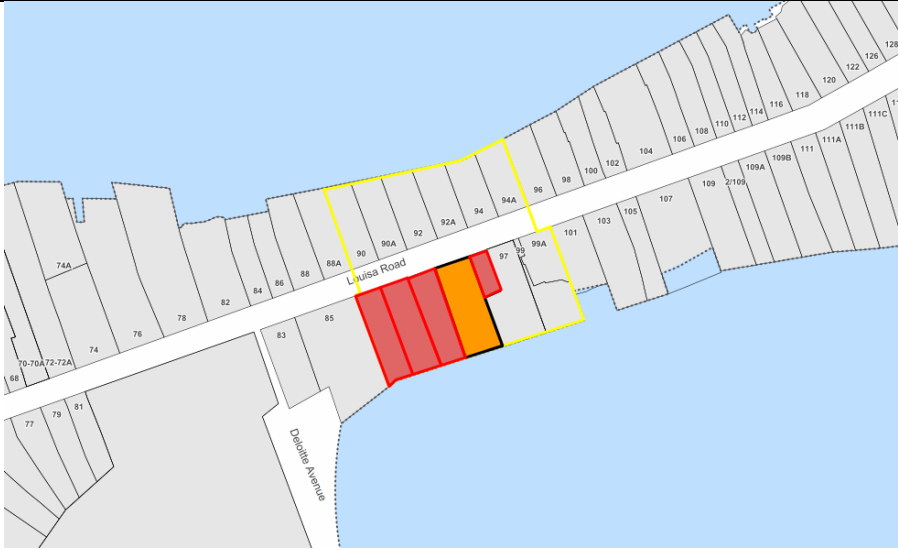





 DEVELOPMENT ASSESSMENT PANEL REPORT	
Application No.	MOD/2023/0318
Address	93 Louisa Road BIRCHGROVE
Proposal	Section 4.55(2) Modification of Development Consent D/2018/25 seeking an increase in height of a lift over run and a new window No. 18 to Bedroom 1 with external louvres.
Date of Lodgement	24 September 2023
Applicant	Mr Franco Bilotta
Owner	Mr Franco Bilotta Mrs Barbara Bilotta
Number of Submissions	Six (6) in opposition (from 4 properties)
Cost of works	\$1,464,000.00
Reason for determination at Planning Panel	Amendment to conditions imposed by Planning Panel
Main Issues	<ul style="list-style-type: none"> Height, bulk and scale of the lift overrun that has already been constructed is out of context with surrounding development and results in adverse streetscape / heritage and amenity impacts. Future privacy impacts from new bedroom window
Recommendation	Refusal
Attachment A	Reasons for Refusal
Attachment B	Recommended amended conditions of consent (in the event of the application being approved)
Attachment C	Plans of proposed development
Attachment D	Current conditions of Development Consent D/2018/25 as modified
	
LOCALITY MAP	
Subject Site	   N
Notified Area	 
	Supporters

1. Executive Summary

This report provides an assessment of the application to modify consent D/2018/25 dated 12 June 2018 under s4.55(2) of the Environmental Planning and Assessment Act 1979 at 93 Louisa Road Birchgrove.

The subject modification seeks an increase in height of a lift overrun and a new window No. 18 to Bedroom 1 with external louvres.

The application was notified to surrounding properties and six (6) submissions were received in response to the initial notification, with three submissions coming from 95 Louisa Road, two submissions coming from 91 Louisa Road and one submission coming from 87 & 89 Louisa Road.

The main issues that have arisen from the application include:

- Height, bulk and scale of the lift overrun that has already been constructed is out of context with surrounding development and results in adverse streetscape / heritage and amenity impacts (noting that a previous application seeking consent for a lift overrun at the height and scale proposed was previously not supported and refused by Council and the Land and Environment Court); and
- Future privacy impacts from new bedroom window on the first floor eastern elevation.

The proposed changes and their impact on the streetscape and Heritage Conservation Area and amenity of the neighbourhood and adjoining properties is not acceptable, and therefore, the application is recommended for refusal.

2. Proposal

Determination No. DA/2018/25, dated 4th December 2018, approved an application for demolition of the existing dwelling and associated structures, remediation of site, construction of a new dwelling with basement parking provided with a car lift and landscaping.

This application seeks to modify Development Consent DA/2018/25 in the following manner:

- To seek consent for the continuing use, and a resultant in the height, bulk and scale of, the approved lift overrun, with a finished height of RL 19.29 AHD (as currently constructed), which is an increase of 0.52 metres over and above the approved level of RL 18.77 AHD. The existing copper cladding is to be removed and the walls of the lift overrun will be finished as per the existing approval, that is, rendered and painted Dulux 'White Duck' *.
- To seek consent for the construction of a new window and fixed full height 150mm wide external vertical louvres in the eastern wall of Bedroom 1 on the first floor (shown as 'W18' on the architectural plans submitted with this Application).

* Note: The removal of the unauthorised copper cladding to ensure the walls of the lift overrun will be finished as per the existing approval does not require consent as the rendered and painted finish is what was originally approved.

The proposal therefore seeks consent for the removal of the following conditions of Development Consent D/2018/25 as last modified by MOD/2022/0474:

2a) A registered surveyor is to confirm the RL of the lift overrun accords with the approved plans as modified under MOD/2022/0474 (i.e RL 18.77 for the top of the lift overrun which is below the ridge height of RL 18.82).

2b. Delete window 18.

Reason: To maintain the privacy of number 95 Louisa Road.

(Modified by MOD/2022/0474 on 13 June 2023)

3. Site Description

The site is located on the southern side of Louisa Road, between Birchgrove Oval and Yerroulbin Lane. The site consists of four allotments and is generally rectangular with a total area of 417.2m². The site is legally described as Lot 1 in DP 947055, Lot 1 in DP 972969, Lot 1 in DP 770507 and Lot 2 in DP 770507.

The site has a frontage to Louisa Road of 12.195 metres and a rear boundary to Snails Bay of 12.17 metres. The adjoining properties support modern dwellings that present as two storeys to Louisa Road and include off street parking to their front façade.

The site previously supported a weatherboard cottage which presented as single storey to Louisa Road, with a lower level accessing the rear yard. While the existing dwelling contained heritage fabric, it was in a dilapidated condition and consent was granted under D/2018/25 for its demolition. The demolition has subsequently been undertaken and construction is underway with the dwelling largely completed.

The property is located within the 'Birchgrove and Ballast Point Road Heritage Conservation Area' (C8) and is identified as a Foreshore Inundation lot. The listed heritage items in the visual vicinity of the subject site include:

- I553 "Geierstein", the dwelling at 85 Louisa Road, Birchgrove; and
- I536 Birchgrove Park, Grove Street, Birchgrove.



Figure 1 - Land Zoning Map with Subject Site outlined in yellow

4. Background

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

Subject Site

Application	Proposal	Decision and Date
MOD/2022/0474	Various changes to Development Consent D/2018/25 including to change building footprint, windows, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, lift overrun height; materials, colours and finishes.	Approved (Local Planning Panel) 13 June 2023
MOD/2021/0320	Various changes to Development Consent D/2018/25 including internal alterations, BBQ and privacy screening at basement level; new and modified openings; new dwarf walls to roof terrace; and new glass roof	Refused on appeal (LEC) 9 February 2022
MOD/2020/0231	Amend Development Consent D/2018/25 seeking to amend the size and height of the lift overrun.	Refused on appeal (LEC) 11 December 2020
M/2019/84	Various internal and external changes to Development Consent D/2018/25, including increase the floor area at the basement level; increases to rear setbacks and reductions to front setbacks; changes to window locations and sizes; and internal reconfiguration.	Approved 8 October 2019
D/2019/174	New pool and retaining wall works and repair and recapping of sea wall.	Approved 19 September 2019
D/2018/25	Demolition of existing dwelling and associated structures and remediation of site. Construction of a new dwelling with basement parking provided with a car lift, and landscaping	Approved with Deferred Commencement Condition on 12 Jun 2018 Operational Development Consent 4 December 2018
M/2004/80	Minor changes to window and door openings in house and boatshed, new door to boatshed, changes to an external stair, minor internal reconfiguration and adjustment to level of boatshed floor slabs	Approved 9 August 2004
M/2001/300	Altering roof form and fenestration and minor upper-level internal reconfiguration	Approved 27 February 2002
D/2000/1013	Demolition of existing dwelling, erection of a new dwelling and rebuilding/refurbishment of an existing rear boatshed with residence above and associated works	Approved 10 October 2001

MOD/2020/0231 of Development Consent D/2018/25

This modification sought to amend the size and height of the lift overrun, with the lift overrun being of the same height, bulk and scale of the current proposal. This was refused by Council for the following reasons:

1. The environmental impacts of the proposal have not been determined to be minor in accordance with the test of Section 4.55(1A) of the Environmental planning and Assessment Act, 1979.
2. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 1.2 - Aims of the Plan;
 - b) Clause 2.3 - Zone Objectives and Land use Table; and
 - c) Clause 5.10 - Heritage Conservation.
3. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Part C1.0 - General Provisions;
 - b) Part C1.1 – Site and Context Analysis;
 - c) Part C1.4 - Heritage Conservation Areas and Heritage Items;
 - d) C2.2.2.6 - Birchgrove Distinctive Neighbourhood & C2.2.2.6(a) Louisa Road Sub Area;
 - e) Part C3.1 - Residential General Provisions; and
 - f) Part C3.2 - Site Layout and Building Design.
4. The proposal is inconsistent with the provisions of:
 - a) Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; and
 - b) Part 5.4 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005.
5. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
7. The approval of this application is likely to create an adverse precedent and is considered contrary to the public interest, pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979.

The application was subsequently appealed by the applicant, and ultimately refused by the Land and Environment Court because the environmental impact of the proposal was not minimal within the meaning of s 4.55(1A) (a) of the EPA Act when comparing the qualitative and quantitative aspects of the approved development and the proposal and the environmental impacts of both.

MOD/2022/0474 of Development Consent D/2018/25

This modification sought consent for changes to building footprint, windows, internal layout, balcony/deck/roof terrace, screening, balustrades, fenestration, roof form, lift overrun height, materials, colours and finishes.

