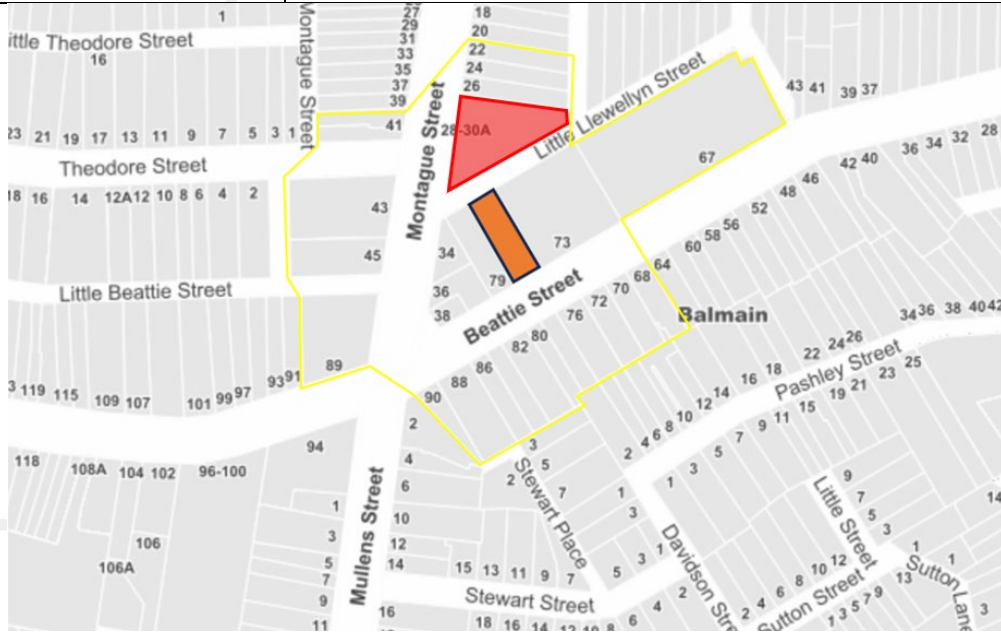






INNER WEST

DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	MOD/2024/0263
Address	77 Beattie Street BALMAIN NSW 2041
Proposal	Section 4.56 Modification to D/2018/243 dated 06/08/2019, modification involves increase to the floor-to-ceiling heights of the ground floor, increase the floor area of the first floor addition, and a new second floor for terrace 2.
Date of Lodgement	14 August 2024
Applicant	ANNANDALE HUB PTY LTD
Owner	R & D Beattie Properties Pty Limited
Number of Submissions	1 objection
Cost of works	\$1,500,000.00
Reason for determination at Planning Panel	>10% variation to FSR development standard
Main Issues	Not substantially the same; unauthorised works; heritage
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Statement of Heritage Significance
Attachment D	Original Court Judgement for D/2018/243
Attachment E	Conditions in the event of approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council under Section 4.56 of the *Environmental Planning and Assessment Act 1979* to modify consent D/2018/243 (as amended), dated 6 August 2019. The modification involves an increase to the floor-to-ceiling heights of the ground floor, increase to the floor area of the first floor addition, and a new second floor for terrace 2 at 77 Beattie Street BALMAIN.

The application was notified to surrounding properties and one submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Not substantially the same
- Unauthorised works
- Insufficient information
- FSR non-compliance
- Heritage, desired future character and bulk and scale impacts

The key reasons for the grant of original approval and contraventions of the FSR, Landscaped Area and Site Coverage standards were the retention and adaptive reuse of the existing warehouse building, and transition in scale from three-storeys (east) to two-storeys (west).

On 4 September 2024, Council requested withdrawal of the application given the proposal is not considered substantially the same, in quantitative and qualitative terms, as the originally approved development having regard to the additional FSR non-compliance, uniform three-storey scale across Terraces 2 and 3 and resultant heritage, streetscape and amenity impacts. Further, based on the extent of unauthorised demolition of the original warehouse, the development may no longer constitute alterations and additions as the proposal now entails substantial demolition of existing structures with retention of existing façade and construction of a new multi dwelling housing development.

Council also requested an updated Survey Plan given the applicant seeks to rely upon amended survey levels, amended Architectural Plans distinguishing between approved works, proposed changes and any unauthorised works, updated Shadow Diagrams in plan and elevation due to the proposed additions for Terrace 2, updated Schedule of Conservation and Repair Works as per Condition 2 of D/2018/243, Structural Engineer's Report and Work Method Statement.

The applicant's planning consultant provided a response on behalf of the applicant via the NSW Planning Portal on 10 September 2024 stating that the applicant will not be withdrawing the application or providing any additional information.

The non-compliances are not acceptable given insufficient information has been provided to enable a full and proper assessment of the proposal and adverse heritage, streetscape and amenity impacts are likely to arise. Therefore, the application is recommended for refusal.

2. Proposal

This application seeks consent to modify D/2018/243, which approved 'site consolidation, alterations and additions to the existing warehouse buildings at the site and change of use to a multi dwelling housing development containing three dwellings and 2 car spaces', pursuant to the provisions of Section 4.56 of the *Environmental Planning and Assessment Act, 1979*.

The application involves the following modifications as outlined by the applicant:

Ground Floor:

- Increase of the floor-to-ceiling height of the ground floor of Terraces 2 and 3 by 200mm to accommodate appropriate clearance for stormwater drainage piping
Note: this increase on the Ground Floor has resulted in an overall maximum building height increase of the approved building by 200mm.

First Floor:

- Extension of the external western wall of Terrace 2 to the western side boundary, resulting in a nil setback.

Second Floor:

- Addition of a second floor for Terrace 2 which includes stair access from the First Floor, a bedroom, ensuite, outdoor terrace and associated planter boxes. This addition will match the existing approved layout and envelope of the adjacent Terrace 3.
- Installation of 1600mm high privacy screen on the western side of the outdoor terrace of Terrace 2 in accordance with Condition 27 of D/2018/432.

The proposal results in an additional gross floor area of 38.5sqm, which equates to an increase from the approved FSR of 1.06:1 (35.1% variation) to 1.2:1 (49.7% variation).

The proposal also seeks to rectify a discrepancy with the surveyed AHD benchmark levels by adjusting all of the adopted kerb, ground and building levels upwards by 1.15m. Whilst a letter from registered surveyor Stratasurv was submitted with the application, Council has not received an updated Survey Plan to replace the original Survey Plan prepared by registered surveyor Frank M Mason & Co Pty Ltd.

Works already carried out.

Based on Council's site inspection (refer to image below), substantial unauthorised demolition of the original warehouse building has occurred including the removal of all original slab, walls (except the front façade), roof and column elements shown for retention. A new basement level and car stacker pit have also been constructed without consent. Whilst these works do not form part of the current proposal, Council requested amended plans to accurately show the parts of the building to be removed and retained and clearly distinguish between previously approved works, proposed changes and any unauthorised works.



Image 1: showing removal of original roof, columns and rear wall behind the retained Beattie Street façade in the background, removal of original slab and new lowered basement level centrally located within the site and new pit for car stacker in the foreground adjacent to Little Llewellyn Street.

3. Site Description

The subject site is located on the northern side of Beattie Street, between Montague Street and Little Llewellyn Street. The site consists of two allotments and is generally regular in shape with a total area of 280.6 sqm and is legally described as Lots 24 and 25 in DP 2821.

The site has a frontage to Beattie Street of 9.145 metres and a rear lane frontage of 9.145 metres to Little Llewellyn Street.

The site supports a former single-storey warehouse building. The adjoining properties support two to three storey buildings.

The subject site is not listed as a heritage item. The property is located within a conservation area. The listed heritage items in the visual vicinity of the subject site include:

- I590, Balmain Co-op Society Limited, including interiors, at 28-30A Montague Street Balmain; and
- I446, Commercial Building, at 88 Beattie Street Balmain.

The property is not identified as a flood prone lot.

No trees are located on the site. The following tree is located within the vicinity.

- Tree within rear yard of 79 Beattie Street - adjacent to the western boundary of the subject site.

