

<b>JRPP No:</b>	Balmain Town Hall, First Floor, 370 Darling Street Balmain
<b>DA No:</b>	D/2010/206
<b>PROPOSED DEVELOPMENT:</b>	Site remediation and residential development for 17 dwellings - 170 Beattie Street, Balmain
<b>APPLICANT:</b>	Scott Marrant/ Wadih Haddad
<b>REPORT BY:</b>	Elizabeth Richardson, Team Leader Assessments, Leichhardt Municipal Council

## Assessment Report and Recommendation

<b>Development Application No.</b>	➤ D/2010/206
<b>Address</b>	➤ 170 Beattie Street, BALMAIN NSW 2041 13 & 15 Evans Street, BALMAIN NSW 2041
<b>Description of Development</b>	➤ Residential development comprising 17 dwellings and 25 off-street parking spaces. The proposal includes the retention and adaptation of the existing timber cottage and hall for dwellings; construction of new dwellings; relocation of electricity substation; and the remediation of the site.
<b>Date of Receipt</b>	➤ 29 April 2010
<b>Value of Works</b>	➤ \$10,654,683
<b>Applicant's Details</b>	➤ Good Fortune No.2 Pty Ltd 255 Parramatta Rd AUBURN NSW 2144
<b>Owner's Details</b>	➤ Mrs C Haddad 23 Phillips St CABARITA NSW 2137 And Energy Australia GPO BOX 4009, SYDNEY NSW 2001
<b>Notification Dates</b>	➤ <u>Initial:</u> 13th May to 14th June 2010. <u>Renotified:</u> 4 September to 5 October 2010
<b>Number of Submissions</b>	➤ Sixty-one (61) in opposition
<b>Building Classification</b>	➤ 1a, 2 & 7
<b>Integrated Development</b>	➤ No

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<b>Main Issues</b>	➤ Solar Access & overshadowing
	➤ Visual bulk and scale; Streetscape

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**Recommendation**

➤ Refusal

## 1. PROPOSAL

This application seeks consent for the following works at the properties known as No.170 Beattie Street, No. 13 and No.15 Evans Street Rozelle.

### Original Development

The application sought consent for the redevelopment of the site for residential purposes.

- Demolition of existing partially-built church building and electricity substation building fronting Evans Street; fibro garage fronting Beattie Street.
- Nineteen (19) new and 'adaptive re-use' dwellings, provided as follows:
  - Two (2) dwellings within the existing weatherboard dwelling fronting Beattie Street. Basement excavation and an attic level conversion was also proposed;
  - Three (3) dwellings located in a new infill building front Beattie Street, sited between the existing dwelling and the southern site boundary;
  - Five (5) new dwellings, constructed of three storeys in the central section of the site;
  - Three (3) dwellings in a new terrace-form building, fronting Evans Street; and
  - Six (6) dwellings contained within a conversion of an existing hall building fronting Evans Street.
- Off-street parking for 33 vehicles, 31 of which were contained in a basement carpark. Two off-street parking spaces are proposed to access the site from existing crossings on Beattie Street.
- Swimming pool, gymnasium and sunken courtyard, in the central section of site, adjacent to the northern site boundary.
- Two (2) new electricity substation kiosks, proposed in the north-eastern corner of the site, fronting Evans Street.
- Associated landscape works, including tree removal.

Consent for the remediation of the site is also required.

### Amended Development

In response to a number of concerns raised by Council, an amended scheme was submitted to Council on the 18<sup>th</sup> August 2010.

Key changes include:

- The number of dwellings has been reduced from nineteen(19) to seventeen (17).The adapted hall building is proposed to now contain only four (4) dwellings, the infill building to Beattie Street has been replaced by two freestanding dwellings. A new freestanding studio dwelling has been introduced.
- The pool and gym has been deleted.
- The sunken courtyard has been deleted, with landscaped area now provided at existing levels.
- Basement excavation beneath the existing dwelling has been deleted.
- The number of parking spaces on site has been reduced from 33 to 25.
- The vehicular driveway entrance has been reduced in width to a single-width crossing only, and relocated marginally.
- The electrical substations have been relocated from the north-eastern corner of the site to the driveway entrance.

- Private open space to the dwellings within the hall building is now provided within the building footprint.
- Front setbacks of the new terrace dwellings to Evans Street have been reduced from 4.2 metres to 2.65 metres and the width of these dwellings narrowed.
- The basement level and buildings have been setback between 1.95 – 2.2 metres to allow for deep soil planting along the southern boundary.
- Greater setbacks provided to the first and second floor levels of the dwellings in the central section of the site.

These amended plans were on public notification from 4 September 2010 – 5 October 2010 and are the subject of this assessment.

Note: Strata subdivision of the development may comprise complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

## 2. SITE DESCRIPTION

The subject site consists of the three (3) parcels, known as No.170 Beattie Street and No's 13 & 15 Evans Street, Balmain.

The total combined site area is 2,944m<sup>2</sup>. The site has a frontage of 42.02 metres to Beattie Street and approximately 34 metres to Evans Street. The site slopes considerably away from Beattie Street, and is stepped with retaining walls accordingly. The site lies approximately 1.5 metres above the level of the Evans Street footpath.

Currently existing on the site is:

- A large fibro and weatherboard dwelling near the Beattie Street frontage;
- A masonry hall building to Evans Street;
- A partially constructed part single/part two-storey building in the south-eastern corner of the site. The building was being erected with consent for meeting rooms, artist's studios and retreats in conjunction with the former use of the site as a place of public worship; and
- An Energy Australia substation at No.15 Evans Street.

The subject site is surrounded by dwellings, mostly detached and semi-detached in nature. The adjoining dwelling at No.25 Evans Street is a two-storey semi-detached residence with two detached outbuildings, used as bedrooms.

The subject site is not a heritage item, however is located within a heritage conservation area.

## 3. SITE HISTORY

The following tables outline the development history of the subject and surrounding site.

Date	Application Details
Approved 21/4/1999	D/1998/472 - Construct a factory built chapel to replace the existing chapel building.
Approved 8/9/1988	DA 370/87 - Restore existing buildings and erect temporary chapel for place of public worship and associated dwellings
Approved	D/2005/535 - Partial demolition, alterations and additions to the existing hall

18/10/2006	<p>for use as a Chapel; Construction of a new part-single/part two storey building adjoining 25 Evans Street, providing meeting rooms, artists studios and retreats, and associated amenities; and</p> <p>Construction of a new car park providing a total of fourteen (14) off-street parking spaces.</p> <p>Works associated with this consent commenced but were never completed when the site was purchased by its current owners in July 2009.</p>
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#### 8 Ewell Street

Approved 1/7/2008	D/2007/417, Demolition of existing structure, construction of two new dwellings with basement parking, removal of 1 tree and subdivision of site into 2 Torrens title allotments.
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#### 6 Ewell Street

Approved 22/9/2009	D/2009/246, Alterations and additions to an existing dwelling.
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#### 10 Ewell Street

Withdrawn 10/8/2009	D/2009/3, Demolition of existing dwelling and removal of concrete paving. Renovate shed to rear as new master bed with ensuite and addition of 2 storey residence with excavation for new car parking area.
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#### 25 Evans Street

Approved 14/8/2008	D/2008/316, Addition of an ensuite with balcony to the first floor northern elevation of an existing dwelling.
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## **4. ASSESSMENT**

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

### **(a)(i) Environmental Planning Instruments**

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

- State Environmental Planning Policy No.1 - Development Standards
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (BASIX) 2004

- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2000

The following summarises the assessment of the proposal against the development standards and lists the other relevant clauses of the Leichhardt Local Environmental Plan 2000.