Specially, the applicant proposed an increase in the height of the lift overrun from below the roof ridge (at RL 18.82) to RL18.77 and proposed Window W18 with fixed full height vertical louvres on the first floor eastern elevation.

This modification was considered by the Inner West Local Planning Panel, where the lift overrun was approved to a maximum height of RL 18.77 (as proposed by the applicant), however, the Panel recommended the deletion of Window W18 as follows:

1. *That the following condition 2b be inserted: 2b. Delete window 18.*

Reason: To maintain the privacy of number 95 Louisa Road.

Current Application

This current Modification was submitted in response to Consent Orders issued by the Land and Environment Court on 13 July 2023 relating to a Class 4 Appeal 2021/167207 pertaining to development not in accordance with development consent. As part of the consent orders, the respondents (which included the applicant to this application) were required to lodge a Modification Application under s4.55 addressing the height non-compliance of the lift overrun within 42 days of the date of the consent orders as follows:

2. *...We will make any modification application under s 4.55 of the EPA Act addressing the height non-compliance of the lift overrun within 42 days of the date of these orders and will pursue resolution of that application diligently, including filing any merit appeal we wish to make to this Court within 14 days of receiving a determination of such application or within 60 days of lodgment if it remains undetermined as at that date and further, that:*
 - a. *if such application is approved, carry out any works required to complete the development in accordance with the Dwelling Consent as then modified (subject to any available appeal rights as to conditions).*
 - b. *if such application is not lodged within 42 days, or if it is ultimately refused (allowing for all available appeal rights), comply with the Dwelling Consent in respect of the matters set out in paragraph 21 of the Amended Points of Claim filed 7 July 2023 including reducing the lift overrun to the height described in the Dwelling Consent as presently modified within 4 months of the date of such refusal or the expiration of the 42 day period as the case may be.*

Surrounding Properties

87-91 Louisa Road, Birchgrove

Application	Proposal	Decision & Date
D/2011/425	Demolition of existing structures, remediation of the site, construction of three new dwellings with parking and three lot subdivision	Approved on appeal 3 April 2012.

95 Louisa Road, Birchgrove

Application	Proposal	Decision & Date
D/2000/645	Alterations and additions to the existing dwelling at ground and first floor level.	Approved 19 May 2001
D/2002/915	Alterations and additions to existing dwelling involving new external cladding at ground and first floor level and demolition of the front room of the dwelling to accommodate a new carport to the Louisa Road elevation.	Approved 6 August 2003

Application History

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

Date	Discussion / Letter / Additional Information
23 rd January 2024	<p>Council requested the withdrawal of the application due to the following concerns:</p> <p><u>Streetscape/Heritage and Bulk and Scale</u></p> <ul style="list-style-type: none"> Concern is raised that the part of the proposal seeking an increase in the height, bulk and scale of the lift overrun results in adverse visual bulk and scale impacts when viewed from the public domain and adjoining properties and that will detract from the streetscape and Heritage Conservation Area. <p><u>New Window and Privacy Impacts</u></p> <ul style="list-style-type: none"> The proposed new window on the eastern elevation is unable to be supported by Council on privacy grounds due to its potential adverse overlooking impacts on No. 95 Louisa Road.
21 st February 2024	<p>Council met with the applicant and their solicitor to speak about the RFI issued.</p> <p>The following issues were discussed:</p> <ul style="list-style-type: none"> The applicant put forward that the minimal environmental impact resulting from the 52cm lift overrun increase is insignificant and negligible considering the overall scale of the project. Council held the position that the lift overrun modification application was not supportable, that it is substantially different to the approved original development consent because the lift overrun is a substantial height box standing outside of the envelope of the development. The applicant enquired about any alternative suggestions in-lieu of rendering the new lift obsolete. Council suggested the installation of a stair lift to the upper most level of the residence which could allow for the lift overrun to be reduced so as to not exceed the height of the approved lift overrun or to eliminate the lift overrun altogether. The applicant highlighted safety concerns when a disabled person uses the stair lift unassisted with this option and safety risks that do not apply to the current passenger lift for individuals with disabilities.

	No resolution was reached at the meeting, and the applicant was requested to consider their position and to formally respond to Council's letter.
2 nd April 2024	The applicant submitted amended plans, heritage statement, amended Statement of Environmental Effects and letter which did not adequately address the streetscape / heritage, height and bulk and context concerns relating to the existing unauthorised lift overrun, but rather, sought to worsen the context, bulk and scale and streetscape / heritage and amenity concerns by increasing the height and bulk of the building through a roof form change to hide the unauthorised lift overrun. These changes were not accepted and Council subsequently advised the applicant as such and that the assessment of the proposal would proceed based on the originally submitted plans.

2. Section 4.55 Modification of Consent

The following is a summary of the assessment of the application in accordance with Section 4.55 of the *Environmental Planning and Assessment Act 1979 (EPA Act 1979)*.

Section 4.55(2)

Section 4.55(2) of the *EPA Act 1979* allows a consent authority to modify a development consent granted by it, if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

In considering the above:

- The essence of the development as modified is substantially the same as the original consent.
- Does not require concurrence or General Term of Agreement from any approval body.
- The application was notified to persons who made a submission against the original application sought to be modified.
- Submissions received have been considered.

Section 4.55(3)

In consideration of Section 4.55(3) of the *EPA Act 1979* the consent authority has taken into account the following reasons given by the determination authority for the granting of the original consent which were as follows:

- The proposal does not comply with the aims, objectives and design parameters contained in the relevant environmental planning instruments and development controls plans;
- The proposal will result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest; and
- The proposal is considered not suitable for a deferred commencement approval.

It is considered that the modification sought as part of this application is contrary to the original reasons granted for consent as the proposal will have adverse impacts on the streetscape and is not in the public interest, and this is discussed in greater detail throughout this report.

3. 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 2 Coastal Management

The *Resilience and Hazards SEPP* aims to ensure that future coastal development is appropriate and sensitive to its coastal location and category. The site is categorised as a coastal use area pursuant to Sections 2.10 and 2.11 of the *Resilience and Hazards SEPP* as identified on the maps to the *Resilience and Hazards SEPP*.

However, these specific provisions do apply to land located within the Foreshores and Waterways Area within the meaning of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 6

In general terms, it is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not be likely to cause increased risk of coastal hazards on the land or other land.

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.*

In considering the above, there is no evidence of contamination on the site. There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) were provided in the original Development Application (DA/2018/25) to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination.

The RAP concludes that the site could be made suitable for the proposed use after the completion of the RAP. Conditions of consent were included in the original application in accordance with the SEPP. The changes involved in this modification will not impact those conditions.

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 given the application was lodged prior to 1st October 2023.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has not included a BASIX Certificate as part of the lodgment of the application contrary to the *EP and A Regulation 2021*.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

Notwithstanding, the proposal is best defined land-based and are positioned above mean high water mark (MHW). Therefore, no development is proposed within a designated zone of the SEPP.

An assessment has been made of the matters set out under Part 6.28 of the *Biodiversity and Conservation SEPP*. It is considered that the carrying out of the proposed development is not consistent with clause (2)(e);

(e) *the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*

- (i) *the Foreshores and Waterways Area, and*
- (ii) *public places, landmarks and heritage items.*

The proposed would have an adverse effect on environmental heritage, the visual environment, the natural environment or any open space and recreation facilities, this is attributed to the additional height proposed associated with the lift overrun which is considered unnecessarily bulky.

Inner West Local Environmental Plan 2022 (IWLEP 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>It is considered that the modified lift will adversely impact upon the Heritage Conservation Area in which the site is located, is excessive in height and scale and is not compatible with the character of surrounding development, and thus, the proposed modification does not comply and / or has not demonstrated compliance with the Aims of the Plan as prescribed in Clause 1.2 of the <i>IWLEP 2022</i> for the following reasons:</p> <ul style="list-style-type: none"> • The proposal fails to conserve and maintain the natural, built and cultural heritage of Inner West, • The proposal fails to creates a high-quality urban place through the application of design excellence in all elements of the built environment and public domain, • The proposal fails to prevent environmental impacts on the local character of Inner West, • The proposal fails to prevent adverse environmental impacts, including cumulative impacts 	No

Part 2 – Permitted or Prohibited Development

Section	Proposed	Compliance
Section 2.3 Zone Objectives and Land Use Table	<p>The site is zoned R1 – General Residential under the <i>IWLEP 2022</i>. The <i>IWLEP 2022</i> defines the building in which the proposal relates as a dwelling-house i.e:</p> <p><i>“dwelling house means a building containing only one dwelling”.</i></p> <p>The proposal seeks consent to modify the approved size and height of the lift overrun to the new dwelling-house and provide a new window in the eastern elevation. The development is permitted with consent in the R1 zone.</p> <p>Whilst the proposal is permissible with consent, due to the streetscape / heritage, scale and character concerns raised in this report, the proposal does not satisfy and / or has not demonstrated compliance with the following objective of the R1 General Residential Zone:</p> <ul style="list-style-type: none"> To provide residential development that maintains the character of built and natural features in the surrounding area. 	No

Part 4 – Principal Development Standards

Section	Proposed	Compliance
Section 4.3C (3)(a) Landscaped Area	The proposed modification of the lift overrun, and introduction of a new window will not alter the approved Landscaped Area.	No change
Section 4.3C (3)(b) Site Coverage	The proposed modification of the lift overrun, and introduction of a new window will not alter the approved Site coverage.	No change
Section 4.4 Floor Space Ratio	The proposed modification of the lift overrun, and introduction of a new window will not alter the approved Floor Space Ratio.	No change

Part 5 – Miscellaneous Provisions

Section	Compliance	Compliance
Section 5.10 Heritage Conservation	<p>The subject property at 93 Louisa Road, Birchgrove, is located within the Birchgrove and Ballast Point Road Heritage Conservation Area (Schedule 5 of the <i>IWLEP 2022</i>)</p> <p>It is in the vicinity of the heritage listed house, “Geierstein”, including interiors, at 85 Louisa Road (Schedule 5 of the <i>IWLEP 2022</i>).</p> <p>For the reasons later discussed later in this report under Part C1.4: <i>Heritage Conservation</i> of the LDCP2013, the proposal is not supported from a heritage perspective as</p>	No

Section	Compliance	Compliance
	<p>it has not demonstrated compliance with the following objectives of Section 5.10 of the <i>IWLEP 2022</i>.</p> <p><i>(a) to conserve the environmental heritage of Leichhardt,</i> <i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.</i></p>	

Part 6 – Additional Local Provisions

Section	Proposed	Compliance
Section 6.5 Limited Development on Foreshore	The modifications, as proposed by this application, do not fall within foreshore area.	Yes
Section 6.6 Development on Foreshore Must Ensure Access	As noted in the assessment of the original DA, both adjoining properties do not provide public access to the foreshore and the site is not located close to public foreshore paths. As such, there is no opportunity to provide foreshore access on this site and this still applies to the proposed modifications.	Yes

B. Development Control Plans

Summary

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

- Leichhardt Development Control Plan 2013; and
- Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005.