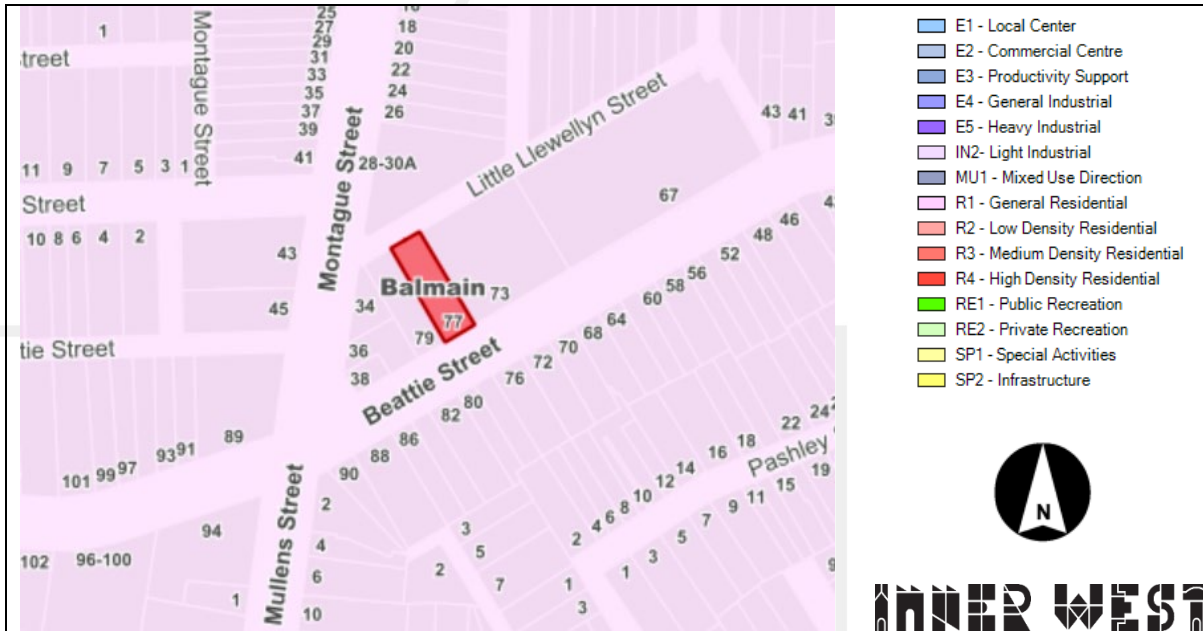


FIGURE 2: ZONING CONTEXT MAP



FIGURE 3: VIEW FROM BEATTIE STREET AT 75-77 BEATTIE STREET



FIGURE 4: VIEW OF SUBJECT SITE FROM LITTLE LLEWELLYN STREET

4. 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
EPA/2024/0132	Investigation of unauthorised works	Lodged 26/9/2024
MOD/2020/0187	Modification of Development Consent D/2018/243 seeking to amend calculation of security deposit bond fees in accordance with condition 31 of the development consent.	Approved 16/6/2020
MOD/2020/0133	Modification of Development Consent granted by the Land and Environment Court seeking various changes, including raising of floor slab of dwellings, to amend stormwater design	Approved 29/5/2020

	and to delete conditions not applicable to the approval	
D/2018/243	Site consolidation, alterations and additions to the existing warehouse buildings at the site and change of use to a multi dwelling housing development containing three dwellings and 2 car spaces and associated works.	Deferred Commencement Consent approved by the Land and Environment Court 6/8/2019

D/2018/243

The originally approved development was for site consolidation, alterations and additions and change of use of the existing warehouse buildings for multi dwelling housing containing 2 x two storey dwellings and 1 x three-storey dwelling and two car spaces.

The partial retention of the existing warehouse buildings including original slab under Terraces 2 and 3, and front and rear walls, windows, roof and column elements within Terrace 1 and transition in scale from east to west were essential features of the original Court approved development.

The above essential features formed the key environmental planning grounds for the originally approved variations to the relevant landscape area, site coverage and FSR development standards. In the absence of these features, no agreement would have been reached as a part of the original court approval.

Condition 2 included the following requirement:

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. Prior to the issuing of a Construction Certificate a schedule of conservation and repair works to the historic fabric prepared by a Conservation Architect is to be submitted for approval.

Whilst a draft report was submitted to Council for review on 2 November 2021, a final Schedule of Conservation and Repair Works prepared by a Conservation Architect has not been submitted to Council for approval.

This report was required to be read together with the demolition plans to ensure the appropriate protection of historic elements of the original warehouse building.

MOD/2021/0133

This modification entailed a 150mm increase to the finished ground floor levels of Terraces 2 and 3 contained within the approved building envelope and amended stormwater plans to resolve deferred commencement matters and enable an operational consent. This application did not involve any changes to the approved extent of demolition and retention of historic elements of the original warehouse.

MOD/2021/0187

This modification only involved the correction of a minor miscalculation for the required security deposit amount. This application did not involve any changes to the approved extent of demolition and retention of historic elements of the original warehouse.

Surrounding properties
73 Beattie Street Balmain

Application	Proposal	Decision & Date
MOD/2023/0443	Modification to Court approved multi-residential development involving the adaptive re-use of the existing buildings and alterations and additions to provide six dwellings, and associated works, including car parking, site remediation and street tree removal and replacement. Modification involves changes to internal layout of Dwelling No. 6.	Approved – 24/5/2024
MOD/2023/0131	Modification to approved townhouse development - includes changes to excavation, footprint, levels, openings, parking, finishes and planting.	Approved by Land and Environment Court on 14/9/2023
MOD/2023/0008	Modification to DA/2021/0521, to modify condition 2 (d) of the LEC consent in order to permit the conveyor structure to be relocated within the building.	Approved by Land and Environment Court on 11/8/2023
DA/2021/0521	Adaptive re-use of the existing buildings and alterations and additions to provide six multi dwelling units and associated works, including car parking, site remediation and street tree removal and replacement	Approved by Land and Environment Court on 10/2/2022

Application history

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

Date	Discussion / Letter / Additional Information
6 September 2024	<p>Council requested additional information to resolve several issues including:</p> <ul style="list-style-type: none">• Not substantially the same• Unauthorised works require Building Information Certificate• Updated architectural plans to clearly distinguish between any unauthorised works undertaken to date, the originally development and any proposed changes• Heritage impacts• Updated shadow diagrams in plan and elevation• Updated schedule of conservation and repair works, structural engineers report and work method statement

10 September 2024	The applicant's planning consultant provided a response to Council on behalf of the applicant via the NSW Planning Portal stating that the applicant will not be withdrawing the application or providing any additional information and requesting that the assessment proceed on the basis of the information lodged with the application.
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5. Section 4.56 Modification of Consent

The following is a summary of the assessment of the application in accordance with Section 4.56 of the *Environmental Planning and Assessment Act 1979 (EP & A Act 1979)*.

Section 4.56

Section 4.56 of the *EPA Act 1979* allows a consent authority to modify a development consent granted by the Court, 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (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*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any 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 not substantially the same as the original consent, in quantitative and qualitative terms, having regard to the additional FSR non-compliance, uniform three-storey scale across Terraces 2 and 3 and resultant heritage, streetscape and amenity impacts.
- As noted previously, the partial retention of the existing warehouse buildings including original slab under Terraces 2 and 3, and front and rear walls, windows, roof and column elements within Terrace 1 and transition in scale from east to west were essential features of the original Court approved development.
- The above essential features formed the key environmental planning grounds for the originally approved variations to the relevant landscape area, site coverage and FSR development standards. In the absence of these features, no agreement would have been reached as a part of the original court approval.

- The proposed uniform three-storey scale for Terraces 2 and 3 fails to provide an appropriate transition in scale from east to west between development of different densities and results in a bulk and scale that is unsympathetic to the conservation area and desired future character of the local area with adverse amenity impacts to adjoining properties in terms of visual impact, privacy and overshadowing.
- The application was notified in accordance with the Community Engagement Strategy 2022-2024 and to persons who made a submission against the original application sought to be modified.
- Submissions received have been considered and the objections raise valid reasons for refusal.

Section 4.56(1A)

In consideration of Section 4.56(1A) of the *EP & A Act 1979* the consent authority has taken into account the following reasons given by the Land and Environment Court for the granting of the original consent:

- The retention and adaptive reuse of the existing warehouse building, and
- Transition in scale from three-storeys (east) to two-storeys (west).

It is considered that the modified proposal has not taken into account the aforementioned reasons that the original development consent was granted.

6. Assessment

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

A. Environmental Planning Instruments

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

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

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

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

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.

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.

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

Inner West Local Environmental Plan 2022

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

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	<p>The proposed development is inconsistent with the following aims of the <i>IWLEP</i>:</p> <ul style="list-style-type: none"> • <i>(b) to conserve and maintain the natural, built and cultural heritage of Inner West,</i> • <i>(g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain,</i> • <i>(h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,</i> • <i>(i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.</i> 	No

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table	<p>The application relates to an approved multi-dwelling housing development, which is permissible with consent within the R1 General Residential Zone.</p> <p>However, the development is not consistent with the following R1 zone objective:</p> <ul style="list-style-type: none"> • <i>To provide residential development that maintains the character of built and natural features in the surrounding area.</i> 	No

Part 4 – Principal development standards

Section	Proposed		Compliance
Section 4.3C (3)(a) Landscaped Area	Minimum	20% (site area > 235sqm)	No (no change to approved)
	Proposed	0%	
	Variation	56.12sqm or 100%	
Section 4.3C (3)(b) Site Coverage	Maximum	60%	No (no change to approved)
	Proposed	100%	
	Variation	112.24sqm or 66%	
Section 4.4 Floor space ratio	Maximum	0.8:1 or 224.48sqm	No (increased variation)
	Approved	1.06:1 or 297.5sqm	
	Proposed	1.2:1 or 336sqm	
	Variation	111.52sqm or 49.7%	
Section 4.5	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes

Section	Proposed	Compliance
Calculation of floor space ratio and site area		
Section 4.6 Exceptions to development standards	<p>The proposed modification is not required to formally submit a written request to vary a development standard having regard to the decision within <i>North Sydney Council v Michael Standley & Associates Pty Ltd</i> [1998] NSWSC 163 that states that Section 96 (now Section 4.55) is a:</p> <p><i>'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application.</i></p> <p>Notwithstanding, the applicant has failed to demonstrate that compliance is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds for the proposed contravention of the FSR standard.</p> <p>As noted previously, the partial retention of the existing warehouse buildings including original slab under Terraces 2 and 3, and front and rear walls, windows, roof and timber support columns within Terrace 1 and transition in scale from east to west were essential features of the original Court approved development.</p> <p>The above essential features formed the key environmental planning grounds for the originally approved variations to the relevant landscape area, site coverage and FSR development standards. The proposal as modified departs from these key environmental planning grounds.</p> <p>Further, the proposed increase to FSR results heritage, streetscape and amenity impacts, which fails to achieve the following objectives of the FSR standard:</p> <ul style="list-style-type: none"> • <i>(b) to ensure development density reflects its locality,</i> • <i>(c) to provide an appropriate transition between development of different densities,</i> • <i>(d) to minimise adverse impacts on local amenity</i> <p>Therefore, the proposed FSR variation is considered unacceptable.</p>	Not required

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.10 Heritage conservation	The subject site is a contributory building within The Valley Heritage Conservation Area (HCA) and is in the vicinity of listed heritage item (1590), known as Balmain Co-op Society Limited, at 28-30A Montague Street Balmain. Refer to discussion below.	No

Section 5.10 – Heritage Conservation

The key and relevant objectives of Section 5.10 of *IWLEP 2022* are to conserve the environmental heritage of the Inner West, including the heritage significance of conservation areas and their associated fabric, settings and views.

