





 DEVELOPMENT ASSESSMENT PANEL REPORT	
Application No.	DA/2023/0556
Address	41 Hubert Street LEICHHARDT
Proposal	Demolition, construction of two dwellings, and Torrens title subdivision
Date of Lodgement	21 July 2023
Applicant	Puria Davoodi
Owner	Puria Davoodi and Ivana Marzullo
Number of Submissions	Initial: One (1) After Renotification: Nil (0)
Value of works	\$915,500.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Minimum Subdivision Lot Size Contamination Solar Access Tree Impacts
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site	   N
Notified Area	  Supporters

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of existing improvements, construction of two dwellings, and Torrens title subdivision of the property known as 41 Hubert Street, Leichhardt.

The application was notified to surrounding properties and one (1) submission was received in response to the initial notification. The application was renotified due to additional information being submitted and no submissions were registered against the application in response to the renotification.

The main issues that have arisen from the application include:

- Minimum subdivision lot size variation exceeds 10%

The non-compliances are acceptable given the proposed Torrens title subdivision is consistent with the prevailing subdivision pattern and new dwellings on each newly created lot will have no significant adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the application is recommended for approval.

2. Proposal

The proposal involves the removal of two trees, demolition of the existing single storey dwelling and carport, Torrens title subdivision of the site into two allotments and the construction of 2 two storey, semi-detached dwellings. The extent of proposed works includes:

Site Works

- Earthworks associated with site remediation

Ground Floor

- New front garden and dwelling entrances with front porches
- New bin storage (for each dwelling)
- New ground floor level comprising living/dining room, kitchen, bathroom, guest bedroom/lounge room, laundry, rear patio area, and detached covered terrace (for each dwelling)
- New party wall

First Floor

- New first floor level comprising 2 x bedrooms with ensuites and built in robes (for each dwelling)
- New party wall

Roof

- Installation of skylights roof planes
- Skillion dormer windows to front roof plane (for each dwelling)

Tree Removal

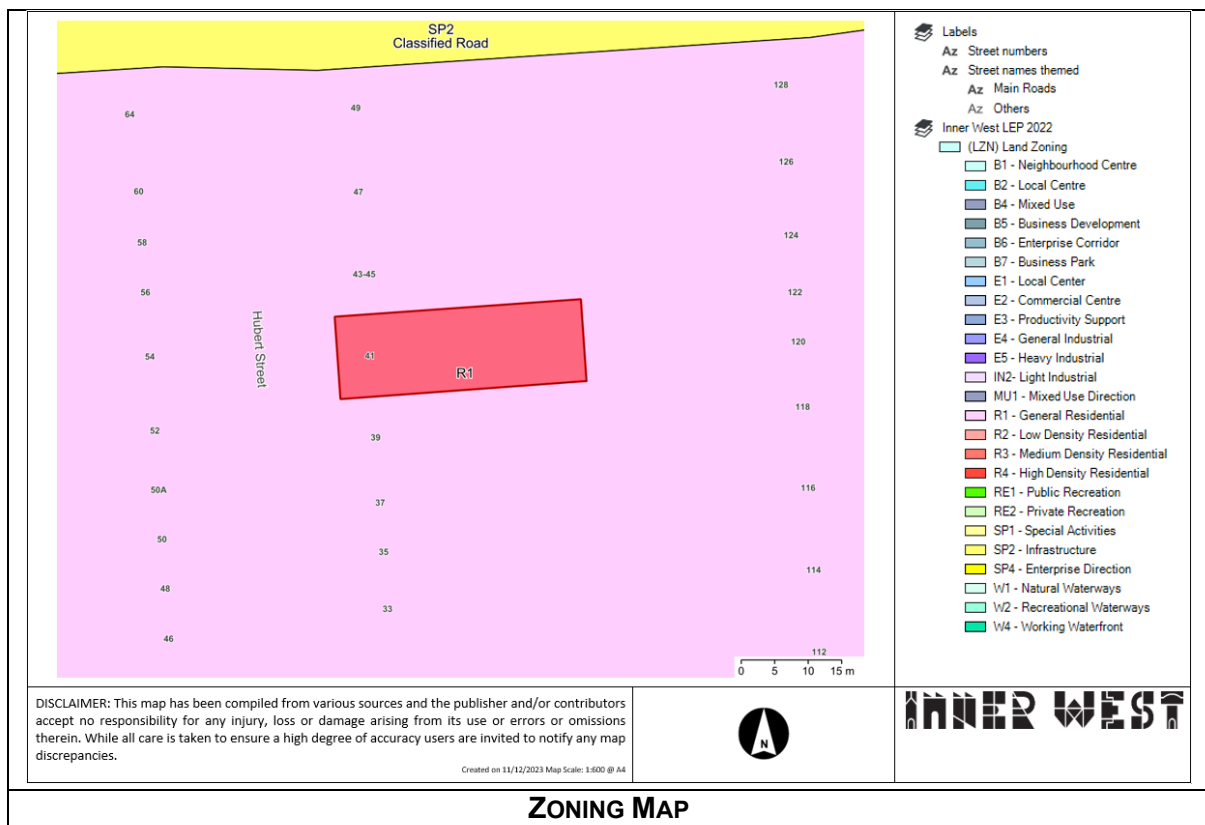
- Removal of 1 x street tree

3. Site Description

The subject site is located on the eastern side of Hubert Street, between Darley Road and William Street. The site consists of one allotment and is generally rectangular shaped with a total area of 303.5sqm and is legally described as Lot 63 Sec 5 in DP 1162.

The site has a frontage to Hubert Street of 10.06 metres. The site currently supports an existing single storey brick cottage. The adjoining southern site at No. 39 and 39A Hubert Street supports a contemporary single storey semi-detached building. The adjoining northern site at No. 43-45 Hubert Street supports a single storey brick commercial building.

The subject site is not listed as a heritage item or located within a conservation area. The property is identified as a flood prone lot.





SITE PHOTO

4. Background

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

Subject Site

None recent.

Surrounding properties

39 Hubert Street, Leichhardt		
Application	Proposal	Decision & Date
DA/2020/0518	Demolition, construction of two dwellings, and subdivision.	Approved, 27 October 2020

43-45 Hubert Street, Leichhardt		
Application	Proposal	Decision & Date
D/2014/530	Alterations and additions to existing commercial building, including a new first floor addition comprising a new dwelling with associated terraces, and alterations on the ground floor to create two entries with awning over to Hubert Street, plus strata subdivision of building into two lots.	Approved, 14 April 2015

Application history

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

Date	Discussion / Letter / Additional Information
02/08/2023 to 16/08/2023	Application notified.
01/09/2023	Council wrote to the applicant requesting further information as follows: <ul style="list-style-type: none"> • Pruning Specification prepared by an AQF Level 5 Arborist • Amended plans • Updated shadow diagrams
21/09/2023	The applicant provided a response to the additional information request via the NSW Planning Portal. Renotification was not required in accordance with Community Engagement Framework. The amended plans are the subject of this report.
12/01/2024	Council wrote to the applicant requesting a stage 1 – preliminary investigation of the site carried out in accordance with the contaminated land planning guidelines given the historic use of the detached outbuilding on the site.
11/02/2024	Applicant submitted stage 1 - Preliminary Investigative Report.
20/02/2024	Council wrote to applicant to advise the following information is required based on the recommendations made within the stage 1 – preliminary investigation of the site: <ul style="list-style-type: none"> • A detailed site investigation (DSI) phase 2 and Hazardous Materials Survey (HMS) to inform the scope of the RAP. • A Remediation Action Plan (RAP).
10/04/2024	Applicant submitted additional information in response to Council's request.
24/04/2024 to 08/05/2024	Application renotified.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EPA Act 1979)*.

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A search of Council's records in relation to the site has indicated that the site is one that is specified in Section 4.6(4)(c).

A search of Councils records has revealed incomplete knowledge of uses listed within Table 1 of the contaminated land planning guidelines. It would have been lawful to carry out development of a type listed in within Table 1 of the contaminated land planning guidelines for the period in which there is no knowledge (or incomplete knowledge).

In consideration of Section 4.6(2) the applicant has provided a preliminary investigation. Based on the findings of the preliminary investigation, a detailed site investigation is warranted in accordance with Section 4.6(3). The detailed site investigation provided identifies the land as being contaminated and requiring remediation to make the site suitable for the proposed use.

The applicant has provided a Remediation Action Plan prepared by Martens & Associates Pty Ltd, dated 03/04/2024, that concludes:

"Subject to the limitations of this report, MA consider that soil contamination can be adequately remediated by implementation of the RAP to allow the Site to be made suitable for the proposed residential use of the land. MA also consider that Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 can be satisfied by the following items being made conditions of development consent to ensure that contamination is remediated to a standard consistent with the proposed land use:

- *Implementation of the remedial works plan and SAQP outlined in the RAP.*
- *Provision of a Validation Report to IWC documenting all remedial works undertaken (as outlined in the RAP) at the Site, that concludes that the land has been remediated to a standard suitable for the land use scenario proposed at the Site.”*

On the basis of this report the consent authority can be satisfied that the land will be suitable for the proposed use and that the land can be remediated.

SEPP (Sustainable Buildings) 2022

Section 4.2 Saving and transitional provisions within the Sustainable Buildings SEPP states:

- (1) *This policy does not apply to the following—*
- (a) *a development application submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (c) *a development application for BASIX development or BASIX optional development submitted on the NSW planning portal on or after 1 October 2023, if the BASIX certificate that accompanies the development application was issued before 1 October 2023,*
 - (e) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal but not finally determined before 1 October 2023,*
 - (f) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal on or after 1 October 2023, if the development application for the development consent was submitted on the NSW planning portal before 1 October 2023.*

In this regard, the provisions of the repealed *SEPP (Building Sustainability Index: BASIX) 2004* remain applicable to this application.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has included a BASIX Certificate as part of the lodgment of the application (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EPA Regulation 2021*.

SEPP (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Excavation in or immediately adjacent to corridors

In accordance with Section 2.121(1), this section applies to development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is a road corridor of any of the roads or road projects identified under this section. The closest road corridor is the M4 (see figures 1 below). The development involves excavation for remediation of the site due to contamination. However, the proposed excavation would be to

a depth of less than 3m below the ground level (existing). Therefore, no further action is required.



SEPP (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council’s Tree Management Development Control Plan (DCP). The application seeks the removal of vegetation from within Council land. The application was referred to Council’s Tree Management Officer who has agreed to the removal of the street tree which is identified as a European Olive Tree. The Peppermint Willow located at the front of the site is in good condition and conditions are included in the recommendation requiring its protection.

Overall, the proposal is considered acceptable with regard to the SEPP and Council’s Tree Management DCP subject to the imposition of conditions, which have been included in the recommendation of this report.

Chapter 6 Water Catchments

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents, • The proposal creates a high quality urban place through the application of design excellence in all elements of the built environment and public domain, • The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West, • The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> • The Site is zoned R1 General Residential. The application proposes 2 semi-detached dwellings. Semi-detached dwellings are permissible with consent in the R1 General Residential zone. • The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for the housing needs of the community within a general residential environment. 	Yes
Section 2.6 Subdivision – consent requirements	<ul style="list-style-type: none"> • The application seeks development consent for the subdivision of the existing lot into two (2) Torrens title lots, which is permissible with consent. 	Yes
Section 2.7 Demolition requires development consent	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> • Demolition works are proposed, which are permissible with consent; and • Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes, subject to conditions

Part 4 – Principal development standards

Lot A – No. 41 (south residence)

Section	Proposal	Non compliance	Complies
Section 4.1 – Minimum subdivision lot size Minimum permissible: 200sqm	151.75sqm	48.25sqm / 24.13%	No
Section 4.3C (3)(a) – Landscape Area Minimum permissible: 15% / 22.7625sqm	23.70% / 35.96sqm	N/A	Yes
Section 4.3C (3)(b) – Site Coverage Maximum permissible: 60% / 91.05sqm	59.98% / 91.02sqm	N/A	Yes
Section 4.4 – Floor Space Ratio Maximum permissible: 0.7:1 / 106.225sqm	0.69:1 / 105.16 sqm	N/A	Yes

Lot B – No. 41a (north residence)

Section	Proposal	Non compliance	Complies
Section 4.1 – Minimum subdivision lot size Minimum permissible: 200sqm	151.75sqm	48.25sqm / 24.13%	No
Section 4.3C (3)(a) – Landscape Area Minimum permissible: 15% / 22.7625sqm	23.70% / 35.96sqm	N/A	Yes
Section 4.3C (3)(b) – Site Coverage Maximum permissible: 60% / 91.05sqm	59.98% / 91.02sqm	N/A	Yes
Section 4.4 – Floor Space Ratio Maximum permissible: 0.7:1 / 106.225sqm	0.69:1 / 105.16 sqm	N/A	Yes

Section	Proposed	Compliance
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.1 – Minimum subdivision lot size.	See discussion below

Section 4.6 – Exceptions to Development Standards

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

- Clause 4.1 – Minimum subdivision lot size

The applicant seeks a variation to the Minimum Subdivision Lot Size development standard under Clause 4.1 of the *IWLEP 2022* by 24.13% (48.25sqm) for each respective lot.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- The general form of the building has minimal impact upon the streetscape in terms of architectural design, bulk and scale – noting that the overall form of the development is compatible in terms of overall height and design to other dwellings;
- The building height, site coverage, and landscaped area provided to both is comparable with adjoining and nearby dwellings and other buildings and the landscaped area is fully compliant with the DCP controls and landscaped area is contained at the front and rear of the site to contribute to the landscape setting with the retention of existing street trees;
- The proposal is fully compliant with the maximum site coverage control;
- The proposed building is compatible with the desired future character of the locality. The overall bulk, form, and scale is comparable to adjoining and nearby development;
- The proposal is compliant with the minimum soft landscaped area control which provides a balance between landscape and built form;
- The amenity impacts arising from the proposal are minimal, with the proposal focusing windows to the front and rear boundaries to mitigate privacy impacts;
- The development has a proposed FSR of 0.7:1 which is consistent with the FSR control for the site;
- The site is modest and the outcome on the site is a two x modest 2 bedroom dwellings, noting strict compliance significantly limits the size and functionality of the dwellings; and,
- The relevant objectives of the zone would be thwarted should the development be refused as the proposal provides housing choice within a low density context, which is the first named objective of the R1 General Residential zone.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

Objective: *To provide for the housing needs of the community.*

Comment: The proposed development will result in additional residential accommodation in the form of semi-detached dwelling and will provide for the housing needs of the community.

Objective: *To provide for a variety of housing types and densities.*

Comment: The proposed development will ensure a variety of housing types is provided within the area.

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

Comment: The subject proposal relates to a type of residential accommodation in statutory terms. Therefore, this objective is not relevant.

Objective: *To provide residential development that maintains the character of built and natural features in the surrounding area.*

Comment: The proposed development maintains the character of built features within the area, the proposed dwellings provide residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood, while also providing landscaping which contributes to the natural features of the area.

It is considered the development is in the public interest because it is consistent with the objectives of the Minimum Subdivision Lot Size development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

Objective: *(a) to ensure lot sizes cater for a variety of development,*

Comment: The proposed subdivision caters for a variety of development, namely a semi-detached dwelling.

Objective: *(b) to ensure lot sizes do not result in adverse amenity impacts,*

Comment: The proposed subdivision will not result in any adverse impacts on the amenity of the subject dwellings on the site or adjoining properties

Objective: *(c) to ensure lot sizes deliver high quality architectural, urban and landscape design,*

Comment: The lot sizes proposed ensure that each dwelling is able to retain good internal and external amenity.

Objective: (d) to provide a pattern of subdivision that is consistent with the desired future character,

Comment: The proposal is consistent with the pattern of subdivision immediately to the north and south of the subject site.

Objective: (e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.

Comment: The subject site is not located on riparian or environmentally sensitive land, as such this objective is not applicable to the proposal.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 20-002 issued in May 2020 in accordance with section 4.6(4)(b) of the *IWLEP 2022*.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Minimum Subdivision Lot Size development standard and it is recommended the Clause 4.6 exception be granted.

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.21 Flood planning	The site is located in a flood planning area. The development is considered to be compatible with the flood function and behaviour on the land now and under future projections. The design of the proposal and its scale will not affect the floor affectation of the subject site or adjoining properties and is considered to appropriately manage flood risk to life and the environment. Conditions are recommended to ensure flooding is appropriately managed and mitigated.	Yes, subject to conditions

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable.	Yes
Section 6.2 Earthworks	The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.	Yes
Section 6.3 Stormwater Management	The development maximises the use of permeable surfaces and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.	Yes, subject to conditions

Section	Proposed	Compliance
Section 6.8 Development in areas subject to aircraft noise	The site is located within the ANEF 20-25 contour, and as such an Acoustic Report was submitted with the application. The proposal is capable of satisfying this section as conditions have been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of Section 6.8 of the <i>IWLEP 2022</i> .	Yes, subject to conditions

B. Development Control Plans

Summary

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.6 Subdivision	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes – see discussion
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.4 – Helsarmel Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see discussion
C3.3 Elevation and Materials	Yes

C3.4 Dormer Windows	Yes – see discussion
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – see discussion
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.5 Water Disposal	Yes
E1.2.7 Wastewater Management	Yes
E1.3.1 Flood Risk Management	Yes
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.6 Subdivision

The proposed Torrens title subdivision of the existing allotment does not comply with the minimum subdivision allotment size requirements of Control C1 at Part C1.6 of the LDCP 2013, which requires new allotments have a minimum lot size of 200sqm.