Leichhardt Development Control Plan 2013

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 B: Connections	
B1.1 Connections – Objectives	Yes
Part C	
C1.0 General Provisions	No – See below
C1.1 Site and Context Analysis	No – See below
C1.2 Demolition	Not applicable
C1.4 Heritage Conservation Areas and Heritage Items	No – See below
C1.20 Foreshore Land	No
Part C: Place – Section 2 Urban Character	
C2.2.2.6 Birchgrove Distinctive Neighbourhood C2.2.2.6(a) Louisa Road sub area	No – See below

Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – See below
C3.2 Site Layout and Building Design	No – see below
C3.3 Elevation and Materials	Yes
C3.11 Visual Privacy	No – See below
Part D: Energy	Yes
Part E: Water	Yes

The following provides discussion of the relevant issues:

Part C – Section 1 – General Provisions

Control	Proposed / Discussion	Compliance
C1.0 General Provisions	<p>For reasons discussed in this report, concern is raised that the modified lift overrun is of a size, height and scale, that will not be compatible with the adjoining dwelling-houses and that does not meet desired future character controls for the Louisa Road sub area, Birchgrove Distinctive Neighbourhood. The height and scale of the proposed modification of the lift is considered to be excessive and will result in adverse heritage and streetscape and amenity impacts on the Heritage Conservation Area.</p> <p>Further, the new window to Bedroom 1 raises adverse privacy / amenity impacts on 95 Louisa Road</p> <p>For these reasons, the proposal does not satisfy and / or has not demonstrated compliance with the following Objective of Part C1.0 of the LDCP2013:</p> <ul style="list-style-type: none"> • O4: Amenable: places and spaces provide and support reasonable amenity, including solar access, privacy in areas of private open space, visual and acoustic privacy, access to views and clean air. • O6: Compatible: places and spaces contain or respond to the essential elements that make up the character of the surrounding area and the desired future character. Building heights, setbacks, landscaping and architectural style respond to the desired future character. Development within Heritage Conservation Areas or to Heritage Items must be responsive to the heritage significance of the item and locality. 	No
C1.1 Site and Context Analysis	<p>For reasons discussed in this report, the proposal has not satisfactorily considered the heritage characteristics of the site and area as per Objective O1(f) as follows:</p> <p><i>the special qualities of the site and its context including urban design, streetscape and heritage considerations.</i></p>	No
C1.4 Heritage Conservation Areas and Heritage Items	<p>The subject property at 93 Louisa Road, Birchgrove, is located within the Birchgrove and Ballast Point Road Heritage Conservation Area (Schedule 5 Part 2 of the <i>IWLEP 2022</i>).</p>	No

Control	Proposed / Discussion	Compliance
	<p>It is in the vicinity of the heritage listed house, “Geierstein”, including interiors, at 85 Louisa Road (1553 in Schedule 5 of the <i>IWLEP 2022</i>).</p> <p>The only streetscape / heritage concern relates to the proposed height, bulk and scale of the approved lift overrun, with a finished height of RL 19.29 AHD (as currently constructed), which is an increase of 0.52 metres over and above the approved level of RL 18.77 AHD (noting that that the removal of the unauthorised copper cladding to ensure the walls of the lift overrun will be finished as per the existing approval does not require consent from Council).</p> <p>The Hearing <i>Bilotta v Inner West Council</i> [2022] NSWLEC 1058, which sought approval of a modification (MOD/2020/0231), including “...raise the height of the lift shaft...”, and other various changes (MOD/2021/0320) to D/2018/25 was dismissed by the Land & Environment Court on 9 February 2022.</p> <p>The Court refused both the modifications in respect to the lift overrun because:</p> <p style="padding-left: 40px;"><i>“The lift overrun appeal must be refused because the environmental impact of the proposal is not minimal within the meaning of s 4.55(1A)(a) of the EPA Act when comparing the qualitative and quantitative aspects of the approved development and the proposal and the environmental impacts of both”.</i></p> <p>As stated in the Joint Heritage Report for <i>Bilotta v Inner West Council</i>, the increased height of the lift overrun was not supported for a number of reasons, which are reiterated below because they are relevant to the current modification (which seeks a lift overrun of a height exactly the same as proposed under MOD/2020/0231 refused by Council and the Court):</p> <ul style="list-style-type: none"> • The overall height of the lift overrun exceeds the established height and bulk of dwellings in the streetscape. In particular, the height of the structure exceeds the height of the new development adjacent at Nos. 87, 89 and 91 Louisa Road, which established a new building height in the vicinity. The proposal is higher than the ridgeline of the heritage item in the vicinity at No. 85 Louisa Road. • The lift overrun is inconsistent with O1 d. and i. of the Leichhardt DCP as it is not compatible with the setting or the relationship with the Birchgrove and Ballast Point Road Heritage Conservation Area in terms of scale, form, architectural detail, roof form, materials, detailing and colour of the building. Structures visible above ridgelines and roof forms in the Birchgrove and Ballast Point Road HCA are not typical and are where they exist they are chimneys. The structure is inconsistent with C8 of Part C1.4 of 	

Control	Proposed / Discussion	Compliance
	<p>the Leichhardt DCP as the increased height, bulk and area does not demonstrate respect for the form, scale and sitting of the immediate area.</p> <ul style="list-style-type: none"> • The box form of the lift overrun does not maintain the use of hipped, pitched or gabled roof forms which is inconsistent with C18 of Part C2.2.2.6 of the DCP. • Lift overruns, or similar box building forms above ridgelines, do not form part of the character of the silhouette of the roof line and architectural detailing along Louisa Road. There are no other box lift overruns in the vicinity. The closest form to this structure are traditional chimneys. The box form of the lift overrun and its location is inconsistent with C6 of Part C2.2.2.6 of the DCP which requires the preservation of consistent patterns of architectural styles on each street as lift overruns are not part of the established character of the HCA. • The increased height and the extent of the increased bulk of the lift overrun above the ridgeline does not maintain the two storey scale which is inconsistent with C1 of Part C2.2.2.6 of the DCP. • The box form of the lift overrun does not preserve the consistent patterns of architectural styles as the form is not part of the established character of the HCA which is inconsistent with C6 of Part C2.2.2.6 of the DCP. <p>For reasons outlined above, the proposed increase in the height, bulk and scale of the lift overrun is not supported.</p> <p>There are no heritage concerns with the proposed new window (No. 18) to the first floor eastern elevation to bedroom 1.</p> <p>The proposal is considered to be of a form, size, scale, design and detail that is not compatible with its context and the Heritage Conservation Area contrary the provisions and objectives of Part C1.4 of the LDCP 2013.</p>	
<p>C1.20 Foreshore Land</p>	<p>As discussed above, it is considered that the modified lift will adversely impact upon the streetscape and Heritage Conservation Area in which the site is located, is excessive in height and scale and is not compatible with the character of surrounding development. Given the above, the proposal has not demonstrated compliance with the following objectives and controls of this part of the DCP:</p> <ul style="list-style-type: none"> • <i>O1 Development shall:</i> <ul style="list-style-type: none"> c. <i>be set within a landscape setting and be compatible with surrounding landscapes and streetscapes;</i> 	<p>No</p>


Control	Proposed / Discussion	Compliance
	<ul style="list-style-type: none"> e. <i>be in the public interest for existing and future generations;</i> j. <i>ensure that the foreshore areas are recognised, protected, enhanced and maintained and rehabilitation is undertaken where necessary.</i> • <i>C3 Development on land adjacent to the foreshore must be designed with regard to the provisions of SREP (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area DCP (2005).</i> • <i>C4 Buildings or structures must respect the topographical features of the site...</i> 	


Part C – Section 2 – Urban Character

Control	Proposed / Discussion	Compliance
<p>C2.2.2.6 Birchgrove Distinctive Neighbourhood C2.2.2.6(a) Louisa Road sub area</p>	<p>Due to the visual bulk, scale, streetscape and heritage concerns raised in this report, the proposal has not demonstrated compliance with the following desired future character controls of the Louisa Road sub area, Birchgrove Distinctive Neighbourhood:</p> <ul style="list-style-type: none"> • <i>C6 - Where a consistent pattern of architectural style and form exists, preserve this consistency on each street.</i> • <i>C8 - Maintain the diverse character of the area by ensuring new development is complementary in terms of its architectural style, built form and materials.</i> • <i>C21 - Development visible from the water is to be designed to preserve the conservation values of the area...Additionally the rear elevation must be designed so it does not detract from the form, character and scale of the conservation area.</i> 	No

Part C – Section 3 – Residential Provisions

Control	Proposed / Discussion	Compliance
<p>C3.1 Residential General Provisions</p>	<p>The proposal will result in unacceptable visual bulk, scale and streetscape impacts to the adjoining properties and is out of character with the Louisa Road sub area, Birchgrove distinctive neighbourhood character controls and will have adverse impacts on the HCA and is not a satisfactory response to its context. Consequently, the proposal will not achieve compliance with the objectives set out in this Part, specifically:</p> <ul style="list-style-type: none"> • <i>O3 - to ensure that alterations, additions to residential buildings and new residential development are compatible with the established setting and character of the suburb and neighbourhood and compatible with the desired</i> 	No