<b>Development Standard</b>	<b>LEP 2000 Requirement</b>	<b>Proposal m<sup>2</sup></b>	<b>Proposal ratio / %</b>	<b>Compliance</b>
Floor Space Ratio	0.7:1	2344m <sup>2</sup>	0.79:1	No
Total Landscape	40%	1036m <sup>2</sup>	35%	No
Soft Landscape	25% of the total	875m <sup>2</sup>	84%	Yes
Diverse housing	Min 25% 1-bedroom (4.25 dwellings)	3 dwellings	-	No
	Max 30% 3-bedroom or more (5.1 dwellings)	5 dwellings	-	Yes
Adaptable housing	2 dwellings	2 dwellings	-	Yes

- Clause 13 – General Objectives
- Clause 15 – Heritage Objectives
- Clause 16(7) – Development in the Vicinity of a heritage item
- Clause 16(8) – Development in Conservation Areas
- Clause 17 – Housing objectives
- Clause 19(2) – Floor Space Ratio
- Clause 19(3) – Landscaped Area
- Clause 19(6) – Diverse housing
- Clause 19(7) – Adaptable housing

#### Clauses 15, 16(7) & 16(8) - Heritage

The subject site is located within a Conservation area and in the vicinity of heritage items.

The former hall building fronting Evans Street was constructed c1900 and is proposed to be adapted for four (4) dwellings. The fabric of this building has been substantially altered over time, however its form remains intact. The proposed adaptation of this building, including some minor contemporary additions, is supported.

The existing large weatherboard dwelling on the site was formerly known as 'Helena Villa' and was constructed c1878. Although accessed from Beattie Street, the cottage is oriented to the east thus has its 'rear' elevation to Beattie Street. Later lean-to additions at the southern end of the dwelling are proposed to be demolished and the open verandah to the Beattie Street elevation is to be reinstated which is considered to be positive in both heritage and streetscape terms.

The proposal seeks to convert the cottage into two (2) dwellings. In order to do this an extension into the attic space is required, with 5 dormer windows proposed. The application remains silent on whether the existing chimneys to the dwelling are to be retained or demolished.

The proposed dormer on the southern roof plane is considered to be over-sized and inappropriate for the period and character of the existing dwelling and would have an adverse heritage impact. A smaller dormer window of traditional proportions could however be supported.

However, the attic level bedroom to dwelling 2 (and its ensuite) does not comply with the deemed to satisfy requirements of the BCA with respect to floor to ceiling heights which requires an average of 2200mm for attic levels. Hence a reduction in the height of the dormer cannot be achieved.

The existing chimneys to the dwelling are considered to be an integral feature and an inherent characteristic of the dwelling and should be retained. On the basis that the southern dormer window is constructed in the location of one of the chimneys, it is assumed that demolition is proposed, which is not supported.

On this basis, the proposal is not considered satisfactory under *Clause 16(8) – Development in Conservation Areas* of the Leichhardt Local Environmental Plan 2000.

#### Clause 19(2) Floor Space Ratio

Clause 19(2) of the Leichhardt Local Environmental Plan 2000 prescribes a maximum FSR of 0.7:1 for this site.

With a site area of 2944m<sup>2</sup>, the maximum FSR permitted on the site by the LEP is therefore 2061m<sup>2</sup>.

The application proposes a total floor space of 2344m<sup>2</sup>, equating to an FSR of 0.79:1, and hence a breach of the development standard by 283m<sup>2</sup> is proposed.

A SEPP No.1 objection has been submitted seeking to vary the development standard and is discussed in further detail below.

#### SEPP 1 Objection

The applicant has submitted a SEPP No.1 objection seeking variation to the requirements of LEP 2000:

1. *What the development standard is and is it a development standard?*

Clause 19(2) states that the maximum floor space ratio permitted required on a site in the Balmain Density Area is 0.7:1. This control is numerical development standard and therefore are capable of being varied under the provision of State Environmental Planning Policy No. 1 – Development Standards.

2. *What is the underlying object or purpose of the standard?*

The purpose of the standard in accordance with Clause 13 (General Objectives), and Clause 17 (Housing) is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items.

3. *Is compliance with the standard consistent with the aims of the policy and does compliance with the standard hinder the object of the Act under s5a(i) and (ii)?*

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards is:

*“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

The objects set down in Section 5(a)(i) and (ii) are:

*“(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*“(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

As is discussed in further detail below, it is considered that a thoughtful reduction in the floor space to a complying situation would alleviate a number of streetscape and amenity impacts, particularly overshadowing and visual bulk and scale concerns.

The proposal is considered to hinder that attainment of the objects of the Act, which are to promote and coordinate the orderly and economic use and development of land whilst having consideration for the environmental, social and economic impacts of carrying out the development.

It is therefore considered inappropriate to invoke the provisions of SEPP No.1 to permit a variation to clause 19(2) of Leichhardt Local Environmental Plan 2000.

4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case and whether a development which complies with standard is unreasonable or unnecessary?*

The applicant's State Environmental Planning Policy No.1 objection states:

*In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis of that:*

- *Compliance with the 0.7:1 control has not been strictly enforced given the density of surrounding development;*
- *Compliance with the standard would not alter the siting, orientation and height of the building;*
- *A development strictly complying would not result in a significant reduction in proposed bulk and scale;*
- *Compliance with the standard would not result in any significant amenity improvements for adjoining properties;*
- *Compliance with the standard would not increase views or vistas enjoyed from adjoining properties;*
- *Compliance with the standard would not alter the relationship of the proposed dwellings with the orientation and pattern of surrounding buildings; and*
- *The proposal complies with the objectives of the development standard (clause 17(a)).*

*Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis of that the proposed development is able to achieve compliance with the objectives of the floor space ratio control without necessarily complying with the numerical standard.*

In response it is argued:

- The density of surrounding development has arisen due to the historic development of the area, with often narrow, terrace style development on small allotments. The subject site is nearly 3000m<sup>2</sup> in area and is considered to be relatively unconstrained, except by the villa and old hall building which are being converted to dwellings in any case.
- Compliance with the standard would result in a reduction in 283m<sup>2</sup> of floor space on the site, which equates approximately to two (2) dwellings and would in fact alter the siting, orientation and height of the building;
- An appropriate reduction in floor space ratio, especially where reduced along the southern boundary, would result in significant improvement in visual bulk and scale and overshadowing impacts (discussed in further detail below).
- By virtue of the amenity impacts that would be created by the proposed development, the objectives of Clause 17 of the LEP are not achieved.

Two key impacts of the excessive floor space ratio (in its current form) are:

- Overshadowing created predominantly by dwellings 3 & 4;
- Visual bulk and scale as a result of the three storey form of 8 & 9, where the development has failed to step with the topography of the site.

It is noted that the combined gross floor area of dwellings 3 & 4 and the second floor level bedrooms of dwellings 8 & 9 is 289m<sup>2</sup>. This closely aligns with the breach of the development standard of 283m<sup>2</sup> and it is considered that a proposal that complied with FSR control by deleting these elements would be more appropriate.

It is considered that strict compliance with the development standard is both reasonable and necessary in this instance.