The relevant objectives to consider in relation to the variation are objectives O1(a), (b), (c), (d), (f) and (g) at Part C1.6 of the LDCP 2013. In considering a variation the following is noted:

- The proposal achieves objective O1(a) as each lot is of a sufficient size and dimension to accommodate residential development and is generally consistent with the residential development controls under Section 3 of the LDCP 2013.
- The proposal achieves objective O1(b) as the proposed new lots are consistent with the prevailing subdivision pattern and pattern of development in the surrounding area. Notably, the orientation and dimensions of the new lots mirror those of existing lots in the neighbourhood.
- The proposal achieves objective O1(c) as each lot is capable of incorporating adequate tree planting, which is reinforced by conditions of consent.
- The proposal achieves objective O1(d) as each allotment of the proposed Torrens title subdivision satisfactorily integrates with the surrounding street network by providing a boundary to a public road, which facilitates safe movement.
- The proposal achieves objective O1(f) as each allotment is oriented to address the street and public open space to maximise passive surveillance opportunities from the sites.
- The proposal achieves objective O1(g) as each allotment is capable of being provided with appropriate urban infrastructure.

Considering the above, the proposed development achieves the relevant objectives under Part C1.6 of the LDCP 2013 and can be supported on merit.

C2.2.3.4 Helsarmel Distinctive Neighbourhood

The subject site is located within the Helsarmel Distinctive Neighbourhood, and therefore, Part C2.2.3.4 of the LDCP 2013 applies to the proposal. The controls prescribed under this part of the LDCP 2013 seek to ensure development is consistent with the Desired Future Character (DFC) of this neighbourhood. The following relevant provisions apply:

- *C1 Maintain the character of the Helsarmel Distinctive Neighbourhood by keeping development complementary in architectural style, form and materials.*
- *C2 Maintain and enhance the predominant low scale 'cottage' character of the residential streets.*
- *C4 Preserve the consistency of the subdivision pattern in this area.*
- *C5 Preserve and enhance the availability of views, both of city landmarks and local features.*
- *C6 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.*
- *C7 Encourage street tree planting throughout Helsarmel Distinctive Neighbourhood.*
- *C8 Encourage and enhance landscaping in the front building setback throughout Helsarmel Distinctive Neighbourhood.*
- *C9 Building wall height is to be a maximum of 3.6m...*

In considering the above, the proposed development is considered to be an acceptable response to the DFC of the Helsarmel Distinctive Neighbourhood for the following reasons:

- The proposal will comprise of compatible roof forms, proportions to openings and has been designed with finishes and materials that complement, and that will not detract from, adjoining buildings and the wider streetscape;
- The proposed subdivision is consistent with the subdivision pattern within this neighbourhood;
- The proposed development has been designed to protect the mature and visually significant tree located within the front setback of the property;
- The first floor elements (i.e. dormer windows) are setback, behind the front verandah of each dwelling, which reduces the visual dominance of the upper level and maintains a single storey appearance from Hubert Street; and,
- The proposed streetscape presentation of the infill development is single storey and has been designed to comply with the 3.6m building envelope applicable to the distinctive neighbourhood.

Accordingly, the proposed development is consistent with the DFC and controls for the Distinctive Neighbourhood and meets objective O1 of Part C2.2.3.4 of the LDCP 2013.

C3.2 Site Layout and Building Design

Part C3.2 of the LDCP 2013 includes a side setback control graph, and outlines building location zone and building envelope parameters which are controls designed to regulate height, bulk and massing in the aim of achieving an acceptable scale on the site which respects the streetscape, development on neighbouring properties and that does not unduly compromise the amenity of surrounding sites.

Site Capacity

The proposal seeks complete demolition and construction of new infill development, and, as such, the proposed allotments will be unconstrained following demolition. The proposed allotments have sufficient capacity to accommodate for the new development and has been designed having regard to the characteristics of the site in accordance with control C1.

Local Character

The siting and design of the proposed infill development integrates with the existing natural landscape attributes that contribute to the character and distinct sense of place of the Hubert Street streetscape, neighbourhood, and applicable land in accordance with control C2 under Part C3.2 of the LDCP 2013 for the following reasons:

- The proposed development harmonises with prominent ridgelines found along this section of Hubert Street, in particular the recent development approved under DA/2020/0518 located at the properties known as Nos. 39 and 39A Hubert Street;
- The proposed development is generally to be constructed at grade level and respects the topography of the land;
- The proposal does not result in any adverse view loss;
- The proposal has been designed to minimise impacts of significant vegetation and includes sufficient space for the planting of vegetation.

Building Location Zone (BLZ) – Main Building

In accordance with control C3 at Part C3.2 of the LDCP 2013, the BLZ is the part of a site where it can be reasonably expected that a building can be located. In this regard, the BLZ controls determine the front and rear building setbacks of new development. The BLZ is determined by having regard to only the main building on the adjacent properties.

Where an adjoining development has a front or rear setback that is clearly uncharacteristic of the general pattern of development within the street, consideration will be given to that general pattern in determining whether to permit a variation to the BLZ that would otherwise be determined based on the adjoining buildings alone.

The property adjacent to the site at No. 43-45 Hubert Street features a single-storey brick commercial building occupying nearly the entire site area. This building stands out as atypical compared to the general development pattern along the eastern side of Hubert Street. Therefore, it does not provide a suitable model for guiding new development on the subject site. Instead, the existing development at Nos. 39 and 39A Hubert Street offers a more appropriate comparison, as it shares similar lot characteristics and ground and first-floor building setbacks.

Front BLZ (Ground Floor)

The proposed front BLZ of the ground floor level has been designed to stagger with the front building setbacks of immediately adjoining properties. It is noted the proposed front building set back is 3.11m from the front boundary, which matches the front setback of the building to be demolished. The proposed front setback is acceptable in this instance for the following reasons:

- The proposed front building setbacks are designed to protect neighbourhood features such as streetscape, private open space, solar access and views.
- The proposed front building setbacks generally complement the siting, scale and form of residential development along Hubert Street and will not result in adverse streetscape impacts.
- The proposed front building setbacks do not give rise to any adverse amenity impacts on surrounding properties in terms of bulk and scale, solar access, visual privacy and view loss.
- The proposed front building setbacks have been designed to retain existing significant vegetation.

Accordingly, the proposed front BLZ can be supported on merit.

Rear BLZ (Ground & First)

The proposed development at the subject site is designed with a ground floor rear setback of 11.12m and a first-floor rear setback of 15.02m, while the development at Nos. 39 and 39A Hubert Street has a ground floor rear setback of 7.52m and a first-floor rear setback of 14.51m,

which is identified on the stamped construction certificate drawings under CCP/2021/0429. In this regard, the proposal complies with the rear BLZ provisions under Part C3.2 of the LDCP 2013 as it respects the pattern of development on the neighbouring property.

BLZ – Open Sided Structures (Front)

In accordance with control C4, open-sided structures may extend beyond the BLZ so determined, where they are consistent with similar structures on adjoining properties. The proposed front porch extends beyond the front BLZ and aligns with the front porch at No. 39 and 39A Hubert Street the proposal also includes sufficient space within the front setback of each property to accommodate landscaped area which is consistent with the prevailing pattern of residential development along Hubert Street. Therefore, the proposed siting of the front porch is acceptable in this instance.

BLZ – Open Sided Structures (rear)

The proposal includes new detached covered terraces on each lot. Neither adjoining property has a similar structure in an equivalent location. Notwithstanding, the proposed structures replace an existing detached structure, which has a considerably larger envelope. The height of the proposed structures measure ~2.9m (RL 8.64) to the top of the parapet from existing ground level. Moreover, the side walls of the structure have been designed with 524mm setbacks from the side boundary, which complies with the side setback requirements under (see assessment below). On balance, the proposed development would not compromise the amenity of the neighbouring properties and, arguably, enhances the amenity of the neighbours due to reduced bulk and scale, and overshadowing impacts. Therefore, objective O4(d) is achieved.

Side Boundary Setbacks – Main Building

The proposed heights for the side walls of each residence (refer to figures 2 and 3 below) requires side setbacks greater than 524mm, as proposed. Consequently, this results in a deviation from the site setback control graph under control C7 at Part C3.2 of the LDCP 2013.

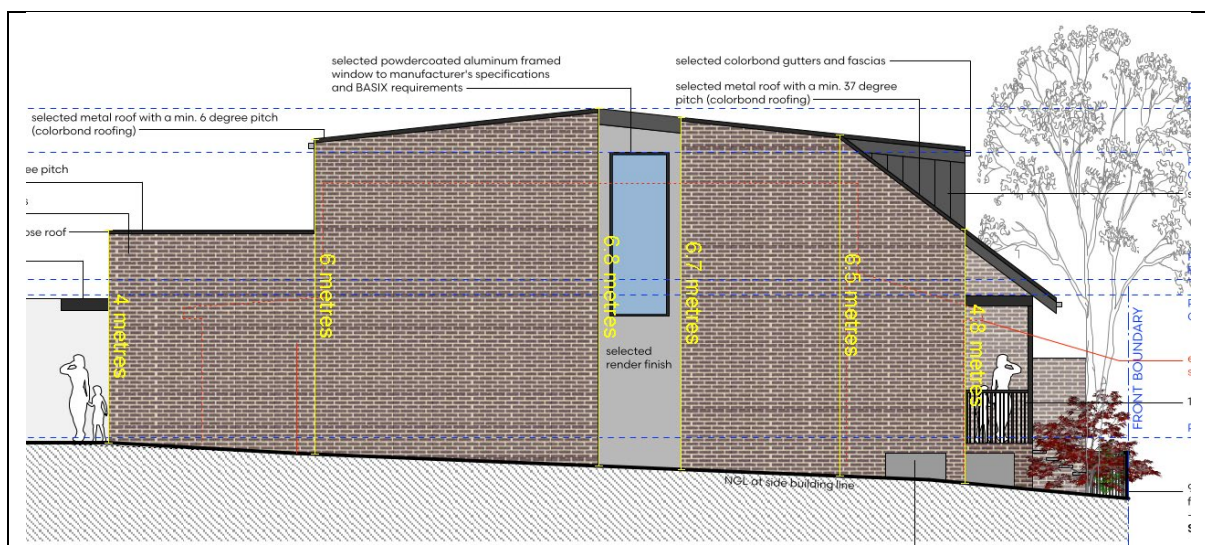


Figure 2: North elevation of proposed dwelling on proposed lot No. 41A (north residence). Proposed side wall heights indicated in yellow (NTS)

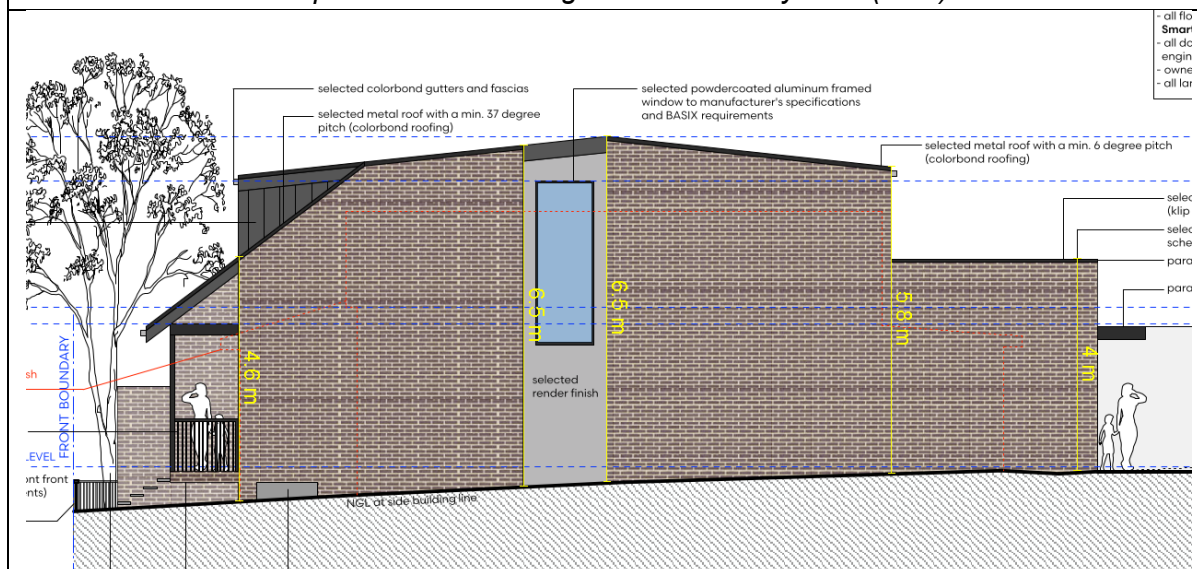


Figure 3: South elevation of proposed dwelling on proposed lot No. 41 (south residence). Proposed side wall heights indicated in yellow (NTS)

In accordance with control C8 of this Part, walls higher than that required by the side boundary setback controls may to be constructed closer to the side boundaries where:

- a. The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP2013.
- b. The pattern of development within the streetscape is not compromised.
- c. The bulk and scale of development is minimised by reduced floor to ceiling heights.
- d. The proposal is acceptable with respect to applicable amenity controls.
- e. The proposal does not unduly obstruct adjoining properties for maintenance purposes.

In assessment of the application under control C8, it is considered that the proposed side wall heights are acceptable for the following reasons:

- The proposal is for new dwellings. As such, Appendix B does not apply to the proposal. As outlined in other sections and parts of this report, the proposal, complies with streetscape and desired future character controls.
- The proposed side setbacks will not compromise, the pattern of development along Hubert Street, which has a variety of building types and side boundary setbacks. The proposed side boundary setbacks are commensurate with development in the site's vicinity.
- The proposed development has not sought excessive floor to ceiling heights and, on balance, is of a reasonable bulk and scale.
- The proposed development is acceptable with regard to solar access and visual privacy controls and there are no issues raised with regard to the obstruction of significant views.
- The proposal does not obstruct adjoining properties for maintenance purposes.

Accordingly, the proposed side boundary setbacks of the proposed semi-detached dwellings are acceptable as the requirements of control C8 are satisfied.

Side Boundary Setbacks – Detached Structures

The proposed height of the side walls of the detached covered terraces, when measured to the top of the parapet is measures ~2.9m (RL 8.64). The proposed side boundary setback of 524mm complies with the side setback control graph under control C7 at Part C3.2 of the LDCP 2013.

Landscaped Open Space

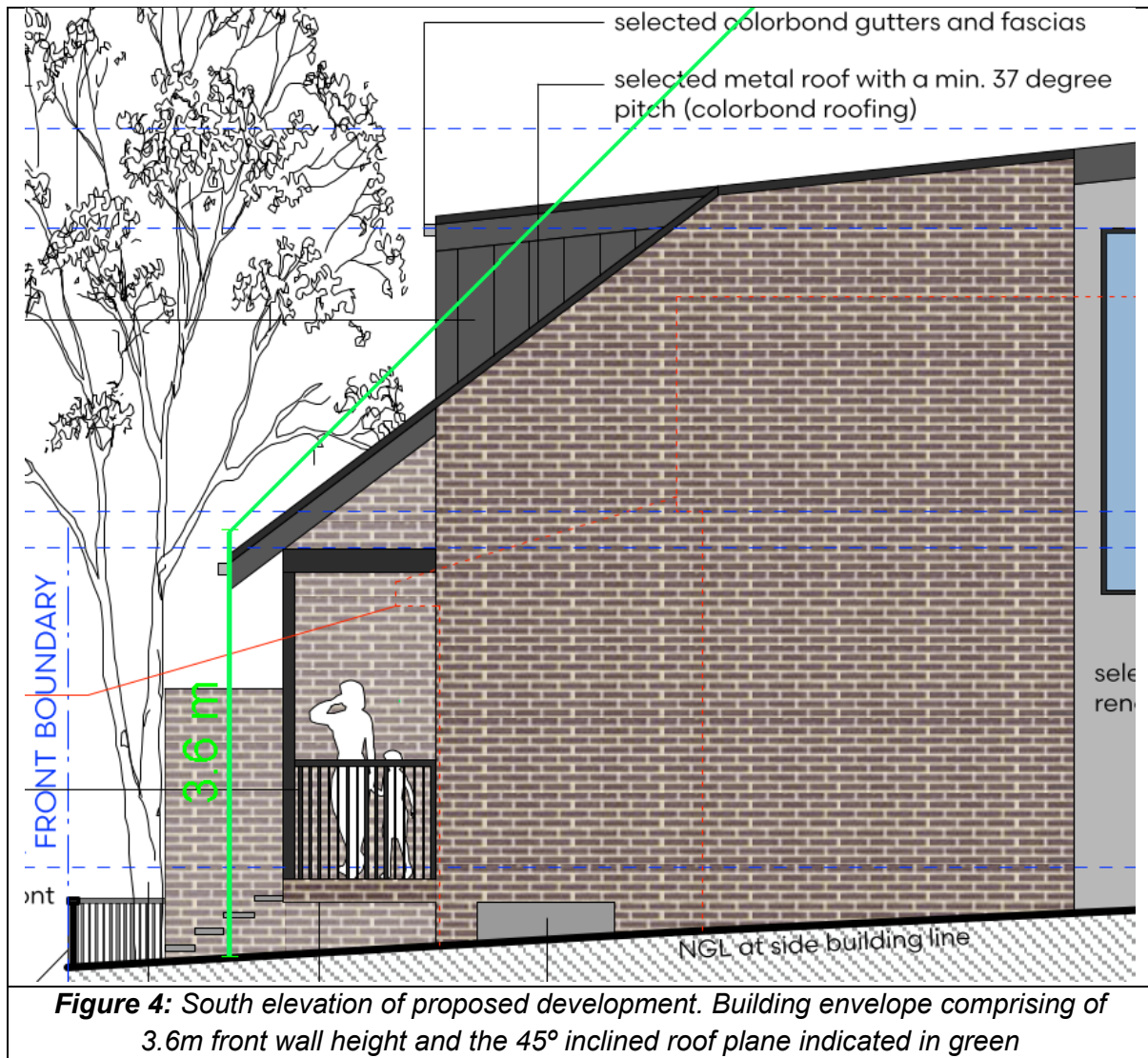
The proposed development includes landscaped area at the front and rear of the site in a manner which is consistent with the BLZ controls. These areas of landscaping are consolidated to facilitate substantial landscaping and tree planting. Moreover, the proposed landscaped open spaces are seamlessly incorporated into the private open space at the rear of the site, which ensures adequate amenity for the new dwellings.