Control	Proposed / Discussion	Compliance
	<p><i>future character and heritage significance of the place and its setting; and</i></p> <ul style="list-style-type: none"> <i>O4 - to ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings.</i> <p>The photos below are of the lift overrun as viewed from different vantage points from the public domain.</p>  <p>Image 1 - View of lift overrun as viewed from Louisa Road</p>	

Control	Proposed / Discussion	Compliance
	 <p data-bbox="411 1070 1192 1106">Image 2 - View of lift overrun as viewed from Birchgrove oval</p>	
<p data-bbox="204 1115 389 1240">C3.2 Site Layout and Building Design</p>	<p data-bbox="411 1115 1192 1413">This part of the DCP contains side setback controls which aim to control, inter-alia, bulk and scale impacts, as well as ensure that the pattern of development within the street is not adversely affected. Applying the side setback control graph prescribed in this Part to the modified lift overrun, the proposal will breach the side setback control – in this regard, a setback of up to approximately 8.1m for the wall height of the lift overrun is required; a minimum side boundary setback for the lift overrun of 4.2m is proposed.</p> <p data-bbox="411 1451 1192 1682">Control C8 allows for departures from the side setback control graph where certain tests are met, including requirements that the pattern of development within the streetscape is not compromised and the bulk and scale of the development has been minimised - as already established in this report, the proposal is not considered to meet these tests.</p> <p data-bbox="411 1720 1192 1877">The proposal is also considered to be an unsatisfactory response to Objective O2 of this part which requires that development ensures that the character of the existing dwelling and/or desired future character and established pattern of development is maintained.</p>	<p data-bbox="1294 1115 1337 1144">No</p>
<p data-bbox="204 1892 389 1989">C3.11 Visual Privacy</p>	<p data-bbox="411 1892 1192 2078">Louvres are proposed to the new and reconfigured windows (W18) to the eastern elevation serving Bedroom 1 on the first floor. The proposed windows propose fixed, full-length, 150mm blade vertical louvres, permanently angled to permit views from 93 Louisa Road but preventing viewing toward the rear balcony of 95 Louisa Road.</p>	<p data-bbox="1294 1892 1337 1921">No</p>

Control	Proposed / Discussion	Compliance
	This is the same window and louvred privacy screening as deleted by the Inner West Planning Panel under MOD/2022/0474 due to privacy concerns on No. 95 Louisa Road. It is noted that the window in question is a third opening associated with this particular room and is not required for light and ventilation. The potential privacy impacts from this opening are unnecessary and avoidable.	

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The site is located in a Foreshore and Waterways Area and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 applies to the proposal. The proposal has not been designed to be a sympathetic to its surroundings and will detract from the unique visual qualities of Sydney Harbour and its islands and foreshores contrary to the provisions and objectives of Part 5.4 of the Sydney Harbour Foreshores DCP.

C. The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have significant adverse environmental impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is not of a nature in keeping with the overall function of the site and contrary to the test of site suitability.

E. Submissions

The application was notified in accordance with Council’s Community Engagement Strategy between 11 October 2023 to 31 January 2024.

A total of six submissions were received in response to the initial notification. The following issues raised in submissions have been discussed in this report:

- Continuing use of the existing unauthorised lift overrun
- The bulk and scale of the lift overrun
- Proposed modification is non-compliant with the Leichhardt DCP and Inner West LEP
- The addition of Window 18, causing privacy concerns to neighbouring lots

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

Issue:	Comment
Concerns that the lift overrun and new bedroom window have already been refused in previous application, therefore it must be refused in this application.	This report and associated assessment recommends refusal of the application in line with previous recommendation from the Land and Environment Court and Inner West Local Planning Panel.

The installation of a hydraulic lift would be a more suitable option.	Noted. See application history for details of discussions with the applicant regarding providing alternative lift options.
Substantially the same development	The modification is considered substantially the same as the development originally approved, however, the impacts of the proposal are not considered to be acceptable.

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 not been achieved in this instance.

4. Referrals

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

- Heritage Specialist.

5. Conclusion

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

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

The application is considered unsupportable, and in view of the circumstances, refusal of the application is recommended.

6. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.55(2) of the *Environmental Planning and Assessment Act 1979*, refuse Application No. MOD/2023/0318 which seeks to increase the height of a lift over run and provide a new window No. 18 to Bedroom 1 with external louvre at 93 Louisa Road, Birchgrove, for the reasons listed in Attachment A below.

Attachment A – Reasons for refusal

1. The proposed development is inconsistent and has not demonstrated compliance with the relevant environmental planning instruments, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) *SEPP (Building Sustainability Index: BASIX) 2004*;
 - b) *SEPP (Biodiversity and Conservation) 2021*; and
 - c) The following Sections of the *Inner West Local Environmental Plan 2022*:
 - i) Section 1.2 - *Aims of the Plan*;
 - ii) Section 2.3 - *Zone Objectives and Land Use Table*; and
 - iii) Section 5.10 - *Heritage Conservation*.
2. The proposed development is inconsistent and has not demonstrated compliance with the following provisions of the following Development Control Plans, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; and
 - b) The following parts of the Leichhardt Development Control Plan 2013:
 - i) Part C1.0 - *General Provisions*;
 - ii) Part C1.1 – *Site and Context Analysis*;
 - iii) Part C1.4 - *Heritage Conservation Areas and Heritage Items*;
 - iv) Part C 1.20 – *Foreshore Land*;
 - v) C2.2.2.6 - *Birchgrove Distinctive Neighbourhood & C2.2.2.6(a) Louisa Road Sub Area*;
 - vi) Part C3.1 - *Residential General Provisions*;
 - vii) Part C3.2 - *Site Layout and Building Design*; and
 - viii) Part C3.11 0- *Visual Privacy*
3. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
4. The adverse environmental impacts of the proposal demonstrate that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
5. The approval of this application is likely to create an adverse precedent and is considered contrary to the public interest, pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979.

Attachment B – Recommended amended conditions of consent (in event of application being approved)

A. Amend the following conditions to read:

- Development must be carried out in accordance with Development Application No. DA/2018/25 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Demolition Plan DA13	ESNH Design Pty Ltd	November 2017
<i>Basement Floor Plan 1705 DA02G</i>	<i>ESNH Design Pty Ltd</i>	<i>October 2022</i>
<i>Lower Ground Floor Plan 1705 DA03D</i>	<i>ESNH Design Pty Ltd</i>	<i>October 2022</i>
<i>Upper Ground Floor Plan 1705 DA04H</i>	<i>ESNH Design Pty Ltd</i>	<i>March 2023</i>
First Floor Plan 1705 DA05K	ESNH Design Pty Ltd	August 2023
<i>Roof Terrace Plan 1705 DA06F</i>	<i>ESNH Design Pty Ltd</i>	<i>October 2022</i>
Roof Plan 1705 DA07H	ESNH Design Pty Ltd	August 2023
Landscape Plan L-01-A	Space Landscape Designs	16 July 2019
Landscape Plan L-02-A	Space Landscape Designs	23 April 2018
North and West Elevations 1705 DA08G	ESNH Design Pty Ltd	August 2023
<i>South and East Elevations 1705 DA09E</i>	<i>ESNH Design Pty Ltd</i>	<i>October 2022</i>
Sections 1705 DA10E	ESNH Design Pty Ltd	August 2023
Pool Section Plan DA15	ESNH Design Pty Ltd	January 2018

Document Title	Prepared By	Dated
<i>BASIX Certificate 869219S_05</i>	<i>ESNH Design Pty Ltd</i>	<i>22 November 2022</i>
Finishes Board DA13	ESNH Design Pty Ltd	November 2017
Waste Management Plan	Eugenia Harley	20.11.12
Geotechnical report No. 17/3401B	STS GeoEnvironmental	December 2017
Remediation Action Plan	LG Consult	12/12/2017
Structural Engineers Report and Construction Methodology	Mance Arraj	1/12/2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail. Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail. In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail. The existing elements (walls, floors etc.) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

(Condition Amended - MOD/2023/0318 – 18 June 2024)

B. Delete the following conditions:

2a) Deleted.

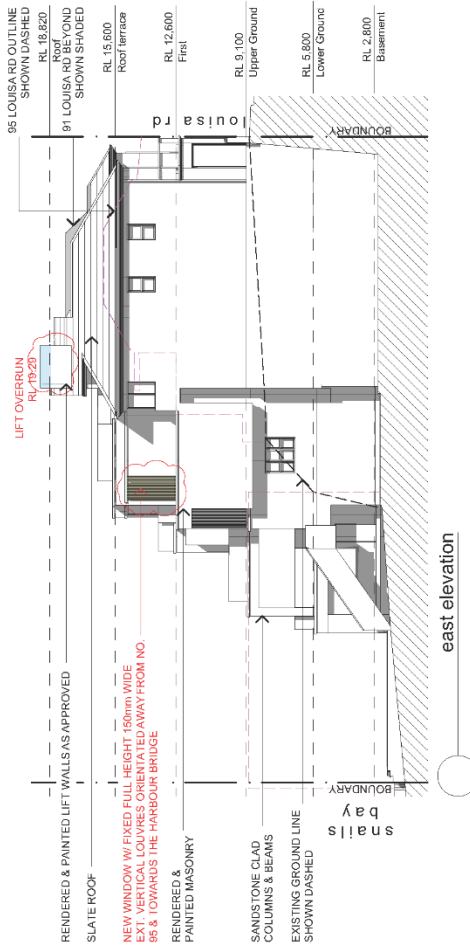
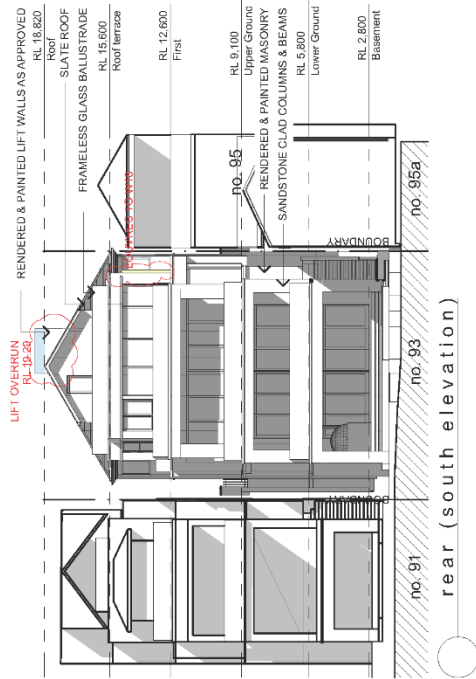
(Condition Deleted - MOD/2023/0318 – – 18 June 2024)

2b. Deleted.

