

# JOINT REGIONAL PLANNING PANEL

## Sydney East

<b>JRPP No</b>	JRPP Reference Number 2011SYE015
<b>DA Number</b>	D/2011/34
<b>Local Government Area</b>	Leichhardt Municipal Council
<b>Proposed Development</b>	Residential development comprising 14 dwellings (plus studio) and 24 off-street parking spaces. The proposal includes the retention of the existing timber cottage and adaptation of the existing hall for dwellings; construction of new dwellings; relocation of electricity substation; and the remediation of the site.
<b>Street Address</b>	15 Evans Street, 13 Evans Street and 170 Beattie Street, BALMAIN NSW 2041
<b>Applicant/Owner</b>	<p><i>Applicant:</i>  Good Fortune No2 Pty Ltd  C/- SJB Planning  Level 2 490 Crown St  SURRY HILLS NSW 2010</p> <p><i>Owner:</i>  Mrs C Haddad  23 Phillips St  CABARITA NSW 2137</p>
<b>Number of Submissions</b>	18 submissions (17 Objections, 1 Support)
<b>Recommendation</b>	Approval with Conditions
<b>Report by</b>	David Ruston Assessment Officer Leichhardt Municipal Council

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## Assessment Report and Recommendation

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### JOINT REGIONAL PLANNING PANEL

MAY 2011



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<b>Development Application No.</b>	➤ D/2011/34
<b>Address</b>	➤ 15 Evans Street, 13 Evans Street and 170 Beattie Street, BALMAIN NSW 2041
<b>Description of Development</b>	➤ Residential development comprising 14 dwellings (plus studio) and 24 off-street parking spaces. The proposal includes the retention of the existing timber cottage and adaptation of the existing hall for dwellings; construction of new dwellings; relocation of electricity substation; and the remediation of the site.
<b>Date of Receipt</b>	➤ 27 January 2011
<b>Value of Works</b>	➤ \$10,229,842
<b>Applicant's Details</b>	➤ Good Fortune No2 Pty Ltd C/- SJB Planning Level 2 490 Crown St SURRY HILLS NSW 2010
<b>Owner's Details</b>	➤ Mrs C Haddad 23 Phillips St CABARITA NSW 2137
<b>Notification Dates</b>	➤ 10 February 2011 to 14 March 2011.
<b>Number of Submissions</b>	➤ 18
<b>Building Classification</b>	➤ 1a, 2 and 7a
<b>Integrated Development</b>	➤ Yes

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<b>Main Issues</b>	➤ Floor Space Ratio, Landscape Area & Diverse Housing ➤ Side setbacks & Bulk and Scale ➤ Heritage & Streetscape
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<b>Recommendation</b>	➤ Approval
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## 1. PROPOSAL

This application seeks consent for a residential development comprising of 14 dwellings plus an ancillary studio, and 24 off-street parking spaces at the properties known as No.170 Beattie Street, No.15 Evans Street and No.13 Evans Street, Balmain.

The application specifically seeks consent for the following works:

- Demolition of a partially completed brick and concrete structure located in the south eastern corner of the site fronting Evans Street, a weatherboard section of the existing hall building, the existing electrical substation, and the existing fibro garage fronting Beattie Street;
- The retention of, and alterations and additions to the existing cottage at the Beattie Street frontage. External alterations involve the introduction of four new dormer windows;
- Adaptive reuse of the existing hall building fronting Evans Street. The building is proposed to accommodate four (4) new one bedroom dwellings;
- Construction of nine (9) new dwellings including three terrace style dwellings fronting Evans Street, five new dwellings centrally located within the site, and a new single storey dwelling fronting Beattie Street.
- New basement carpark consisting of 23 parking space, including visitor spaces, bicycle storage, general storage, garbage room and car wash bay;
- Relocation of an Energy Australia substation fronting Evans Street;
- Landscaping works, including tree removal; and
- Remediation of the site.

This application relies on a State Environmental Planning Policy No.1 objections to floor space ratio, landscaped area and diverse housing development standards.