An assessment of the revised proposal against Section 5.10 of *IWLEP 2022* has been carried out and it is considered that the design of the amended proposal does not satisfactorily conserve the heritage significance of the existing warehouse building, and significance of the HCA.

In this regard, it is considered that the proposed modification fails to achieve the objectives of this section as follows:

- The approved scheme provided a transition that related to the scale of the existing commercial building at No. 79 Beattie, with Terrace No.2 relating to the scale of this building and Terrace No.3 relating to the larger scale of the adjacent interwar warehouse building. The scale of the surrounding building stock is largely two storey, with the exception of the two warehouses, the former Balmain Co-operative Society and the later portion of the Derrin brothers warehouse. The proposal should take its cue from the majority of the building stock within this part of The Valley HCA (which is one or two storey) and not the larger warehouse buildings which are anomalies.
- The increase in scale is also likely to block views from the adjacent heritage item, the former Balmain Co-operative Society, to the rear of the site.
- The approved design sought the retention of the roof of the historic portion of the building. From the current photographs in Near Maps, it does not appear that this has occurred.
- Accordingly, the increase in scale of the proposal is not supported on heritage grounds. The transition in scale between the commercial building at No. 79 Beattie Street and the former warehouse complex at No. 73-75 Beattie Street should remain as per the approved design, as this is a more appropriate transition in scale within the Heritage Conservation Area.
- The development has not been designed to respond to the significance of the conservation area and preserve contributory elements and fabric of the existing building.

Given the above, the proposal in its amended form is considered contrary to Section 5.10(1)(a) & (b) of *IWLEP 2022*.

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.3 Stormwater Management	<ul style="list-style-type: none"> The development maximises the use of permeable surfaces, includes on site retention as an alternative supply and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment. 	Yes
Section 6.12 Adaptive reuse of existing buildings for dwellings in residential zones	<ul style="list-style-type: none"> It is noted that subclause 6.12(3)(a) of the IWLEP states that development consent must not be granted to a change of use to multi dwelling housing on land other than in the R2 Low Density Residential zone. Whilst the land is not zoned R2 Low Density Residential, the modified development retains the approved residential use of the land under D/2018/243 and development consent for the purpose of multi dwelling housing is not sought as a part of this application. Therefore, further consideration of clause 6.12 is not required. 	Not applicable

B. Development Control Plans

Summary

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

LDCP 2013	Compliance
Part B: Connections	Yes
Part C	
C1.0 General Provisions	No – see discussion
C1.1 Site and Context Analysis	No – see discussion
C1.2 Demolition	No
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No – see discussion
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes

C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.2.4 The Valley 'Balmain' Distinctive Neighbourhood	No – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see discussion
C3.10 Views	No – see discussion
C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	No – see discussion
C3.13 Conversion of Existing Non-Residential Buildings	No – see discussion
C3.14 Adaptable Housing	N/A
Part D: Energy	
	Yes
Part E: Water	
	Yes

Leichhardt Development Control Plan 2013

The application was assessed against the following relevant parts of the Leichhardt Development Control Plan 2013 (LDCP 2013).

Part C – Section 1 – General Provisions

Control	Proposed / Discussion	Compliance
C1.0	For reasons discussed in this report, the proposal does not satisfy and / or has not demonstrated compliance with the following Objective of Part C1.0 of the LDCP2013:	No

Control	Proposed / Discussion	Compliance
General Provisions	<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. 	
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> <ul style="list-style-type: none"> • <i>the special qualities of the site and its context including urban design, streetscape and heritage considerations.</i> 	No
C1.2 Demolition, C1.3 Alterations and Additions, and C1.4 Heritage Conservation Areas and Heritage Items	<ul style="list-style-type: none"> • The development is not compatible with the Heritage Conservation Area in terms of scale, size, form, design and detail. Refer to discussion under Section 5.10 of the <i>IWLEP 2022</i>. 	No
C1.14 Tree Management	<ul style="list-style-type: none"> • The proposal if approved would necessitate tree pruning of an existing tree in the vicinity on the adjoining property to the west at 79 Beattie Street, which is acceptable subject to conditions. 	Yes

Part C – Section 2 – Urban Character

Control	Proposed / Discussion	Compliance
C2.2.2.4 – The Valley 'Balmain' Distinctive Neighbourhood	<ul style="list-style-type: none"> • The proposal is not considered to be a satisfactory response to the Distinctive Neighbourhood Control C3, which seeks to preserve view lines to the south and east by stepping buildings with the prevailing topography. 	No

Part C – Section 3 – Residential Provisions

Control	Proposed / Discussion	Compliance
C3.1 Residential General Provisions	<p>The proposal will result in unacceptable visual bulk, scale and streetscape impacts to the adjoining properties and is out of character with the Evans Street/Beattie Street Former Commercial Precinct sub area, The Valley 'Balmain' distinctive neighbourhood character controls and will have adverse impacts on the HCA and is not a satisfactory response to its context. Consequently, the</p>	No

Control	Proposed / Discussion	Compliance
	<p>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 future character and heritage significance of the place and its setting; and</i> • <i>O4 - to ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings.</i> 	
C3.2 Site Layout and Building Design	<ul style="list-style-type: none"> • The proposed development does not comply with the building location zone required under Control C3 given the lower scale adjoining property to the west at 79 Beattie Street does not have a third storey and seeks to extend the western boundary wall to the first floor contrary to the required side setback under Control C7. • Controls C6 and C8 allows for departures from the building location zone and side setback controls where certain tests are met, including requirements that the pattern of development within the streetscape is not compromised, amenity to adjoining properties is protected, and the bulk and scale of the development has been minimised and will be compatible with the existing streetscape, desired future character and scale of surrounding development - as already established in this report, the proposal is not considered to meet these tests. • 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. 	No
C3.8 Private Open Space	<ul style="list-style-type: none"> • No change to the approved private open space area is proposed. 	Yes
C3.9 Solar Access	<ul style="list-style-type: none"> • Insufficient information has been provided to enable a full and proper assessment of the overshadowing impacts to 79 Beattie Street given the applicant has elected not to provide the requested amended shadow diagrams in plan and elevation to determine the additional overshadowing impacts to adjoining living areas. 	No
C3.10 Views	<ul style="list-style-type: none"> • It is noted that the originally approved part 2-storey, part 3-storey development resulted in substantial view loss from the heritage listed property, known as Balmain Co-op Society Limited, at 28-30A Montague Street to the north opposite the site. • However, to the extent that any additional view impacts arise, the applicant has not demonstrated that the proposed additions to Terrace 2 have been designed to promote view sharing from a reasonable form of development by 	No

Control	Proposed / Discussion	Compliance
	appropriately addressing building height, bulk and massing and including building setbacks and gaps between buildings.	
C3.11 Visual Privacy	<ul style="list-style-type: none"> The proposal includes a second floor balcony for terrace 2 immediately adjacent to 79 Beattie Street to the west, which exceeds the maximum depth of 1.2m and length of 2m contrary to Control C9. 	No
C3.12 Acoustic Privacy	<ul style="list-style-type: none"> The proposal is contrary to Controls C3 and C8, given the proposed second floor balcony is not located away from bedroom windows on adjoin 	No
C3.13 Conversion of Existing Non-Residential Buildings	<ul style="list-style-type: none"> The existing character of the building and streetscape is not enhanced by the proposal contrary to Controls C1, C2 and C5 and objectives O1 d) and f). 	No

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 required to be notified in accordance with Council's Community Engagement Strategy between 29 August 2024 to 27 September 2024.

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

- Substantially the same
- Unauthorised works
- Incorrect survey levels
- FSR non-compliance
- Excessive bulk and scale / out of character
- Amenity impacts (overshadowing, outlook, views)

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.

7. Section 7.11 / 7.12 Contributions

Section 7.11 contributions would be payable for the proposal given the application involves an increase from two bedrooms to three bedrooms for Terrace 2.

However, as the application is recommended for refusal, the applicable contribution has not been calculated.

8. Referrals

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

- Heritage Specialist;
- Development Engineer;
- Urban Forest;
- Environmental Health; and
- Building Certification.

9. 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 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.

10. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.56 of the *Environmental Planning and Assessment Act 1979*, refuse Modification Application No. MOD/2024/0263, which seeks to modify DA/2018/243 to increase the floor-to-ceiling heights of the ground floor, increase the floor area of the first floor addition, and add new second floor for terrace 2 at 77 Beattie Street, Balmain, for the reasons listed in Attachment A below.