(Condition Deleted - MOD/2023/0318 – – 18 June 2024).

Attachment C – Plans of proposed development

NOTES
 1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER D/2016/25, M2018/91 & M2022/20/71.
 2. YELLOW SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
 3. YELLOW SHADING DENOTES DEVELOPMENT WHICH HAS NOT BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.



ESNH
 DESIGN PTY LTD
 P.O. Box 1347
 Forestville NSW 2057
 T: 04 15 4 8 7 3 6 6
 e: esnsh@esnsh.com.au
 A/CN 13439550

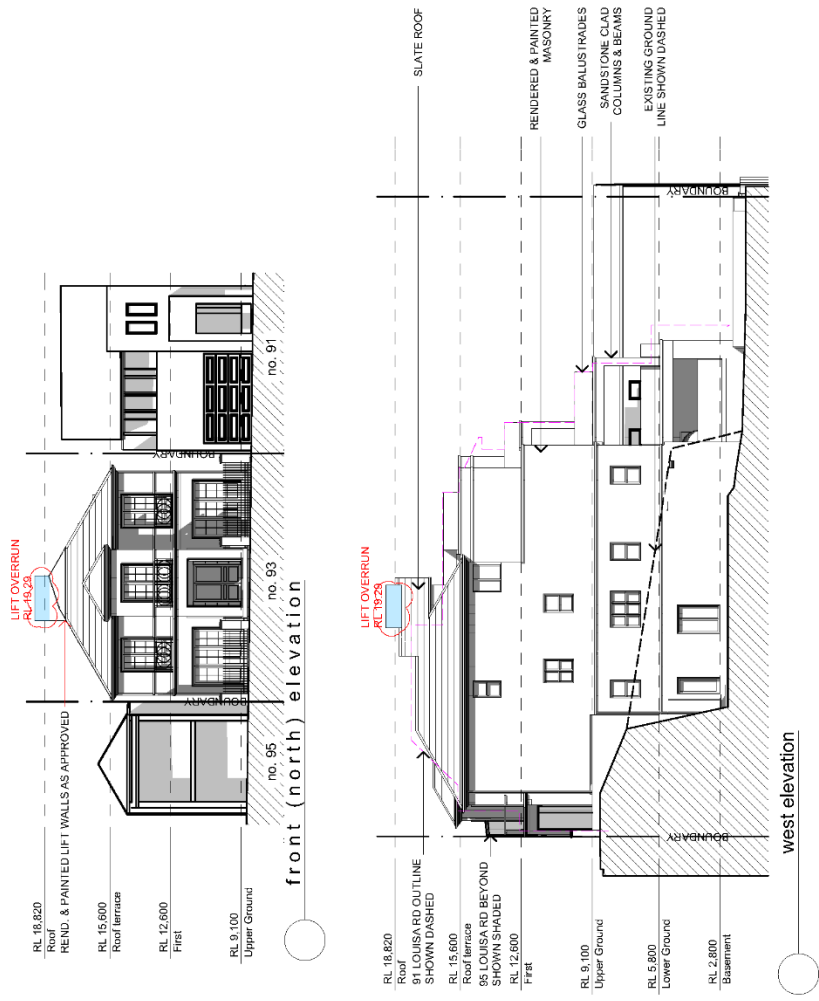
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 SCALE 1:200(A3)
 DATE August 2023
 ISSUE s 4.55 mod. appl.

elevations sheet 2 of 2

BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

Document Set ID: 39168935
 Version: 1, Version Date: 20/09/2023

NOTES
 1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER 2/2018/225, 1M/2018/91 & MOD/2022/0071.
 2. SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
 3. YELLOW SHADING DENOTES DEVELOPMENT WHICH HAS NOT BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.



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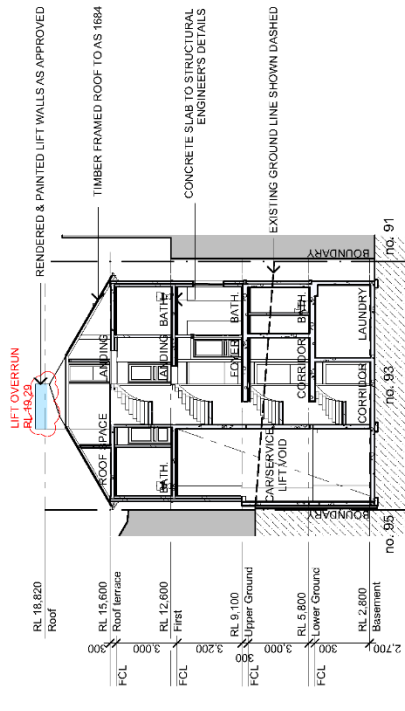
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 SCALE 1:200(A3)
 DATE August 2023
 ISSUE S 4.55 mod. appl.

elevations sheet 1 of 2

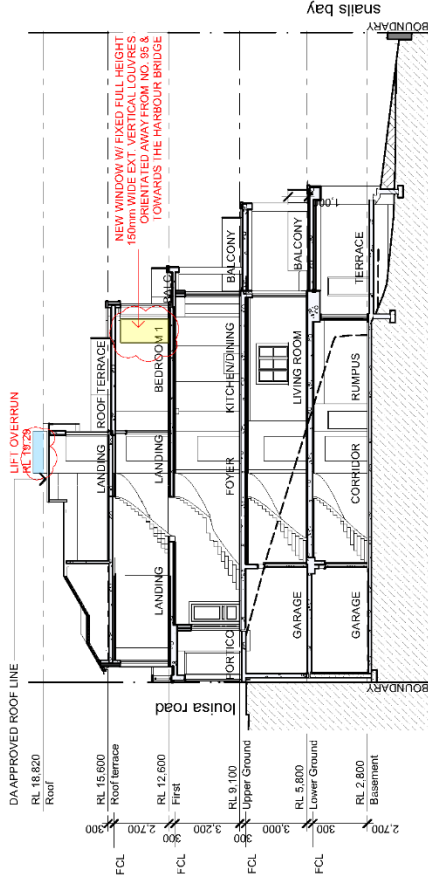
BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

Document Set ID: 38188933
 Version: 1, Version Date: 26/09/2023

NOTES
 1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER 2/2018/25, 1/20/18/91 & MOD/20/22/0071.
 2. SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
 3. YELLOW SHADING DENOTES DEVELOPMENT WHICH HAS NOT BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.



section aa



section bb

ESNH
 DESIGN PTY LTD
 1/24/15/4/87/3/6/6
 2/20/18/91/1/20/22/0071
 1/24/15/4/87/3/6/6
 ACN 13439550

DWG NO. 1705 DA10E
 SCALE 1:200 (A3)
 DATE August 2023
 ISSUE S 4.55 mod. appl.

sections

BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

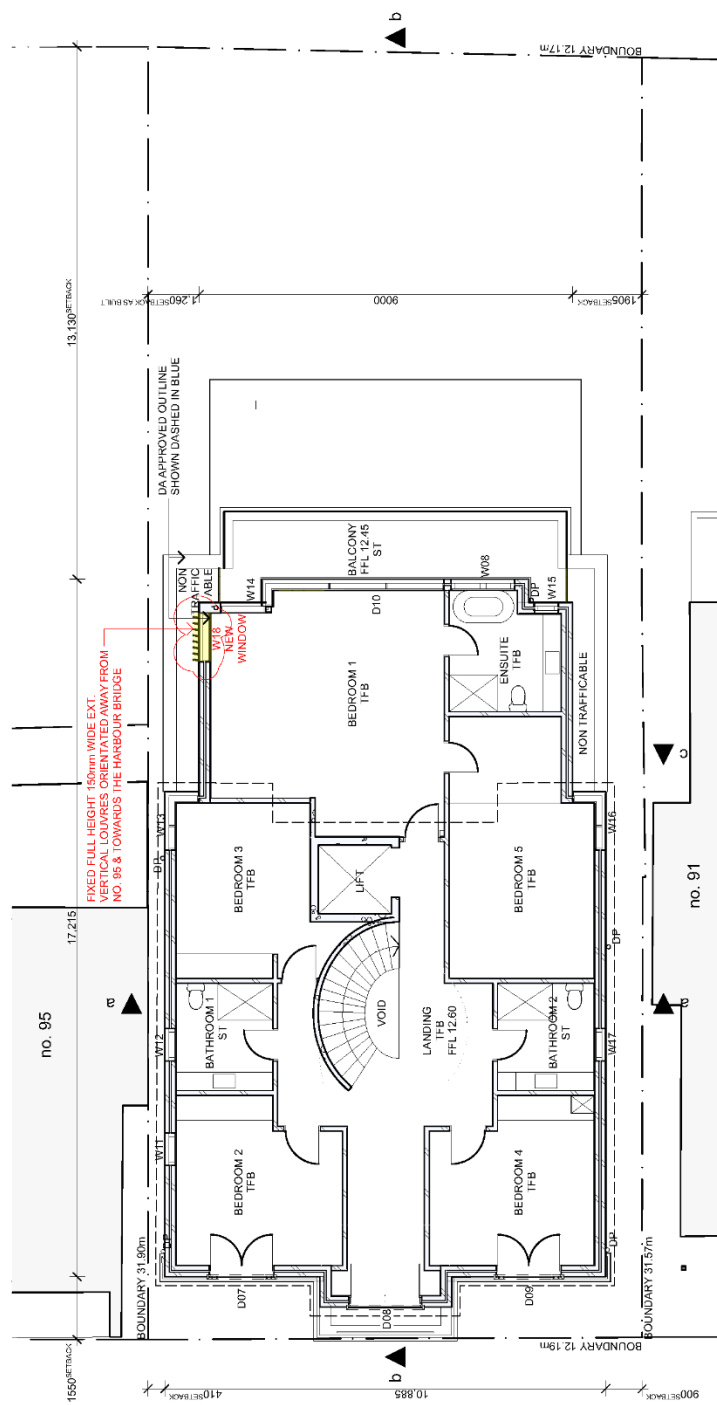
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 Version: 1, Version Date: 26/09/2023

NOTES

1. UNSHADED AREAS DENOTE DEVELOPMENT APPROVED UNDER 2/2018/25, 1/2018/25, 1/2018/25 & MOD/2022/0071.
2. SHADING DENOTES DEVELOPMENT WHICH HAS BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.
3. YELLOW SHADING DENOTES DEVELOPMENT WHICH HAS NOT BEEN CARRIED OUT AND FOR WHICH APPROVAL IS BEING SOUGHT IN THIS MODIFICATION APPLICATION.