#### *5. Is the objection well founded?*

For the reasons discussed above, the objection submitted is not considered to be well founded nor adequately justifies the proposed development in terms of the aims and objectives of the standard and the Leichhardt Local Environmental Plan 2000.

The objection to clauses 19(2) of Leichhardt Local Environmental Plan 2000 is not considered to be well founded nor worthy of support

#### Clause 19(3) Landscaped area

The site provides 1036m<sup>2</sup> of Landscaped Area, on a site of 2944m<sup>2</sup>. This equates to 35% of the site area and fails to comply with Clause 19(3)(a) of the Leichhardt Local Environmental Plan 2000. A total of 1177m<sup>2</sup> is required in order to comply with the control and hence the proposal is deficient by 141m<sup>2</sup>.

Of this landscaped area, 294m<sup>2</sup> (25% of total landscaped area) is required to be provided as soft landscaping. A total of 876m<sup>2</sup> of soft landscaping is provided and the proposal complies with Clause 19(3)(b) of the Leichhardt Local Environmental Plan 2000 in this regard.

A SEPP No.1 objection has been submitted seeking to vary the development standard under Clause 19(3)(a) and is discussed in further detail below.

### SEPP 1 Objection

The applicant has submitted a SEPP 1 objection seeking variation to the requirements of LEP 2000:

1. *What the development standard is and is it a development standard?*

Clause 19(3) states that the minimum landscaped area required on a site is 40% of the site area. This control is numerical development standard and is therefore capable of being varied under the provision of State Environmental Planning Policy No. 1 – Development Standards.

2. *What is the underlying object or purpose of the standard?*

The purpose of the standard in accordance with Clause 13 (General Objectives), and Clause 17 (Housing) is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items.

3. *Is compliance with the standard consistent with the aims of the policy and does compliance with the standard hinder the object of the Act under s5a(i) and (ii)?*

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards is:

*“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

The objects set down in Section 5(a)(i) and (ii) are:

*“(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*“(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

It is considered that strict compliance with the development standard is unnecessary in this instance.

The breach of the landscaped area is not considered to be of such a concern as to warrant refusal of the application. The quantum of landscaping, noting that much more ‘landscaping’ is provided above the basement level podium and is not defined as landscaped area pursuant to the Leichhardt Local Environmental Plan 2000, is considered reasonable. It provides adequate space for both communal and private recreation and deep-soil planting.

Were the application recommended for approval, it would be considered appropriate to invoke the provisions of SEPP No.1 to permit a variation to clause 19(3) of Leichhardt Local Environmental Plan 2000.

4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case and whether a development which complies with standard is unreasonable or unnecessary?*

The applicant's State Environmental Planning Policy No.1 objection states:

*In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis of that:*

- An area of 240m<sup>2</sup> of landscape area is excluded from calculation as landscape area as it does not strictly comply with the landscape area definition, as it is not within 500mm of the existing ground level of the site. This area will be treated and finished as landscaped area. If this area was included in the landscape area calculations, the proposal would achieve a landscape area of 1,276m<sup>2</sup>, representing 43% of the site, and would comply with the development standard.*
- An area of 875.8m<sup>2</sup> of permeable landscaping is provided for the site, representing 30% of the site area, which is in excess of the 10% required by Council controls (clause 19(3)(b)).*
- An area of 495m<sup>2</sup> of additional landscaping area is provided above the garage basement podium level, which will be used for occupant recreation opportunities and tree, shrub and grass planting.*
- A continuous 1.95-2.2 metre landscaped setback is provided along the entire southern boundary of the site, capable of accommodating mature tree planting.*
- Sufficient space is provided around the perimeter of the site, and between building forms to accommodate mature tree planting.*
- An area of 220m<sup>2</sup> of communal open space is provided for the recreational use of the occupants of the development.*
- All dwellings include private open space in excess of Council's control.*

*Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.*

It is not anticipated that the non-compliance would cause a loss of amenity upon adjoining properties, or have a detrimental impact upon the local streetscape and locality and is considered that strict compliance with the landscaped area control is necessary in this instance.

5. *Is the objection well founded?*

The objection submitted is well founded and adequately justifies the proposed development in terms of the aims and objectives of the standard and the Leichhardt Local Environmental Plan 2000.

The variation is supported for the reasons contained in the submission and as outlined above.

#### Clause 19(6) Diverse housing

Pursuant to Clause 19(6) of the LEP, the proposal is required to provide a minimum of 25% of the dwellings as one (1) bedroom, and maximum of 30% as three (3) bedroom dwellings.

Therefore of the 17 dwellings provided a minimum of 4.25 (4) shall be provided as one-bedroom and a maximum of 5.1 (5) x 3-bedroom dwellings.

The proposed dwelling mix is as follows:

- 3 x 1-bedroom dwellings;
- 9 x 2-bedroom dwellings;
- 5 x 3-bedroom dwellings.

The proposal therefore seeks a shortfall of 1 x 1-bedroom unit and non-compliance with the development standard arises.

A SEPP No.1 objection has been submitted by the applicant and is discussed below.

#### State Environmental Planning Policy No.1 Objection

The applicant has submitted a SEPP 1 objection seeking variation to the requirements of LEP 2000:

1. *What the development standard is and is it a development standard?*

Clause 19(6) states that consent must not be granted for a development that will provide 4 or more dwellings unless 25% of the dwellings are provided as bed-sitter or one-bedroom dwellings. This control is numerical development standard and therefore are capable of being varied under the provision of State Environmental Planning Policy No. 1 – Development Standards.

2. *What is the underlying object or purpose of the standard?*

The purpose of the standard in accordance with Clause 13 (General Objectives), and Clause 17 (Housing) is to provide a diverse range of housing in terms of size, type, form, layout, location, affordability, and adaptability to accommodate the varied needs of the community, including persons with special needs.

3. *Is compliance with the standard consistent with the aims of the policy and does compliance with the standard hinder the object of the Act under s5a(i) and (ii)?*

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards is:

*“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

The objects set down in Section 5(a)(i) and (ii) are:

*“(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*“(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

It is considered that strict compliance with the development standard is both reasonable and necessary in this instance.

The Leichhardt Local Government Area has a well-documented shortfall of affordable housing.

Council's Community Development Department have commented as follows:

*The proposal does not meet the LEP requirements for diverse housing.*

*Gentrification across the Leichhardt Municipality over the past 20 years has progressively reduced the stock of affordable housing for lower income people, pushing prices well beyond Sydney median house prices and forcing vacancy rates to an all time low. Single bedroom/bedsit units are a critical component of housing diversity particularly for low and moderate income earners.*

*Leichhardt was previously a destination for some people on low to moderate incomes and maintaining a diversity of housing stock is one means of addressing the risk of pricing out key workers and depleting the Municipality's cultural and socioeconomic diversity. There is an identified need for more one bedroom, studio and boarding house-style accommodation to assist in meeting the needs of the community through different stages of the housing life cycle and particularly for young people, key workers and elderly people on lower incomes .*

*Council 's commitment to maintaining diverse housing stock is reinforced in its Draft Affordable Housing Policy , which draws on on the NSW Local Government Housing Kit (LGHK) released by the NSW Department of Housing in 2007 and a range of best practice solutions from Australia and overseas. The strategy identifies four key mechanisms which underpin affordable housing policy and strategy and in doing so create a stronger, healthier and more balanced community, namely*

*Ø To resist the loss of affordable housing and encourage the retention of existing affordable housing*

*Ø To collaborate with the State Government and/or other inner Sydney councils facing similar issues to address the declining stock of affordable housing, regionally*

*Ø To encourage the provision of affordable, adaptable and diverse housing and raise awareness of affordable housing needs and issues to facilitate action*

*Ø To facilitate the provision of additional affordable housing within the Municipality.*

Specifically, it is considered that the proposal would fail to satisfy the objective of *promoting the social and economic welfare of the community.*

Furthermore, when considered in the context of the breach of the statutory floor space ratio development standard of some 283m<sup>2</sup>, a failure to provide the requisite number of one-bedroom or bed-sitter dwellings cannot be justified.