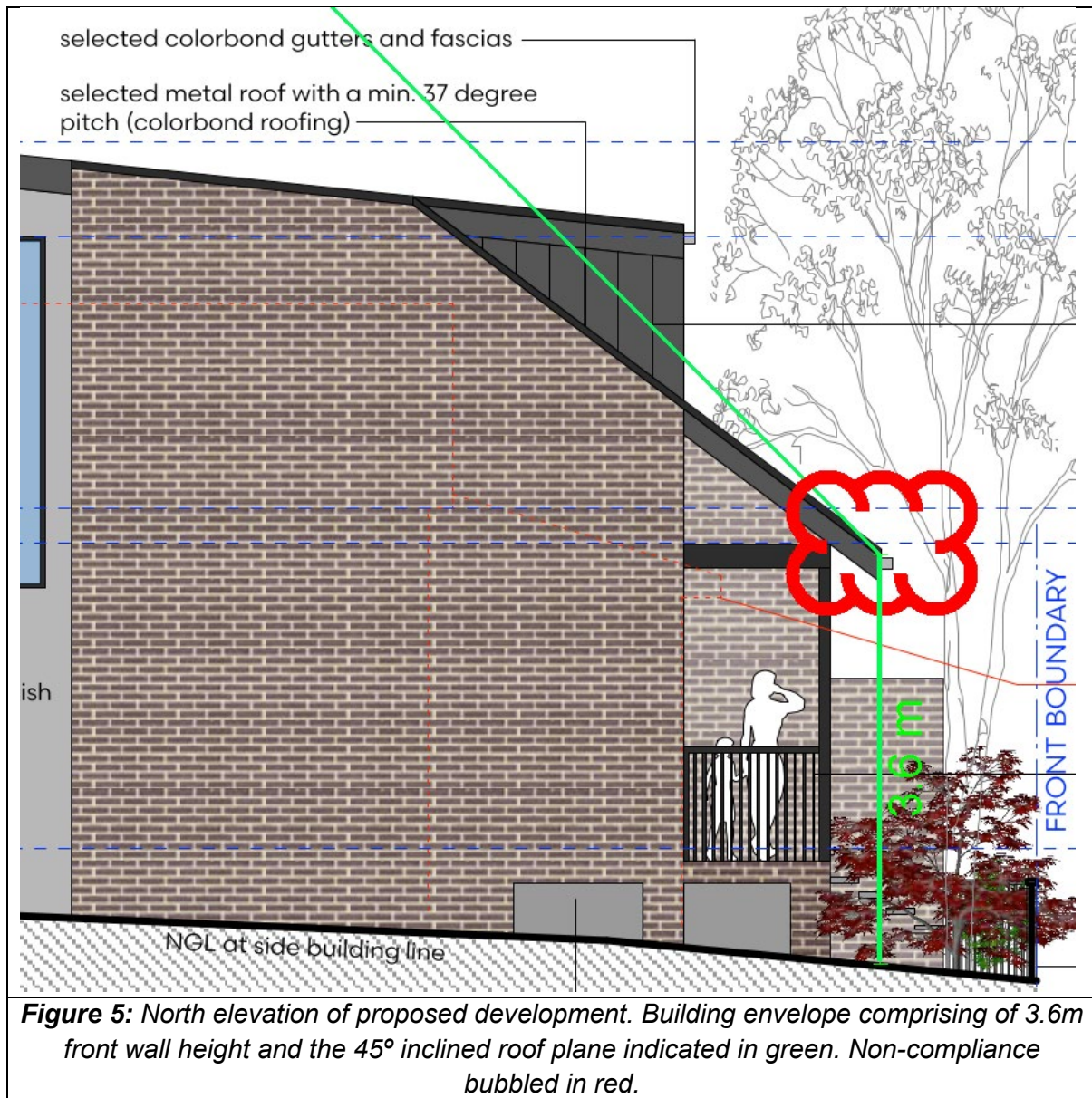
Building Envelope

The building envelope defines the maximum potential volume of a development above ground level. It applies to the following parts of a building:

- a. the whole area defined by external walls; and
- b. includes covered areas such as verandahs and balconies (but does not include open decks and paved areas).

The site falls within the Helsarmel Distinctive Neighbourhood as outlined in Part C2.2.3.4 of the LDCP 2013. Development in this area is subject to a maximum building envelope of 3.6m, as specified in control C9 of the same section. The proposed development complies with the prescribed front wall height of 3.6m and the 45° inclined roof plane requirement on the south elevation (refer to figure 4). However, the proposal deviates from the 3.6m control on the north elevation when measured to the front roof line of the front verandah (refer to figure 5). Despite this variance, the proposed variation is minor and harmonises with the scale and architecture of the adjacent development at Nos. 39 and 39a Hubert Street. Further, it is noted that the proposed dormer windows sited at the street elevation penetrate the envelope which is considered acceptable in accordance with Control C16 of Part C3.2 of the LDCP 2013 as the resultant design is compatible with the street.





C3.4 Dormer Windows

The proposal seeks to provide two (2) dormer windows at the front elevation to Hubert Street, providing one (1) dormer to each side of the semi-detached dwelling. The proposed dormers demonstrate general compliance with the controls contained with Part C3.4 of the LDCP 2013 with the exception of controls C4 and C8 which prescribes the following:

C4 The minimum distance between the main roof ridge and the dormer window is 300mm.

C8 Dormer windows must not have a total width of more than 25% of the width of the roof.

Notwithstanding the departure to the control above, the proposed dormer windows are considered to be an appropriate design outcome reflective of other building styles in the

locality with a similar façade articulation including those at Nos. 39 and 39a Hubert Street. Moreover, the proposed dormers do not compromise the unity of any rows or groups of dwellings and are compatible with the contemporary style of the building and adjoining development. As such, the proposal achieves objective O1(a) and (c) and is supported on merit.

C3.9 Solar Access

New Dwellings

As the proposal includes the construction of new dwellings, C4 (Private Open Space) and C9 (Main Living room) of the LDCP 2013 are applicable. An assessment of solar access for each lot is carried out below:

Lot A – No. 41 (south residence)

- C4 – The proposal achieves solar access to the private open space of the southern semi-detached dwelling between 10am and 3pm. The boundary wall that separates the proposed semi-detached dwellings has been lowered to a height of 1.8m, which ensures solar access can be provided for 3 hours.
- C9 – Given the orientation of the proposed lot, the location of the main living areas to the rear of the site face east, resulting in living rooms receiving direct solar access in the morning hours. This has been demonstrated from 9am to 10am. The proposal also includes two skylights at each residence positioned over the living room which enables the living rooms to maximise the room's exposure to direct sunlight.

Lot B – No. 41a (north residence)

- C4 – The northernmost lot does not meet the required 3 hours of solar access under the control. However, there is no other alternative solution that would result in a superior outcome for the site noting the orientation of the lot and the development density of existing development located at No. 43-45 Hubert Street. Notwithstanding, the applicant has produced equinox solar access diagrams, which demonstrate the lot receives considerable direct solar access between 9am and 3pm.
- C9 – Given the orientation of the proposed lot, the location of the main living areas to the rear of the site face east, resulting in living rooms which will receive direct solar access in the morning hours. Due to the density of the existing development located at No. 43-45 Hubert Street, solar access to the rear main living room window is limited during mid-winter. Notwithstanding, the proposal includes two skylights at each residence positioned over the living room which enables the living rooms to maximum the room's exposure to direct sunlight.

Minimise Impact to Neighbouring Properties – Living Areas

Shadow diagrams portraying the shadow cast by the existing structures and the proposed development for the winter solstice were submitted with the application.

The main living room windows of surrounding properties, impacted by the proposal, is oriented as follows:

Street Address	Orientation	Control
39A Hubert Street	East/West	2 hours
39 Hubert Street	East/West	2 hours

An assessment of the overshadowing impact on the properties identified in the table above is undertaken below.

The proposed development is designed with greater rear building setbacks compared to the existing development at properties 39A and 39 Hubert Street. As a result, the staggered rear building alignment ensures that the proposed development, situated on the northern side of these properties, would not cause overshadowing impacts on the rear (east) facing main living room window of these properties. Moreover, the existing skylights in the roof form above the ground floor main living room, aimed at maximising sunlight exposure to the main living area, would not be unreasonably overshadowed. This is achieved through the design of the proposed first floor level, which is articulated with a greater rear building setback compared to the first floor level of No. 39A and 39 Hubert Street. This design solution ensures that solar access is maintained throughout the morning during the winter solstice, aligning with reasonable expectations for a property oriented towards the east.

Having regard to the above, the proposed development's greater rear building setbacks effectively mitigates overshadowing impacts on the rear facing main living room window of properties 39A and 39 Hubert Street and minimises impacts on the neighbouring properties skylights. This design solution ensures reasonable solar access is retained to those properties, which accords with objectives O1(a), (d) and (f) at Part C3.9 of the LDCP 2013.

Minimise Impact to Neighbouring Properties – Private Open Space

The private open space of surrounding properties, impacted by the proposed development, is oriented as follows:

Street Address	Orientation	Control
39A Hubert Street	East/West	2½ hours
39 Hubert Street	East/West	2½ hours
122 Francis Street	East/West	2½ hours
120 Francis Street	East/West	2½ hours
118 Francis Street	East/West	2½ hours

An assessment of the overshadowing impact on the properties identified in the table above is undertaken below.

No. 39A Hubert Street

The shadow diagrams provided indicate that during the winter solstice, No. 39A Hubert Street currently lacks the requisite amount of solar access. However, the proposal results in an overall enhancement in direct solar exposure due to the replacement of the existing detached structure with a rear covered terrace. Additionally, the newly gained sunlight falls upon an area of the property close to the main living room window, which holds greater significance. Hence, the proposed alterations result in an improved solar access for No. 39A Hubert Street given the present circumstances, without adversely affecting the neighbouring property's amenity. While there is some additional overshadowing from the proposed main building, its ground and first floor levels are designed with greater rear setbacks compared to those of No. 39A Hubert Street. Therefore, it is deemed unreasonable to further increase the setbacks of the proposed rear building.

No. 39 Hubert Street

The shadow diagrams show that additional shadows fall across the private open space of No. 39 Hubert Street at 3pm. However, the additional overshadowing is deemed acceptable since direct sunlight remains accessible throughout the day during the winter solstice, and the additional shadows only affect the rear corner of the property, where protecting solar access is less critical.

Nos. 118, 120 & 122 Francis Street

The shadow diagrams further demonstrate that the proposed detached covered terrace would result in some additional overshadowing on the private open spaces of properties at the rear of the site between 12pm and 3pm. Council has deduced that the shadows cast by the proposed covered terrace would be slightly longer than that of the existing structure proposed for demolition. However, it is deemed that this slight increase in overshadowing would not have any noticeable impact on properties at the rear.

Considering the above, the additional overshadowing during the winter solstice is considered acceptable as the proposal is considered to achieve the objectives of this part of the LDCP 2013 as the degree of overshadowing to neighbouring properties has generally been minimised and is considered acceptable; hence, the proposal has been designed to protect and provide a high level of amenity for neighbouring properties.

C3.11 Visual Privacy

The visual privacy controls prescribed in this part of the LDCP 2013 aim to protect sightlines and overlooking between living areas and private open space and ensure that spaces are designed with a high level of consideration to protecting visual privacy within the dwelling. The proposed development locates high use areas (i.e. the main living room) at the ground level and low traffic rooms at the first floor (i.e. bedrooms). Further, the private open space is located at grade level. These design choices assist in minimising overlooking opportunities between properties, which aligns with objective O1 under this part of the LDCP 2013.

It is noted that one (1) submission was received raising concern about privacy and overlooking from the window on the south (side) elevation of the new dwelling on the proposed southern lot, which services a stairwell. The placement of the window on the side elevation is considered acceptable for the following reasons:

- The proposed window, which services a stairwell, is located near No. 39A Herbert Street's stairwell window. These areas are considered to be low use areas and are not considered to be capable of generating adverse overlooking opportunities.
- Whilst the LDCP 2013 encourages windows to be offset, the windows are only slightly offset resulting in potential sightlines between the adjoining windows. It is considered and anticipated that screening methods, such as blinds or obscured glazing, could be implemented to manage any potential sightlines between the subject windows.

As such, the proposal would achieve compliance with the relevant controls and objectives of part C3.11 of the LDCP 2013 and it is considered that an adequate level of visual separation is achieved between the subject dwellings and adjacent properties. In light of the above considerations, the proposal is considered acceptable.

C. The Likely Impacts

A. These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed. Upon the completion of onsite remediation and validation works as outlined in the Remediation Action Plan, the site will be suitable for the proposed use.

E. Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 08 August 2023 to 16 August 2023.

One (1) submission was received in response to the initial notification.

The application was renotified between 24 April 2024 to 08 May 2024 and no submissions were received.

Issues raised in the submission received are discussed below:

Concern	Comment
Overshadowing impact	The proposed development is expected to affect the windows situated on the northern facade of No. 39A Hubert Street. These windows serve various functions, including providing light to a bathroom, butler’s pantry on the ground floor, and a stairwell and bathrooms on the first floor. Since these rooms are not subject to protection under Part C3.9 the LDCP 2013. Due to their infrequent use, they lack specific privacy considerations and elevation shadow diagrams to assess the overshadowing impact on these windows were required in this instance. However, it’s worth noting that these windows are centrally positioned on the northern side, rendering them particularly susceptible to overshadowing from new development to the north. Additionally, the scale of the development causing the overshadowing is deemed reasonable given the circumstances of this case.
Visual privacy impact from opposite stairwell windows	Part C3.11 of the LDCP 2013 requires privacy mitigation measures between the private open spaces or main living areas of adjacent dwellings. However, the windows in question serve the stairwells, and therefore, privacy mitigation measures are not deemed necessary. While the DCP encourages windows to be offset, the proposed windows are only slightly offset. It is therefore considered and anticipated that post-development approval screening methods, such as blinds or obscured glazing, could be implemented to manage any potential sightlines between the windows.
Bulk and scale impact	In accordance with Part C3.2 of the LDCP 2013, the proposed development sited in a location where new development can reasonably be expected to occur, and it is commensurate with the scale of development on neighbouring sites. Furthermore, the windows through which the proposed development would be most noticeable serve low-use areas such as a bathroom, butler’s pantry, and stairwell. These areas are not expected to be adversely affected in terms of visual bulk and scale.

F. 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.

This has been achieved in this instance.

6. Section 7.11

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$20,000.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

7. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Development Engineer;
- Urban Forest; and
- Environmental Health.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Leichhardt Development Control Plan 2013.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the minimum subdivision lot size development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/0850 for demolition, remediation works, construction of two dwellings, and Torrens title subdivision at 41 Hubert Street, Leichhardt subject to the conditions listed in Attachment A below/for the following reasons.

Attachment A – Recommended conditions of consent

GENERAL CONDITIONS

	Condition
1.	<p style="text-align: center;">Boundary Alignment Levels</p> <p>Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.</p> <p>Reason: To allow for pedestrian and vehicular access.</p>
2.	<p style="text-align: center;">Permits</p> <p>Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the <i>Local Government Act 1993</i> and/or Section 138 of the <i>Roads Act 1993</i>. Permits are required for the following activities:</p> <ul style="list-style-type: none"> a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application; b. A concrete pump across the roadway/footpath; c. Mobile crane or any standing plant; d. Skip Bins; e. Scaffolding/Hoardings (fencing on public land); f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; g. Awning or street veranda over the footpath; h. Partial or full road closure; and i. Installation or replacement of private stormwater drain, utility service or water supply. <p>If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
3.	<p style="text-align: center;">Public Domain and Vehicular Crossings</p> <p>The redundant vehicular crossing works are required to be removed by your contractor. You or your contractor must complete an application for <i>Public Domain Works – Step 1</i> form and removing of <i>Redundant Vehicle Crossing and Public Domain Works – Step 2</i> form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.</p> <p>You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity,</p>