Council sought additional information and amendments via correspondence dated 21 February 2011, which included:

- Updated design verification statement in accordance with Clause 50(1A) the *Environmental Planning and Assessment Regulation 2000*;
- Minor design change amendments in line with heritage comments;
- Materials sample board;
- Updated Integrated Water Cycle Plan and Stormwater Management Report;
- Details demonstrating provisions of a car wash bay within the basement car park;
- Longitudinal sections through all proposed vehical crossings; and
- Additional shadow diagrams to confirm compliance with internal solar access to dwellings.

The amendments and additional information did not require the application to be renotified.

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. The subject site is not a flood control lot.

## 3. SITE HISTORY

The following table outlines the development history of the subject site.

Application	Details	Decision	Date
DA 370/87	Restore existing buildings and erect temporary chapel for place of public worship and associated dwellings.	Approved	8/9/1988
D/1998/472	Construct a factory built chapel to replace the existing chapel building.	Approved	21/4/1999
D/2005/535*	Partial demolition, alterations and additions to the existing hall for use as a chapel; Construction of a new part-single/part two storey building adjoining No.25 Evans Street, providing meeting rooms, artists studios and retreats, and associated amenities; and Construction of a new car park providing a total of fourteen (14) off-street parking spaces.	Approved	18/10/2006

	<i>Works associated with this consent commenced but were never completed when its current owners purchased the site in July 2009.</i>		
D/2010/206	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.	Refused by JRPP	22/12/2010

*\* The applicant will be required to surrender the existing consent as part of the conditions of consent.*

The key changes from the previous development application, D/2010/206 to the subject application include:

- A reduction in dwelling numbers from 17 dwellings to 14 dwellings;
- Number of off-street car parking spaces reduced from 25 to 24;
- Changed dwelling mix providing 4 x 1 bedroom, 3 x 2 bedroom and 7 x 3+ bedroom dwellings and a studio associated with the existing dwelling;
- Redesign of dwellings along southern boundary to lower bulk and scale and reduce overshadowing impacts;
- Relocation of Energy Australia substation; and
- Design changes to the facades of the Evens Street terraces.

The following table outlines relevant history of the surrounding properties.

#### ***No.6 Ewell Street Balmain***

<b>Application</b>	<b>Details</b>	<b>Decision</b>	<b>Date</b>
D/2009/246	Alterations and additions to an existing dwelling.	Approved	22/9/2009

#### ***No.8 Ewell Street Balmain***

<b>Application</b>	<b>Details</b>	<b>Decision</b>	<b>Date</b>
D/2007/417	Demolition of existing structures, construction of two new dwellings with basement parking, removal of 1 tree and subdivision of site into two Torrens title allotments.	Approved	1/7/2008

#### ***No.10 Ewell Street Balmain***

<b>Application</b>	<b>Details</b>	<b>Decision</b>	<b>Date</b>
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	Withdrawn	10/8/2009

	parking area.		
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### **25 Evans Street Balmain**

<b>Application</b>	<b>Details</b>	<b>Decision</b>	<b>Date</b>
D/2008/316	Addition of an ensuite with balcony to the first floor northern elevation of an existing dwelling.	Approved	14/8/2008

## **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: Building Sustainability Index) 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>	<b>% of Non-compliance</b>
Floor Space Ratio	0.7:1	2298m <sup>2</sup>	0.78:1	No	11.5%
Total Landscape	40%	1040m <sup>2</sup>	35.3%	No	11.7%
Soft Landscape	25% of the total required	898m <sup>2</sup>	76.3%	Yes	N/A
Diverse Housing	Min 25% 1-bed (3.5 dwellings)	4	-	Yes	N/A
	Max 30% 3-bed or more (4.2 dwellings)	7	-	No	75%
Adaptable Housing	1 dwelling	1	-	Yes	N/A

- Clause 12 – Vision of the plan
- Clause 13 – General Objectives
- Clause 15 – Heritage Objectives

- Clause 16(7) – Development in the vicinity of heritage items
- Clause 16(8) – Development in Conservation Areas
- Clause 17 – Housing Objectives
- Clause 19(2) – Floor Space Ratio
- Clause 19(3) – Landscaped Area
- Clause 19(5) – Building Conversion and adaptation
- Clause 19(6) – Diverse Housing
- Clause 19(7) – Adaptable Housing

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

The subject site is located within a heritage conservation area and is also located within 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 retain the cottage and undertake alterations and additions to this cottage to create more functional living spaces at the first floor. In order to do this an extension into the attic space is required, with four (4) dormer windows proposed. The proposed dormer windows, following to provision of additional design details, are acceptable. The existing chimneys to the dwelling are to be retained.

