:

- a) Relevant BASIX Certificate means:
  - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or

- (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

## **B. Building Code of Australia**

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

## **C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - b) in the case of work to be done by an owner-builder:
    - i) the name of the owner-builder, and
    - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

## **D. Site Sign**

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

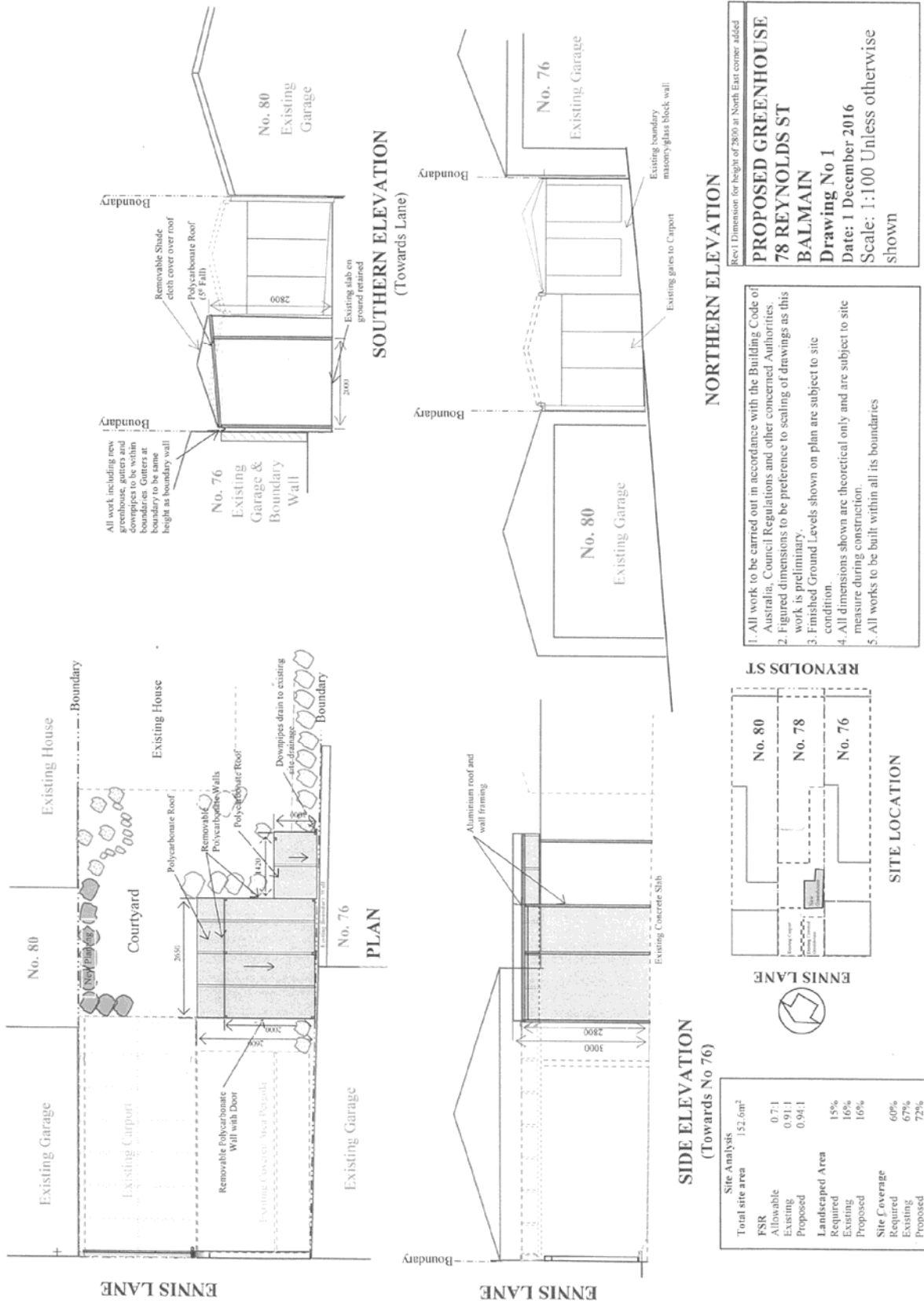
- (1) For the purposes of [section 80A](#) (11) of [the Act](#), it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development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

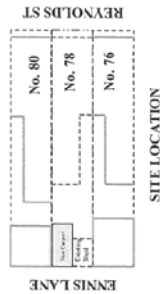
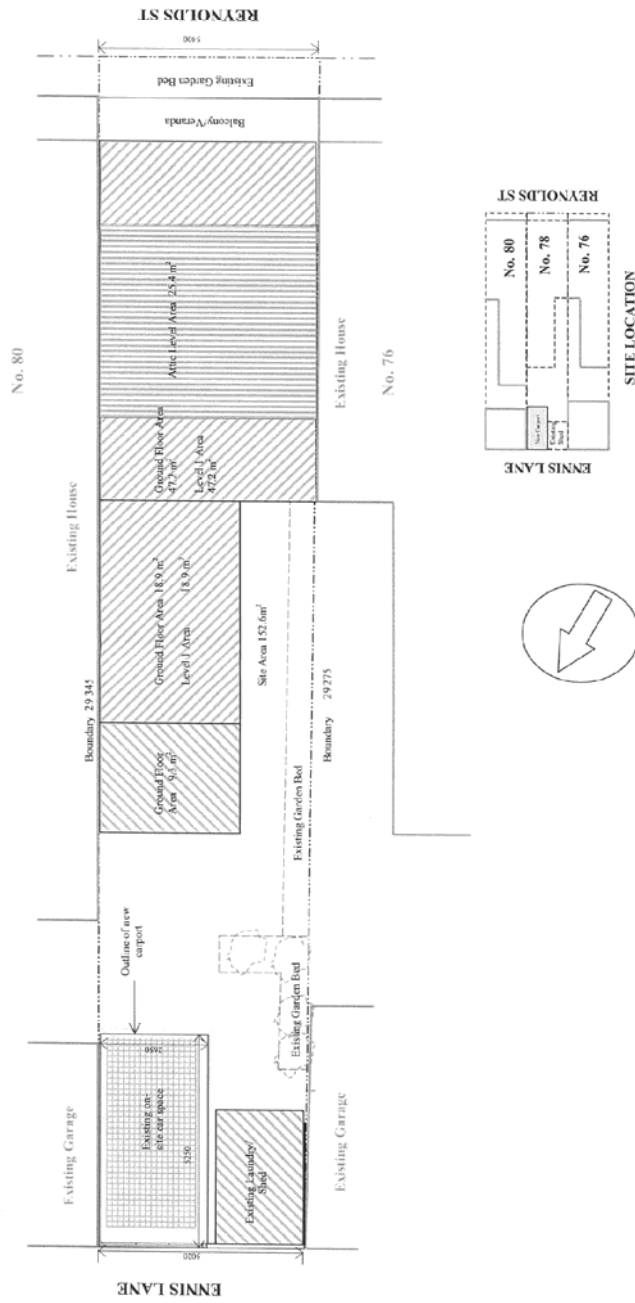
**NOTES**

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 a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
  - b) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.

- c) Development Application for demolition if demolition is not approved by this consent.
  - d) 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





PROPOSED CARPORT  
 78 REYNOLDS ST  
 BALMAIN  
 Drawing No. 2 – Site Location Plan  
 Date 1 September 2010  
 Scale: 1:100 Unless otherwise shown

SITE LOCATION PLAN