



DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	REV/2024/0010
Address	4 Adolphus Street BALMAIN
Proposal	Section 8.2 Review of DA/2024/0042, for removal of tree in front setback. Review seeks to amend condition 3 which relates to replacement tree planting.
Date of Lodgement	08 April 2024
Applicant	Trent Tavoletti
Owner	Mrs Althea Funke
Number of Submissions	0
Cost of works	\$1,500.00
Reason for determination at Planning Panel	No substantial change to original determination of conditions seeking review
Main Issues	Replacement tree planting
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Consent of consent for DA/2024/0042
Attachment C	Assessment Report DA/2024/0042



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* for a review of Development Consent DA/2024/0042, relating to the amendment of condition 3, which requires replacement planting of a minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres and minimum mature canopy spread of four (4) metres at 4 Adolphus Street Balmain. The applicant seeks the provision of a smaller replacement tree, however no alternate species/size has been specified in the application other than a tree half the size of that conditioned.

The application was notified to surrounding properties and no submissions were received in response to notification.

The main issues that have arisen from the application include:

- Replacement planting of the nominated tree size as specified under condition 3 of consent DA/2024/0042 is considered to be consistent with the relevant objectives and controls of the Inner West Council Tree Management Development Control Plan 2023.

Amendment of condition 3 to require the planting of a smaller replacement tree is not justified and would result in an unacceptable impact on the urban landscape of the Inner West Local Government Area. Therefore, the review application is recommended for refusal.

1. Proposal

The application seeks a review of Condition 3 imposed on consent DA/2024/0042, approved on 29 February 2024 to remove one tree located within the front setback. Condition 3 of that determination is reproduced as follows:

3. Certification of Tree Planting

Within one month of planting of the new tree, Council is to be provided with evidence in the form of an image of the planted tree/s and a copy of a purchase invoice to confirm that:

A minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres and minimum mature canopy spread of four (4) metres, has been planted in a suitable location within the property (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—Tree stock for landscape use. Trees listed as exempt species from Council's Tree Management Development Control Plan, - and species recognised to have a short life span, will not be accepted.

The replacement tree must be planted within one month of removal.

Trees required by this condition must be maintained and protected until they are protected

by Council’s Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

The review application does not seek any changes to the approved works or any other conditions of consent imposed under DA/2024/0042.

2. Site Description

The subject site is located on the eastern side of Adolphus Street, between Darling Street and Vincent Street. The site consists of one (1) allotment and is generally rectangular with a total area of area 232.6sqm and is legally described as LOT B in DP 370619.

The site has a frontage to Adolphus Street of 6.43 metres and rear access via Wallace Lane.

The site supports a single storey semi-detached dwelling house. The adjoining properties support single storey semi-detached and freestanding dwelling houses.

The property is located within a conservation area.

The following trees are located on the site and within the vicinity.

- 1 x *Sapium sebiferum* (Chinese Tallow) – located in the front yard of the subject site.



Figure 1: Zoning Map



Figure 2: Photo of subject site

3. Background

Site history

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

Subject Site

Application	Proposal	Decision & Date
DA/2024/0042	Removal of one tree, located within the front setback.	Approved, 29/02/2024
MOD/2023/0186	Modification of approval to alter the rear roof plane of additions to match that of the adjacent neighbouring roof plane	Approved, 3/08/2023
DA/2023/0630	Construction of a carport, swimming pool, fencing and rainwater tank and PV panels	Approved, 22/12/2023
DA/2022/0464	Alteration and Additions, ground floor modifications, first floor addition, garage	Approved, 14/11/2022

4. 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 (EP and A Act 1979)*.

5(a) Section 8.2 Reviews

The application was lodged under Section 8.2 of the *Environmental Planning and Assessment Act 1979 (EP and A Act 1979)*.

A development application to remove one (1) x *Sapium sebiferum* (Chinese Tallow tree) located in the front setback was approved by Council under delegated authority under Development Application No. DA/2024/0042 on 29 February 2024. The applicant is seeking review of the following condition imposed by the original determination:

3. Certification of Tree Planting

Within one month of planting of the new tree, Council is to be provided with evidence in the form of an image of the planted tree/s and a copy of a purchase invoice to confirm that:

A minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres and minimum mature canopy spread of four (4) metres, has been planted in a suitable location within the property (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—Tree stock for landscape use. Trees listed as exempt species from Council’s Tree Management Development Control Plan, - and species recognised to have a short life span, will not be accepted.