On this basis, the proposal is 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 floor space ratio of 0.7:1 for the subject site. The subject site has a site area of 2944m<sup>2</sup> with a maximum permissible gross floor area of 2061m<sup>2</sup>. The subject application proposes as total GFA of 2298m<sup>2</sup> equating to an FSR of 0.78:1, an 11.5% breach to the development standard.

#### ***State Environmental Planning Policy No.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,*

The proposed development's non-compliance with the standard does not hinder the objectives of the Environmental Planning and Assessment Act 1979 which amongst other matters aims to promote the orderly and economic development of land and a better environment.

It is considered that the proposed works will be consistent with the objectives and intent of the Act in that the amenity of the dwelling will be improved.

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.”*

The subject proposal addresses potential impacts with regard to maintaining amenity to neighbouring properties, especially to Ewell Street properties. The proposed new dwellings are sited appropriately to ensure adequate solar access is maintained to southern adjacent properties. All bulky elements of the proposed built structures are setback from the boundaries of the site and will maintain outlook for adjacent properties.

It is therefore agreed that no adverse impacts are associated with the additional floor space proposed by the subject development and compliance with the FSR development standard is unreasonable and unnecessary in this case.

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

For the reasons discussed above, the objection submitted is considered to be 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 objection to clauses 19(2) of Leichhardt Local Environmental Plan 2000 is considered to be well founded and worthy of support.

#### Clause 19(3) – Landscaped area

The site provides 1040m<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 11.6%.

Of this landscaped area, 294m<sup>2</sup> (25% of total landscaped area) is required to be provided as soft landscaping. A total of 898m<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.

### **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(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.

It is 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 14 dwellings provided a minimum of 4.25 (4) shall be provided as one-bedroom and a maximum of 4.2 (4) x 3-bedroom dwellings.

The proposed dwelling mix is as follows:

- 4 x 1-bedroom dwellings;
- 3 x 2-bedroom dwellings;
- 7 x 3 & 4-bedroom dwellings.

The proposal therefore provides an additional three (3) or more bedroom units 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 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:*

- To resist the loss of affordable housing and encourage the retention of existing affordable housing;*
- To collaborate with the State Government and/or other inner Sydney councils facing similar issues to address the declining stock of affordable housing, regionally;*
- To encourage the provision of affordable, adaptable and diverse housing and raise awareness of affordable housing needs and issues to facilitate action; and*
- To facilitate the provision of additional affordable housing within the Municipality.*

*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 three 930 additional two (2) bedroom units;*
- The proposal provides an additional 14 dwellings within the Balmain Peninsular, 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 peninsular;*
- 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; and*
- 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 proposed development provides the quota of low cost housing required by the Leichhardt LEP 2000. While a surplus of three plus bedroom dwellings is proposed, it is not considered that depart unreasonably from the objectives set within clause 17(d) of the LEP 2000.

It is considered both unreasonable and unnecessary 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 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.

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 No.65 - Design Quality of Residential Flat Development

The proposed development is subject to SEPP No.65 as the proposal fits within the following:

- 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 3 – 7) is defined as a residential flat building and the SEPP is applicable to this building only.

In accordance with clause 30(2) of SEPP No.65:

- (2) *In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
- (a) *the advice (if any) obtained in accordance with subclause (1), and*
  - (b) *the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
  - (c) *the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

The following table outlines Council's assessment of the proposal against the design principles of SEPP No.65.