	<p>Street lighting and Telecommunications required as a result of the development must be at no cost to Council</p> <p>Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.</p> <p>Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.</p> <p>No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>																																											
4.	Documents related to the consent																																											
	<p>The development must be carried out in accordance with plans and documents listed below:</p>																																											
	<table border="1"> <thead> <tr> <th data-bbox="440 770 707 831">Plan, Revision and Issue No.</th> <th data-bbox="722 770 922 831">Plan Name</th> <th data-bbox="922 770 1121 831">Date Issued/Received</th> <th data-bbox="1121 770 1273 831">Prepared by</th> </tr> </thead> <tbody> <tr> <td data-bbox="440 837 707 911">DA01, Rev. A</td> <td data-bbox="722 837 922 911">Proposed Site Analysis Plan</td> <td data-bbox="922 837 1121 911">21/09/2023</td> <td data-bbox="1121 837 1273 911">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 911 707 1016">DA02, Rev. A</td> <td data-bbox="722 911 922 1016">Proposed Site Plan & BASIX/NaTHERS REQ.</td> <td data-bbox="922 911 1121 1016">21/09/2023</td> <td data-bbox="1121 911 1273 1016">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1016 707 1090">DA03, Rev. A</td> <td data-bbox="722 1016 922 1090">Proposed Demolition Plan</td> <td data-bbox="922 1016 1121 1090">21/09/2023</td> <td data-bbox="1121 1016 1273 1090">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1090 707 1196">DA04, Rev. A</td> <td data-bbox="722 1090 922 1196">Proposed Ground Floor Plan</td> <td data-bbox="922 1090 1121 1196">21/09/2023</td> <td data-bbox="1121 1090 1273 1196">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1196 707 1279">DA05, Rev. A</td> <td data-bbox="722 1196 922 1279">Proposed First Floor Plan</td> <td data-bbox="922 1196 1121 1279">21/09/2023</td> <td data-bbox="1121 1196 1273 1279">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1279 707 1352">DA06, Rev. A</td> <td data-bbox="722 1279 922 1352">Proposed Roof Plan</td> <td data-bbox="922 1279 1121 1352">21/09/2023</td> <td data-bbox="1121 1279 1273 1352">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1352 707 1426">DA07, Rev. A</td> <td data-bbox="722 1352 922 1426">Proposed West & East Elevations</td> <td data-bbox="922 1352 1121 1426">21/09/2023</td> <td data-bbox="1121 1352 1273 1426">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1426 707 1509">DA08, Rev. A</td> <td data-bbox="722 1426 922 1509">Proposed North & South Elevations</td> <td data-bbox="922 1426 1121 1509">21/09/2023</td> <td data-bbox="1121 1426 1273 1509">Dagliesh Ward Architects</td> </tr> <tr> <td data-bbox="440 1509 707 1592">DA09, Rev. A</td> <td data-bbox="722 1509 922 1592">Proposed Section A-A</td> <td data-bbox="922 1509 1121 1592">21/09/2023</td> <td data-bbox="1121 1509 1273 1592">Dagliesh Ward Architects</td> </tr> </tbody> </table>	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by	DA01, Rev. A	Proposed Site Analysis Plan	21/09/2023	Dagliesh Ward Architects	DA02, Rev. A	Proposed Site Plan & BASIX/NaTHERS REQ.	21/09/2023	Dagliesh Ward Architects	DA03, Rev. A	Proposed Demolition Plan	21/09/2023	Dagliesh Ward Architects	DA04, Rev. A	Proposed Ground Floor Plan	21/09/2023	Dagliesh Ward Architects	DA05, Rev. A	Proposed First Floor Plan	21/09/2023	Dagliesh Ward Architects	DA06, Rev. A	Proposed Roof Plan	21/09/2023	Dagliesh Ward Architects	DA07, Rev. A	Proposed West & East Elevations	21/09/2023	Dagliesh Ward Architects	DA08, Rev. A	Proposed North & South Elevations	21/09/2023	Dagliesh Ward Architects	DA09, Rev. A	Proposed Section A-A	21/09/2023	Dagliesh Ward Architects			
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DA09, Rev. A	Proposed Section A-A	21/09/2023	Dagliesh Ward Architects																																									

	DA10, Rev. A	Proposed External Finishes Schedule	21/09/2023	Dalgliesh Ward Architects
	DA14, Rev. A	Proposed Torrens Title Subdivision	21/09/2023	Dalgliesh Ward Architects
	L01, Rev. A	Landscape Plan	23/05/2023	Landscape Architect
	1396304M	BASIX Certificate	27/05/2023	SDS Engineering
	230039 - REV01	Flood Risk Management Report	27/03/2023	SMART Structures Australia
	20230013.1/1801A/R0/LL, Rev. 0	Aircraft Noise Intrusion Assessment	18/01/2023	Acoustic Logic
	Version 2	Arboricultural Impact Assessment and Tree Management Plan	6/09/2023	Horticultural Management Services
	P2410163JR02V01, Issue 1	Detailed Site Investigation	2/04/2024	Martens and Associates
	P2410163JR01V011, Issue 1	Remedial Action Plan	3/04/2024	Martens and Associates
	As amended by the conditions of consent.			
	Reason: To ensure development is carried out in accordance with the approved documents.			
5.	Works Outside the Property Boundary			
	This development consent does not authorise works outside the property boundaries on adjoining lands.			
	Reason: To ensure works are in accordance with the consent.			
6.	Storage of Materials on public property			
	The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.			
	Reason: To protect pedestrian safety.			
7.	Other works			
	Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the <i>Environmental Planning and Assessment Act 1979</i> .			
	Reason: To ensure compliance with legislative requirements.			

8.	<p style="text-align: center;">National Construction Code (Building Code of Australia)</p> <p>A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
9.	<p style="text-align: center;">Notification of commencement of works</p> <p>Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:</p> <ul style="list-style-type: none"> a. In the case of work for which a principal contractor is required to be appointed: <ul style="list-style-type: none"> i. The name and licence number of the principal contractor; and ii. The name of the insurer by which the work is insured under Part 6 of that Act. b. In the case of work to be done by an owner-builder: <ul style="list-style-type: none"> 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. <p>Reason: To ensure compliance with legislative requirements.</p>
10.	<p style="text-align: center;">Dividing Fences Act</p> <p>The person acting on this consent must comply with the requirements of the <i>Dividing Fences Act 1991</i> in respect to the alterations and additions to the boundary fences.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
11.	<p style="text-align: center;">Lead-based Paint</p> <p>Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.</p> <p>Reason: To protect human health.</p>
12.	<p style="text-align: center;">Dial before you dig</p> <p>Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.</p> <p>Reason: To protect assets and infrastructure.</p>

13.	Bin Storage
	<p>All bins are to be stored within the property.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
14.	Asbestos Removal
	<p>Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
15.	Insurances
	<p>Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
16.	Contamination – Remedial Action Plan (No Site Auditor Engaged)
	<p>The site is to be remediated and validated in accordance with all the recommendations set out in the Remedial Action Plan, prepared by Martens and Associates, reference P2410163JR01V011 dated 03/04/2024, the Contaminated Land Management Act 1997 and Chapter 4 - Remediation of Land of the State Environmental Planning Policy (Resilience and Hazards) 2021.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination and ensure that the development is carried out in accordance with the consent.</p>

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition				
17.	<p>Security Deposit - Custom</p> <p>Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.</p> <table border="1" style="margin-left: 20px;"> <tr> <td>Security Deposit:</td> <td>\$9,155.00</td> </tr> <tr> <td>Inspection Fee:</td> <td>\$374.50</td> </tr> </table>	Security Deposit:	\$9,155.00	Inspection Fee:	\$374.50
Security Deposit:	\$9,155.00				
Inspection Fee:	\$374.50				

	<p>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.</p> <p>The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.</p> <p>Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.</p> <p>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.</p> <p>The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.</p> <p>Reason: To ensure required security deposits are paid.</p>
<p>18.</p>	<p>Dilapidation Report – Pre-Development – Minor</p> <p>Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.</p> <p>Reason: To ensure Council assets are protected.</p>
<p>19.</p>	<p>Stormwater Drainage System – Minor Developments (OSD is required)</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on-site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:</p> <ol style="list-style-type: none"> 1. The stormwater drainage concept plan on Drawing No. 230039 prepared by SMART STRUCTURES AUSTRALIA and dated 1 May 2023, shall amended to comply with the following: <ol style="list-style-type: none"> a. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks as necessary; b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;

	<ul style="list-style-type: none">c. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);d. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;e. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre-development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;h. Only roof water is permitted to be connected to the storage tank. The overflow from the OSD/OSR must be connected by gravity to the kerb and gutter of a public road;i. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;j. Drainage pipes must be designed at a minimum grade of 1%. Pipe diameter and invert level, pit surface and invert level and finished surface ground level must be shown on the plan;k. An overland flowpath must be provided within the setback to the side boundary with adjoining properties between the rear of the dwelling and the Hubert Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath;l. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;m. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;n. No nuisance or concentration of flows to other properties;o. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;p. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;q. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;r. 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 maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
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	<ul style="list-style-type: none"> s. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; t. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated; u. No impact to street tree(s). <p>Reason: To ensure that the adequate provision of stormwater drainage is provided.</p>
<p>20.</p>	<p>Public Domain Works – Prior to Construction Certificate</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the <i>Roads Act 1993</i> incorporating the following requirements:</p> <ul style="list-style-type: none"> a. Installation of a stormwater outlet to the kerb and gutter. <p>All works must be completed prior to the issue of an Occupation Certificate.</p> <p>Reason: To ensure public domain works are constructed to Council's standards</p>
<p>21.</p>	<p>Flood Risk Management Plan</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:</p> <ul style="list-style-type: none"> a. The plan must be generally in accordance with the recommendations of the Flood Risk Management Report prepared by SMART STRUCTURES AUSTRALIA and dated 27 March 2023; b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following: <ul style="list-style-type: none"> i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris; ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections; iii. Flood warning signs/depth indicators for areas that may be inundated; iv. A flood evacuation strategy; and v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level. c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have

	<p>equivalent meaning to terms used in Council's Development Control Plan as listed below:</p> <ul style="list-style-type: none"> i. Building Code of Australia; ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level; iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and iv. Flood hazard level (FHL) Flood Planning Level (FPL). <p>Reason: To protect human life and property during a flood event</p>						
<p>22.</p>	<p>Construction Methods to Minimise Impact on Trees</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist (AQF Level 5 - the Project Arborist) demonstrating that the footings of the approved dwellings utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk/s of the following trees:</p> <table border="1" data-bbox="459 763 1233 824"> <thead> <tr> <th>Tree No.</th> <th>Botanical/Common Name</th> <th>Radius in metres</th> </tr> </thead> <tbody> <tr> <td>2</td> <td><i>Agonis flexuosa</i> (WA Weeping Myrtle)</td> <td>5m</td> </tr> </tbody> </table> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).</p> <p>Reason: To mitigate the impact of the work on trees to be retained.</p>	Tree No.	Botanical/Common Name	Radius in metres	2	<i>Agonis flexuosa</i> (WA Weeping Myrtle)	5m
Tree No.	Botanical/Common Name	Radius in metres					
2	<i>Agonis flexuosa</i> (WA Weeping Myrtle)	5m					
<p>23.</p>	<p>Long Service Levy</p> <p>Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.</p> <p>Reason: To ensure the long service levy is paid.</p>						
<p>24.</p>	<p>Sydney Water – Tap In</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.</p> <p>Note: Please refer to the web site http://www.sydneywater.com.au/tapin/index.htm for details on the process or telephone 13 20 92.</p> <p>Reason: To ensure relevant utility and service provides requirements are provided to the certifier.</p>						

25.	<p>Acoustic Report – Aircraft Noise</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.</p> <p>Reason: To ensure all noise attenuation is in accordance with the relevant Australian Standard.</p>														
26.	<p>Section 7.11 Contribution</p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p> <table border="1" data-bbox="435 712 1145 1019"> <thead> <tr> <th>Contribution Category</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Open Space & Recreation</td> <td>\$14,300.00</td> </tr> <tr> <td>Community Facilities</td> <td>\$2,650.00</td> </tr> <tr> <td>Transport</td> <td>\$1,880.00</td> </tr> <tr> <td>Plan Administration</td> <td>\$184.00</td> </tr> <tr> <td>Drainage</td> <td>\$986.00</td> </tr> <tr> <td>TOTAL</td> <td>\$20,000.00</td> </tr> </tbody> </table> <p>At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:</p> $C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$ <p>Where:</p> <p>C_{payment} = is the contribution at time of payment</p> <p>C_{consent} = is the contribution at the time of consent, as shown above</p> <p>CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 137.7 for the March 2024 quarter.</p> <p>CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment</p> <p>Note: The contribution payable will not be less than the contribution specified in this condition.</p> <p>The monetary contributions must be paid to Council (i) <u>if the development is for subdivision – prior to the issue of the subdivision certificate</u>, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if</p>	Contribution Category	Amount	Open Space & Recreation	\$14,300.00	Community Facilities	\$2,650.00	Transport	\$1,880.00	Plan Administration	\$184.00	Drainage	\$986.00	TOTAL	\$20,000.00
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	<p>the development does not require a construction certificate or subdivision certificate – prior to the works commencing.</p> <p><u>It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.</u></p> <p>Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.</p> <p>Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.</p> <p>Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).</p> <p>The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.</p> <p>Reason: To ensure payment of the required development contribution.</p>
<p>27.</p>	<p>Flood Affected Site</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:</p> <ol style="list-style-type: none"> a. All habitable floor levels must be set no lower than 5.35 m AHD (flood level plus 500mm freeboard). All structures below RL 5.35 m AHD must be constructed from flood compatible materials; b. All electrical equipment and wiring must be waterproofed or installed at or above RL 5.35 m AHD; c. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level; d. The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan; and e. All fencing within the overland flow path must be of an open type so as to allow for the free flow of water throughout the site so as to maintain existing flows. <p>Reason: To ensure the safety and flood resilience of the proposed development and its surroundings.</p>

28.	<p>Hazardous Materials Survey</p> <p>Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.</p> <p>A copy of any SafeWork NSW approval documents is to be included as part of the documentation.</p> <p>Reason: To ensure compliance with the requirements of SafeWork NSW.</p>
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BEFORE BUILDING WORK COMMENCES

	Condition
29.	<p>Project Arborist</p> <p>Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.</p> <p>Reason: To protect and retain trees.</p>
30.	<p>Waste Management Plan</p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
31.	<p>Erosion and Sediment Control</p> <p>Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>

32.	<p>Dilapidation Report</p> <p>Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the identified properties (43-45 Hubert Street, 39A Hubert Street) to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.</p> <p>Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
33.	<p>Construction Fencing</p> <p>Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.</p> <p>Reason: To protect the built environment from construction works.</p>

DURING BUILDING WORK

	Condition						
34.	<p>Tree Protection</p> <p>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.</p> <p>Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.</p> <p>Any public tree within five (5) metres of the development must be protected in accordance with Council's <i>Development Fact Sheet—Trees on Development Sites</i>.</p> <p>No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.</p> <p>The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :</p> <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 15%;">Tree No.</th> <th style="width: 55%;">Botanical/Common Name</th> <th style="width: 30%;">Location</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2</td> <td><i>Agonis flexuosa</i> (WA Weeping Myrtle)</td> <td style="text-align: center;">Front</td> </tr> </tbody> </table>	Tree No.	Botanical/Common Name	Location	2	<i>Agonis flexuosa</i> (WA Weeping Myrtle)	Front
Tree No.	Botanical/Common Name	Location					
2	<i>Agonis flexuosa</i> (WA Weeping Myrtle)	Front					

	<p>Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:</p> <p>a. Green for trees to be retained;</p> <p>NOTE: Reference should be made to the <i>Arboricultural Impact Assessment Report prepared by Horticultural Management Services dated 6 September 2023 (Rev 2) for tree numbering and locations.</i></p> <p>Reason: To ensure that trees to be retained are protected.</p>						
<p>35.</p>	<p>Inspections by Project Arborist</p> <p>The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at the following times or phases of work:</p> <table border="1" data-bbox="448 685 1174 1482"> <thead> <tr> <th data-bbox="448 685 751 741">Tree No./ Common Name/ Botanical/ Location</th> <th data-bbox="751 685 938 741">Time of Inspection</th> <th data-bbox="938 685 1174 741">Key stage/ Hold point</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 741 751 1482"> <p><i>Agonis flexuosa</i> (WA Weeping Myrtle) - front</p> </td> <td data-bbox="751 741 938 1482"> <p>Prior to commencement of works</p> </td> <td data-bbox="938 741 1174 1482"> <ul style="list-style-type: none"> Inspection and sign off installation of tree protection measures. Ground protection in accordance with part 9.1, fencing in accordance with part 9.0 and installation of rainwater tanks in accordance with part 9.2 of the Tree Management Plan prepared by Horticultural Management Services dated 6 September 2023. </td> </tr> </tbody> </table>	Tree No./ Common Name/ Botanical/ Location	Time of Inspection	Key stage/ Hold point	<p><i>Agonis flexuosa</i> (WA Weeping Myrtle) - front</p>	<p>Prior to commencement of works</p>	<ul style="list-style-type: none"> Inspection and sign off installation of tree protection measures. Ground protection in accordance with part 9.1, fencing in accordance with part 9.0 and installation of rainwater tanks in accordance with part 9.2 of the Tree Management Plan prepared by Horticultural Management Services dated 6 September 2023.
Tree No./ Common Name/ Botanical/ Location	Time of Inspection	Key stage/ Hold point					
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		<p>During Works</p>	<ul style="list-style-type: none"> • Supervise all works inside or above the TPZ; • Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ; • Supervise all tree work. 					
		<p>And -</p>	<ul style="list-style-type: none"> • In accordance with the approved Tree Protection Plan and works methodologies referred to in the Arboricultural Impact Assessment prepared by Horticultural management Services dated 6 September 2023 (Version 2). 					
	<p>Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.</p> <p>Reason: To protect and retain trees.</p>							
<p>36.</p>	<p>Canopy and Root Pruning</p> <p>Canopy pruning of the following trees which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.</p> <table border="1" data-bbox="459 1272 1174 1335"> <thead> <tr> <th>Tree No.</th> <th>Botanical/Common Name</th> </tr> </thead> <tbody> <tr> <td>2</td> <td><i>Agonis flexuosa</i> (WA Weeping Myrtle) / front</td> </tr> </tbody> </table> <p>The person acting on this consent has approval under Council's Tree Management Controls to prune in accordance with the Pruning Specification in part 9.3 of the Arboricultural Impact Assessment (AIA) prepared by Horticultural Management Services dated 6 September 2023 (Ver 2). Approved pruning is in accordance with the following as detailed in the AIA -</p> <p>1 x 100mm diameter limb</p> <p>1 x 50mm diameter limb</p>				Tree No.	Botanical/Common Name	2	<i>Agonis flexuosa</i> (WA Weeping Myrtle) / front
Tree No.	Botanical/Common Name							
2	<i>Agonis flexuosa</i> (WA Weeping Myrtle) / front							