The replacement tree must be planted within one month of removal.

Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

The application is supported by the following justification:

- *Planting a tree of the size specified by the condition will cause foundation issues for the properties at 2, 4, and 6 Adolphus Street and the Council footpath.*
- *The front yard, which is located 2.8 metres to the road and has a distance of 3.6 metres from adjoining neighbours, is of an insufficient size to support planting a tree of the size specified by the condition*
- *Planting a tree of the size specified by the condition will likely obstruct with power lines.*
- *Planting a tree of a smaller size is considered to be more suitable for the site*
- *An alternative is half the size of the tree recommended as the tree size that was allocated would interfere with the power lines on the property.*

The review proposes the amendment of one condition of consent, being condition 3 relating to replacement tree planting. Council has reviewed the whole proposal (noting no changes to the tree removal as approved are proposed) and concurs with the original assessment, which can be found at Attachment C.

The following objectives of the Inner West Council Tree Management Development Control Plan 2023 (TMDCP) are relevant to the assessment of the justification with regard to the contested condition:

Objectives

O2 To consider the safety of the community, private property, and public infrastructure assets.

O4 To manage the urban landscape so trees continue to make a significant contribution to its quality, character, and amenity.

O6 Ensure private property owners' plant new trees and replace trees in order to meet Council's tree canopy targets.

One (1) x *Sapium sebiferum* (Chinese Tallow tree), which was observed to be approximately 6 metres in height with a canopy spread of 5 metres, was approved for removal under consent DA/2024/0042, due to its poor structural condition and the risk of branch failure. To ensure the urban landscape of the Inner West is effectively maintained, a replacement tree of a quality, character, and amenity, suitable to the site context was conditioned under condition 3, in accordance with Control C10 of the TMDCP.

In determining the nominated container size and mature tree height of the replacement tree, consideration is given to the land zoning canopy target applicable to the subject site and the quantum of space available, which must be capable of supporting tree planting in a location that is not within 1 metre of any building, swimming pool, or property boundary.

It is noted that the TMDCP lists 40% as the tree canopy cover target for the subject site.

As part of the original assessment completed under DA/2024/0042, it was considered that any future tree planting as required by a condition of consent should be located in the front yard of the subject site, given the works approved under DA/2023/0630 for construction of a carport and swimming pool do not provide adequate space to support substantial tree growth at the rear. As such, it is considered the contested condition, which requires, “a minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres and minimum mature canopy spread of four (4) metres” has been imposed with sufficient regard to the suitability of the site for the nominated tree size.

Per the applicant’s justification, it has also been asserted that a planting of a tree of the nominated size would likely result in undue property damage occurring at the subject and adjoining sites, and the public domain. Given this, in considering whether planting of the required tree would necessitate future removal, the following is noted:

In accordance with Control C8 (ii) of the TMDCP, the following matters will be considered when determining an application to remove or prune a prescribed tree:

Property Damage

The likelihood of the tree causing property damage. This includes trees renowned for having extensive root systems, which cause damage to footings of houses or, trees that may cause blockages to domestic sewer and drainage lines

Notwithstanding the above, where the impacts to property can be directly attributed to a tree, all other avenues to rectify the impact must be investigated before removal can be supported. As such, the following criteria are generally not considered justification for removal per Control C9:

vi. Minor lifting of driveways, paths and paving or minor damage to outbuildings, garden structures, walls or landscape structures;

vii. Damage to underground services (such as sewer lines, water services) where there are feasible alternatives to mitigate or solve problems and retain the tree. Alternatives to tree removal include replacement of damaged pipes, relining, relocation or encasement of pipes;

Given the above, it is recommended that a root barrier installed at the time of planting will effectively mitigate the likelihood of a tree of the nominated size causing damage to footings of houses or sewer and drainage lines. As such, it is considered the contested condition has been imposed with sufficient regard to the likely impacts on the subject and adjoining sites, and the public domain.