4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case and whether a development which complies with standard is unreasonable or unnecessary?*

The applicants State Environmental Planning Policy No.1 objection states:

*‘..In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis of that:*

*The proposal will provide an adequate mix of accommodation types and sizes which responds to the housing market;*

- The variation to the standard is minor and a development strictly complying would not result in a significant increase in the quantum of one bedroom units for the locality;*
- The proposal provides rental accommodation within the locality. The proposal provides a one bedroom studio (dwelling 1 a) which is under the same strata allotment as dwelling 1, lending itself to be available for rental purposes.*
- The proposal provides an additional 17 dwellings within the Balmain peninsula, increasing housing opportunities and choice in proximity to employment opportunities and public transport.*
- The proposal provides a diverse range of dwellings, differing in size, type, form, and layout which is not generally found within the Balmain peninsula,*
- The proposal provides larger sized housing stock which is currently undersupplied within the locality due to the traditional size and shape of existing buildings and allotments.*
- The approval of the application will ensure aging in place to occur, allowing families to remain within the locality.*

*Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.’*

The arguments of the applicant are noted.

However, for the reasons outlined in Point No.3 above, it is considered that little justification exists for the shortfall in one-bedroom units and the application should provide the requisite number.

It is considered both reasonable and necessary that the proposal satisfy the development standards of the Leichhardt Local Environmental Plan 2000 in this regard.

#### *5. Is the objection well founded?*

The objection submitted is not considered to be well-founded and nor adequately justifies the proposed development in terms of the proposed breach of the development standard.

The variation is not supported for the reasons outlined above.

#### State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

SEPP 65 applies to development being:

- The erection of a new residential flat building (RFB); and
- The substantial redevelopment or the substantial refurbishment of an existing RFB; and
- The conversion of an existing building to a RFB.

An RFB is defined as a building that comprises or includes:

- Three (3) or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2m above ground level), and

- Four (4) or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

In this instance the building in the central section of the site (containing dwellings 5 – 9) is defined as a residential flat building and the SEPP is applicable to this building only.

For reasons outlined elsewhere in this assessment, it is considered that the proposal does not meet the 'context' and 'scale' principles of the State Environmental Planning Policy.

These dwellings do comply with the relevant solar access requirements of the State Environmental Planning Policy.

Taking into consideration the Design Quality Principles and the Guidelines, the proposal is considered to be inconsistent with SEPP 65.

#### State Environmental Planning Policy No.55 – Remediation of Land

The applicant has submitted appropriate environmental investigation reports in support of the application, including a Remedial Action Plan.

The chosen remediation method for the site is to remove the exposed contaminated fill and replace with clean fill.

The proposal complies with State Environmental Planning Policy No.55 and the site is able to be made suitable for on-going residential use.

#### State Environmental Planning Policy (Major Development) 2005

The proposal has a Capital Investment Value (CIV) exceeding \$10 million and comprises 'regional development' pursuant to the State Environmental Planning Policy.

The Joint Regional Planning Panel is the consent authority for such development.

#### **(a)(ii) Draft Environmental Planning Instruments**

There are no Draft Environmental Planning Instruments applicable to the subject application.

#### **(a)(iii) Development Control Plans**

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

- Leichhardt Development Control Plan 2000
- Leichhardt Development Control Plan No.32 – Design of Equity of Access
- Leichhardt Development Control Plan No.36 – Notifications
- Leichhardt Development Control Plan No.38 – Waste: Avoid, Reuse, Recycle
- Leichhardt Development Control Plan No.42 – Contaminated Land Management

More specifically, the application has been assessed against the following clauses of Development Control Plan 2000.

- Part A2.0 – Urban framework plans

- Part A3.0 – Principles of ecologically sustainable development
- Part A3a.0 – Sustainable water and risk management
- Part A4.0 – Urban form and design
- Part A5.0 – Amenity
- Part A6.0 – Site analysis
- Part A7.0 – Heritage conservation
- Part A10.6.4 –The Valley (Balmain) Distinctive Neighbourhood
- Part B1.1 – Demolition, site layout, subdivision and design
- Part B1.2 – Building Form, Envelope and Siting
- Part B1.3 – Carparking
- Part B1.4 – Site drainage and stormwater control
- Part B1.5 – Elevation and materials
- Part B1.6 – Front gardens and Dwelling Entries
- Part B1.7 – Fences
- Part B1.8 – Site facilities
- Part B2.8 – Landscaping
- Part B3.1 – Solar Access
- Part B3.2 – Private open space
- Part B3.3 – Visual privacy
- Part B3.4 – Access to views
- Part B3.5 – Acoustic privacy

The application satisfies the provisions of the above Development Control Plans with the exception of the following:

Part A10.6.4 –The Valley (Balmain) Distinctive Neighbourhood & Part B1.5 – Elevation and materials

Aspects of the street presentation of the new buildings and their relationship to the surrounding built form are not considered satisfactory.

The neighbourhood controls established under Part A10.6.4 state the *new development should not mimic older architecture but should respect the scale and form of the traditional streetscape in the vicinity and the use of traditional timber, stone or masonry finishes as well as corrugated iron roofing and timber windows are preferred.*

Part B1.5 provides that *development should take reference from and complement the existing character of the streetscape in terms of scale, architectural style and materials.*

Concern is raised with:

- The zinc finish to the walls of the infill dwelling to Beattie Street. It is considered that a weatherboard or rendered masonry finish would be more appropriate in this regard. The low-scale, modern form is however supported in streetscape terms;
- The form of the three (3) terrace-style infill dwellings to Evans Street is not considered to be complementary to the existing streetscape or conservation area. It is considered that these buildings require review to reduce the visual prominence of the box-like cantilevered balconies and adopt a form which is more consistent with other more traditional first floor balconies along Evans Street.

Accordingly, the proposal is considered to not satisfy Parts A10.6.4 & B1.5 of the DCP 2000.

Part A5.0 – Amenity

For the reasons outlined elsewhere in this assessment, the proposal is not considered to maintain or provide appropriate levels of amenity to surrounding residents or future occupants.

#### Part B1.1 – Site layout and Design & Part B1.2 – Building Form, Envelope and Siting

##### *Side Setbacks*

With regard to setbacks, the application includes breaches to the side setback control in a number of places.

Of most importance are the breaches to the control along the southern boundary, particularly to the proposed dwellings 3 and 12 where overshadowing impacts arise from the breaches. The dwellings in the central section of the site and dwelling 4 comply with the control.

Overshadowing impacts are addressed in further detail below. However, the application has demonstrated that the impacts from proposed dwelling 12 are no worse than the previous church building approval. Dwelling 3 and its side setback breach of up to 600mm does however create overshadowing impacts and a breach of the side setback control to this dwelling cannot be supported.