Attachment A – Reasons for refusal

1. The applicant has not satisfactorily demonstrated that the proposed development as modified is substantially the same as the originally approved development, contrary to Section 4.56(1a) of the *Environmental Planning and Assessment Act 1979*.
2. The application lacks sufficient information to enable a full and proper assessment as the applicant has elected not to provide any additional information in response to Council's request for information, dated 6 September 2024, pursuant to Section 104 of the *Environmental Planning and Assessment Regulation 2021*.
3. 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) 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*;
 - iii) Section 4.4 – *Floor Space Ratio*; and
 - iv) Section 5.10 - *Heritage Conservation*.
4. The proposed development is inconsistent and has not demonstrated compliance with the following provisions of the following Development Control Plan, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - a) 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 C1.2 – *Demolition*;
 - iv) Part C1.3 – *Alterations and additions*;
 - v) Part C1.4 – *Heritage Conservation Areas and Heritage Items*;
 - vi) Part C2.2.2.4 – *The Valley 'Balmain' Distinctive Neighbourhood*;
 - vii) Part C3.1 – *Residential General Provisions*;
 - viii) Part C3.2 – *Site Layout and Building Design*;
 - ix) Part C3.9 – *Solar Access*;
 - x) Part C3.10 – *Views*;
 - xi) Part C3.11 – *Visual Privacy*;
 - xii) Part C3.12 – *Acoustic Privacy*; and
 - xiii) Part C3.13 – *Conversion of existing non-residential buildings*.
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 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*.
7. The public submissions raised valid grounds of objection and 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)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Plans of proposed development



6th August 2024

**REF: SECTION 4.56 APPLICATION
77 BEATTIE STREET BALMAIN**

Schedule of Amendments to Architectural Plans

The following schedule summarises amendments to architectural plans prepared by DRA [AUS] PTY LTD t/a Derek Raithby Architecture Issue 7, dated July 2024.

#	TITLE	ISSUE	AMENDMENT
A01	Site Plan	6	Roof over Terrace 2 amended to match Terrace 3 including balcony below for new bed 1.
A02	Demolition & Sediment Control Plan	6	Survey levels amended from assumed to AHD.
A03	Lower Level Floor Plans	7	Survey levels amended from assumed to AHD.
A04	Upper Level Floor Plans	7	Side setback removed on first floor plan. Design for terrace 3 reflected on second floor plan for terrace 2
A05	North & South Elevation	7	Increased ground floor ceiling height required to provide sufficient clearance for stormwater drainage for upper roof. Elevations updated for master bedroom with ensuite to Terrace 2 including removal of setback on first floor.
A06	East elevation	7	Increased ground floor ceiling height required to provide sufficient clearance for stormwater drainage for upper roof
A07	West elevation	7	Increased ground floor ceiling height required to provide sufficient clearance for stormwater drainage for upper roof Elevations updated for master bedroom with ensuite to Terrace 2 including removal of setback on first floor.
A08	Cross Sections	7	Increased ground floor ceiling height required to provide sufficient clearance for stormwater drainage for upper roof Elevations updated for master bedroom with ensuite to Terrace 2 including removal of setback on first floor.
A09	Long Section	7	Increased ground floor ceiling height required to provide sufficient clearance for stormwater drainage for upper roof
A10	External Finishes	6	No change
A11	Basix Certificate details	6	Basix certificate information
A12	Window / door schedule	6	Amended to include external windows and doors associated to new bedroom over terrace 2 second floor.
A13	Window / door schedule	6	Amended to include external windows and doors associated to new bedroom over terrace 2 second floor.
A14	GFA calculation	6	Diagram updated to show increase in gross floor area with the addition of bedroom on the second floor
A15	Shadow Diagram 1 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.
A16	Shadow Diagram 2 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.
A17	Shadow Diagram 3 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.
A18	Shadow Diagram 4 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.

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Page | 1

A19	Shadow Diagram 5 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.
A20	Shadow Diagram 6 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.
A21	Shadow Diagram 7 of 7	6	Diagram amended for change in built form with the addition of bedroom at level 2 on terrace 2 and nil side setback.

The proposed redevelopment will greatly upgrade and improve the appearance of the existing locality and is considered to be of appropriate form. The proposal will maintain the character of the existing natural environment, while being compatible with the scale and character of surrounding and proposed development. The proposed design is satisfactory when assessed under the matters of consideration of section 4.15 of the Environmental Planning and Assessment Act 1979, as amended. No adverse environmental impacts have been identified.

The beneficial effects of the proposal include;

- An improvement to the site incorporating a building form which compliments neighbouring properties with an internal and external environment suited to its current and future uses.
- Improved amenities and upgraded appearance.
- A positive contribution to the locality;

The proposal has been developed with a view to upgrading the site and producing a form of development, which is consistent with council's nominated objectives and design principles. The proposal will produce an attractive and notable contribution to the site and locality in general with limited environmental impact. The proposal is consistent with the character of the area and will have no negative environmental or urban design impacts. It is consistent with the objectives of the Environment Planning and Assessment Act 1979.

Sincerely,



Sincerely,

Derek Raithby, Principal
AIA, B.Sc Arch., B. Arch
Nominated Architect Reg:7469
Design Practitioner #DEP1313



RESIDENTIAL DEVELOPMENT 75-77 BEATTIE STREET BALMAIN

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PROJECT

ARCHITECTURAL DRAWINGS

PROJECT#	DWG#	TITLE	SCALE	ISSUE DATE
2313	A00	COVER SHEET	NIS @ A1	JUL 2024
	A01	SITE / ROOF PLAN	1:100 @ A1	JUL 2024
	A02	CONSTRUCTION MANAGEMENT	1:100 @ A1	JUL 2024
	A03	LOWER LEVEL PLANS	1:100 @ A1	JUL 2024
	A04	UPPER LEVEL PLANS	1:100 @ A1	JUL 2024
	A05	ELEVATIONS 1 / 3	1:50 @ A1	JUL 2024
	A06	ELEVATIONS 2 / 3	1:50 @ A1	JUL 2024
	A07	ELEVATIONS 3 / 3	1:50 @ A1	JUL 2024
	A08	SECTIONS 1 / 2	NIS @ A1	JUL 2024
	A09	SECTIONS 2 / 2	NIS @ A1	JUL 2024
	A10	EXTERNAL FINISHES	NIS @ A1	JUL 2024
	A11	BASIX COMMITMENTS	NIS @ A1	JUL 2024
	A12	WINDOW / DOOR SCHEDULE 1 OF 2	1:50 @ A1	JUL 2024
	A13	WINDOW / DOOR SCHEDULE 2 OF 2	1:50 @ A1	JUL 2024
	A14	GFA CALCULATIONS	1:100 @ A1	JUL 2024
	A15	SHADOW DIAGRAM 1 OF 7	1:100 @ A1	JUL 2024
	A16	SHADOW DIAGRAM 2 OF 7	1:100 @ A1	JUL 2024
	A17	SHADOW DIAGRAM 3 OF 7	1:100 @ A1	JUL 2024
	A18	SHADOW DIAGRAM 4 OF 7	1:100 @ A1	JUL 2024
	A19	SHADOW DIAGRAM 5 OF 7	1:100 @ A1	JUL 2024
	A20	SHADOW DIAGRAM 6 OF 7	1:100 @ A1	JUL 2024
	A21	SHADOW DIAGRAM 7 OF 7	1:100 @ A1	JUL 2024

FOR S 4.5.5 APPLICATION

Scale	Size	Description	Sheet
1:100	A1	Site Plan	1
1:100	A1	Site Plan	2
1:100	A1	Site Plan	3
1:100	A1	Site Plan	4
1:100	A1	Site Plan	5
1:100	A1	Site Plan	6
1:100	A1	Site Plan	7
1:100	A1	Site Plan	8
1:100	A1	Site Plan	9
1:100	A1	Site Plan	10
1:100	A1	Site Plan	11
1:100	A1	Site Plan	12
1:100	A1	Site Plan	13
1:100	A1	Site Plan	14
1:100	A1	Site Plan	15
1:100	A1	Site Plan	16
1:100	A1	Site Plan	17
1:100	A1	Site Plan	18
1:100	A1	Site Plan	19
1:100	A1	Site Plan	20
1:100	A1	Site Plan	21
1:100	A1	Site Plan	22
1:100	A1	Site Plan	23
1:100	A1	Site Plan	24
1:100	A1	Site Plan	25
1:100	A1	Site Plan	26
1:100	A1	Site Plan	27
1:100	A1	Site Plan	28
1:100	A1	Site Plan	29
1:100	A1	Site Plan	30
1:100	A1	Site Plan	31
1:100	A1	Site Plan	32

Prepared by: **Amir Alsharif-Haji Pty. Ltd.**
 Checked by: **Amir Alsharif-Haji Pty. Ltd.**
 Drawn by: **Amir Alsharif-Haji Pty. Ltd.**
 Date: **21/06/2024**

Project: **RESIDENTIAL DEVELOPMENT**
 77 Beattie St, Balmain, NSW
 2041

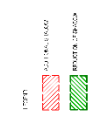
Scale: **1:100**
 Date: **21/06/2024**
 Drawing No: **A19**
 Project No: **231**
 Location: **Balmain, NSW**
 Client: **Amir Alsharif-Haji Pty. Ltd.**



② 1 PM Shadow diagrams on 21st June - Proposed
 1:100



① 1 PM Shadow diagrams on 21st June - Approved
 1:100



Attachment C – Statement of Heritage Significance

Godden Mackay Logan

Area 12 The Valley (Rozelle and Balmain)

Landform

This conservation area comprises a large but tightly formed valley which falls south and east from the Darling Street ridge towards White Bay affording enclosed views to industrial workings of the port city in the bay.

It includes a number of subdivisions/part subdivisions around the highest land in the Leichhardt Municipality on either side of the Darling Street ridge and across Victoria Road. It includes land east of Wellington Street to White Bay. It also includes the civic buildings and the commercial zone of Rozelle on both sides of Victoria Road, the land east of the Darling Street ridge beyond the commercial zone, the civic and commercial buildings of Balmain retail centre, small groups of shops along Darling Street and the former retail area of Evans and Beattie Streets.