Therefore, as indicated in the assessment above, the contested condition, being condition 3 relating to replacement tree planting, is considered to be justified and consistent with objectives O2, O4, and O6 of the Inner West Council Tree Management Development Control Plan 2023 (TMDCP), as it ensures replacement trees will make a significant contribution to

the quality, character, and amenity of the urban landscape while considering the safety of the community, private property, and public infrastructure assets.

The following table outlines compliance with the procedural provisions of Section 8.2 of the EP and A Act 1979.

Requirement	Proposal
8.2 Determinations and decisions subject to review	
<p>(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—</p> <ul style="list-style-type: none"> (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary), (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary), (c) the decision of a council to reject and not determine an application for development consent. 	<p>The subject application relates to the review of a determination of an application for development consent by Council.</p>
<p>(2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division—</p> <ul style="list-style-type: none"> (a) a complying development certificate, (b) designated development, (c) Crown development (referred to in Division 4.6). 	<p>The subject application does not relate to any of the applications noted in Clause 2.</p>
<p>(3) A determination or decision reviewed under this Division is not subject to further review under this Division.</p>	<p>Noted.</p>
8.3 Application for and conduct of review	
<p>(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.</p>	<p>Noted.</p>
<p>(2) A determination or decision cannot be reviewed under this Division—</p> <ul style="list-style-type: none"> (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or (b) after the Court has disposed of an appeal against the determination or decision 	<p>The original application was determined on 29 February 2024. Pursuant to Section 8.10(1)(b)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, an appeal may be made to the Court 6 months after the date of determination. The subject application was lodged on 11 April 2024 and has been reported to the Inner West Local Planning Panel for determination prior to the expiry of the appeal period (29 August 2024).</p>

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.	The development remains substantially the same as that proposed in the original DA.
(4) The review of a determination or decision made by a delegate of a council is to be conducted- (a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.	The original DA was determined under Council Officer delegation. The current application is to be determined by the Local Planning Panel.
(5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.	The application is to go before the Local Planning Panel for determination.
(6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.	N/A
(7) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.	N/A
(8) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.	N/A
(9) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.	N/A

5(b) Environmental Planning Instruments and Development Control Plans

The application has been assessed against the relevant Environmental Planning Instruments and Development Control Plans listed below and assessed as discussed earlier in this report.

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Inner West Local Environmental Plan 2022*
- *Leichhardt Development Control Plan 2013*

5(c) The Likely Impacts

The assessment of the Section 8.2 Review Application demonstrates that the proposal will have an adverse impact on the locality as it would not make a significant contribution to the urban landscape of the Inner West Local Government Area.

5(d) The Suitability of the Site for the Development

The proposal is not considered to be of a nature that is in keeping with the landscape character of the site, streetscape, and surrounding residential neighbourhood.

5(e) Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 17 April 2024 to 01 May 2024.

No submissions were received

5(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.

The proposal is contrary to the public interest.

5. Referrals

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

- Heritage Specialist;
- Urban Forest;

6. Conclusion

The proposal does not 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 adverse impacts on the landscape quality, character, and amenity of the streetscape and the Inner West Local Government Area 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.

7. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s8.2 of the *Environmental Planning and Assessment Act 1979*, REFUSE Application No. REV/2024/0010 which seeks review of condition 3 of Determination No DA/2024/0042 dated 29 February 2024, relating to replacement tree planting at 4 Adolphus Street, Balmain for the reasons listed in Attachment A.

Attachment A – Reasons for refusal

1. The proposed development is inconsistent with, and has not demonstrated compliance with the Inner West Council Tree Management Development Control Plan 2023, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Part 2 - Objectives and Part 3 - Controls, as the proposal does not comply with control C10 and C12 within Part 3 and is inconsistent with the objectives O2, O4, and O6 as it would result in adverse impacts on the landscape quality, character, and amenity of the streetscape and the Inner West Local Government Area
2. The proposed development will result in adverse impacts in the locality as it would not make a significant contribution to the urban landscape of the Inner West Local Government Area pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
3. The proposal has not demonstrated that it is that is in keeping with the landscape character of the site, streetscape, and surrounding residential neighbourhood pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Conditions of consent - DA/2024/0042



NOTICE OF DETERMINATION - APPROVAL

Issued under Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No.	DA/2024/0042
Applicant	Althea Funke
Land to be developed	4 Adolphus Street BALMAIN NSW 2041
Approved development	Removal of one tree, located within the front setback.
Cost of development	\$1,500.00
Determination	The application was determined by Delegation to Staff 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.
Determination date	29 February 2024
Consent is to operate from	29 February 2024
Consent will lapse on	28 February 2029

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

Document Set ID: 39787062
 Version: 1, Version Date: 28/02/2024

Reasons for conditions

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

Right of appeal

If you are dissatisfied with this decision, Section 8.7 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 **Matteus Liebenberg** on **02 9392 5217** or matteus.liebenberg@innerwest.nsw.gov.au.