##### *Visual Bulk and Scale*

A principle of Part B1.2 is *'plan and design new housing...to maintain and enhance the established scale and character of the streetscape. Match and complement the existing building forms, private open space and landscaped areas'*

The application proposes a number of three (3) storey buildings. However, with the excavation proposed for the basement level, most of these are only 2 – 2.5 storeys above the existing ground level which is not considered unreasonable in the context of the site which is predominantly single-two storey forms. However, dwellings 8 & 9 provide a bedroom each at the second floor level, which due to the topography of the site, will be closer to three storeys above existing ground level and are not supported.

Although well inset from the southern site boundary, this level on these dwellings will clearly read as a third storey, particularly from the rear yards of the dwellings at the lower end of Ewell Street, and those in Evans Street.

The deletion of these bedrooms would allow the development to better fall with the topography of the site and would result in a more appropriate development as well as mitigating floor space ratio breaches and amenity impacts.

#### Part B3.1 – Solar Access – Residential Amenity and Energy Efficiency

The principles set down in Part B3.1 are:

- To optimise solar access to habitable rooms and private open space of new housing, and
- To minimise overshadowing of habitable rooms and private open space of existing housing.

Part B3.1 of Leichhardt Development Control Plan 2000 states:

*'Where an existing adjacent building has an east - west orientation:*

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- Maintain solar access to the habitable side rooms for a minimum period of 2 hours between 9.00 a.m. and 3.00 p.m. at the winter solstice.
- Where less than 2 hours solar access is currently available to the habitable side rooms of existing dwellings, no additional overshadowing shall be permitted.

Where an existing adjacent building has a north - south orientation:

- Maintain solar access to the front and rear habitable rooms for a minimum period of 4 hours between 9.00 a.m. and 3.00 p.m. at the winter solstice.

Where solar access already exists to the private open space of adjacent dwellings, ensure it is maintained over a minimum of 50% of the private open space for a minimum period of 3 hours between 9.00am and 3.00pm at the winter solstice”

The majority of the adjoining sites to the south of the subject site have a north-south orientation. No's 172 Beattie Street and No.25 Evans Street have east-west orientations.

### Overshadowing Impacts to neighbouring dwellings

Overshadowing impacts to affected neighbouring properties has been assessed. The impacts are summarised in the table at Appendix No.1 to this report.

Appendix No.1 provides a summary of the increase or decrease in overshadowing as a result of the proposal, and whether the affected properties receive sufficient solar access at any given hour on the winter solstice so as to comply with Part B3.1 of the Leichhardt Development Control Plan 2000.

It may be ascertained from the table that:

- None of the affected properties will receive sufficient solar access so as to comply with the provisions of the Leichhardt Development Control Plan 2000;
- Where many of the properties do not currently obtain the requisite 3 hours solar access of 50% of the rear yard, the proposal further exacerbates this situation.

A discussion of the key affected properties is provided below:

### 172 Beattie Street

The rear private open space of this property measures approximately 53m<sup>2</sup>. The area in shadow, post development, at the winter solstice is:

Time, Winter solstice	Total area of private open space in shadow, post development	Existing % of private open space in shadow	Proposed % of private open space in shadow	Complies
9am	48m <sup>2</sup>	77%	90%	No
10am	45m <sup>2</sup>	65%	84%	No
11am	40m <sup>2</sup>	58%	75%	No
12 midday	37m <sup>2</sup>	53%	69%	No
1pm	41m <sup>2</sup>	64%	77%	No
2pm	46m <sup>2</sup>	80%	86%	No
3pm	49m <sup>2</sup>	100%	93%	No

This property does not currently enjoy solar access to an extent that would comply with the DCP. As may be seen in the above table, the proposal seeks to exacerbate existing shadowing at each hour of the day on the winter solstice between 9 am and 2pm. A minor

improvement in shadows at 3pm would result, although the rear private open space is almost totally in shadow at this time.

#### 4 Ewell Street

The rear private open space of this property measures approximately 80m<sup>2</sup>. The area in shadow, post development, at the winter solstice is:

Time, Winter solstice	Total area of private open space in shadow, post development	Existing % of private open space in shadow	Proposed % of private open space in shadow	Complies
9am	62m <sup>2</sup>	69%	77%	No
10am	51m <sup>2</sup>	57%	63%	No
11am	28m <sup>2</sup>	30%	35%	Yes
12 midday	23m <sup>2</sup>	21%	28%	Yes
1pm	38m <sup>2</sup>	36%	47%	Yes
2pm	55m <sup>2</sup>	55%	68%	No
3pm	74m <sup>2</sup>	83%	92%	No

The applicant contends that this property receives adequate solar access between 10am and 1:30pm on the winter solstice. Half-hourly shadows were not provided to Council for assessment. At 10:30am the development is expected to be very close to providing 50% solar access to the this rear private open space, however 1:30pm is unlikely to comply (given that the 1pm shadow would cast over 47% and the 2pm shadow would cast over 68% of the rear private open space).

#### 6 Ewell Street

The rear private open space of this property measures approximately 67m<sup>2</sup>. The area in shadow at the winter solstice is:

Time, Winter solstice	Total area of private open space in shadow, post development	Existing % of private open space in shadow	Proposed % of private open space in shadow	Complies
9am	63m <sup>2</sup>	90%	94%	No
10am	49m <sup>2</sup>	68%	73%	No
11am	39m <sup>2</sup>	52%	58%	No
12 midday	29m <sup>2</sup>	36%	43%	Yes
1pm	39m <sup>2</sup>	52%	58%	No
2pm	46m <sup>2</sup>	65%	68%	No
3pm	67m <sup>2</sup>	93%	100%	No

This property does not currently enjoy solar access to an extent that would comply with the DCP. As may be seen in the above table, the proposal seeks to exacerbate existing shadowing at each hour of the day on the winter solstice between 9 am and 3pm.

#### 8 Ewell Street

The property at No.8 Ewell Street has a dual occupancy development for which construction works have commenced. The proposed shadow diagrams indicate the presence of a vacant

allotment, and do not account for these dwellings. It advises the proposal complies with the provisions of the Leichhardt Development Control Plan. However, it is considered appropriate that an assessment account for these dwellings, which as construction works have commenced, a reasonable probability exists will be completed.

Dwelling 'H1' is the western dwelling and solar access to its rear private open space will be severely compromised by the proposal. This is especially so when a dividing fence shadow between dwelling H1 & H2 is accounted for during the morning hours.

The private open space to dwelling 'H1' measures approximately 46m<sup>2</sup>. The area in shadow at the winter solstice (excluding a dividing fence shadow between H1 & H2) is:

Time, Winter solstice	Total area of private open space in shadow, post development	Existing % of private open space in shadow	Proposed % of private open space in shadow	Complies
9am	21m <sup>2</sup>	45%	45%	Yes
10am	20m <sup>2</sup>	40%	43%	Yes
11am	26m <sup>2</sup>	38%	56%	No
12 midday	30m <sup>2</sup>	34%	65%	No
1pm	37m <sup>2</sup>	43%	80%	No
2pm	43m <sup>2</sup>	72%	93%	No
3pm	46m <sup>2</sup>	99%	100%	No

This dwelling will therefore not receive adequate solar access at any time of the day on the winter solstice. It is noted that that the proposal results in overshadowing that takes this property from a complying situation at 11am, midday and 1pm, to a non-complying situation.