LEGEND

- C CHUTE
- CR CRIBS RISER
- CC CONCRETE COLUMN TO ENGINEER'S DETAILS
- ST STONE TILE
- TFB TIMBER FLOOR BOARDS



ESNH
 DESIGN PTY LTD
 1705 DA05K
 1:100
 August 2023
 \$4.55 mod. appl.



DWG NO 1705 DA05K
 SCALE 1:100
 DATE August 2023
 ISSUE \$4.55 mod. appl.

first floor plan

BILLOTTA HOUSE
 93 LOUISA ROAD
 BIRCHGROVE

Document Set ID: 38188933
 Version: 1, Version Date: 26/09/2023

Attachment D - Current conditions of Development Consent D/2018/25 as modified



NOTICE OF DETERMINATION - APPROVAL

Issued under Section S4.55 of the Environmental Planning and Assessment Act 1979

Development Application No.	D/2018/25
Applicant	Mr Franco Bilotta
Land to be developed	93 Louisa Road BIRCHGROVE NSW 2041
Approved development	Demolition of existing dwelling and associated structures and remediation of site. Construction of a new dwelling with basement parking provided with a car lift and landscaping.
Cost of development	\$1,464,000.00
Determination	This S4.55(2) modification application was determined by Local Planning Panel and was granted consent subject to the conditions attached.
Other Approvals	Before commencing <i>building work</i> or <i>subdivision work</i> , a relevant Construction Certificate must be obtained from Council or an Accredited Certifier. Council must be appointed the Principal Certifier for any <i>subdivision work</i> under the Act.
Date of Development Consent:	4 December 2018
Date of Modification of Consent:	13 June 2023
Modification Number:	MOD/2022/0474

Reasons for conditions

To protect the environmental amenity of the area and the public interest.

Inner West Council
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council@innerwest.nsw.gov.au
PO Box 14, Petersham NSW 2049

Document Set ID: 3988044
Version: 1, Version Date: 08/05/2023

Right of appeal

If you are dissatisfied with this decision, Section 8.9 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court in accordance with the timeframes set out in [Section 8.10](#) of the *Environmental Planning and Assessment Act 1979*. In addition to the above, third party appeal rights are set out in the *Environmental Planning and Assessment Act 1979* and may be applicable.

Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides that the applicant may request the Council to review the determination. Section 8.2 does not apply to complying development, designated development, a determination made by Council under Section 4.2 in respect of Crown applications, or a decision that is already subject to a Section 8.2 review.

For further information please contact **Adele Cowie** on **02 9392 5085** or **adele.cowie@innerwest.nsw.gov.au**.



Ruba Osman
Manager – Development Assessment

CONDITIONS OF CONSENT**DEFERRED COMMENCEMENT – Satisfied 4 December 2018**

1. The following deferred commencement condition has been satisfied as of 4 December 2018.
 - a) [deleted]
 - b) Sydney Water Corporation approval shall be obtained for all works in the vicinity of the Sydney Water Corporation owned sewer pit and pipes on the site. A letter detailing Sydney Water Corporation approval and any conditions imposed shall be submitted and accepted by Council.
 - c) [deleted]
 - d) The eastern wall of the car/service lift is to be set back an additional 170mm further west so that it is setback 410mm from the eastern boundary and aligns with the eastern garage entrance/kitchen wall on the upper ground floor plan and eastern wall of the first floor to provide reasonable access to the western wall of the dwelling at 95 Louisa Road if required for maintenance.
 - e) The southern wall of the upper ground floor plan must be setback an additional 1 metre from the rear/southern boundary to align with the rear alignment of the upper ground level of 91 Louisa Road, Birchgrove.
 - f) The proposed rear facing first floor balcony is to be modified as follows:
 - i) The parts of the balcony to the east and west of the dwelling are not to be accessible. They shall either be converted to planter beds or a balustrade erected between the rear elevation of the dwelling and the southern edge of the balcony to prevent access to these areas.
 - ii) The central section of the balcony that extends approximately 2 metres from the rear elevation shall be cut back so that it aligns with the side sections and has a depth of approximately 1 metre to align with the first floor balcony at 91 Louisa Road, Birchgrove.
 - g) The southern balustrade of the Upper Ground floor rear facing "terrace" is to be in set approximately 1.5 metres from the rear/south to align with the balustrade of the adjoining property at this level at 91 Louisa Road, Birchgrove.

- h) The trees proposed in the western setback must be relocated further east so that they are located in front of the proposed dwelling and do not block the public view corridor from Louisa Road to the water.
- i) The finished floor level of all internal basement rooms shall be raised such that they are not less than RL2.8m AHD without raising the height of the building as a whole.
- j) The level of the proposed terrace at basement level shall be raised to RL2.7m AHD without raising the height of the building as a whole.
- k) The following design changes are required in the rear yard:
 - i) The proposed pool shall be deleted and replaced with lawn and/or landscaping.
 - ii) The finished surface level of the proposed lawn and landscaping shall not exceed RL 1.5m AHD adjacent to the seawall.
 - iii) No retaining walls are permitted within 3.0m of the sea wall.
- l) The southern balustrade of the roof terrace is to be set back to align with the balustrade of the roof terrace of the adjoining dwelling house at 91 Louisa Road, Birchgrove.

The operational Development Consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement consent.

If the applicant fails to satisfy Council as to the above matters within 2 years from the date of determination this consent will lapse.

CONDITIONS OF CONSENT

- 2. Development must be carried out in accordance with Development Application No. D/2018/25 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Demolition Plan DA13	ESNH Design Pty Ltd	November 2017
Basement Floor Plan 1705 DA02G	ESNH Design Pty Ltd	October 2022
Lower Ground Floor Plan 1705 DA03D	ESNH Design Pty Ltd	October 2022

Upper Ground Floor Plan 1705 DA04H	ESNH Design Pty Ltd	March 2023
First Floor Plan 1705 DA05J	ESNH Design Pty Ltd	March 2023
Roof Terrace Plan 1705 DA06F	ESNH Design Pty Ltd	October 2022
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North and West Elevations 1705 DA08F	ESNH Design Pty Ltd	October 2022
South and East Elevations 1705 DA09E	ESNH Design Pty Ltd	October 2022
Sections 1705 DA10D	ESNH Design Pty Ltd	October 2022
Pool Section Plan DA15	ESNH Design Pty Ltd	January 2018

Document Title	Prepared By	Dated
BASIX Certificate 869219S_05	ESNH Design Pty Ltd	22 November 2022
Finishes Board DA13	ESNH Design Pty Ltd	November 2017
Waste Management Plan	Eugenia Harley	20.11.12
Geotechnical report No. 17/3401B	STS GeoEnvironmental	December 2017
Remediation Action Plan	LG Consult	12/12/2017
Structural Engineers Report and Construction Methodology	Mance Arraj	1/12/2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail. Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail. In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail. The existing elements (walls, floors

etc.) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

(Modified by M/2019/84 on 08/10/2019 and MOD/2022/0474 on 13 June 2023)

A. Additional condition 2 a) be inserted as follows:

2a) A registered surveyor is to confirm the RL of the lift overrun accords with the approved plans as modified under MOD/2022/0474 (i.e RL 18.77 for the top of the lift overrun which is below the ridge height of RL 18.82).

2b. Delete window 18.

Reason: To maintain the privacy of number 95 Louisa Road.

(Modified by MOD/2022/0474 on 13 June 2023)

3. Consent is granted for the demolition of all built structures currently existing on the property, subject to strict compliance with the following conditions:
 - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
 - b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
 - i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
 - ii) A *final* inspection when the demolition works have been completed.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.

- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (i.e., sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.

- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
 - i) A WorkCover licensed contractor must undertake removal of all asbestos.
 - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
 - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
 - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
 - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

4. Remediation and validation of contaminated land must be carried out in accordance with State Environmental Planning Policy No. 55 – Remediation of land, the Contaminated Land Management Act 1997, Development Control Plan 2013 and the following documentation:

Document Title	Prepared By	Dated
Remediation Action Plan	Land and Groundwater Consulting Pty Ltd	12 December 2017

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

5. To ensure reasonable privacy for the adjoining property, the following windows/glazing:

Window/glazing	Room	Elevation
W06	Kitchen	Eastern

W07	Lounge	Western
W13	Bedroom	Eastern

- must be treated with one of the following privacy treatments:
- have a minimum sill height of 1.6m above finished floor level. or
- be permanently fixed (that is windows are not to swing or lift open) with obscure glazing (not frosted film on clear glazing) to a height of 1.6 metres above finished floor level; or
- provided with fixed external louvers with a density of 75% and have no individual opening more than 30mm wide, and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials. Where fixed louvered screens are used, the screen structure must be securely fixed. The louvers may tilt open from a closed position to an angle of 45 degrees in either a downward or upward position, depending on the sightlines that are to be restricted.

The treatment must ensure that the ventilation requirements of the Building Code of Australia are met. If one treatment cannot satisfy the requirements, an alternative in the list above is to be used.

Details must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The privacy measures must be maintained for the life of the building.

(Modified by M/2019/84 on 08/10/2019 and MOD/2022/0474 on 13 June 2023)

6. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
 - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the “Principal Certifying Authority.”
 - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
 - c) At least two days notice, in writing has been given to Council of the intention to commence work.