	<p>2 x 20mm limbs</p> <p>No other pruning is approved including for scaffolding.</p> <p>Reason: To protect and retain trees.</p>				
37.	<p>Limited Root Pruning</p> <p>No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s may be severed or injured in the process of any works during the construction period:</p> <table border="1" data-bbox="459 593 1177 651"> <thead> <tr> <th>Tree No.</th> <th>Botanical/Common Name</th> </tr> </thead> <tbody> <tr> <td>2</td> <td><i>Agonis flexuosa</i> (WA Weeping Myrtle) - front</td> </tr> </tbody> </table> <p>All excavation within 5 m being hand dug under the direct supervision of the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and <i>fit for purpose tool</i>. The pruning must be undertaken by, or directly supervised by, the Project Arborist.</p> <p>Reason: To protect and retain trees.</p>	Tree No.	Botanical/Common Name	2	<i>Agonis flexuosa</i> (WA Weeping Myrtle) - front
Tree No.	Botanical/Common Name				
2	<i>Agonis flexuosa</i> (WA Weeping Myrtle) - front				
38.	<p>Arborists standards</p> <p>All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—<i>Pruning of amenity trees</i> and the Safe Work Australia Code of Practice—<i>Guide to Managing Risks of Tree Trimming and Removal Work</i>. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.</p> <p>Reason: To ensure compliance with legislative requirements.</p>				
39.	<p>Tree Protection Works</p> <p>All tree protection for the site must be undertaken in accordance with Council's <i>Development Fact Sheet—Trees on Development Sites</i> and AS4970—<i>Protection of trees on development sites</i>.</p> <p>Reason: To protect and retain trees.</p>				

40.	<p>Works to Trees</p> <p>Approval is given for the following works to be undertaken to trees after the issuing of a Construction Certificate:</p> <table border="1" data-bbox="459 409 1209 495"> <thead> <tr> <th data-bbox="459 409 944 439">Tree/location</th> <th data-bbox="944 409 1209 439">Approved works</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 439 944 495">Tree 1 - <i>Olea europaea</i> (European Olive) / street tree</td> <td data-bbox="944 439 1209 495">Removal</td> </tr> </tbody> </table> <p>The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree/s removal.</p> <p>Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's <i>Development Fact Sheet—Trees on Development Sites</i>.</p> <p>Reason: To identify trees permitted to be pruned or removed.</p>	Tree/location	Approved works	Tree 1 - <i>Olea europaea</i> (European Olive) / street tree	Removal
Tree/location	Approved works				
Tree 1 - <i>Olea europaea</i> (European Olive) / street tree	Removal				
41.	<p>Advising Neighbours Prior to Excavation</p> <p>At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, reasonable notice must be provided to the owner of the adjoining allotment of land including particulars of the excavation.</p> <p>Reason: To ensure surrounding properties are adequately notified of the proposed works.</p>				
42.	<p>Construction Hours – Class 1 and 10</p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>				
43.	<p>Survey Prior to Footings</p> <p>Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.</p> <p>Reason: To ensure works are in accordance with the consent.</p>				
44.	<p>Imported Fill Materials</p> <p>All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.</p> <p>All fill imported onto the site shall be validated by either one or both of the following methods:</p>				

	<p>Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or</p> <p>Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>
45.	<p>Contamination – New Evidence</p> <p>Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
46.	<p>Public Domain Works</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the <i>Roads Act 1993</i> including:</p> <ul style="list-style-type: none"> a. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone; and b. Other works subject to the <i>Roads Act 1993</i> approval. <p>All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
47.	<p>No Encroachments</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>

<p>48.</p>	<p>Protect Sandstone Kerb</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.</p> <p>Reason: To ensure Council assets are protected.</p>
<p>49.</p>	<p>Works as Executed – Site Stormwater Drainage System</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:</p> <ul style="list-style-type: none"> a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans. <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>
<p>50.</p>	<p>Operation and Management Plan</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:</p> <ul style="list-style-type: none"> a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc. <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>

51.	<p>Redundant Vehicle Crossing</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
52.	<p>Project Arborist Certification</p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.</p> <p>Reason: To ensure the protection and ongoing health of trees to be retained.</p>
53.	<p>Aircraft Noise</p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.</p> <p>Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.</p> <p>Reason: To ensure all noise attenuation is in accordance with the relevant Australian Standard.</p>
54.	<p>Dilapidation Report</p> <p>Prior to the issue of an Occupation Certificate, the Certifying Authority and owners of identified properties must be provided with a second colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the identified properties (43-45 Hubert Street, 39A Hubert Street) to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.</p> <p>Reason: To determine potential construction impacts.</p>

55.	<p>Contamination – Disposal of Soil</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the Protection of the Environmental Operations Act 1997.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
56.	<p>Contamination – Validation (No Site Audit Statement Required)</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.</p> <p>The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines Consultants Reporting on Contaminated Sites and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.</p> <p>Reason: To protect the amenity of the neighbourhood from contamination.</p>
57.	<p>Section 73 Certificate</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the Sydney Water Act 1994.</p> <p>Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>
58.	<p>Torrens Title Subdivision to Occur before Occupation</p> <p>Prior to the issue of an Occupation Certificate for any dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.</p> <p>Reason: To ensure that the subdivision is in accordance with the consent.</p>

OCCUPATION AND ONGOING USE

Condition	
59	<p>Operation and Management Plan</p> <p>The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.</p> <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
60.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.</p> <p>Separate approval is required from the Council under the <i>Roads Act 1993</i> to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>

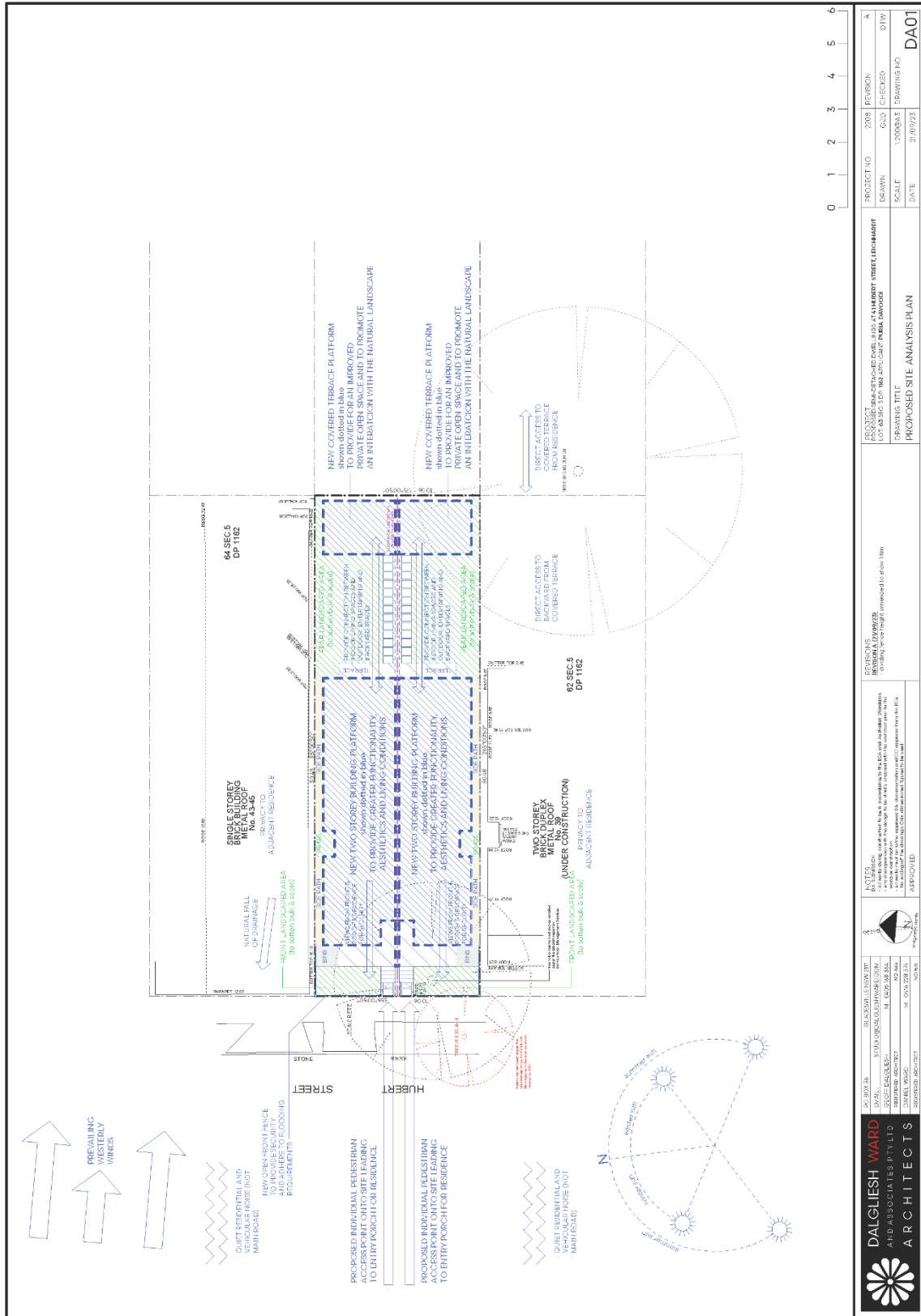
SUBDIVISION WORK

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Condition	
61.	<p>Separate Drainage Systems</p> <p>Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.</p> <p>Reason: To ensure that the adequate provision of stormwater drainage is provided</p>
62.	<p>Street Numbering</p> <p>If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to Street Numbering Application</p> <p>Reason: To ensure occupancies are appropriately numbered.</p>

<p>63.</p>	<p>Civil Engineer Verification</p> <p>Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written verification from a suitably experienced / Chartered/Registered Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.</p> <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>
<p>64.</p>	<p>Torrens Title Subdivision</p> <p>Prior to the issue of a Subdivision Certificate, the Certifying Authority must verify that the physical works within this consent have been constructed.</p> <p>If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Street Numbering Application</p> <p>Reason: To ensure that the subdivision works is in accordance with the consent.</p>

Attachment B – Plans of proposed development



BULK REQUIREMENTS - MULTIDWELLINGS
 No. 41 Hubert Street, Leichhardt, Council, 1506/0046

INTER-COMPLIANT


- The applicant must provide a written copy of the report throughout the term of the development.
- The applicant must not provide a written copy of the report for the development.
- The applicant must ensure that the development is in accordance with the requirements for all dwellings.
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ENERGY COMPLIANCE

- The applicant must ensure that the development is in accordance with the requirements for all dwellings.
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COMMON AREAS

- The applicant must ensure that the development is in accordance with the requirements for all dwellings.
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National House Energy Rating Scheme - Multiple Class 1 - dwelling summary
 NAHERS Certificate No. 000871150
 Generated on 27 May 2023 using NHERS Pro V4.1.2 (a.21)

Property	Alban, Charifrazeh
Address	80/81 Hubert Street, Leichhardt, NSW, 2040
NAHERS climate zone	68



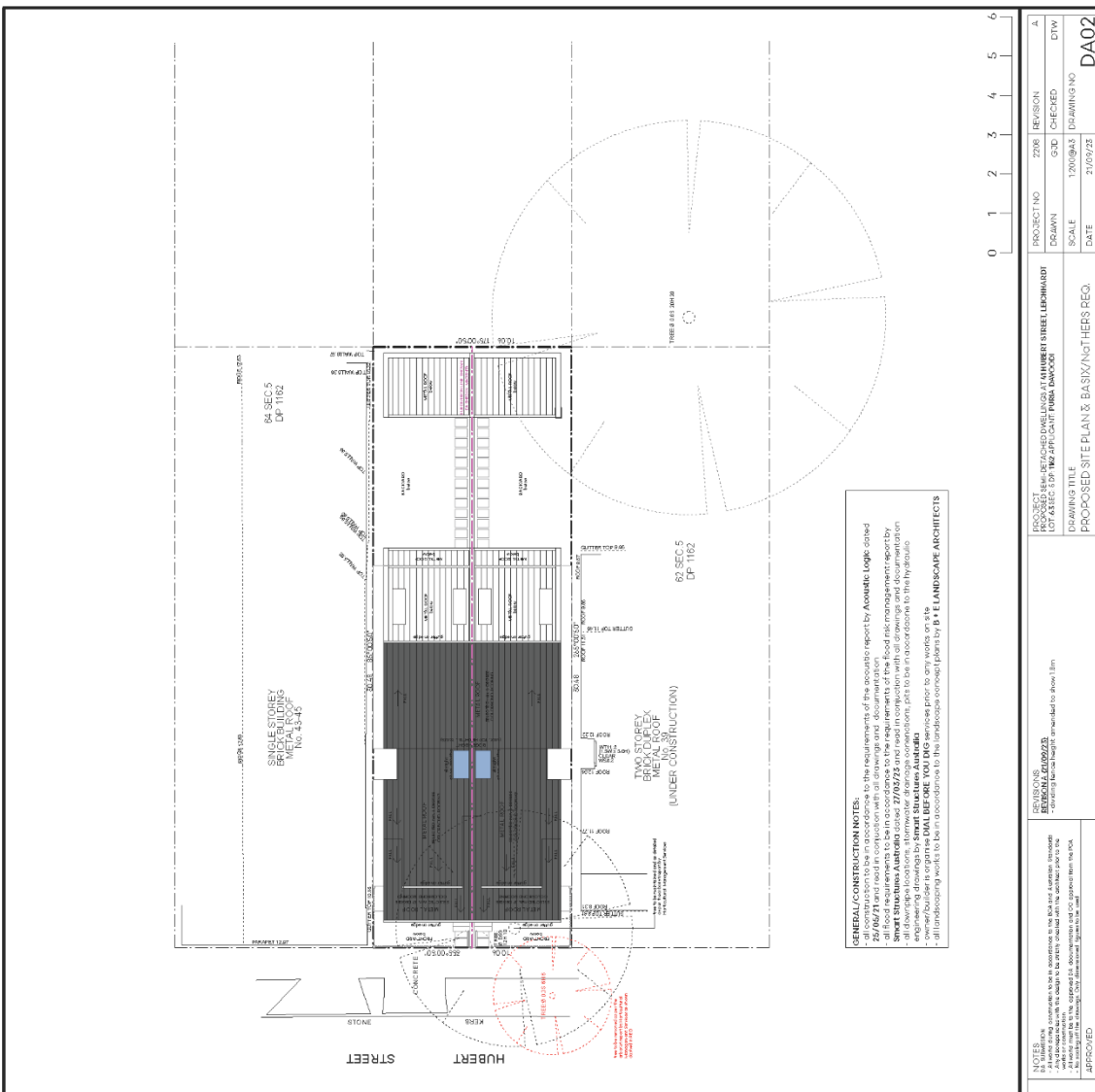
Accredited assessor
 SYMEC Group Pty Ltd, T/A S/E Engineering
 abas@seengineering.com.au
 (02) 9398 4729
 15/11/23

Summary of all dwellings				
Certificate	Unit	Heating Load	Cooling Load	Star
000871150	NORTH	35.3	20	5.0
000871150	SOUTH	35.4	23	5.0
				5.4



Verification
 When using either QR, ensure you are verifying the certificate.
 When using either QR, ensure you are verifying the certificate.

National Construction Code (NCC) requirements
 The applicant must ensure that the development is in accordance with the requirements for all dwellings.



GENERAL/CONSTRUCTION NOTES:

- The applicant must ensure that the development is in accordance with the requirements of the Australian Standard AS/NZS 1530.1.2.
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PROJECT NO.	2308	REVISION	A
DRAWN	GDH	CHECKED	DTW
SCALE	1:200 (9.4)	DRAWING NO.	DA02
DATE	21/07/23	PROPOSED SITE PLAN & BASIX/NOTHERS REQ.	

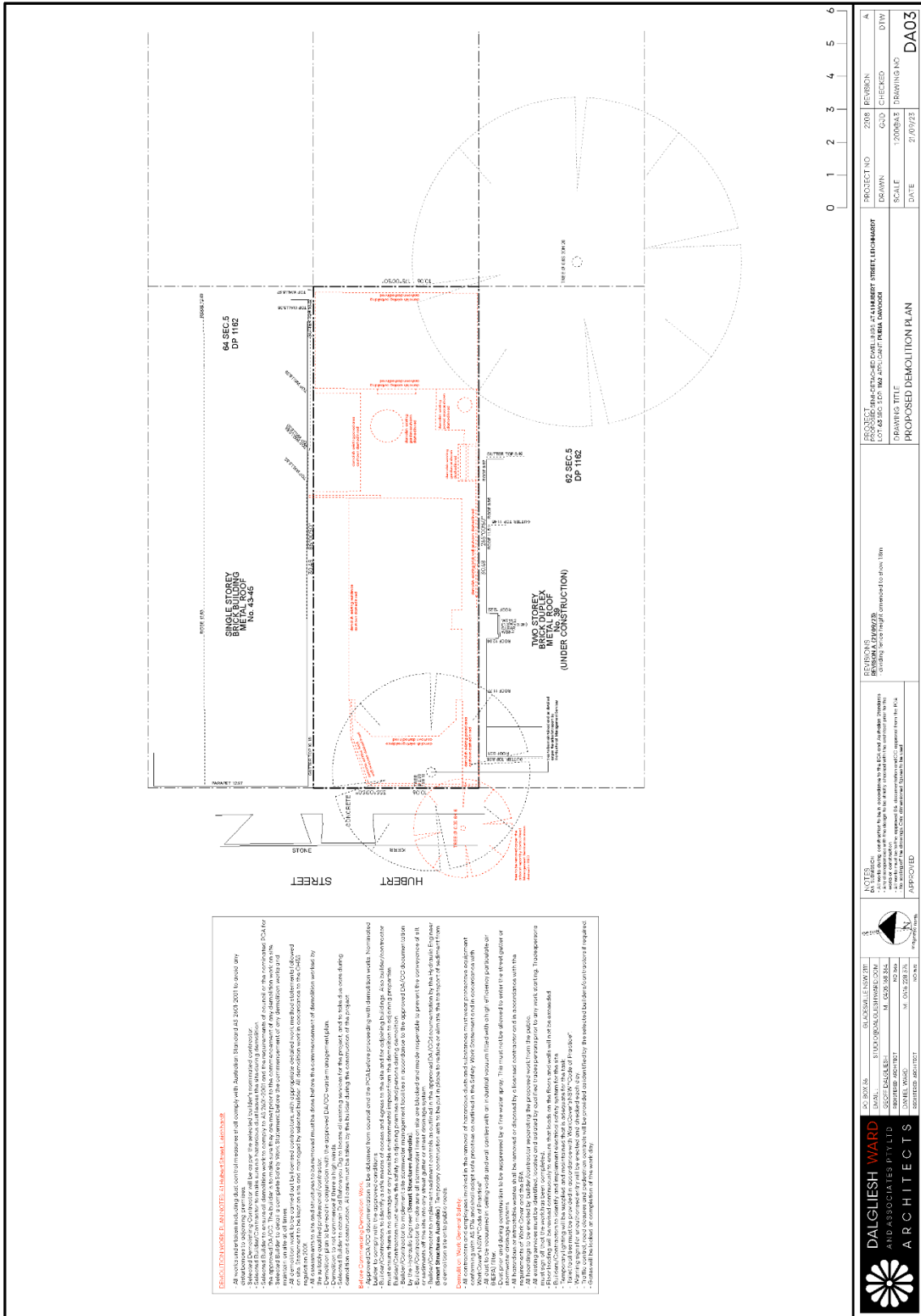
REVISIONS

NO.	DESCRIPTION	DATE
1	As per the requirements of the NAHERS Certificate No. 000871150.	21/07/23
2	As per the requirements of the NAHERS Certificate No. 000871150.	21/07/23
3	As per the requirements of the NAHERS Certificate No. 000871150.	21/07/23

APPROVED

DAALGESH WARD AND ASSOCIATES PTY LTD ARCHITECTS

DAALGESH WARD
 ARCHITECT



Demolition/Debris Removal: Demolition work shall be carried out in accordance with the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS).