The private open space to dwelling 'H2' measures approximately 44m<sup>2</sup>. The area in shadow at the winter solstice (excluding a dividing fence shadow between H1 & H2) is:

Time, Winter solstice	Total area of private open space in shadow, post development	Existing % of private open space in shadow	Proposed % of private open space in shadow	Complies
9am	32m <sup>2</sup>	69%	69%	No
10am	26m <sup>2</sup>	59%	59%	No
11am	20m <sup>2</sup>	45%	45%	Yes
12 midday	16m <sup>2</sup>	36%	36%	Yes
1pm	23m <sup>2</sup>	37%	52%	No
2pm	40m <sup>2</sup>	56%	90%	No
3pm	44m <sup>2</sup>	80%	100%	No

This dwelling maintains its existing solar access until 12 midday. Afternoon shadows created by the proposal onto this dwelling are significant, and are expected to cast over the rear elevation at 2pm and 3pm. This dwelling does not receive 3 hours solar access over 50% of the rear private open space and fails to comply with the DCP.

### 12, 14 & 16 Ewell Street

These properties have rear private open space areas that measure 53m<sup>2</sup>, 57m<sup>2</sup> & 69m<sup>2</sup> respectively.

Although none will receive a compliant level of solar access, No's 14 & 16 Ewell Street will actually receive improved solar access as result of the partially constructed church building not being completed.

No.12 Ewell Street will be affected by increased overshadowing from the proposed but only to a minor degree (less than 1m<sup>2</sup> at each hour of the day on the winter solstice). This impact is not considered so severe as to warrant refusal of the application.

### 25 Evans Street

The proposal provides an improvement to shadowing on the private open space to this dwelling.

The primary affectation to this dwelling is overshadowing to the windows on its northern elevation.

The application has demonstrated that the proposal results in different, yet generally equal to or an improved solar access situation to these windows, especially in the afternoon.

The proposal is considered satisfactory with respect to its impact on this property.

### Solar Access to New Dwellings

Part B3.1 of the DCP further provides that applications must:

*Design to ensure that solar access for a minimum period of 3 hours between 9:00am and 3:00pm at the winter solstice to the living area of new dwellings*

Dwellings 5 – 9 to in the centre of the site are contained within a residential flat building and are subject to the solar access provisions of SEPP No.65 (as discussed above) and comply with the relevant controls of the SEPP.

However, a number of the other dwellings do not receive adequate solar access and provide poor amenity that could be resolved through more thoughtful design.

Of particular concern are dwellings 10, 11 & 12, which are the infill terraces to Evans Street. These dwellings are east-west oriented. At the living area level of these dwellings morning sun is limited to nothing more than 0.5m<sup>2</sup> of circulation space at the base of the staircase at 9am. This is largely a result of the deep, box-like balconies which restrict solar access in this regard.

Afternoon sun is obtained by 2.5m<sup>2</sup> of solar access at 2pm and 6.5m<sup>2</sup> at 3pm to the kitchen/dining areas. Even at this time, it is unclear what the exact extent is that the other buildings shade these ground floor western elevations which would further reduce available solar access.

Dwelling 4 also appears unlikely to receive adequate solar access, with its ground floor living areas being shaded by other buildings on the site.

Consequently these dwellings do not receive adequate solar access and fail to comply with the control.

Dwellings 1 & 2 within the converted Villa are also unlikely to receive sufficient direct solar access on the winter solstice. However, a tolerance exists for such non-compliance as the building has a deep wrap-around verandah which is existing, and any dwelling is unlikely to comply with modern development controls for internal solar access.

### Conclusion – Solar Access & Overshadowing

Generally speaking, it is proposed dwellings 3 & 4 that generate the unacceptable impacts to the dwellings at No.172 Beattie Street and 4, 6 & 8 Ewell Street. The dwellings in the centre of the site are sufficiently off-set from the southern boundary that their shadows mostly fall within existing fence shadows.

These impacts are unacceptable and cannot be supported, especially in light of the proposed breach of the floor space ratio control.

The proposal also fails to provide adequate solar access to new dwellings, in particular dwellings 4, 10, 11, & 12 and is not worthy of support.

### Part B3.3 – Visual Privacy & Part B3.5 – Acoustic Privacy

The principal of Part B3.3 is to protect visual privacy of adjoining dwellings by direct overlooking of principal living areas and private open space. In recognising that visual privacy is a highly valued component of residential amenity the following controls have been developed:

- Ensure that habitable room windows are not located opposite the window of another dwelling within 15 metres or are separated by a street.
- Restrict views by staggering window location, having oblique rather than direct, and providing sill heights of 1.6 metres (or obscure glazing in window panes below 1.6 metres) above floor level.
- Obscure outlook by providing screening.

The amended scheme submitted to Council generally resolves most of the visual and acoustic privacy concerns raised by Council during the assessment process.

Any remaining concerns could have reasonably been dealt with as conditions of development consent were the proposal recommended for approval.

### **(a)(iv) Environmental Planning and Assessment Regulation 2000**

The Development Application has been assessed against the relevant clauses of the Environmental Planning and Assessment Regulation 2000. The Development Application fully complies with the Environmental Planning and Assessment Regulation 2000.

### **(b) The likely environmental both natural and built environment, social and economic impacts in the locality**

The assessment of the Development Application within this report demonstrates that the proposal will have an adverse impact on the locality and is not supported.

### **(c) The suitability of the site for the development**

The site is zoned Residential. It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

**(d) Any submissions made in accordance with the Act or the regulations**

The Development Application was notified for a period of 30 days.

The first notification period was from 13th May to 14th June 2010. Amended plans were submitted and were the subject of re-notification from 4 September 2010 to 5 October 2010.

The notification of the application included:

- Letters sent to 342 properties.
- A yellow site notice placed on the site.
- Listing under the notification section on Council's website.

Sixty-one (61) objections (total, including two petitions) were received during the advertising periods.

The following information is provided in response to the issues raised in the objections.

Loss of on-street parking

The proposal provides adequate on-site parking so as to comply with the provision of Part A8.0 of the Leichhardt Development Control Plan 2000 in this regard.

Adverse heritage/streetscape impacts

These matters have been addressed above, and the proposal is considered unsatisfactory in this regard.

Loss of sunlight/ overshadowing

This matter has been addressed in detail above. The proposal fails to comply with part B3.1 of the Leichhardt Development Control Plan and is considered unsatisfactory.

Impact on existing large trees at 6 Ewell Street and 11 Evans Street

Were the application recommended for approval, appropriate conditions of consent would have been recommended ensuring appropriate protection measures for these trees.

View impacts from neighbouring properties. Could the height of any trees/shrubs be restricted?

As the proposal retains existing heights, no loss of view to the city skyline would result.

No approvals are required for the planting of trees and hence it is generally considered unreasonable to restrict plantings on the site as part of any approval.

Acoustic impact of pool and spa

Amended plans were submitted which have deleted the proposed pool and spa.

Breach of the floor space ratio

This matter has been addressed above and is considered unsatisfactory.

#### The height of the buildings is excessive in the context

This matter has been addressed above. The height of the buildings is generally considered satisfactory, save for the third level to dwellings 8 & 9.

#### Shadow diagrams are inadequate and do not show impacts on Evans Street properties

Following a detailed assessment of the most recently submitted plans, it is determined that the submitted shadow diagrams are adequate in their nature and show all affected properties, with the exception of the dual occupancy development at No.8 Ewell Street, which is under construction.