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

7. A contribution pursuant to the provisions of Section 7.11 of the *Environmental Planning and Assessment Act 1979* for the services detailed in column A and for the amount detailed in column B must be made to Council prior to the issue of a Construction Certificate:

Column A	Column B
Open space and recreation	\$6,829.00
Community facilities and services	\$1,043.00
Total Contribution	\$7,872.00

Payment will only be accepted in the form of cash, bank cheque or EFTPOS / Credit Card (to a maximum of \$10,000). It should be noted that personal cheques or bank guarantees cannot be accepted for Section 7.11 Contributions. Contribution Plans may be inspected on Council's website www.leichhardt.nsw.gov.au or a copy purchased at the Customer Service counter in Council's Administration Centre, 7-15 Wetherill Street, Leichhardt, during business hours.

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

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

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
 - i) 10:00pm to 7:00am on Monday to Saturday; and
 - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

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

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

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

9. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site (with the exception of any works to the sea wall covered by Condition 1). No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property (with the exception of any works to the sea wall covered by Condition 1).

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by / pegged out by a registered surveyor in accordance with the approved plans, prior to the issue of a construction certificate.

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

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

10. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a Construction Certificate.

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

11. All plant and associated equipment must be located within the approved building envelope and is not be located on the roof. Details on the location of all plant and equipment must be consistent with the approved plans and provided prior to the issue of a Construction Certificate.

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

12. Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard AS 1158.3:2005 *Pedestrian area (Category P) lighting – Performance and design requirements* and Australian Standard AS 4282:1997 *Control of the obtrusive effects of outdoor lighting*.
13. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
 - a) Must preserve and protect the adjoining building from damage
 - b) Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

14. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
15. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document *Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004)* available at www.environment.nsw.gov.au and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:
 - a) Minimise the area of soils exposed at any one time.
 - b) Conservation of top soil.
 - c) Identify and protect proposed stockpile locations.

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

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

16. The approved plans must be checked online with Sydney Water Tap In to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

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

17. To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided.

The ventilation systems are to be designed, constructed and operated in accordance with the:

- The Building Code of Australia,
- Australian Standard AS 1668 Part 1 – 1998,
- Australian Standard AS 1668 Part 2 – 2012,
- Australian Standard 3666.1 – 2011,
- Australian Standard 3666.2 – 2011; and
- Australian Standard 3666.3 - 2011.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate. The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council (the consent authority).

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

18. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):

- a) A plan view of the entire site and frontage roadways indicating:
- i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
 - iii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
 - iv) Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road).
 - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
 - vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
 - vii) An on-site parking area for employees, tradespersons and construction vehicles as far as possible.
 - viii) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
 - ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
 - x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer, with National Professional

Engineering Registration (NPER) in the construction of civil works or a survey company of Registered Surveyors with "preliminary accreditation" from the Institution of Surveyors New South Wales Inc. or an accredited certifier.

- b) **Noise & Vibration**
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) www.epa.nsw.gov.au for guidance and further information. Advice should be obtained from a suitably qualified Geotechnical Engineer. .
- c) **Occupational Health and Safety**
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
- d) **Toilet Facilities**
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be provided on plan.
- e) **Traffic control plan(s) for the site**
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual" and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

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

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

- 19. Prior to issue of the Construction Certificate the applicant shall have a Geotechnical / Civil Engineering report prepared which addresses (but is not limited to) the following:
 - i. The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and

- include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs shall be related to Australian Height Datum.
- ii. The appropriate means of excavation/shoring in light of point (i) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations/buildings shall be discussed and ameliorated.
 - iii. The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support to be provided within the subject site).
 - iv. The existing groundwater levels in relation to the basement structure, where influenced.
 - v. Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program (as required) including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by a suitably qualified consulting Geotechnical / Hydrogeological Engineer with previous experience in such investigations and reporting.

The report, satisfying the requirements of this condition, must be provided as part of the supporting documentation lodged with the Principal Certifying Authority for approval of the Construction Certificate application. The professional recommendations of the report shall be implemented in full during the relevant stages of excavation and construction.

20. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
21. A Foreshore Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided prepared / prior to the issue of a Construction Certificate. The Plan must be prepared / amended to make provision for the following:
 - a) 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 shall be assessed for the 100 year ARI and Probable Maximum

Flood (PMF) storm events. The precautions shall include but not be limited to the following:

- i) Types of materials to be used to ensure the structural integrity of the building and the sea wall 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.
- 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.

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 equivalent meaning to terms used in Council's Development Control Plan as listed below.

Building Code of Australia	Development Control Plan 2013
<i>Defined flood level (DFL)</i>	<i>100 year Average Recurrence Interval flood level</i>
<i>Defined flood event (DFE)</i>	<i>100 year Average Recurrence Interval flood</i>
<i>Flood hazard level (FHL)</i>	<i>Foreshore Planning Level (FPL)</i>

- b) Specify the architectural and structural plans upon which the above recommendations have been incorporated.

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

- 22. The approved Architectural plans shall be amended to incorporate the recommendations of the Foreshore Risk Management Plan prepared under Condition 22. The plans addressing the requirements of this condition must be provided prior to the issue of a Construction Certificate. The design must be prepared to make provision for the following:

- a) Specification of materials
- b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans shall occur except as identified by this condition and Condition 5. Any

changes to such must be subject to separate approval in accordance with Section 4.55 of the Environmental Planning and Assessment Act.

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

23. Engineering design plans prepared by a qualified practicing Structural Engineer must be prepared and incorporate the following recommendations of the Foreshore Risk Management Plan prepared under Condition 22.

The design must be prepared to make provision for the following:

- a) Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b) Waterproofing works, where applicable.

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

24. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:

- a) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to Snail's Bay.
- b) Comply with Council's Stormwater Drainage Code.
- c) Charged or pump-out stormwater drainage systems are not permitted.
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- e) An overland flowpath must be provided within the setback to the western site boundary between the Louisa Road frontage of the dwelling and Snail's bay. The front yard and driveway at the Louisa Road frontage must be graded so that bypass flows from the site drainage system are directed to the overland flowpath.
- f) A minimum 150mm step up must be provided between the finished surfaces of all external courtyards and the adjacent internal floor levels.

- g) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3:2015 Plumbing and Drainage – Stormwater Drainage*.
- h) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- i) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- j) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- k) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.

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

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

25. An integrated structural and geotechnical engineering design and report must be prepared by a qualified practicing Structural and Geotechnical Engineer prior to the issue of a Construction Certificate. The design and report must be prepared/amended to make provision for the following:
- a) The basement must be of fully tanked construction and be entirely waterproofed.
 - b) The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
 - c) Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.
 - d) All components of the structure, including subsoil drainage, must be set back inside the property boundary.

- e) Any retaining walls must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment.
- f) Recommendations regarding method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.
- g) No adverse impact on surrounding properties or the adjacent road.
- h) Relevant geotechnical/subsurface conditions of the site, as determined by full geotechnical investigation.

The design must be certified as compliant with the terms of this condition by a suitably qualified Structural and Geotechnical Engineers.

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

- 26. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the opposite kerb line of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary.
- 27. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 *Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:
 - a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent.
 - b) The garage slab or driveway must rise within the property to be a minimum 230mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
 - c) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest

projection from the ceiling, such as lighting fixtures, and to open garage doors.

- d) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- e) The garage including Garage Entrance and Car/Service Lift must have minimum clear internal dimensions of 6000 x 3000mm (length x width) and an door opening width of 2800mm to the driveway. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
- f) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

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

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

28. The car lift and vehicular access design and specification must be certified by a suitably qualified Civil Engineer with NPER registration and be provided prior to the issue of a Construction Certificate as meeting the following requirements:
- a) The car lift shall have the internal dimensions not less than shown on the approved plans or as amended by Condition 5.
 - b) A minimum of 2200mm headroom must be provided throughout the car lift
 - c) Ensure operating noise and vibration levels of the car lift are limited to acceptable levels in accordance within appropriate standards
 - d) Provide manufacturer specifications of the car lift
 - e) Provide operational details and maintenance plan of the entire car lift facility, demonstrating safe and functional access for all users, include details of safety protection systems for users and non-users.

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

- 29. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall 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.
- 30. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit (FOOT)	\$7,860
Inspection fee (FOOTI)	\$225

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

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

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

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

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

Property
95 Louisa Road, Birchgrove
91 Louisa Road, Birchgrove

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

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

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

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating

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

32. Prior to the commencement of works or issue of a Construction Certificate (whichever occurs first), a Noise and Vibration Management Plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant Australian Standards and Assessing Vibration: A technical guideline (available www.environment.nsw.gov.au). The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works. The Plan shall address, but not be limited to, the following matters:

- a) Identification of activities carried out and associated noise sources.
- b) Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment.
- c) Determination of appropriate noise and vibration objectives for each identified sensitive receiver.
- d) Noise and vibration monitoring, reporting and response procedures.
- e) Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles.
- f) Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction.
- g) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency (consistent with conditions of this consent).
- h) Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration.
- i) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.

33. An experienced suitably qualified & experienced Heritage Architect must be commissioned to assist and to provide advice on the following elements of the approved development, **and to oversee the following component of the project:**

The salvaging of certain aspects of the historic fabric within the interior of the dwelling - unique pressed metal wall and ceiling linings in the bedrooms; and the front façade windows as recommended by the applicant's heritage consultant.

Details of the engagement of the experienced Heritage Architect in accordance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Prior to the issue of an Occupation Certificate the Heritage Architect is to certify that the works have been carried out in accordance with these requirements.

Details of the engagement of the experienced Heritage Architect & copy of the certification in accordance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

34. Prior to the commencement of demolition or any works or issue of a Construction Certificate (whichever occurs first), the Principal Certifying Authority shall be satisfied that an **Archival Record, as recommended by the applicant's heritage consultant**, has been completed and 3 copies have been submitted to Council for the following properties:

Address/Building

No.93 Louisa Road, Birchgrove.

The report must be prepared by a suitably qualified and experienced heritage consultant, be consistent with the Heritage Office 'Photographic Recording Of Heritage Items Using Film Or Digital Capture' and must contain the following minimum requirements:

- a) Title page with subject, author, client, date, copyright etc.
- b) Statement of why the record was made
- c) Outline history of the item and associated sites, structures and people.
- d) Statement of heritage significance of the items in accordance with the Burra Charter and the Heritage Inventory.