<b>Principle</b>	<b>Assessment</b>	<b>Comment</b>
Principle 1: Context	The RFB is centrally located within the site and will not detrimentally impact heritage conservation area. Also siting respects the site layout, topography and context created by adjacent residential development.	Satisfactory
Principle 2: Scale	The scale of the proposed RFB responds to the topography of the site and sets bulkier elements central to the building, respecting the outlook of the southern adjacent properties.	Satisfactory
Principle 3: Built form	The built form presents a satisfactory design solution, maintaining amenity to adjacent sites, i.e. solar access, outlook and visual privacy.	Satisfactory
Principle 4: Density	FSR has been previously discussed within this report. Existing local infrastructure is capable of accommodating the increased density within the site. The site also manages this density by providing off-street parking.	Satisfactory
Principle 5: Resource, energy & water efficiency	The subject proposal achieves the required NatHERS / ABSA and BASIX ratings. All apartments are designed to receive cross ventilation and direct solar access. A water cycle management plan has been submitted and assessed as being acceptable as part of this proposal.	Satisfactory
Principle 6: Landscape	Matters with regard to landscaped area have been addressed previously within this report. Significant levels of soft landscaping have been provided within the development site.	Satisfactory
Principle 7: Amenity	The proposed design of the RFB protects the amenity of adjacent sites through	Satisfactory



	providing adequate setbacks from the southern boundary addressing Leichhardt DCP 2000 solar access requirements, maintaining visual privacy and adequately addressing the outlook currently afforded to Ewell Street Properties.	
Principle 8: Safety & Security	The proposal provides for safe, well lit pedestrian access to the site, lighting internal to the site, security gates and secure basement car parking.	Satisfactory
Principle 9: Social dimensions & housing affordability	An adaptable unit has been provided within the overall development site (dwelling 1) as well as an acceptable dwelling mix with 4 one bedroom dwellings.	Satisfactory
Principle 10: Aesthetics	The RFB proposes a variety of textures, materials and colours. A materials sample board has been assessed and all materials have a high standard finish.	Satisfactory

It is further noted that the RFB component of the development has been considered against the Residential Flat Design Code and is considered to have been designed in accordance with the provisions of the code.

#### 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 – 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 A8.0 – Parking standards & controls
- Part A10.6.4 – The Valley 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
- Part B3.6 – Dormer windows
- Part B4.1 – Alterations & additions to dwelling houses
- Part B4.5 – Conversion of non-residential buildings
- Part B4.7 – Diverse & affordable housing

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

#### Part A8.0 – Parking standards and controls

The proposed development includes provisions for off-street car parking. The following table outlines the proposal and demonstrates compliance with Leichhardt DCP 2000 requirements.

	<b>Dwelling mix</b>	<b>Minimum parking rate</b>	<b>Maximum parking rate</b>	<b>Required</b>	<b>Proposed</b>
<b>1 Bedroom</b>	4	0.5	1	2 (min) 4 (max)	4
<b>2 Bedroom</b>	3	0.8	1.6	2.4 (min) 4.8 (max)	3
<b>3 Bedroom</b>	6	1	2	6 (min) 12 (max)	12
<b>4 Bedroom</b>	1	1	2	1(min) 2 (max)	2
<b>Visitor</b>	-	0.1	0.2	1.4 (min)	3

				2.8 (max)	
<b>Carwash</b>	-	1*	-	1*	1* (dual visitors space)
<b>Total</b>	14			12.8 (min) 25.6 (max)	24 parking spaces

*\*For multi-unit development of more than 3 but less than 16 dwellings, the car wash bay may be provided separately or in one of the visitor car space (dual signage required).*

The following table outlines the bicycle parking requirements:

	<b>Dwellings</b>	<b>Parking rate</b>	<b>Required</b>	<b>Proposed</b>
<b>All Apartments</b>	14	0.33 space per apartment	4.62	5
<b>Visitors</b>	-	0.08 spaces per apartment	1.12	2
<b>Total</b>			5.74	7

The proposed development complies with the proposed parking allocation requirements, proposing 24 vehicle parking spaces and 7 bicycle parking space.

The proposed development has been assessed in accordance with the Leichhardt DCP 2000 and AS2890.1-2004 – Off Street Parking. The proposal has been designed generally in accordance with the relevant standards, however is silent on maintaining a minimum 2200mm head clearance throughout the basement car park.

The submitted architectural sections appear to show that the proposed headroom clearance is adequate; notwithstanding supporting beams have not been shown on the plans which will further reduce the available headroom and result in non-compliance with this standard.