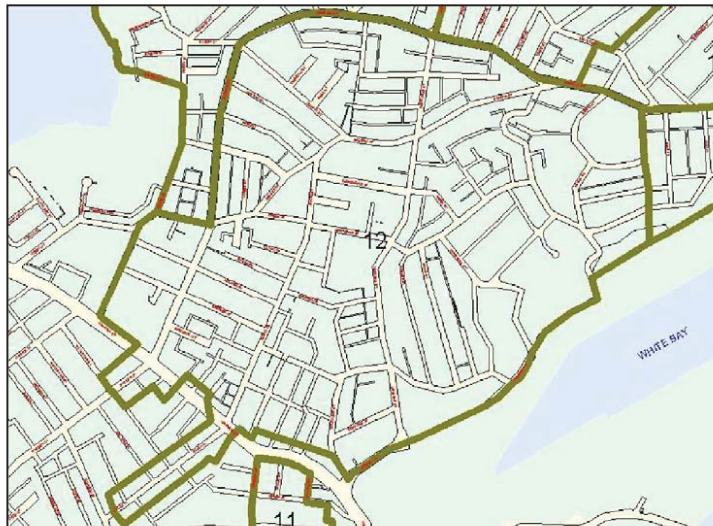


Figure 12.1 The Valley Conservation Area Map.

History

When sales of John Gilchrist's Balmain 550-acre grant were resumed in 1852, Surveyor Charles Langley subdivided the remaining acres into 46 (later 47) sections, using existing routes such as Darling Street, and other contour-hugging tracks, such as Beattie Street and Mullens Street to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

The largest of the estates put together from Langley's subdivisions was the 19 acres of the Merton Estate purchased by piano importers Paling and Starling, druggists George and Frederick Elliott and estate agent Alfred Hancock. It occupied the land between Terry Street and Evans Street. It was subdivided by its owners into 197 allotments generally 30ft x 100ft with 50ft-wide grid

pattern of roads, and was auctioned by local agent and developer, Alfred Hancock from 1874.

A miscellaneous collection of service and consumer trades servicing these new dwellings appeared along Evans Street in the 1870s making it the main commercial thoroughfare along the upper reaches of the Balmain peninsula.

By the 1880s the growth of industry, including noxious industry, in White Bay and along Whites Creek, made the south and east-facing slopes of the Darling Street ridge unattractive for a more affluent residential market. Those who could find employment in these industries would seek housing within walking distance, as public transport – then the horse drawn bus or later the steam tram – were too expensive. Canny speculators, such as Hancock (later Mayor of Balmain) sold to small builders who constructed very dense workers' housing for rentees or purchasers on small budgets. By 1891 a large part of this area had been built upon.

The arrival of the government-owned steam tram at the junction of Darling Street and Victoria Road in 1892, provided relatively more affluent residents along its route with transport to the city, and a greater choice of employment away from places within immediate walking distance from home. The advent of the tramway probably explains the major impetus to growth in the area particularly to the west of Evans Street, so that in the 1890s much of Terry, Wellington, Merton and Nelson Streets were built upon with one-storey brick semis, pairs or small groups of terraces (two to an allotment) and double-fronted single-storey houses (one to an allotment). Most of these buildings were constructed by local builders such as Robert Gordon, William Whitehorn and James Gibson, whose small-scale operations are indicated by the small groups of similar houses or terraces.

From the 1850s, Booth's Saw Mill on White Bay provided a cheap source of timber and weatherboards, promoting weatherboard houses as the norm for workers' housing throughout Balmain until brick terrace housing became prevalent in the late nineteenth century.

The extension of the steam tram service along Darling Street by 1900 encouraged shopkeepers to relocate there to catch the passing trade, and Evans Street was superseded as a commercial centre.

The Metropolitan Detail Survey Sydney Water Archive¹ suggests that almost all the land east of Wellington Street was built upon by 1905.

By 1907 the precinct was generally known as Rozelle.

Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Further information provided by Max Solling.

Significant Characteristics

- Contour hugging main roads – Evans, Beattie and Reynolds.

- Outline of subdivisions, size and aspect of allotments, determined by route of main roads.
- Wider residential roads off Darling Street ridge, with grid subdivision pattern, but
- Generally narrow roads between main access roads.
- Narrow, often shallow allotments.
- Back lanes are rare.
- Dense urban environment.
- Continuous lines of buildings create sharply defined lineal spaces.
- Buildings stepped up and down hill, following the topography.
- Houses sited close to road near Darling Street ridge; and sited onto the road alignment nearer to White Bay.
- Small front gardens near Darling Street; there are fewer gardens towards White Bay.
- Tree planting is minimal except where wider main access roads provide enough room – Langley, Roseberry, Llewelyn and Reynolds Street.
- Large stands of trees in parks and open spaces.
- Small range of housing types: single-fronted, single-storey timber terraces, two-storey terraces, free-standing timber or stone single-storey cottages.
- Some larger villas on high land around Smith Street, and more generous terraces in similar locations.
- Scale predominantly limited to one or two storeys.
- Pubs with verandahs act as punctuation marks in the streetscape.
- Corner stores.
- Commercial premises (and former commercial premises) with attached dwellings along Evans and Darling Streets.
- Small industrial/warehouse buildings occur throughout the area.
- Variety of materials – large number of timber, plastered brick, some later (1890s+) face brick and a few stone buildings.
- Roof materials vary – iron is common, terracotta tiles, some slate.
- Stone retaining walls.
- Remnants of iron palisade fences define some street frontages.
- Suspended awnings to commercial facades along Darling and Evans Streets.
- Sandstone kerbs and gutters.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area is important for illustrating development for workers' and artisan housing particularly from 1871-1891 which forms the major element of its identity. It is significant for its surviving development from that period and the later infill development up to World War II (ie pre-1939).
- Retains evidence of all its layers of growth within that period from the late-1870s.
- Through its important collection of weatherboard buildings, including the now rare timber terraces, it continues to demonstrate the nature of this important/major construction material in the fabric of early Sydney suburbs, and the proximity of Booth's saw mill and timber yards in White Bay.
- Through the mixture of shops, pubs and industrial buildings it demonstrates the nature of a Victorian suburb, and the close physical relationship between industry and housing in nineteenth century cities before the advent of the urban reform movement and the separation of land uses.
- Demonstrates through the irregular pattern of its subdivision the small-scale nature of the spec builders responsible for the construction of the suburb.
- Demonstrates the nature of some private subdivisions before the introduction of the Width of Streets and Lanes Act of 1881 required roads to be at least one chain wide.

Maintenance of Heritage Values

Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

Retain

- Existing width and alignment of streets: avoid chicanes which cut diagonally across the carriageway.
- Existing back lanes.
- All buildings pre-1939 and particularly all timber buildings
- All original plaster finishes to external walls - reconstruct where necessary.
- All original unplastered face brick walls.
- All original external architectural detail, decorative tiles, plaster mouldings, chimneys, roof ridges and finials, commercial signs etc.

Encourage replacement of lost elements, but only where evidence is available.

- All remaining sandstone kerbs and gutters.
- All corner stores, corner pubs and industrial buildings within the residential areas, and encourage their restoration. Consider small-scale commercial or professional uses for these buildings, if original uses no longer operate, as a reference to their original uses.
- Street and park planting; reinstate where necessary

Avoid

- Amalgamation that might lead to a change in the densely developed streetscape.
- Demolition of any pre-1939 building, particularly those pre-1910.
- Demolition of any remaining timber building.
- Additional storeys above the existing form of the building.
- Posted-verandahs over footpaths to commercial premises where no evidence can be provided to support their reconstruction. Encourage restoration of verandahs where evidence exists.
- Removal of plaster to external walls, where part of the original construction. Removal of original architectural details.
- Additional architectural detail for which there is no evidence.
- Inappropriate fences such as high brick walls, new iron palisades on high brick bases.
- Interruption to the almost continuous kerb and gutter line.

Endnotes

- ¹ Solling & Reynolds, p 81.
-

Attachment D – Original Court Judgement for Development Consent D/2018/243



Land and Environment Court New South Wales

Case Name: Abraham v Inner West Council

Medium Neutral Citation: **[2019] NSWLEC 1370**

Hearing Date(s): Conciliation conference on 2 August 2019

Date of Orders: 6 August 2019

Date of Decision: 6 August 2019

Jurisdiction: Class 1

Before: O'Neill C

Decision: The Court orders:
(1) The applicant is granted leave to amend the application by relying on the amended plans and documentation referred to in condition 2 of Annexure A.
(2) The applicant is to pay the respondent's costs thrown away as a result of the amendments pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 in the agreed sum of \$8,000.
(3) The written requests to vary the development standards in cl 4.3A and 4.4(2B)(b)(ii) of Leichhardt Local Environmental Plan 2013 are upheld.
(4) The appeal is upheld.
(5) Development Application No. D/2018/243 for site consolidation, alterations and additions to the existing warehouse buildings at the site and change of use to a multi dwelling housing development containing three dwellings and 2 car spaces at 75-77 Beattie Street, Balmain, is approved, subject to the deferred commencement condition and the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Leichhardt Environmental Plan 2013

Cases Cited: Initial Action Pty Ltd v Woollahra Municipal Council
[2018] NSWLEC 118
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC
90
RebelMH Neutral Bay Pty Limited v North Sydney
Council [2019] NSWCA 130
Wehbe v Pittwater Council (2007) 156 LGERA 446

Texts Cited:

Category: Principal judgment

Parties: Richard Abraham (Applicant)
Inner West Council (Respondent)

Representation: Solicitors:
G Green and A Knox, Pikes & Verekers Lawyers
(Applicant)
M Bonanno, Inner West Council (Respondent)

File Number(s): 2018/296942

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. D/2018/243 for site consolidation, partial demolition of the existing building, retention of façade to Beattie Street and change of use to a multi dwelling housing development containing three dwellings and parking for three vehicles (the proposal) at 77 Beattie Street, Balmain (the site) by Inner West Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 2 August 2019. I presided over the conciliation conference.
- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.
- 5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised, pursuant to cl 4.6 of the Leichhardt Environmental Plan 2013 (LEP 2013).