#### Vehicle access should be from Beattie Street

Council's engineers have undertaken a detailed assessment of the proposal and have advised that access from Evans Street to the site is satisfactory.

#### The proposed vehicle entry directly adjacent to the junction of Evans and Carrington Streets creates a dangerous intersection

Council's engineers have undertaken a detailed assessment the proposal and have advised that location of the driveway entry to the site complies with all relevant Australian Standards and is considered satisfactory in this regard.

#### Is it possible to remove the electricity substation all together?

The provision of a substation on the site is required by Energy Australia and is typical of development of this scale, irrespective of the fact that a larger substation already exists on the site.

#### Eyesore of rubbish bins on Evans Street on collection day

An appropriately sized garbage room has been provided. Council's waste officer has advised that collection would be from the street kerb in Evans Street. Waste collection is a necessary part of residential living and any inconvenience/visual impact associated with rubbish collection is considered to be minor and transient in the circumstances.

#### Loss of property value No.11 Evans Street

No evidence exists to support an assertion that the proposal will result in a loss of property values.

#### Visual and acoustic privacy impacts

This matter has been addressed above. Were the application recommended for approval, any concerns not already addressed by the amended plans could have been ameliorated through conditions of development consent.

#### Acoustic impact of basement access stairwell to 12 Ewell Street

The basement egress stairs in proximity to No.12 Ewell Street serve only one dwelling, being No.4 and are not considered to give rise to undue acoustic impact.

Notably however, the application has not demonstrated how dwellings 1, 2 & 3 access the basement level for garbage disposal.

Proposal is an overdevelopment of the site.

Agreed. The proposal breaches a number of Council's key development controls and is not supported.

Visual impact of contemporary buildings

Contemporary architecture of a high standard is not considered inappropriate on the site, especially where the form, finish and detailing is complementary to the streetscape and broader conservation area. As discussed above however, concerns exist about some detailing aspects of the facades to both Beattie and Evans Streets which require resolution.

Light spill to 22 Evans Street from cars exiting driveway

Some light spill is expected to arise, although this is minimised with the current location of the driveway opposite the junction of Evans Street with Carrington Street.

Reasonably however, this would arise wherever the driveway egress was located and is not considered to give rise to such amenity impacts that would warrant refusal or substantial revision of the proposal in this regard.

Encroachments of eave overhang and stormwater drainage lines from No.11 Evans Street exist and easements are requested. No fencing along the southern elevation of No.11 Evans Street is requested so as to allow maintenance of the existing weatherboard wall.

Noted. Were the application recommended for approval, such matters could be addressed through conditions of development consent.

Ability to develop No.11 Evans Street without being constrained by the subject development

Any development on No.11 Evans Street would be assessed on its merits against the provisions in the Leichhardt Local Environmental Plan 2000 and Leichhardt Development Control Plan 2000. It is considered that the amended proposal is unlikely to unduly affect the ability for further development on No.11 Evans Street.

Geotech report and dilapidation report requested for 11 Evans Street due to excavation in close proximity

Noted. Were the application recommended for approval, such reports would be required as conditions of development consent.

No provision of visitor parking is a concern

The amended application provides two (2) visitor parking spaces and complies with the DCP in this regard.

Concern that the proposal does not address environmental sustainability. On-site solar power generation and water tank storage should be required.

The proposal has the appropriate certificates required by *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. On-site rainwater re-use is proposed and no power exists in planning law to require ESD measures above and beyond those specified in the BASIX certificates.

**(e) The public interest**

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

The proposal is considered to be contrary to the public interest.

**5. SECTION 94 CONTRIBUTIONS**

Section 94 contributions are payable for the proposal. Were the application recommended for approval a condition of any development consent would require payments of such contributions.

Planning Circular PS 10-022 issued by the NSW Department of Planning on the 16 September 2010 limits contributions to a maximum of \$20,000 per dwelling.

**6. INTERNAL REFERRALS**

The Development Application was referred to the following Council Officers:

Building

The floor to ceiling height to unit 2 first floor attic bedrooms do not comply with the 2.2m ceiling height requirement for two thirds of the floor area complying with part 3.8.2 of the Building Code of Australia. In addition the first floor bedroom ensuite located within the dormer roof plane also does not achieve compliance with respect to floor to ceiling heights requirements and is considered an impracticable design solution.

Otherwise satisfactory, subject to conditions.

Comment: The attic level bedroom to dwelling 2 (and its ensuite) does not comply with the deemed to satisfy requirements of the BCA with respect to floor to ceiling heights which requires an average of 2200mm for attic levels.

On the basis that the bedroom does not achieve adequate floor to ceiling heights, this bedroom is not supported. It is noted that this is the only bedroom to this dwelling. It is considered that revision of the proposal is required which reduces the amount of floor space sought in the attic level of the existing dwelling in order provide adequate amenity to occupants.

Engineering

Council's engineers provided the following comments:

Headroom clearance

*The submitted architectural sections appear to show that the proposed headroom clearance is inadequate; notwithstanding supporting beams have not been shown on the plans which will further reduce the available headroom.*

*Compliance can be achieved by lowering the parking facilities floor level, while maintaining the proposed Level 2 Floor Levels and gravity drainage to Evans Street.*

Garbage and Bicycle Storage

*It appears that the garbage and bicycle storage areas have inadequate dimensions.*

#### Car Wash Bay

*A dedicated car wash bay must be provided within the Basement Carpark in accordance with Clause B4.4 of Section A3a.0 (Sustainable Water and Risk Management) of DCP2000. This will require conversion of Parking Space 18 to the car wash bay.*

Comment: Were the application to be recommended for approval these matters would be able to be addressed through conditions of development consent.

#### Heritage Advisor

Council's heritage advisor provided the following comment on the amended plans:

- Generally the proposal appears much better than previous design. 3 sided verandah to timber building better than excavated sides.
- Dormer not traditional dimensions, should be set back 900mm inside external walls not sitting on front wall.
- No objections to attic bedrooms.
- Stone wall to Beattie Street should be max 1200mm high on front boundary
- Proposal supported on heritage grounds.

#### Environmental Health Officer

Satisfactory, subject to conditions.

#### Landscape Officer

*The two trees proposed to be removed are Eucalyptus sideroxylon and Banksia integrifolia. These trees have been previously assessed through a PreDA for this site. The trees have good vigour but are presently within the footprint of the new works.*

*On assessment of the new plans, there is some loss of landscaped area near the Evans Street frontage. Alternatively, the new proposal is removing the pool and surrounds and will result in an area of approximately 8 x 5m<sup>2</sup> for deep soil planting.*

*It is considered that the existing Eucalyptus sideroxylon and Banksia integrifolia cannot be successfully retained without substantial negative impacts to their structural root systems. This proposal overall will equate to a better ecological and climatic outcome for the site from the planting of canopy trees in the new location.*

*Recommendation is given for the removal and replacement of the Eucalyptus sideroxylon and Banksia integrifolia on the site. There must be 3 replacement plantings carried out within the proposed landscaped area located near the boundary to No.168. These replacements must be native species to achieve a minimum height of 6 metres and growing in a 25L pot at the time of planting.*

*The replacement plantings must be assessed for condition prior to the release of the OC for the works.*

Comment: The large eucalypt at the Beattie Street frontage of the site is proposed to be retained and if the development were to be approved, protection measures for this tree would be required.