Conor Wilson
Team Leader – Development Assessment

CONDITIONS OF CONSENT

GENERAL CONDITIONS

1. Works to Trees

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

Tree/location	Approved works
<i>Sapium sebiferum</i> (Chinese Tallow tree)	Remove

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

2. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

3. Certification of Tree Planting

Within one month of planting of the new tree, Council is to be provided with evidence in the form of an image of the planted tree/s and a copy of a purchase invoice to confirm that:

A minimum of one (1) x 75 litre size tree, which will attain a minimum mature height of eight (8) metres and minimum mature canopy spread of four (4) metres, has been planted in a suitable location within the property (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Development Control Plan, - and species recognised to have a short life span, will not be accepted.

The replacement tree must be planted within one month of removal.

Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

DURING DEMOLITION AND CONSTRUCTION

4. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

ON-GOING

5. Tree Establishment

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

ADVISORY NOTES

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

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.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *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; and
- 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. A lease fee is payable for all occupations.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm	www.basix.nsw.gov.au
Department of Fair Trading	13 32 20	www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100	www.dialpriortoyoudig.com.au
Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au


WorkCover Authority of NSW 13 10 50
www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Attachment C – Assessment Report DA/2024/0042



Development Assessment Report

Application No:	DA/2024/0042	Assessing Officer:	Matteus Liebenberg
Date of lodgement:	25 January 2024	Cost of works:	\$1,500.00
Heritage Significance:	HCA	Notification:	N/A
Permissible:	Yes	Submissions:	Nil
Applicant:	Althea Funke		
Owner:	Mrs Althea Funke		
Subject Site:	4 Adolphus Street BALMAIN NSW 2041		
Site Location:	<p>The subject site is located on the East side of Adolphus Street, between Darling Street and Wallace Street. The site area is approximately 232.6sqm with a primary frontage to Adolphus Street and rear access via Wallace Lane.</p> <p>Surrounding land uses are predominantly single storey dwelling houses.</p>  <p>Figure 1: Aerial photo of the subject site outline in green</p>		
Proposal:	<p>Removal of one tree, located within the front setback.</p> <p>Specifically, the proposal involves the following works/use:</p> <ul style="list-style-type: none"> Removal of 1x Sapium sebiferum (Chinese Tallow tree) 		
Relevant Background:	<p><u>Site History:</u></p> <ul style="list-style-type: none"> MOD/2023/0186, Approved, 03/08/2023, Modification of approval to alter the rear roof plane of additions to match that of the adjacent neighbouring roof plane.; and DA/2023/0630, Approved, 22/12/2023, Construction of a carport, swimming pool, fencing and rainwater tank and PV panels. DA/2022/0464, Approved, 14/11/2022, Alteration and Additions, ground floor modifications, first floor addition, garage. 		

INNER WEST

Key Issues:	heritage conservation
Recommendation:	Approval subject to conditions





1. 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 (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The *Biodiversity and Conservation SEPP* requires consideration for the protection and/or removal of vegetation and gives effect to the local tree preservation provisions of C1.14 Tree Management of the LDCP 2013.

The application seeks the removal of 1x *Sapium sebiferum* (Chinese Tallow tree) from within the subject site.

An assessment of the proposal against the abovementioned provisions has identified the following:

- The tree has been identified as a *Sapium sebiferum* (Chinese Tallow tree) located in the front yard. The tree is approximately 6 metres in height and has a canopy spread of 5 metres. The tree was noted in good health and poor structural condition. The tree has previously been lopped at 3 metres in height resulting in multiple shoots regrowing at the old pruning wounds. The type of pruning is unacceptable as it results with regrowth known as 'epicormic growth' which are weakly attached to the main trunk and are prone to failure and decay.