Planning framework

- 6 The site is zoned R1 General Residential pursuant to LEP 2013 (Land Zoning Map - Sheet). The objectives of the zone are:
 - To provide for the housing needs of the community.
 - To provide for a variety of housing types and densities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To improve opportunities to work from home.

- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
 - To provide landscaped areas for the use and enjoyment of existing and future residents.
 - To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
 - To protect and enhance the amenity of existing and future residents and the neighbourhood.
- 7 The proposal contravenes the development standard for landscaped area and site coverage for residential accommodation in the R1 zone, at cl 4.3A of LEP 2013. The site area is 281sqm and development consent must not be granted to development for the purpose of residential accommodation on land zoned R1 General Residential where the landscaped area is less than 20% of the site, at cl 4.3A(3)(a)(ii) of LEP 2013 and where the site coverage exceeds 60% of the site area, at cl 4.3A(3)(b) of LEP 2013.
- 8 The objectives of the development standard, at cl 4.3A(1) of LEP 2013 are:
- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,
 - (b) to maintain and encourage a landscaped corridor between adjoining properties,
 - (c) to ensure that development promotes the desired future character of the neighbourhood,
 - (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,
 - (e) to control site density,
 - (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.
- 9 The floor space ratio (FSR) development standard for the site is 0.9:1 at cl 4.4(2B)(b)(ii) of LEP 2013 and the FSR for the proposal is 1.18:1.
- 10 Clause 4.6 of LEP 2013 provides an appropriate degree of flexibility in applying certain development standards to particular development and the applicant relies on a written request to vary the development standard.

Contravention of the landscaped areas for residential accommodation in Zone 1 development standard

- 11 The proposal has a landscaped area of 6.85% and site coverage of 80.5%.
- 12 The applicant provided a written request seeking to justify the contravention of the landscaped area for residential accommodation in Zone 1 development standard.
- 13 Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 [13] "*Initial Action*"). The consent authority must form two positive opinions of satisfaction under cl 4.6(4)(a). As these preconditions are expressed in terms of the opinion or satisfaction of a decision-maker, they are a "jurisdictional fact of a special kind", because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent (*Initial Action* [14]). The consent authority, or the Court on appeal, must be satisfied that the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6(3) and that the proposal development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4), as follows:
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- 14 On appeal, the Court has the power under cl 4.6(2) to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and Environment, pursuant to s 39(2) LEC Act, but should still consider the matters in cl 4.6(5) (*Initial Action* [29]).

The applicant's written request to contravene the height of buildings development standard

15 The first opinion of satisfaction required by cl 4.6(4)(a)(i) is that the applicant's written request seeking to justify the contravention of a development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3) (see *Initial Action* [15]), as follows:

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

16 The applicant bears the onus to demonstrate that the matters in cl 4.6(3) have been adequately addressed by the written request in order to enable the Court, exercising the functions of the consent authority, to form the requisite opinion of satisfaction (*Initial Action* [25]). The consent authority has to be satisfied that the applicant's written request has in fact demonstrated those matters required to be demonstrated by cl 4.6(3) and not simply that the applicant has addressed those matters (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [4]).

17 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by the Chief Judge in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] ("*Wehbe*") and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;

- underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
 - the development standard has been abandoned by the council;
 - the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).
- 18 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).
- 19 The applicant's written request justifies the contravention of the height of buildings development standard on the basis that compliance is unreasonable or unnecessary because the proposal is an adaptive reuse of existing buildings that are unique to the area and fully occupy the site; there is cohesive landscaped corridor evident in the vicinity of the site because the site is within an areas formerly industrial and commercial in character; the proposal provides opportunities for planting around the site and not all of these areas contribute to the calculation landscaped area as they are within raised planter boxes and pots; and the proposal does not have any impact on existing landscaped areas within the vicinity of the site. The proposal is consistent with the desired future character of the area because it retains buildings that make a contribution to the local streetscape and the heritage conservation area and the proposal has been designed in response to the constraints presented by the retention of the existing buildings on the site.
- 20 The grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature, and environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 [26]) as they refer to grounds that relate to the

subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* [23]). The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* [24]). Therefore the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

- 21 I am satisfied, pursuant to cl 4.6(4)(a)(i), that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). The applicant's written request defends the exceedance of the development standard as a justified response to the constraint of retaining the existing buildings on the site. I am satisfied that justifying the aspect of the development that contravenes the development standard can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* [23].

Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone

- 22 The second opinion of satisfaction in cl 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that the development is in the public interest (*Initial Action* [27]). The consent authority must be directly satisfied about the matters in cl 4.6(4)(a)(ii) (*Initial Action* [26]).
- 23 I am satisfied that the proposal will be in the public interest because it is consistent with the objectives of the development standard, for the reasons outlined above and given by the applicant in the written request.

Contravention of the FSR development standard

- 24 The proposal has a FSR of 1.18:1 and the FSR development standard for the site is 0.9:1.
- 25 The applicant provided a written request seeking to justify the contravention of the FSR development standard.

The applicant's written request to contravene the height of buildings development standard

- 26 The applicant's written request justifies the contravention of the FSR development standard on the basis that compliance is unreasonable or unnecessary because the proposal is an adaptive reuse of an existing building and the existing building fully occupies the site. The bulk and mass of the development has been located centrally within the site so as to minimise its visual impact and provide a transition in scale between the higher building to the east and the lower development to the west. The proposed bulk and scale of the development is consistent with that which currently exists on the site and retains the existing presentation of the former warehouse to Beattie Street.
- 27 I am satisfied, pursuant to cl 4.6(4)(a)(i), that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). The applicant's written request defends the exceedance of the development standard as a justified response to the constraints and opportunities of retaining and adaptively reusing the warehouse buildings on the site. I am satisfied that justifying the aspect of the development that contravenes the development standard can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* [23].

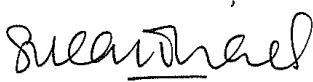
Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone

- 28 I am satisfied that the proposal will be in the public interest because it is consistent with the objectives of the development standard, for the reasons outlined above and given by the applicant in the written request.

Orders

29 The orders of the Court are:

- (1) The applicant is granted leave to amend the application by relying on the amended plans and documentation referred to in condition 2 of Annexure A.
- (2) The applicant is to pay the respondent's costs thrown away as a result of the amendments pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 in the agreed sum of \$8,000.
- (3) The written requests to vary the development standards in cl 4.3A and 4.4(2B)(b)(ii) of Leichhardt Local Environmental Plan 2013 are upheld.
- (4) The appeal is upheld.
- (5) Development Application No. D/2018/243 for site consolidation, alterations and additions to the existing warehouse buildings at the site and change of use to a multi dwelling housing development containing three dwellings and 2 car spaces at 75-77 Beattie Street, Balmain, is approved, subject to the deferred commencement condition and the conditions of consent at Annexure A.



Susan O'Neill
Commissioner of the Court

Annexure A
Abraham v Inner West Council

DEFERRED COMMENCEMENT

The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

1. The stormwater drainage concept plan (SDCP) on Drawing No DA – 0003 and 0004 Rev B prepared by Lindsay Dynan dated 12 October 2018 shall be amended to address the following issues:
 - 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 the overflow pipelines from the on-site retention tank(s) by gravity directly into Council's piped drainage system.
 - b) Charged or pump-out stormwater drainage systems are not permitted. All downpipes and pipelines to the proposed rainwater tanks shall be shown on the plans.
 - c) Comply with Council's Stormwater Drainage Code.
 - d) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
 - e) A development of this nature requires site discharge be connected directly to Council's piped drainage system in Beattie Street. In this regard, the existing system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 2.4m lintel) must be installed.

The pipeline shall be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. All pipes within the road shall be Class 4 Steel Reinforced Concrete Pipe.
 - f) Incorporate on site retention/ re-use facilities (OSR). Calculations must be submitted in support of the flow rates and OSD storage volumes proposed in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013.
 - h) The proposed rainwater tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use.
 - i) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) shall be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).

The design must be prepared by a suitably qualified practising Civil Engineer.

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

- Development must be carried out in accordance with Development Application No. D/2018/243 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan DA-005-I	BKA architecture	20/06/2019
Demolition plan DA-006-C	BKA architecture	22/05/19
Demolition Elevations/Sections DA-007-C	BKA architecture	22/05/2019
Lower level Floor plans DA-100-N	BKA architecture	20/06/2019
Upper Level Floor plans DA-101-L	BKA architecture	22/05/2019
Elevations DA-200-N	BKA architecture	20/06/2019
Sections DA-300-L	BKA architecture	20/06/2019
Loading Bay Door Retention DA-802-A	BKA architecture	14/05/2019
Void and Balcony Structure DA-803-A	BKA architecture	14/05/2019
Document Title	Prepared By	Dated
Materials and Finishes DA-900-D	BKA architecture	22/05/2019
BASIX Certificate	Taylor Smith Consulting	12/06/2019
Remediation Action Plan REP-18 6078-A	Envirotech	5 May 2018

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. Prior to the issuing of a Construction Certificate a schedule of conservation and repair works to the historic fabric prepared by a Conservation Architect is to be submitted for approval.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

- Consent is granted for the demolition of the structures indicated in red on the approved demolition plans, subject to strict compliance with the following conditions:

- a) Prior to the issue of a Construction Certificate revised demolition plans are to be submitted for approval that detail the full extent and nature of all of the historic materials that are to be retained. This includes existing historic features such as loading bay doors, windows and sandstone walls and outcrops that are to be retained. Sufficient sandstone is to be retained below the existing columns to provide a base. These plans are also to demonstrate any alterations to the historic fabric required in conjunction with the required stormwater system. Penetrations through historic stonework are to be kept to a minimum.