#### Community Development

Community Development comments have been outlined in the assessment of the proposal under Clause 19(6) of the LEP above.

It is recommended that the development be required to comply with the LEP requirements for provision of diverse housing.

#### Waste Officer

*The proposed calculations on the waste & recycling generation levels for 2 / 3 bed room units is too low. The applicant has averaged 52.6 litres for each unit totalling 1000 litres per week for both waste & recycling.*

*Calculations should be based on 120 litres per unit for both waste and recycling. Total of 2280 litres per week for both waste & recycling. This will require 8 x 240 litre waste bins, 2 x 240 litre food waste bins, 5 x 240 litre recycling bins for paper & cardboard & 5 x 240 litre recycling bins for commingled containers. Total of 20 x 240 litre bins. The proposed waste storage area of 15.66 m<sup>2</sup> will be sufficient for these bins.*

*The proposed waste storage room is in the basement. All bins will need to be presented on the Evans or Beattie Street footpaths for collection. Council will not collect bins from the bin storage area.*

## **7. EXTERNAL REFERRALS**

The Development Application was referred to Energy Australia for comment under the provisions of the SEPP (Infrastructure) 2007 as the proposal seeks to demolish an existing substation and provide two smaller 'kiosks' as part of the development.

To date, no comments have been received. Noting that Energy Australia has given owners consent for the application to be made, their concurrence is assumed.

## **8. CONCLUSION**

The Development has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies. The proposal is unsatisfactory in respect of:

- Floor space ratio;
- Diverse housing;
- Overshadowing and solar access;
- Visual bulk and scale;
- Heritage and Streetscape impacts; and
- Building Code of Australia.

and will result in adverse impacts on the locality. Accordingly the application is recommended for refusal for the reasons listed below.

## **9. RECOMMENDATION**

That Joint Regional Planning Panel as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979 refuse the Development Application No. D/2010/206 for remediation, residential development comprising 17 dwellings and 25 off-street parking spaces at 170 Beattie Street, 13 & 15 Evans Street, BALMAIN for the following reasons.

## REASONS FOR REFUSAL

1. The proposal provides an excessive floor space ratio, failing to comply with Clause 19(2) of the Leichhardt Local Environmental Plan 2000, resulting in undue amenity impacts on neighbouring properties.
2. The proposal fails to comply with Clause 19(6) of the Leichhardt Local Environmental Plan 2000 and provides an inadequate number of one-bedroom or bed-sit dwellings.
3. The proposal results in unacceptable overshadowing impacts to the properties sited at No. 172 Beattie Street & No's 4, 6 & 8 Ewell Street Balmain. The proposal fails to comply with *Part B3.1 – Solar Access* of the Leichhardt Development Control Plan 2000 in this regard.
4. A number of the proposed dwellings do not receive adequate internal solar access resulting in poor amenity and fail to comply with *Part B3.1 – Solar Access* of the Leichhardt Development Control Plan 2000 in this regard.
5. The proposed second floor level to proposed dwellings 8 & 9 results in a development which is of unacceptable visual bulk and scale.
6. The proposal results in unacceptable streetscape and heritage impacts and fails to comply with Clause 16(8) of the Leichhardt Local Environmental Plan 2000; *Part B1.5 – Elevations and Materials* and *Part A.10.6.4 – The Valley Distinctive Neighbourhood* of Leichhardt Development Control Plan 2000
7. The proposed dwelling No.3 fails to comply with the side setback control under *Part B1.2 – Building Form, Envelope and Siting* resulting in acceptable amenity impacts on neighbouring properties.
8. The proposed attic level bedroom to Dwelling No.2 is not afforded adequate floor to ceiling height nor appropriate levels of internal amenity and fails to comply with Part 3.8.2 of the Building Code of Australia (BCA).
9. The State Environmental Planning Policy No.1 objections to Clauses 19(2) & 19(6) of the Leichhardt Local Environmental Plan 2000 are not considered to be well-founded or worthy of support.
10. The site is not suitable for the proposed development.
11. The approval of this application would not be in the public interest.

**PROPOSED SOLAR ACCESS - WINTER SOLSTICE**

- X = less than 3 hours solar access over 50% of private open space
- √ = more than 3 hours solar access over 50% of private open space
- Increase or reduction in shadowing in m<sup>2</sup> shown in brackets

Address	9am	10am	11am	12 midday	1pm	2pm	3pm
172 Beattie Street	X (+7.1m <sup>2</sup> )	X (+10.4m <sup>2</sup> )	X (+9.2m <sup>2</sup> )	X (+8.4m <sup>2</sup> )	X (+6.8m <sup>2</sup> )	X (+3.6m <sup>2</sup> )	X (-3.6m <sup>2</sup> )
2 Ewell Street	No Change						
4 Ewell Street	X (+6.1m <sup>2</sup> )	X (+4.8m <sup>2</sup> )	√ (+3.4m <sup>2</sup> )	√ (+6.3m <sup>2</sup> )	√ (+9.1m <sup>2</sup> )	X (+10.9m <sup>2</sup> )	X (+7.0m <sup>2</sup> )
6 Ewell Street	X (+2.3m <sup>2</sup> )	X (+3.6m <sup>2</sup> )	X (+3.9m <sup>2</sup> )	√ (+4.5m <sup>2</sup> )	X (+3.8m <sup>2</sup> )	X (+2.3m <sup>2</sup> )	X (+4.2m <sup>2</sup> )
8 Ewell Street (H1)	√ (no change)	√ (+1.5m <sup>2</sup> )	X (+8.5m <sup>2</sup> )	X (+14.1m <sup>2</sup> )	X (+17.1m <sup>2</sup> )	X (+9.7m <sup>2</sup> )	X (+0.5m <sup>2</sup> )
8 Ewell Street (H2)	X (no change)	X (no change)	√ (no change)	√ (no change)	X (+6.3m <sup>2</sup> )	X (+15.4m <sup>2</sup> ) *shadows will cast on to rear elevation	X (+8.7m <sup>2</sup> ) *shadows will cast on to rear elevation
10 Ewell Street	No Change						
12 Ewell Street	X (+0.9 m <sup>2</sup> )	X (-0.9m <sup>2</sup> )	X (+0.6m <sup>2</sup> )	X (+0.9m <sup>2</sup> )	X (+0.9m <sup>2</sup> )	X (+0.9m <sup>2</sup> )	X (+0.9m <sup>2</sup> )
14 Ewell Street	X (+1.7m <sup>2</sup> )	X (-1.1m <sup>2</sup> )	X (-1.0m <sup>2</sup> )	√ (-4.0m <sup>2</sup> )	X (-2.5m <sup>2</sup> )	X (-0.5m <sup>2</sup> )	X (no change)
16 Ewell Street	X (-0.2m <sup>2</sup> )	√ (-0.1m <sup>2</sup> )	X (-4.3m <sup>2</sup> )	√ (-2.6m <sup>2</sup> )	X (-0.7m <sup>2</sup> )	X (no change)	X (no change)
25 Evans Street	X (-7.7m <sup>2</sup> )	X (-10.3m <sup>2</sup> )	X (-9.2m <sup>2</sup> )	√ (-10.3m <sup>2</sup> )	X (-7.0m <sup>2</sup> )	X (no change)	X (no change)

**APPENDIX No.1 – EXTENT OF ADDITIONAL OVERSHADOWING**