Therefore, the Urban Forest team supports removal of the tree due to the unacceptable risk of branch failure occurring. Replacement planting must be undertaken within the front yard in accordance with the attached condition.

Overall, the proposal is considered acceptable with regard to the *Biodiversity and Conservation SEPP* and C1.14 Tree Management of the LDCP 2013 subject to the imposition of conditions, which have been included in the recommendation of this report.

Inner West Local Environmental Plan 2022



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

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal satisfies the section as follows: <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, • The proposal conserves and maintains the natural, built and cultural heritage of Inner West, • The proposal reduces community risk from and improves resilience to urban and natural hazards, 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> • The application proposes removal of 1x Sapium sebiferum (Chinese Tallow tree) which is permissible with consent in the R1 (General Residential) zone. • The proposal is consistent with the relevant objectives of the zone, The proposal conserves and maintains the natural, built and cultural heritage of Inner West. • The proposal reduces community risk from and improves resilience to urban and natural hazards. 	Yes

Part 4 – Principal development standards

- No change to the Principal development standards were proposed in this DA.

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.10 Heritage conservation	The subject site is a contributory building within the Balmain East Heritage Conservation Area (HCA). The proposal achieves the objectives of this section as follows: <ul style="list-style-type: none"> • The proposal is acceptable from a heritage perspective as it will not detract from the Balmain East Heritage Conservation Area, and is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Inner West LEP 2022 and the relevant objectives and controls in the Leichhardt DCP 2013. 	Yes



Section	Compliance	Compliance
	<ul style="list-style-type: none"> The development has been designed to respond to the significance of the conservation area and preserve contributory elements and fabric of the existing building. <p>Given the above the proposal preserves the environmental heritage of the Inner West.</p>	

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable. 	Yes
Section 6.2 Earthworks	<ul style="list-style-type: none"> The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability. 	Yes

B. Development Control Plans

Leichhardt Development Control Plan 2013

Part C – Section 1 – General Provisions

Control	Proposed / Discussion	Compliance
C1.1 Site and Context Analysis	<ul style="list-style-type: none"> The development is well designed and appropriately considers context, scale, built form, density and resource, energy and water efficiency, streetscape, travel networks and connections, social dimensions, and aesthetics. 	Yes
C1.4 Heritage Conservation Areas and Heritage Items	<ul style="list-style-type: none"> The development is compatible with the Heritage Conservation Area in terms of scale, form, roof form, materials, detailing and colour, architectural detail, and fenestration. Refer to discussion under Section 5.10 of the <i>IWLEP 2022</i> contained within Part 3A of this report. 	Yes, see discussion above
C1.14 Tree Management	<ul style="list-style-type: none"> One (1) prescribed tree is proposed to be removed. See discussion above. 	Yes

Part C – Section 2 – Urban Character

Control	Proposed / Discussion	Compliance
C2.2.2.3 – Gladstone Park	<ul style="list-style-type: none"> The proposal is considered to be a satisfactory response to the Distinctive Neighbourhood controls under this part 	Yes



Control	Proposed / Discussion	Compliance
Distinctive Neighbourhood		

Part C – Section 3 – Residential Provisions

Control	Proposed / Discussion	Compliance
C3.1 Residential General Provisions	<ul style="list-style-type: none"> The proposal will not have an adverse effect on the amenity, setting or cultural significance of the place and the relationship of any Heritage Item or Heritage Conservation Area. 	Yes

Part D – Energy and Part E - Water

These parts of the DCP are not relevant to the proposal.

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 not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.

E. Submissions

In accordance with Council's Community Engagement Framework, the application was not required to be notified.

F. The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

This has been achieved in this instance.

2. Section 7.11 / 7.12 Contributions

The carrying out of the development will not result in an increased demand for public amenities and public services within the area.

3. Housing and Productivity Contributions



The carrying out of the development will not result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space.

4. Referrals

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

- Heritage Specialist;
- Urban Forest;

5. Recommendation

The proposal generally complies with the aims, objectives and design parameters contained within the relevant environmental planning instruments and development controls plans.

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

It is recommended that the application is suitable for APPROVAL subject to the imposition of appropriate conditions as per the conditions as recommended.