The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.

- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
- i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
 - ii) A *final* inspection when the demolition works have been completed.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6.00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.

- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au 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 REP-18 6078-A	Envirotech	5 May 2018

5. The trees identified below are to be retained:

Tree/location
Tree (<i>Agonis Flexuosa</i>) located in rear yard of 79 Beattie Street, Balmain

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

- a) Demolition of the brick footing within the SRZ of the subject tree is to be supervised by the Project Arborist to ensure structural roots are not damaged during the demolition of the existing structure.
- b) Where possible, trunk and stem protection is to be installed on the subject tree for the prior to and for the duration of demolition and construction work on the site in accordance with Appendix 4 to the *Addendum to Arboricultural Impact Assessment* dated 22/10/2018. Should permission to install the trunk and stem protection be refused by the adjoining owner, evidence of written attempts to obtain permission shall be submitted to the PCA prior to commencement of works.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. A stormwater drainage design, incorporating on site retention/ re-use facilities (OSR), prepared by a qualified practising Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:
- a) The design must be generally in accordance with the plans approved under Deferred Commencement Condition 1.
 - b) Comply with Council's Stormwater Drainage Code.
 - c) Charged or pump-out stormwater drainage systems are not permitted.
 - d) A development of this nature requires site discharge be connected directly to Council's piped drainage system in Beattie Street. In this regard, the existing system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 2.4m lintel) must be installed.

The pipeline shall be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. All pipes within the road shall be Class 4 Steel Reinforced Concrete Pipe.

- e) As there is no overland flow/flood path available from the central courtyard(s) to the Beattie Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
 - ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
 - iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands/roof areas.
- f) All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2018 Plumbing and Drainage – Stormwater Drainage.
- g) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- h) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- i) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) shall be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).
- l) The proposed rainwater tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use.

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.

7. 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 170mm 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 shall be provided, demonstrating compliance with the above requirements. The sections shall show existing levels (based on survey), proposed levels, gradients and the location of the sections shall be detailed on the plans.
 - e) The parking space(s) must have minimum clear internal dimensions of 5400 x 3000mm (length x width). 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 shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

8. In order to provide satisfactory vehicular and pedestrian access, drainage, landscaping and aesthetic improvements to the public domain adjacent to the site, the following works shall be undertaken at no cost to Council:
- a) Light duty concrete vehicle crossing(s) at the vehicular access location(s).
 - b) The redundant vehicular crossing to the site at the Beattie Street frontage of the site shall be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.
 - c) The existing footpath across the frontage of the site shall be reconstructed.

- d) The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored.
- e) The existing Council Stormwater Drainage system shall be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 2.4m lintel) must be installed. The pipeline shall be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. All pipes within the road shall be Class 4 Steel Reinforced Concrete Pipe.

Full detailed construction plans and specifications including long sections for drainage and driveway works and showing location of underground utility services shall be submitted to Council for approval under Section 138 of the Roads Act 1993 before the issue of a Construction Certificate with all works completed before to the issue of an Occupation Certificate.

All works shall be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council.

- 9. 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.

- 10. 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.

11. An Access Management Plan must be provided by an Accredited Access Consultant prior to the issue of a Construction Certificate. Details of the Access Management Plan must include:
 - a) Confirmation whether the Disability (Access to Premises – Buildings) Standards 2010 is applicable to the development, in particular whether an upgrade of the 'Affected part' is required
 - b) Proposed requirements for access to the building or part of building for people with a disability in accordance with Part D3 of Building Code of Australia.
 - c) Conduct an assessment and identify any non-compliances with the Disability Standards 2010 and/or the Building Code of Australia where applicable and provide recommendations to achieve compliance with the relevant performance requirements.
 - d) If the building is located within a heritage conservation area or is a heritage item, any changes required to the external fabric of the building that are outside the approved works will require additional development consent from the consent authority. If the building is a listed heritage item, any works outside the approved works (external, internal etc) will require development consent from Council.
 - e) Accessible carparking spaces should be provided, where applicable, in accordance with Part D3.5 of Building Code of Australia.
12. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property. The downpipes from the adjacent warehouse must remain accessible for maintenance purposes.

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.

13. 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

14. The existing unpainted brick surfaces are not to be painted, bagged or rendered but to remain as original brick work. The Construction Certificate plans must clearly depict all original brickwork with a notation that they are to remain unpainted to the satisfaction of the Principal Certifying Authority. Likewise all sandstone blocks and outcrops to be retained are to be clearly indicated on the Construction Certificate drawings.
15. A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant must be provided prior to the issue of a Construction Certificate. The plan must include:
 - a) Location of all proposed and existing planting delineating existing trees to be retained, removed or transplanted.
 - b) A detailed planting schedule including species by botanical and common names, quantities, pot sizes and estimated size at maturity.
 - c) At least 85% of the plantings must be native species from the Sydney locale.
 - d) If the property is greater than 300m², at least two canopy trees or if less than 300m² only one canopy tree.
 - f) Details of planting procedure including available soil depth.
 - g) Details of earthworks including mounding, retaining walls, and planter boxes (consistent with the approved architectural plans).
 - h) A landscape maintenance strategy for the owner / occupier to administer over a twelve (12) month establishment period.
 - i) Details of drainage and watering systems.

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

16. 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*.

17. An application must be made to Council for the issue of a Levels Certificate. The certificate, issued by Council, must be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

The certificate specifies the surface levels in the road reserve adjacent to the property that must be used as the basis for the design of vehicle or pedestrian accesses, finished floor levels, fences, vents and any structures in the vicinity of the property boundary.

The architectural & engineering plans must be updated to reflect the information in the levels certificate and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The overall height of the external form must not alter from that depicted within the approved plans and/specified by this consent.

The levels certificate may specify that levels in the adjacent road reserve are required to be changed.

18. 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.
19. The following requirements are to be detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
- a) Where possible, paving surfaces for non-high traffic areas will be porous concrete or interlocking modular pavers i.e. permeable paving;
 - b) Bulk insulation and reflective insulation shall be incorporated into walls ceilings and roofs to achieve combined 'R' value of R2.5 for roofs and ceilings and R1.5 for walls;
 - c) The use of the colour Monument for the garage doors and the dark grey render or paint is not approved. A revised schedule of external materials and finishes is to be submitted that demonstrates the use of lighter colours for external walls and the garage doors, colours that are keeping with the overall character of the brick warehouse buildings.
 - d) Timber used for building materials shall be sourced from Forest Stewardship Council (FSC) certified plantation or regrowth areas; grown in Australia, or recycled and not sourced from rainforest or old growth forests.

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

20. Prior to the issue of the Construction Certificate the builder in conjunction with or certified by a suitably qualified Civil engineer shall prepare a detailed work method statement including detailed specifications of the proposed method of excavation including the size, weight and power rating of plant and accessories, as well as appropriate hold points. to the satisfaction of the Principal Certifying Authority.

The design must be certified as compliant with the terms of this condition and adequate for the intended works. 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.

21. 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	\$13,820.61
Community facilities and services	\$2,894.13
In lieu of adequate parking	\$13,200.00
Local area traffic management	\$341.84
Access to Balmain peninsula	\$1,757.46
Bicycle works	\$34.13
Total Contribution	\$32,048.17

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.

22. 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.

23. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must 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.

24. All shop front glazing must be clear and untinted. Any security grille must be open grille see through and not a solid material and be located internally. Details are to be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate. The Construction Certificate drawings are also to demonstrate that the historic signage to the front façade and the surviving loading bay doors are being retained and conserved.

No advertising flags or banners or the like are to be erected on or attached to the shopfront without the consent of Council.

Merchandise, public telephones, stored material, A-frame signs or the like must not be placed on the footway of other public areas without the consent of Council a current footway approval issued by Council with relevant lease fee paid and insurance provided.

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.

- 25. The construction and fit out of the premises shall comply with the Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.
- 26. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
 - a) Estimated volume (m³) or weight (t) of materials that are reused, recycled or removed from site.
 - b) On site material storage areas during construction.
 - c) Material and methods used during construction to minimise waste.

- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

27. A privacy screen must be erected along western edge of the terrace adjacent to Bedroom 1 of Terrace 2 at Level 2 to ensure reasonable privacy for the adjoining property at 79 Beattie Street, Balmain. The privacy screen must:
- a) be 1.6m high, measured from the floor level, and
 - b) have no individual opening more than 30mm wide, and
 - c) have a total area of all openings that is less than 25 per cent of the surface area of the screen; and
 - d) be permanently fixed and made of durable materials.

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

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

28. 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 has been completed and 3 copies have been submitted to Council for the property.

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).

29. 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 or commencement of works (whichever occurs first).
30. 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.

31. 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)	\$60,000
Inspection fee (FOOTI)	\$230.65

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.

PRIOR TO THE COMMENCEMENT OF WORKS

32. 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. 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.

- 33. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
- 34. The vehicular crossing and/or public domain 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 1' form for design approval and an '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.
- 35. 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.
- 36. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- 37. 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.