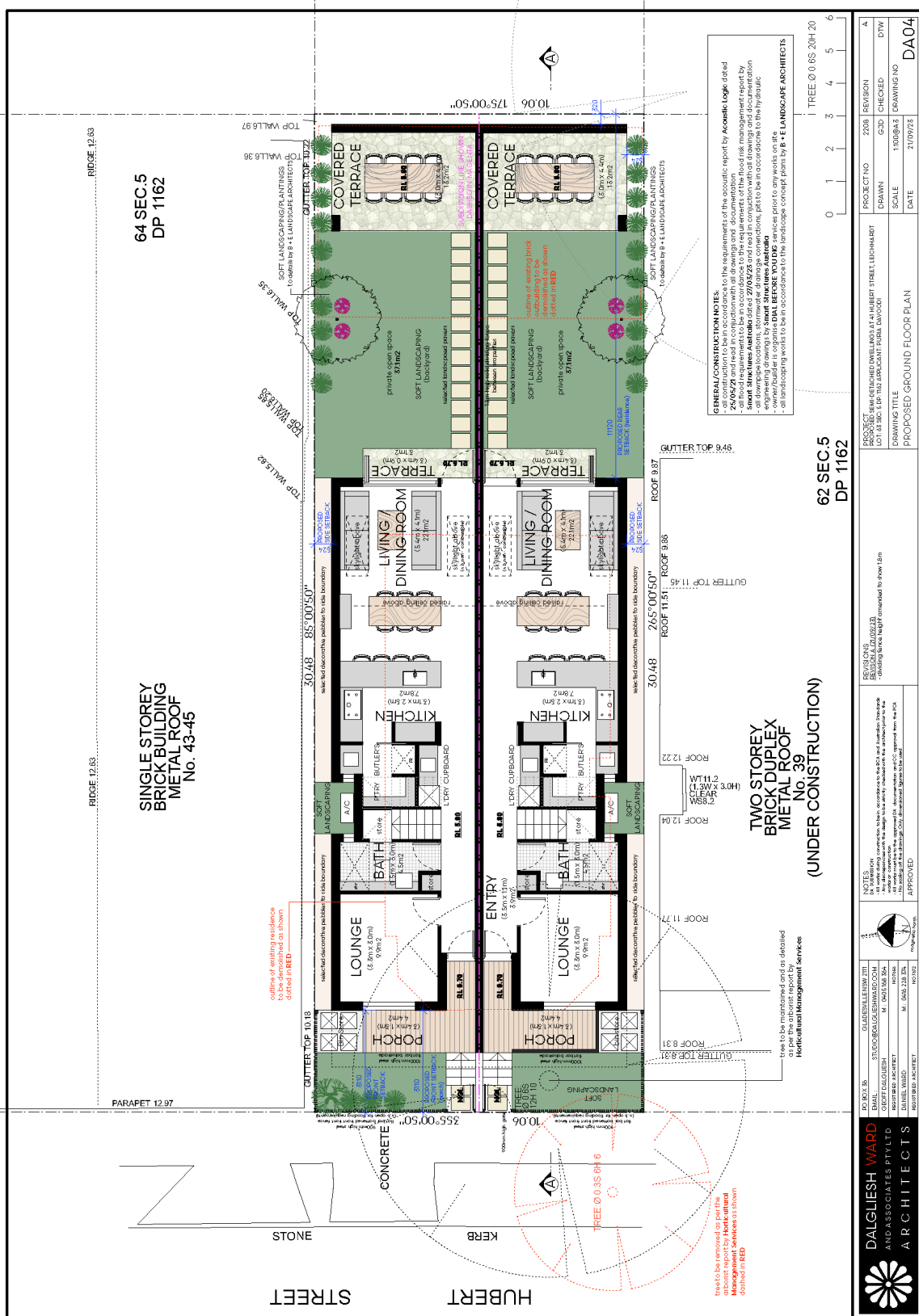
Demolition/Debris Removal: Demolition work shall be carried out in accordance with the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS).

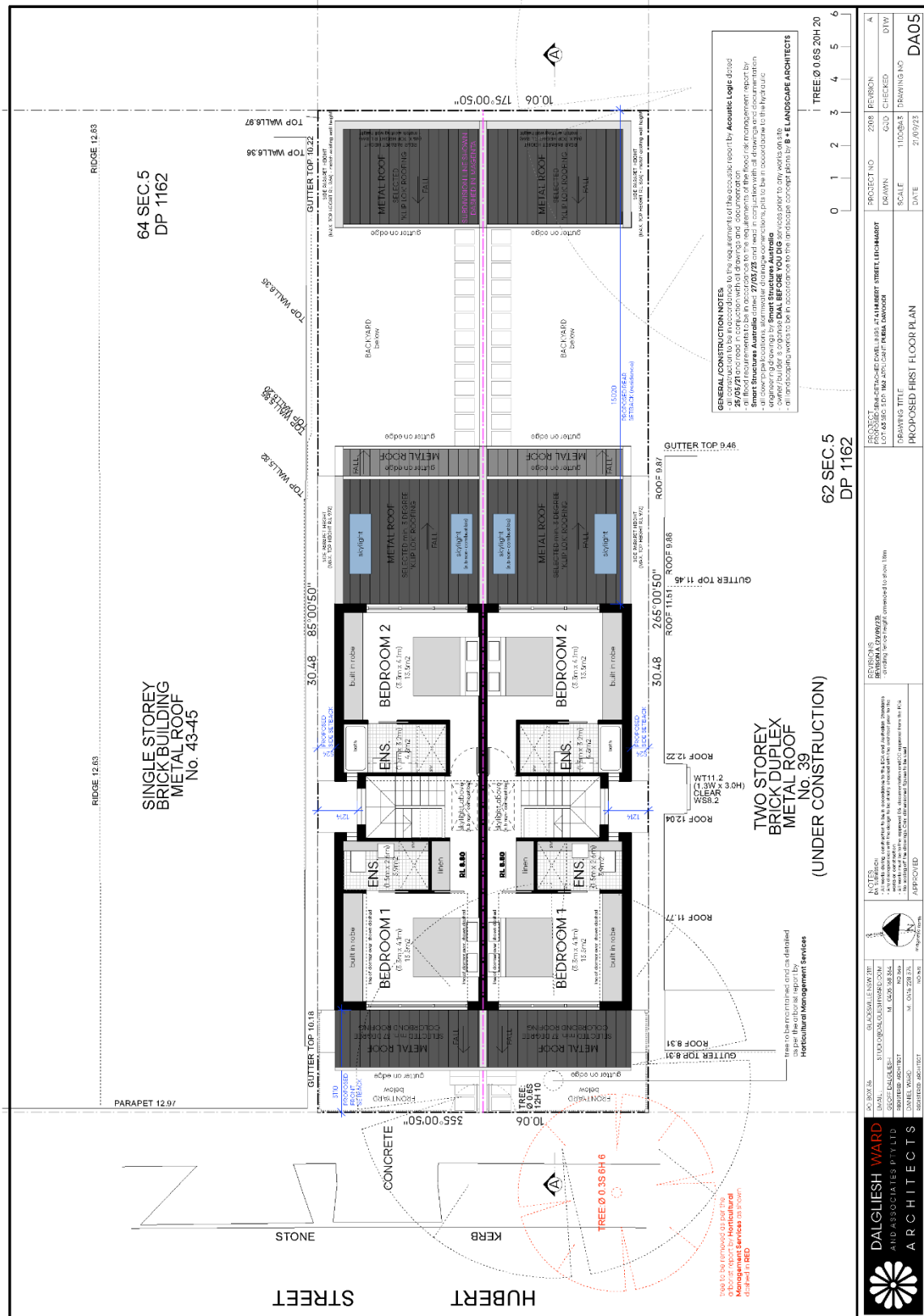
Demolition/Debris Removal: Demolition work shall be carried out in accordance with the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS).

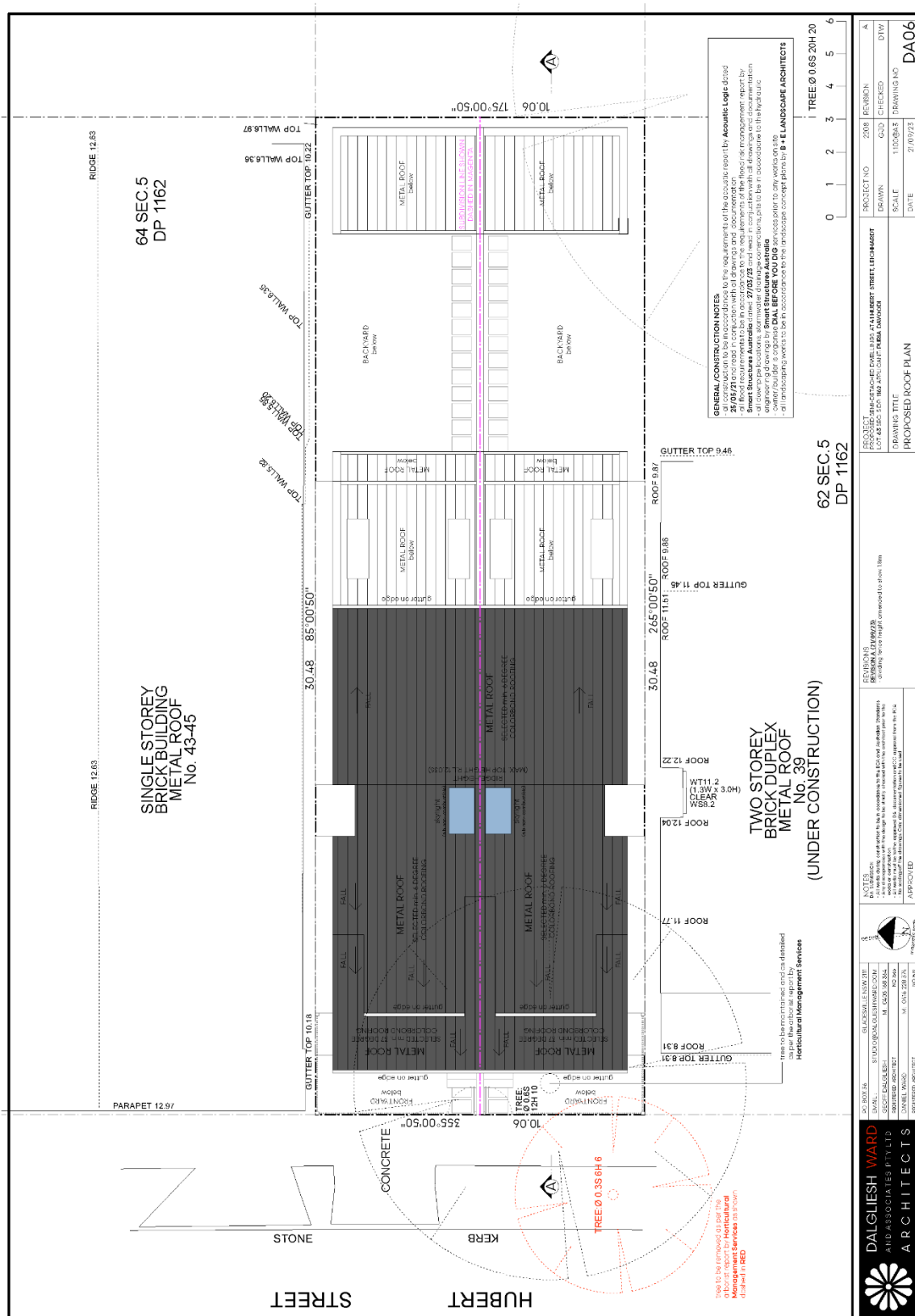
Demolition/Debris Removal: Demolition work shall be carried out in accordance with the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS) and the approved Demolition Method Statement (DMS).

DALGIESH WARD ARCHITECTS
 4/115 HUBERT STREET, LEICH HARBOR NSW 1585
 M: 0258 38 3844
 E: dalg@dalg.com.au
 W: www.dalg.com.au

PROJECT: 64 SEC 5 DP 1162 AND 60 SEC 5 DP 1162
PROPOSED: DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF TWO STOREY METAL ROOF BUILDING (UNDER CONSTRUCTION)
DRAWING TITLE: PROPOSED DEMOLITION PLAN
DATE: 27/09/23
SCALE: 1:200 (B.A.S.)
DRAWING NO.: DA03
PROJECT NO.: 2008
REVISION: A
DRAWN: GULI
CHECKED: DIVI
DATE: 27/09/23







GENERAL/CONSTRUCTION NOTES:

- The requirements of this site plan are subject to the requirements of the local council's planning scheme and the requirements of the local council's planning scheme and the requirements of the local council's planning scheme.
- The requirements of this site plan are subject to the requirements of the local council's planning scheme and the requirements of the local council's planning scheme.
- The requirements of this site plan are subject to the requirements of the local council's planning scheme and the requirements of the local council's planning scheme.

PROJECT NO.	2018	REVISION	A
DRAWN	COL	CHECKED	DIV
TITLE	11000042	DRAWING NO.	DA06
DATE	27/09/23		

64 SEC.5
DP 1162

SINGLE STOREY BRICK BUILDING METAL ROOF No. 43-45

62 SEC.5
DP 1162

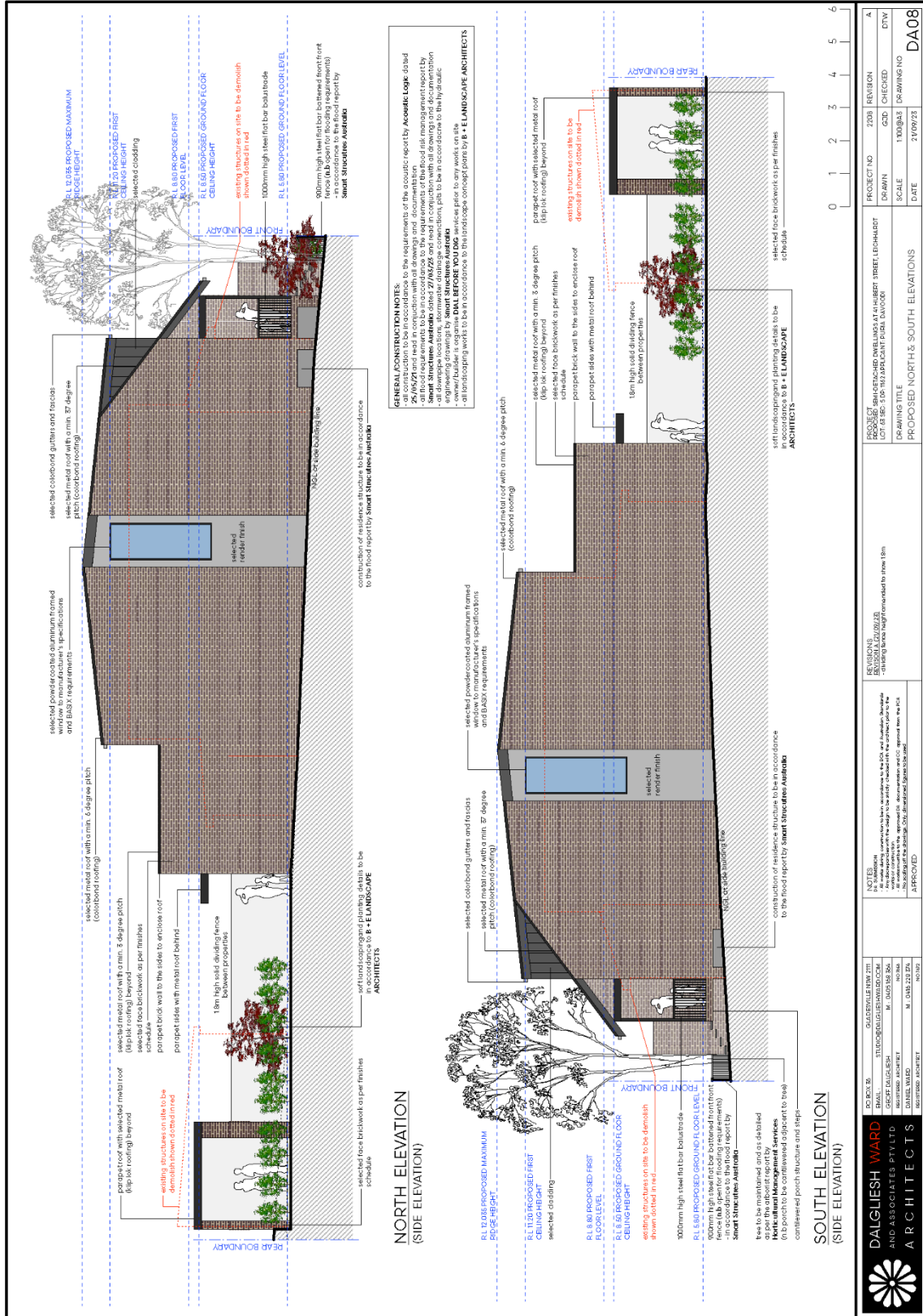
TWO STOREY BRICK DUPLEX METAL ROOF No. 29 (UNDER CONSTRUCTION)