- e) Inventory of archival documents related to the item and their location (eg company records, original drawings, photography), when available.
- f) Location plan showing relationship to surrounding geographical features, structures, roads etc. Include a north point.
- g) Floor plans/site plans cross-referenced to photographs and showing the order & orientation in which the photos were taken. Name the relevant features, structures and spaces. Show a north point.
- h) Photographic record, labelled and cross-referenced to floor / site plans and accompanied by informative catalogues and two copies of proof sheets. Images should include:
 - View to and from the site (possible from four compass points)
 - Views showing relationships to other relevant structures, landscape features and movable items.
 - All external elevations.
 - Views of all external and internal spaces (e.g. courtyards, rooms, roof spaces etc).
 - External and internal detail (e.g. joinery, construction joints, decorative features, paving types etc).

Selected prints to give an overall picture of the item may be required. They should be mounted and labelled.

- i) Colour slides/archival quality prints. One set of slides mounted in archival stable slide pockets or 10.5 x 14.8cm prints on archival quality paper and archivally stable inks, clearly labelled and cross-referenced to base plans. Images should include:
 - Views to and from the site and/or the heritage item.
 - Views and details of external and internal elements and colour schemes as appropriate.

Two (2) hard copies and one (1) electronic copy (including digital copies of images – not scanned copies) of the report must be submitted to Council; one of the hard copies shall contain negatives (if using film) or DVD with digital copies of photos (if using digital). A written acknowledgment from the Consent Authority (Leichhardt Council) must be obtained (attesting to this condition being appropriately satisfied) and submitted to the

Principal Certifying Authority prior to the issue of a Construction Certificate or commencement of works (whichever occurs first).

35. Site cranes and hoists may be erected within the boundaries of the site subject to compliance with the relevant provisions of Australian Standard AS 1418:2005 *Crane, hoists and winches*, Australian Standard AS 2549:1996 *Cranes (including hoists and winches)* and Australian Standard AS 2550:2002 *Cranes, hoists and winches*.

Cranes must not swing or hoist over any public property unless the relevant approval under Local Government Act 1993, Crown Lands Act 1989, or the Roads Act 1993 has been obtained prior to the commencement of works.

The use of the cranes and hoists must comply with the approved hours of construction and/or Roads Act approval. The cranes must not be illuminated outside approved working hours other than safety beacons required by the Civil Aviation Safety Authority. No illuminated signs are to be erected upon or displayed upon any crane.

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

36. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
 - b) A concrete pump across the roadway/footpath
 - c) Mobile crane or any standing plant
 - d) Skip bins
 - e) Scaffolding/Hoardings (fencing on public land)
 - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
 - g) Awning or street verandah over footpath
 - h) Partial or full road closure

- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 37. Council will not approve permanent anchors in the road reserve. Temporary anchors may be considered in shallow environments where they are to be removed during construction.

If you are seeking to use temporary anchors, you should make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross sectional details where appropriate.
- b) Demonstrate how the temporary anchors will be removed or immobilised replaced by full support from structures within the subject site by completion of the works.
- c) The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

PRIOR TO THE COMMENCEMENT OF WORKS

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

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

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

40. The site must be secured with temporary fencing prior to any works commencing.

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

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

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

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

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

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

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

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

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

42. An Asbestos Survey prepared by a suitably qualified Occupational Hygienist shall be prepared for the premises. The Survey is to incorporate appropriate Asbestos removal and disposal methods in accordance with the requirements of WorkCover NSW, NSW Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and NSW Environment Protection Authority, Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)] and conditions of this consent.

A copy of any WorkCover approval documents is to be included as part of the documentation.

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

43. The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Application for Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

DURING WORKS

44. Alignment levels for the site at all pedestrian access locations shall match the existing back of footpath levels at the boundary.
45. Unless otherwise approved by Council, excavation, demolition, construction or

subdivision work shall only be permitted during the following hours:

- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

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

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

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

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

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

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

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

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

46. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.

47. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
- a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

48. Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

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

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

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

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

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

support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

50. Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environmental Operations Act 1997*.

Any soil, which fails to meet the criteria, is not to be disposed of off-site unless agreed to in writing by the NSW Environmental Protection Authority (EPA). Results of the testing are to be forwarded to Leichhardt Council and the Environmental Protection Authority (EPA) for acknowledgement before any off-site disposal and before proceeding with any construction works.

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

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

52. Construction material and vehicles shall not block or impede public use of footpaths or roadways.

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

54. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.

55. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

56. Vibration caused by excavation and construction at any residence or structure outside the site must be limited to:

- a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and

- b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).

Vibratory compactors must not be used in the vicinity of residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified above.

- 57. The following replacement trees must be planted:

Tree/species	Quantity	Location
In accordance with Landscape plan prepared by SPACE Landscape Designs Pty Ltd, Project No. 181544, dated 23/04/2018, amended on 16 July 2019. Note: TL (1) which has been deleted from the front setback is to be planted in the location noted on the amended Landscape Plan, next to TR(2) in the rear private open space.		

The minimum pot size at time of planting will be equivalent to 75 litre (min) containerised stock. The tree(s) is/are to conform to the AS 2303—*Tree Stock for Landscape Use*.

Council encourages the uses of replacement trees that are endemic to the Sydney Basin to increase biodiversity in the local environment and provide a natural food source for native birds and marsupials. Note: Any replacement tree species must not be a palm tree species or be a plant declared to be a noxious weed under the Noxious Weeds Act 1993 or tree species listed as an exempt species under Section C1.14 (Tree Management) of the Leichhardt Development Control Plan 2013. **(Modified by M/2019/84 on 8 October 2019)**

- 58. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
- 59. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's 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.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

60. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
61. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:
- Compare the post construction report with the pre-construction report required by these conditions,
 - Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

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

62. A street number must be clearly displayed at the ground level frontage of the building prior to the issue of an Occupation Certificate. A separate application must be made to Council if new street numbers or a change to street numbers is required.

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

63. All allotments involved in this proposal must be consolidated into one allotment. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Evidence of registration shall be submitted to Council or the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

65. All letter boxes must be constructed and located in accordance with the relevant provisions of Australian Standard AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction. Work is to be completed prior to the issue of any Occupation Certificate.

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

66. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
67. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
 - the approved plans;
 - BASIX certificate (where relevant),
 - approved documentation (as referenced in this consent); and
 - conditions of this consent.

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

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

69. Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environmental Operations Act 1997*.

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

70. To ensure the development is constructed in accordance with the approved plans, a Check Survey prepared by a registered surveyor to Australian Height Datum (AHD) shall be prepared on completion of the building works. The survey shall be submitted to the Principal Certifying Authority who must be satisfied that the following are consistent and no higher or closer than that depicted on the approved plans prior to the issue of an Occupation Certificate.
 - a) Level of the floor/terrace/lawn in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
 - b) Ridge heights of the building and gutters.

Where there is a difference in the above RL's / dimensions /degree between that of the survey and the approved plans and the survey indicates the constructed development is larger/higher/closer than the approved development, an application under Section 4.55 of the Environmental Planning and Assessment Act 1979 shall be submitted to Council for consideration of the amendments.

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

71. A validation report shall be prepared by a suitably qualified Environmental Consultant and be submitted to Council upon completion of remediation works and prior to the site being occupied. The validation report shall be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines 'Consultants Reporting on Contaminated Sites' and shall include :
- Description and documentation of all works performed
 - Results of validation testing and monitoring
 - Validation results if any imported fill was transferred to site
 - Demonstrate how all agreed clean-up criteria and relevant regulations have been satisfied

Confirmation and justification as to the suitability of the site for the proposed use and the potential for off site migration of any residual contaminants.

72. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.
73. Light duty concrete vehicle crossing, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be reconstructed at the vehicular access location to match the new driveway and garage before the issue of the Occupation Certificate and at no cost to Council.
74. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all aspects of the foreshore risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer this condition has been complied with must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

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

76. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

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

77. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath, Vehicle Crossing and Public Domain Works on Council property required to be undertaken as a result of this development, including removal of rock anchors, have been completed satisfactorily and in accordance with Council approved plans and specifications.

78. 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, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.

79. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road

or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.

ONGOING CONDITIONS OF CONSENT

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

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

81. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
82. The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.
83. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage to other premises as defined in the Environment Protection Authority's Technical Guidelines for Assessing Vibration.
84. The public view corridor from Louisa Road to Snails Bay is to be maintained.
85. The Foreshore Risk Management Plan approved with the Occupation Certificate must be implemented and kept in a suitable location on site at all times.
86. The basement level terrace shall not be enclosed, walled or otherwise altered from the approved plans contrary to this consent without prior approval from Council.
87. ***The landscape plan is to be amended and approved by Council's Urban Forest Officer to provide for an additional canopy tree native within the lawn area to the waterfront. This may be located within the lawn at least 3m from the western edge of the lawn.***
(Added by M/2019/84 on 8 October 2019)

PRESCRIBED CONDITIONS**A. BASIX Commitments**

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

In this condition:

- a) Relevant BASIX Certificate means:
 - i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

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

C. Home Building Act

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

D. Site Sign

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

E. Condition relating to shoring and adequacy of adjoining property

- 1) For the purposes of section 4.17(11) of [the Act](#), it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and

- b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

NOTES

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
5. Works or activities other than those approved by this Development Consent will require the submission of a new development application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):
 - a) Application for any activity under that Act, including any erection of a hoarding.
 - b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.

- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
 - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
 - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
 - f) Development Application for demolition if demolition is not approved by this consent.
 - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
 - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.
 9. You may need a permit before filling a new or renovated swimming pool which holds more than 10,000 litres of water. You are advised to contact Sydney Water on 132092 to obtain this permit.

Have you made a political donation?

If you (or an associate) have made a political donation or given a gift to a Councillor, political party or candidate at the local government elections during the last two (2) years you may need to include with your application a full disclosure of this matter. For information go to Council's website at www.leichhardt.nsw.gov.au/Political-Donations.html. If you have made a reportable donation, failure to provide a completed declaration with your application is an offence under the Environmental Planning and Assessment Act, 1979 for which you may be prosecuted.