38. 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.

39. 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.

40. 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).

41. Dial Before You Dig

Underground assets may exist in the area that is subject to the approved development. In the interests of health and safety and in order to protect damage to third party assets contact Dial Before You Dig at www.1100.com.au or telephone on 1100 prior to works commencing. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction. Care must be taken to ensure any identified assets are protected accordingly.

If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

DURING WORKS

42. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry.

Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.

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

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

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

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

44. 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.

45. The site must be appropriately secured and fenced at all times during works.
46. 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.
47. 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.

48. 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.
49. 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.
50. The development site must be inspected at the following stages during construction:
 - a) after the commencement of the excavation for, and before the placement of, the first footing.
 - b) prior to covering any stormwater drainage connections, and
 - c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
51. 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.
52. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.
53. Where any works are proposed in the public road reservation, the following applications must be made to Council, as applicable:
 - a) For installation or replacement of private stormwater drainage lines or utility services, including water supply, sewerage, gas, electricity, etc. an application must be made for a *Road Opening Permit*.
 - b) For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a *Roadworks Permit*.

Note: Private stormwater drainage is the pipeline(s) that provide the direct connection between the development site and Council's stormwater drainage system, or street kerb and gutter.

54. 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.

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

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

56. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be satisfied that a Fire Safety Certificate for all essential fire or other safety measures has been completed.
57. Provision must be maintained for access to and within the building on the site for persons with a disability in accordance with the provisions of Australian Standard AS 1428.1:2001 *Design for access and mobility – General requirements for access – new building work* prior to the issue of an Occupation Certificate.
58. 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.

59. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
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 street / shop 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.

62. 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.

63. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and plumbing section on the web site www.sydneywater.com.au then refer to "Plumbing, building & developing".

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

64. 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.

65. 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 contaminates.

66. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate.
67. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall 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 and OSR system commissioned in accordance with the approved design and relevant Australian Standards, shall be submitted and accepted by Council prior to the issue of an Occupation Certificate.

The works-as-executed plan(s) shall 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 shall be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

68. All works required to be undertaken on public roads shall be designed and constructed in accordance with Council's standard plans and specifications. The works shall be supervised and certified by a qualified civil engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Register" (NPER) and shall state that the works have been constructed in accordance with the approved plans and specifications before the issue of the Occupation Certificate.

Video inspection (CCTV) shall be carried out of completed stormwater drainage works that are to revert to Council and a copy provided to Council to support the certification of those works.

In addition, full works-as-executed plans in PDF or CAD format (dwg or dxf files), prepared and signed by a registered surveyor, shall be submitted to Council upon completion of the works.

69. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on-site retention/re-use facilities and stormwater quality improvement devices. The Plan must set out the following at a minimum:
- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
 - b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

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

70. 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.

71. 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 have been completed satisfactorily and in accordance with Council approved plans and specifications.

72. 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.
73. 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.
74. Prior to the issue of an Occupation Certificate, a positive covenant must be created under Section 88E of the *Conveyancing Act 1919*, burdening the owner(s) with the requirement to maintain the on-site stormwater retention facilities and stormwater quality improvement devices on the property.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a) The Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the on-site stormwater retention facilities ("OSR") and stormwater quality improvement devices (SQIDS).
- b) The Proprietor shall have the OSR and SQIDS inspected annually by a competent person.
- c) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSR and SQIDS or which convey stormwater from the said land; and recover the costs of any such works from the proprietor.
- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSR and SQIDS, or failure to clean, maintain and repair the OSR and SQIDS.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Proof of registration with NSW Land and Property Information must be submitted to and approved by 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.

75. The Operation and Management Plan for the on-site retention/re-use facilities and stormwater quality improvement devices, approved with the Occupation Certificate, shall be implemented and kept in a suitable location on site at all times.

ONGOING CONDITIONS OF CONSENT

79. The premises shall not be used for any purpose other than that stated in the Development Application 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*.
80. Owners and occupants of the proposed building shall refer to the Council resident parking scheme for the area to confirm their eligibility to participate in any existing or proposed Council Resident Parking Schemes. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this requirement.

PRESCRIBED CONDITIONS

A. BASIX Commitments

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

In this condition:

- a) Relevant BASIX Certificate means:
- (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

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

C. Home Building Act

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

- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

D. Site Sign

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

Attachment E – Conditions in the event of an approval



Attachment E – Conditions in the event of an approval

A. AMEND THE FOLLOWING CONDITIONS TO READ:

Condition 2

2. Development must be carried out in accordance with Development Application No. D/2018/243 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan DA-005-I	BKA architecture	20/06/2019
Demolition plan DA-006-C	BKA architecture	22/05/19
Demolition Elevations/Sections DA-007-C	BKA architecture	22/05/2019
Site/Roof Plan A01 Issue 7	DRA	July 2024
Site Management Plan A02 Issue 7	DRA	July 2024
Lower Ground Floor Plans A03 Issue 7	DRA	July 2024
Upper Ground Floor Plans A04 Issue 7	DRA	July 2024
North & South Elevations A05 Issue 7	DRA	July 2024
East Elevation A06 Issue 7	DRA	July 2024
West Elevation A07 Issue 7	DRA	July 2024
Sections 1/2 A08 Issue 7	DRA	July 2024
Sections 2/2 A09 Issue 7	DRA	July 2024
Window/Door Schedule 1 of 2 A12 Issue 7	DRA	July 2024
Window/Door Schedule 2 of 2 A13 Issue 7	DRA	July 2024
Lower level Floor plans DA-100-N*	BKA architecture	20/06/2019
Upper Level Floor plans DA-101-L	BKA architecture	22/05/2019
Elevations DA-200-N*	BKA architecture	20/06/2019
Sections DA-300-L*	BKA architecture	20/06/2019
Loading Bay Door Retention DA-802-A	BKA architecture	14/05/2019
Void and Balcony Structure DA-803-A	BKA architecture	14/05/2019
*As amended by Dwg. No. 19050MOD01, Rev. A, prepared by Kink Architects, dated 29/04/2020, to raise the finished ground floor level of Terrace 2 and 3 by 150mm.		
Document Title	Prepared By	Dated
Materials and Finishes DA-900-D	BKA architecture	22/05/2019
External Finishes Schedule A10 Issue 7	DRA	July 2024
BASIX Certificate	Taylor Smith Consulting	12/06/2019 02/07/2024
Remediation Action Plan REP-18 6078-A	Envirotech	5 May 2018

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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. Prior to the issuing of a Construction Certificate a schedule of conservation and repair works to the historic fabric prepared by a Conservation Architect is to be submitted for approval.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

(Condition as previously amended under MOD/2021/0133)

(Condition modified under MOD/2024/0263 on INSERT DATE)

Condition 6

6. A stormwater drainage design, incorporating on site retention/ re-use facilities (OSR), prepared by a qualified practising Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:
 - a) ~~The design must be generally in accordance with the plans approved under Deferred Commencement Condition 1 the stormwater drainage concept plan (SDCP) on Drawings No 20956-SW01 Rev A dated 09/04/20, No 20956-SW02 Rev B dated 01/05/20 and No 20956-SW03 Rev A dated 09/04/20 prepared by B. HAYKAL dated 12 October 2018. Drawing No. V581-C11 Rev D dated 19/07/2024, Drawing No. V581-C12 Rev C dated 25/07/2024 and Drawing No. V581-C13 Rev C dated 25/07/2024 prepared by VTAA.~~
 - b) Comply with Council's Stormwater Drainage Code.
 - c) Charged or pump-out stormwater drainage systems are not permitted.
 - d) ~~A development of this nature requires site discharge be connected directly to Council's piped drainage system in Beattie Street. In this regard, the existing~~

~~system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 2.4m lintel) must be installed.~~

~~The pipeline shall be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. All pipes within the road shall be Class 4 Steel Reinforced Concrete Pipe.~~

- e) As there is no overland flow/flood path available from the central courtyard(s) to the Beattie Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
 - ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
 - iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands/roof areas.
- f) All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2018 Plumbing and Drainage – Stormwater Drainage.
- g) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- h) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- i) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) shall be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).

- l) The proposed rainwater tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use.
- m) *Incorporate on site retention/ re-use facilities (OSR). Calculations must be submitted in support of the flow rates and OSD storage volumes proposed in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013.*
- n) *Connection to the kerb and gutter of a public road in accordance with Council standards.*

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.

(Condition as previously amended under MOD/2021/0133)

(Condition modified under MOD/2024/0263 on INSERT DATE)

Condition 21

- 21. 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	\$13,820.61
Community facilities and services	\$2,894.13
In lieu of adequate parking	\$13,200.00
Local area traffic management	\$341.84
Access to Balmain peninsula	\$1,757.46
Bicycle works	\$34.13
Total Contribution	\$32,048.17

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.

In addition, in accordance with section 7.11 of the Environmental Planning and Assessment Act 1979 and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:

<i>Contribution Category</i>	<i>Amount</i>
<i>Open Space & Recreation</i>	<i>\$9,182.00</i>
<i>Community Facilities</i>	<i>\$1,702.00</i>
<i>Transport</i>	<i>\$1,207.00</i>
<i>Plan Administration</i>	<i>\$118.00</i>
<i>Drainage</i>	<i>\$633.00</i>
<i>TOTAL</i>	<i>\$12,841.00</i>

At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$$

Where:

C_{payment} = is the contribution at time of payment

C_{consent} = is the contribution at the time of consent, as shown above

CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 139.1 for the July 2024 quarter.

CPI payment = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

Reason: To ensure payment of the required development contribution.

(Condition modified under MOD/2024/0263 on INSERT DATE)