PROJECT: 11000042 - 11000042 DWA
 LOT 48 SEC 5 DP 1162 AUTHORITY: 1161-1-1-1
 DRAWING TITLE: PROPOSED ROOF PLAN
 DATE: 27/09/23

DALGLES WARD
 ARCHITECTS
 4/110 HUBERT STREET, LICHFIELD

DATE: 27/09/23
 DESIGNER: COLIN WARD
 CHECKED: COLIN WARD
 APPROVED: COLIN WARD

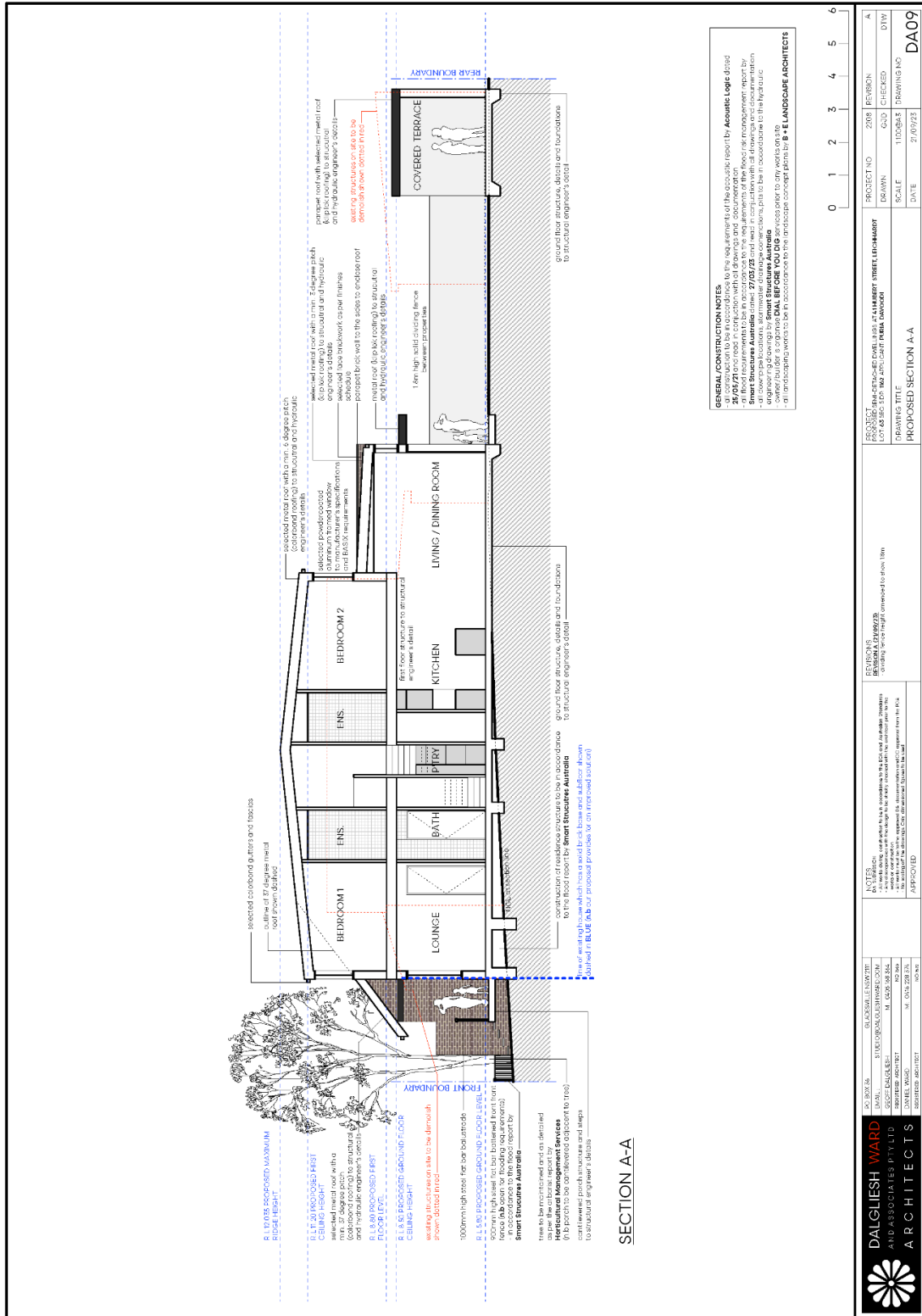




NORTH ELEVATION
(SIDE ELEVATION)

SOUTH ELEVATION
(SIDE ELEVATION)

	PROJECT NO: 2024 DRAWN: GCH CHECKED: DTV SCALE: 1:100 (SCALE) DATE: 21/09/23 DRAWING NO: DA08	PROJECT NO: 2024 DRAWN: GCH CHECKED: DTV SCALE: 1:100 (SCALE) DATE: 21/09/23 DRAWING NO: DA08
	PROJECT NO: 2024 DRAWN: GCH CHECKED: DTV SCALE: 1:100 (SCALE) DATE: 21/09/23 DRAWING NO: DA08	PROJECT NO: 2024 DRAWN: GCH CHECKED: DTV SCALE: 1:100 (SCALE) DATE: 21/09/23 DRAWING NO: DA08



ADJACENT TWO STOREY BRICK BOWLING CLUB BUILDING
 No. 39 & 41 HUBERT ST, LEICHHARDT
 existing max. ridge R.L. 12.085

ADJACENT SINGLE STOREY BRICK REMASTERED WINGECARIBEE BUILDING
 No. 37 HUBERT ST, LEICHHARDT
 existing max. ridge R.L. 12.027

existing max. ridge R.L. 12.027
 existing max. ridge R.L. 12.085
 R.L. 12.085 PROPOSED MAXIMUM RIDGE HEIGHT
 R.L. 12.120 PROPOSED FIRST CEILING HEIGHT
 R.L. 6.80 PROPOSED FIRST FLOOR LEVEL
 R.L. 6.50 PROPOSED GROUND FLOOR CEILING HEIGHT
ADJACENT SINGLE STOREY BRICK BUILDING & METAL ROOF
 No. 45 HUBERT ST, LEICHHARDT
 R.L. 5.80 PROPOSED GROUND FLOOR LEVEL
 (R.L. on front building line)

ROOF SHEETING
 - Selected Klip Lok (or standing seam) roofing in a Colorbond 'Monument' or an equivalent colour.

FACE BRICK
 - Face brick walls to be a 'BOWRAL REMASTERED WINGECARIBEE' from Bowral Bricks or an equivalent.

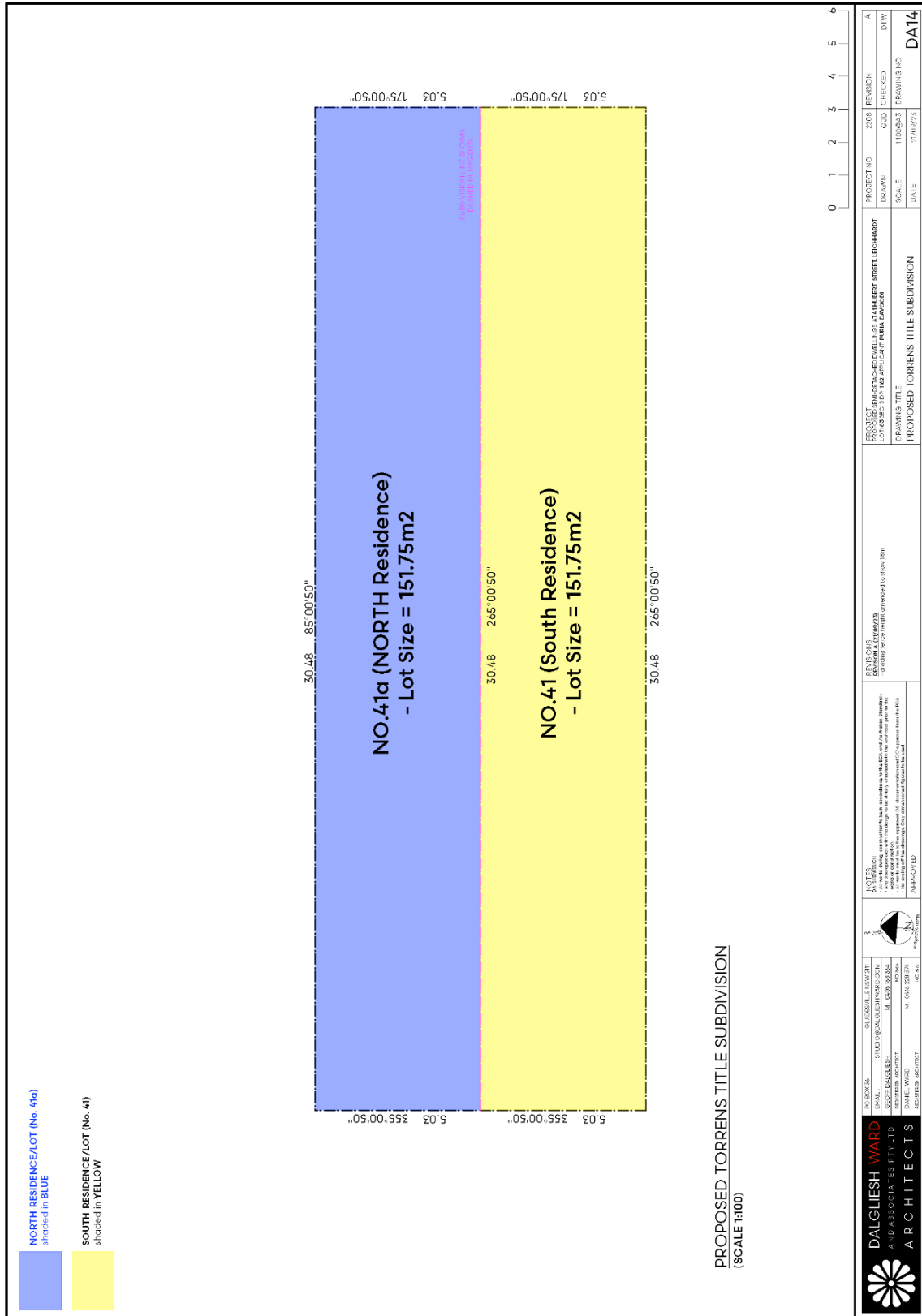
FRONT DOOR
 - New timber door to have a selected light oil finish or an equivalent.

DOOR / WINDOW FRAMES
 - New aluminium frames to be a selected powder coated colour to match Colorbond 'Night Sky' or an equivalent colour.

FLAT BAR FENCE
 - New aluminium frame flat bar fence to be a selected powder coated colour to match Colorbond 'Monument' or an equivalent colour.

PROJECT	PROJECT NO	YEAR	REVISION	DRAWING NO
PROPOSED BRICK BUILDING WITH METAL ROOF LOT 43 SEC. 155 184 SEC. 154 DRAWING TITLE	2206	2006	REVISION	A
PROPOSED EXTERNAL FINISHES SCHEDULE	SCALE	DATE	DRAWING NO	
	1:200 (BAS)	21/07/22	DA10	

NOTES	REVISIONS
1. ALL FINISHES TO BE SUPPLIED BY THE CONTRACTOR TO BE SHOWN ON THE DRAWINGS. 2. ALL FINISHES TO BE MATCHED TO THE SAMPLES PROVIDED. 3. ALL FINISHES TO BE MATCHED TO THE SAMPLES PROVIDED. 4. ALL FINISHES TO BE MATCHED TO THE SAMPLES PROVIDED. 5. ALL FINISHES TO BE MATCHED TO THE SAMPLES PROVIDED.	1. REVISION 1: NEW DOOR FINISH TO BE OIL FINISH 2. REVISION 2: NEW DOOR FINISH TO BE OIL FINISH 3. REVISION 3: NEW DOOR FINISH TO BE OIL FINISH 4. REVISION 4: NEW DOOR FINISH TO BE OIL FINISH 5. REVISION 5: NEW DOOR FINISH TO BE OIL FINISH
APPROVED:	
DALGLIESH WARD ARCHITECTS	



0 1 2 3 4 5 6

PROJECT NO	2008	REVISION	A
DRAWN	COLL	CHECKED	DIV
SCALE	1:100@A4	DRAWING NO	
DATE	27/09/23		DATA

PROPOSED TORRENS TITLE SUBDIVISION
 PROJECT: PERMITS/RES-DWELL/105/PT 41, HAMMERT STREET, LICHA-HAMMERT
 LOT AS SHG FOR 100 SUBDIVISION/100/000000
 DRAWING TITLE: TORRENS TITLE SUBDIVISION
 PROJECT NO: 2008
 REVISION: A
 DRAWN: COLL
 CHECKED: DIV
 SCALE: 1:100@A4
 DATE: 27/09/23

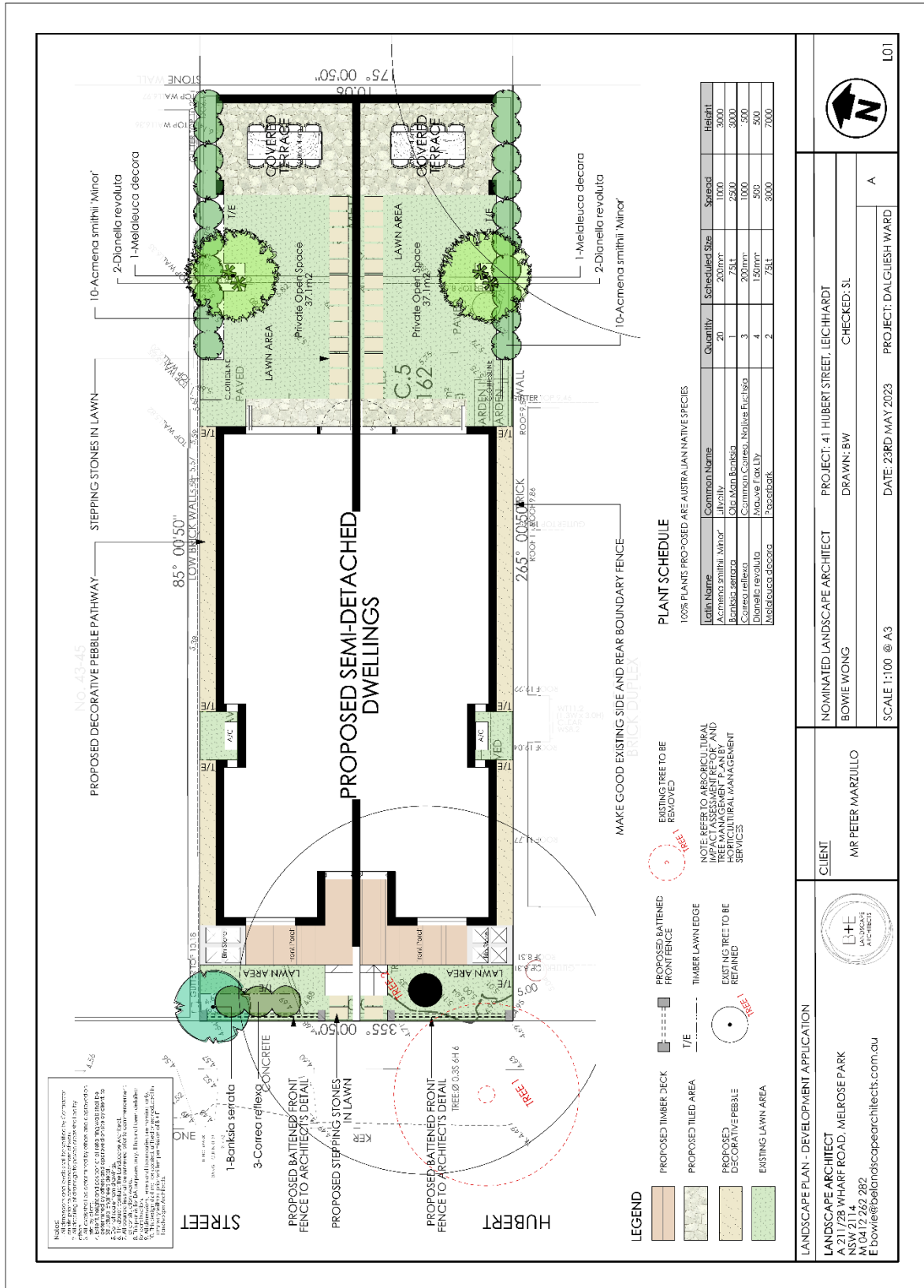
NOTES:
 1. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.
 2. THIS PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL PLANNING PANEL.
 3. THIS PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL PLANNING PANEL.
 4. THIS PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL PLANNING PANEL.
 APPROVED

DALGLISH WARD ARCHITECTS
 4110 ASSOCIATES PTY LTD
 150 QUEEN STREET, SYDNEY NSW 2000
 M: 02 9539 3834
 F: 02 9539 3834
 EMAIL: DALGLISH@DALGLISH.COM

CLIENT: M. COLLETT
PROJECT: TORRENS TITLE SUBDIVISION

APPROVED:

PROPOSED TORRENS TITLE SUBDIVISION (SCALE 1:100)



PLANT SCHEDULE

100% PLANTS PROPOSED ARE AUSTRALIAN NATIVE SPECIES

Latin Name	Common Name	Quantity	Scheduled Size	Spaced	Height
Acmena smithii 'Minor'	Jillivilly	20	200mm	1100	3000
Bankia serrata	Old Man Banksia	1	75L	2500	3000
Conocarpus laevis	Common Cane	3	200mm	1000	500
Dianella revoluta	Melrose Fox Lily	4	150mm	500	500
Melaleuca decora	Peppercorn	2	75L	3000	2000

LEGEND

- PROPOSED TIMBER DECK FRONT FENCE
- PROPOSED TILED AREA
- PROPOSED DISCRETE PEBBLE
- EXISTING LAWN AREA
- PROPOSED BATTENED FRONT FENCE
- T/E
- TIMBER LAWN EDGE
- EXISTING TREE TO BE RETAINED
- EXISTING TREE TO BE REMOVED

NOTE: REFER TO ARBORICULTURAL TREE MANAGEMENT PLAN BY TREE MANAGEMENT SERVICES.

LANDSCAPE PLAN - DEVELOPMENT APPLICATION		CLIENT	NOMINATED LANDSCAPE ARCHITECT
LANDSCAPE ARCHITECT A/211 288 WHARF ROAD, MELROSE PARK NSW 2114 M 04 12 262 282 E bowie@belandscapearchitects.com.au		MR PETER MARZULLO	PROJECT: 41 HUBERT STREET, LEICHHARDT
			DRAWN: BW
			CHECKED: SL
		SCALE 1:100 @ A3	DATE: 23RD MAY 2023
			PROJECT: DALGUESH WARD
			A
			L01

Attachment C – Section 4.6 Exception to Development Standards



**CLAUSE 4.6 REQUEST FOR VARIATION TO
CLAUSE 4.1 (MINIMUM SUBDIVISION LOT SIZE)
OF
INNER WEST LOCAL ENVIRONMENTAL PLAN
2022 (IWLEP)**

**41 Hubert Street,
LEICHHARDT**

July 2023



Clause 4.6 Variation to Minimum subdivision lot size
41 Hubert Street, Leichhardt
Demolition and construction of two semi-detached dwellings



1.0 Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Inner West Local Environmental Plan 2022 (IWLEP 2022), the relevant clause being Clause 4.1 Minimum subdivision lot size.

This written variation request has been provided to support the proposed demolition and construction of two new semi-detached dwellings at 41 Hubert Street, Leichhardt. The relevant plans relied upon are those identified as the plans prepared by Dalgliesh Ward and Associates Architects, dated 20.6.2023.

The relevant minimum subdivision lot size standard under Clause 4.1 and shown on Lot Size Map 004 under IWLEP 2022 is 200m². The proposal seeks to create two new lots having equal areas of 151.75m². Accordingly, both of the proposed new lots are less than the minimum required 200m².

The minimum subdivision lot size control is a *development standard* for the purposes of the *EP&A Act 1979*.

This request to vary the minimum subdivision lot size development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action"), *Wehbe v Pittwater Council*, *Big Property Pty Ltd v Randwick City Council [2021]* and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2)*.

The request addresses those relevant provisions of Clause 4.6 under IWLEP 2022 and sets out the reasons for why strict application of the minimum subdivision lot size standard in this instance is unreasonable and unnecessary. Further, it demonstrates:

- That the development remains consistent with the objectives of the development standard under Clause 4.1; and
- That the proposal is consistent with the objectives of the R1 General Residential zone; and
- That there are sufficient environmental planning grounds to justify the variation; and
- That the variation is consistent with the reduced lot sizes which exist in the locality.

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 41 Hubert Street, Leichhardt
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2.0 Development Standard to be Varied – Minimum Subdivision Lot Size

The relevant *development standard* to be varied is the minimum 200m² subdivision lot size control under Clause 4.1. Clause 4.1 of IWLEP relevantly provides:

- 4.1 Minimum subdivision lot size**
 (1) *The objectives of this clause are as follows—*
 (a) *to ensure lot sizes cater for a variety of development,*
 (b) *to ensure lot sizes do not result in adverse amenity impacts,*
 (c) *to ensure lot sizes deliver high quality architectural, urban and landscape design,*
 (d) *to provide a pattern of subdivision that is consistent with the desired future character,*
 (e) *to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.*
 (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
 (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
 (4) *This clause does not apply in relation to the subdivision of any land—*
 (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
 (b) *by any kind of subdivision under the Community Land Development Act 2021.*

The relevant Minimum subdivision lot size map is identified below:

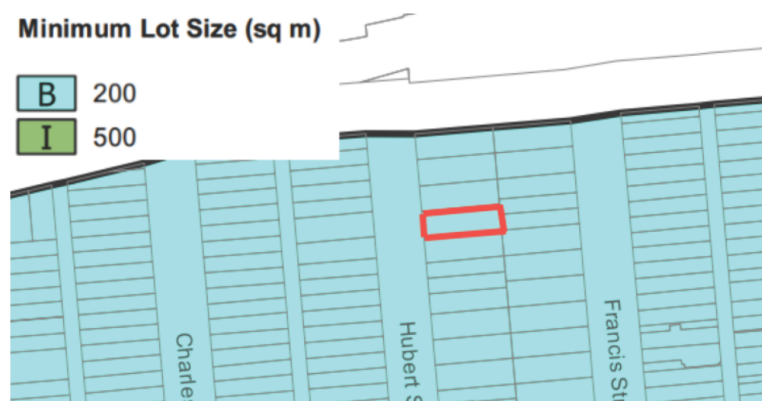


Figure 1: Minimum subdivision lot size under IWLEP (Source: LSR_004 IWLEP)

The subject site is mapped “B” – 200m².

3.0 Nature of Variation Sought

The requested variation is as follows:

The subject site has a minimum subdivision allotment size of 200m².

Each of the proposed new lots will comprise areas of 151.75m². Therefore, each lot is 48.25m² short of the required minimum subdivision lot size control. This is equivalent to a shortfall of 24.1%.

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4.0 Minimum Subdivision Lot Size – Development Standard

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation,*
and
- (o) such other matters as may be prescribed."*

The **200m²** minimum subdivision lot size standard is a *development standard* as defined under the *EP&A Act 1979*.

5.0 Clause 4.6 of Inner West Local Environmental Plan 2022

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The minimum subdivision lot size development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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-
- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to cl4.1 of the IWLEP 2022. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the IWLEP 2022 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (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*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Sections below of this written request addresses the matters required under cl4.6(5) of the IWLEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

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6.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in IWLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately **44%** (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately **41%**.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick (Big Property)

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The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced SJD, and went on to hold that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

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7.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above the following identifies the first method identified in *Wehbe*:

“Ways of establishing that compliance is unreasonable or unnecessary

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis)*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the Applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the standard.

In dealing with the control it is necessary to identify the purpose of the minimum subdivision lot size control and then progress to dealing with the consistency or otherwise with the objectives. The following is relevant in addressing this consideration:

- The overall built form proposed is comparable in its scale, height, layout, architectural features and general appearance to other semi-detached dwellings in the surrounding area and the streetscape.
- The building height, site coverage and landscaped area provided to both dwellings is directly comparable with adjoining dwellings and complies with the standards.
- The proposal is fully compliant with the maximum site coverage control.

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- The proposed buildings are compatible with the desired future character of the area.
- The development is directly comparable to the recently constructed semi-detached dwellings to the south at 39 Hubert Street. This project too was supported by a Clause 4.6 variation to the minimum subdivision lot size and was ultimately approved by Council, demonstrating that the proposed outcomes under this DA are directly relevant to that decision.
- The proposal provides for the minimum overall and soft landscaping areas under the LEP and DCP.
- The amenity impacts arising from the proposal are negligible and result from a development form which is envisaged on a site of this size, having regard to recent decisions of Council.
- The subject site is located in a precinct where numerous allotments are less than the 200sqm requirement by Clause 4.1 of the IWLEP including:
 - 39 Hubert Street (semi-detached lots approved at 151.75sqm)
 - 37 Hubert Street 185sqm
 - 35 Hubert Street 187sqm
 - 25 Hubert Street 166sqm
 - 23 Hubert Street 132sqm
 - 60 Hubert Street 191sqm
 - 58 Hubert Street 194sqm
 - 56 Hubert Street 186sqm
 - 52 Hubert Street 185sqm
 - 48 Hubert Street 190sqm
 - 46 Hubert Street 188sqm
 - 44 Hubert Street 188sqm
 - 42 Hubert Street 189sqm
 - 40 Hubert Street 186sqm
 - 38 Hubert Street 182sqm
 - 36 Hubert Street 190sqm
 - 34 Hubert Street 184sqm
 - 32 Hubert Street 189sqm
 - 30 Hubert Street 186sqm
 - 28 Hubert Street 187sqm
 - 122 Francis Street 183sqm
 - 120 Francis Street 189sqm
 - 123 Francis Street 188sqm
 - 121 Francis Street 190sqm
 - 119 Francis Street 182sqm
 - 117 Francis Street 185sqm
 - 115 Francis Street 186sqm
 - 113 Francis Street 186sqm
 - 111 Francis Street 179sqm
 - 109 Francis Street 186sqm
 - 107 Francis Street 184sqm
- The proposed development provides housing diversity, choice and a form of housing which is consistent with the prevailing low-density scale of the area. Accordingly, notwithstanding the non-compliance, the proposal demonstrates alignment with the R1 General Residential zone objectives.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case are aimed at providing lot sizes to accommodate a variety of dwelling types, avoidance of significant amenity impacts and a high standard of architectural and urban design.

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The following justification is provided.

(a) to ensure lot sizes cater for a variety of development

The proposed lot sizes are consistent with the majority of lots along both sides of Hubert Street and the resultant dwellings are also comparable. The majority of dwellings along Hubert Street are single storey and accordingly, the provision of a new two storey (rooms in the roof design for upper level) semi-detached dwellings will provide contemporary small-homes to suit young families and down-sizers.

(b) to ensure lot sizes do not result in adverse amenity impacts

Amenity impacts resulting from the proposed development are negligible overall. Overshadowing impacts to the southern neighbour are contained predominantly to the adjoining built form which has no window openings along its northern aspect. The neighbouring dwelling will continue to receive 2-3 hours of cumulative direct sunlight to living and lounge rooms during mid winter and 3 hours to its rear private courtyard space.

The separation distance provided to the neighbouring dwelling is consistent with those already observed in the streetscape. The overall bulk, scale and height of the development is not considered overbearing as it is directly comparable to the development at 39 Hubert Street and the existing commercial premises at 43-45 Hubert Street.

The development does not create any unreasonable impacts by way of acoustic, overshadowing or visual privacy to neighbouring properties.

(c) to ensure lot sizes deliver high quality architectural, urban design and landscape design

The proposed built form is compatible with the desired future character of the locality with respect to the architectural and urban design expectations. The scale overall is modest, yet the resultant detailing of the facades is intricate, of a high architectural standard and integrates well into the streetscape. The landscape approach across the front of the property will also aid in softening the street wall and contributing additional street trees along Hubert Street.

The proposal seeks to instate contemporary features and materials which are sympathetic to the fundamental character elements of the area and streetscape.

(d) to provide a pattern of subdivision that is consistent with the desired future character

The proposed subdivision will maintain the established and desired future character of the subdivision pattern in the area. Lots have been orientated east-west as per the prevailing subdivision pattern and lot shapes are regular. The size of the lots are commensurate with those numerous existing undersized lots in the surrounding area and accordingly produced built form outcomes that are consistent with the prevailing streetscape character.

(e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land

Objective not relevant in this instance.

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8.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to the minimum subdivision lot size and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R1 General Residential.

The environmental planning grounds justification for the minimum subdivision lot size variation is provided as follows:

- The recently completed development to the south of the site at No. 39 Hubert Street has established a clear and reliable precedent in terms of its subdivision lot sizes (directly comparable to those sought under this DA) and the characteristics of the approved built form. The neighbouring development has therefore established a clear example of the desired future character of development in the street in terms of the siting of the dwellings, the built form scale, height and contemporary style, materials and finishes used. The subject development is directly comparable in all facets and accordingly emulates Council's future vision of the area.
- The lot sizes proposed accommodate sufficient areas for each dwelling to comprise ample internal floor plates, compliant overall and soft landscaping areas, compliant site cover and private open space.
- The shortfall in lot area has had no impact on the prevailing subdivision pattern of the area. In fact, the shape, dimensions and areas of the lots are consistent with numerous other existing properties along both sides of Hubert Street and therefore contribute to continued consistency.
- The development effectively completes the row of dwellings along the eastern side of Hubert Street in a manner that is consistent with the established built form. The dwellings incorporate minimal setbacks, present abutting walls and other stylistic design features that are sympathetic to the character of the area including low pitched roof forms with upper level contained within the roof volume so as not to read as a storey. This design approach helps to reduce bulk and scale and maintain the low density character.
- The development presents a 2 storey form with a compliant building height, landscaped area and private open space meaning that the footprint and form of the building is suitable for the size of the lot on which the development is proposed.
- The form and presentation of the proposal maintains the visual characteristics of the streetscape and does not present a bulk and scale from the street or adjoining properties that is inconsistent or detrimental to the desired future character of the area.

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- There are no adverse environmental impacts directly attributable to the reduced lot sizes proposed. The lots are capable of containing semi-detached dwellings that are otherwise in the majority compliant with the relevant LEP and DCP controls.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to the minimum subdivision lot size. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,***
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),***
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development that complies with the land use zoning of the site (R1 General Residential) satisfies the objectives of under S1.3 *EP&A Act 1979*.

The plans by Dalglish Ward and Associates Architects, dated 15 August 2022 and specifically the minimum lot size variation satisfies the objectives in bold given that:

- The development provides for residential land use (semi-detached dwellings) in line with Council’s strategic planning intent and the IWLEP 2022.
- The development assists in achieving a co-ordinated and timely outcome for the site based on the neighbourhood provisions that are relevant to the subject site.
- The development offers better and proper management of the State’s land resources by providing a more efficient use of private land that is well positioned to take advantage of its proximity to public transport, jobs, services and local and regional leisure, recreation, retail and cultural activities.
- The site has the capacity to support the proposed new lots and residential density sought.



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- The proposal will not cause significant adverse environmental impacts to neighbouring properties as outlined in Section 7 and detailed in the Statement of Environmental Effects.
- The proposal exhibits an acceptable standard of internal and external amenity for the future resident(s) and represents a considered in-fill development which fits well within the urban context.
- The subdivision enables increased home-ownership and/or rental opportunities on the site which is larger enough to accommodate the semi-detached dwellings as discussed above.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Clause 4.6(4)(a)(ii) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the minimum subdivision lot size standard, to reasonably satisfy the stated objectives of the zone.

Zone R1 General Residential

1 Objectives of zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The following provides a review of the zone objectives:

- ***To provide for the housing needs of the community.***

The development provides new housing to meet the needs of the community. The built form design, massing and overall density is compatible with that of neighbouring residential properties in the street and is of a low-density scale.

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

The proposal provides two new 2 storey dwellings in place of a single, 1 storey dwelling in a locality that is well served by transport and access to employment, recreation, cultural and retail services. The proposed two storey dwellings are set against single and 2 storey forms and provide housing diversity to meet the needs of young families and downsizers.

The density and overall scale of the development is directly comparable to the recently completed development to the south at 39 Hubert Street and other similar developments in the street.

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

Not relevant.

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- ***To provide residential development that maintains the character of built and natural features in the surrounding area.***

The proposed new dwellings are compatible with the character, style and pattern of dwellings in the area. The proposed new lots are consistent with the prevailing pattern of subdivision.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the IWLEP.

The Court has power to grant development consent to the proposed development even though it contravenes the minimum subdivision lot size development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the minimum subdivision lot size development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the minimum subdivision lot size development standard under cl4.1 of IWLEP 2022 and the control under

Clause 4.6 Variation to Minimum subdivision lot size
41 Hubert Street, Leichhardt
Demolition and construction of two semi-detached dwellings



cl4.1 of the IWLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the IWLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.1 of the IWLEP 2022 and is consistent with the relevant objectives of the R1 General Residential zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed development will not result in adverse environmental harm in that the amenity of neighbouring properties and the surrounding area will be reasonably maintained.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the minimum subdivision lot size development standard, including:

- The proposal is directly comparable to the recently approved and completed development at 39 Hubert Street to the south. Accordingly, the proposal supports the desired future character of the area and effectively continues the anticipated wall heights along the eastern side of Hubert Street.
- The lot sizes proposed accommodate sufficient areas for each dwelling to provide functional internal floor plates; compliant soft landscaping areas; compliant site coverage and private open space.
- The shortfall in lot areas has had no impact on the prevailing subdivision pattern of the area. In fact, the shape, dimensions and areas of the lots are consistent with numerous other existing properties along both sides of Hubert Street and therefore contribute to continued consistency.
- The dwellings incorporate minimal setbacks, present abutting walls and other stylistic design features that are sympathetic to the character of the area including low pitched roof forms, setback upper levels to help reduce bulk and scale and maintain the low density character.
- The development presents a 2 storey form with a compliant building height, landscaped area and private open space meaning that the footprint and form of the building is suitable for the size of the lot on which the development is proposed.
- The form and presentation of the proposal maintains the visual characteristics of the streetscape and does not present a bulk and scale from the street or adjoining properties that is inconsistent or detrimental to the desired future character of the area.
- The lots accommodate 2 storey dwellings with modest overall footprints that contribute to the growing needs of young people and families in the area. It provides housing diversity and purpose-built product to meet the needs of the community.

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Demolition and construction of two semi-detached dwellings



- There are no significant adverse environmental impacts directly attributable to the reduced lot sizes proposed. The lots are capable of containing semi-detached dwellings that are otherwise in the majority compliant with the relevant LEP and DCP controls.

A handwritten signature in black ink that reads 'A Martin'.

**Andrew Martin MPlA
Planning Consultant**