Compliance can be achieved by lowering the parking facilities floor level, while maintaining the proposed floor levels above and gravity drainage to Evans Street. The proposal has been conditioned accordingly to ensure compliance is achieved.

#### Part A10.6.4 – The Valley (Balmain) Distinctive Neighbourhood

The subject proposal has been assessed against the provisions of the distinctive neighbourhood controls. The following neighbourhood controls are of notable relevance to the proposed development:

- New development should not mimic older architecture but should respect the scale and form of the traditional streetscape in the vicinity;
- The use of traditional timber, stone or masonry finishes as well as corrugated iron roofing and timber windows are preferred; and
- Maintain roof forms with pitched, gable or hipped roofs. Roof forms are to be designed to preserve view lines for adjoining properties.

Key consideration has been given to the Evans Street terrace style dwellings (dwellings 8-10). These dwellings have been designed at a similar scale and form to the adjacent dwelling to the south on Evans Street, which are two storey terrace style

dwelling. It is considered that the form proposed is consistent with the provisions of the applicable development control.

The development proposed to use a variety of finishes including a grey-graphite zinc material to all dwellings with the exception of the existing cottage. While this finish is not a traditional finish, it is a high quality non-reflective finish which does not dominate the facades of the dwellings. The remaining materials are consistent with the above stated control.

Finally, the site features a mixture of flat and pitched roof forms. Given the site fronts both Beattie and Evans Streets, the pitched roof forms are maintained along Beattie Street and to the former hall on Evans Street, and flat roofs and parapets are utilised along the Evans Street terraces. It is considered that the roof forms proposed are acceptable within the varying context of the site.

#### Part B1.1 – Demolition, site layout, subdivision and design

The proposed development involves 3 development lots. As part of the determination of the subject application, the 3 development lots will need to be consolidated. Conditions of consent will therefore be imposed to require the consolidation of lots prior to the issue of an occupation certificate.

It is further noted that while subdivision is not proposed under the subject application, it is possible to strata-subdivide the site via a Complying Development Certificate process under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Conditions of consent will require that the proposed studio form part of the same lot as dwelling 1 (the existing cottage).

#### Part B1.2 – Building form, envelope and siting

##### *Side Setbacks:*

Elements of the proposed development establish breaches in side setbacks. The following table represents the proposed and required side setbacks:

##### ***Studio to dwelling 1***

	<b>Proposed Wall Height</b>	<b>Required setback</b>	<b>Proposed setback</b>
<b>Northern elevation</b>	3.8m	1.4m	1m
<b>Southern elevation</b>	N/A	N/A	N/A

##### ***Dwelling 10***

	<b>Proposed Wall Height</b>	<b>Required setback</b>	<b>Proposed setback</b>
<b>Northern elevation</b>	N/A	N/A	N/A
<b>Southern elevation</b>	8.1m	5.7m	2.2m

The Development Control Plan allows departures from the setback control where, amongst other matters, the pattern of development is not compromised and the potential impacts on amenity of adjoining properties, in terms of sunlight, privacy and bulk and scale are satisfactory.

Sunlight, privacy and bulk and scale have all been assessed in the later of this report where it was concluded that the impacts are acceptable, as such, it is considered that the proposal complies with the requirements of this clause.

*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 area which is predominantly single and two storey forms.

Dwellings 6 & 7 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. Under the previous proposal (D/2010/206), Council considered the third storey unacceptable because of the resultant bulk and scale impacts associated with the setback and siting proposed stair, in addition to associated overshadowing impacts.

The subject proposal still retains the three storey form; however this built form has been redesigned closer to the upper levels of dwellings 3 to 5, with a setback of approximately 9.59 metres to the southern boundary. The built form reduces bulk and scale impacts, and improving the outlook where viewed from No.16 Ewell Street. The following photomontage shows the subject proposal as viewed from No.16 Ewell Street.



It is considered that the applicant has adequately demonstrated that the proposed built form will not result in unacceptable bulk and scale impacts on the southern adjacent properties. The relocation of the stair increases the overall setback of the addition and improves the outlook of the southern adjacent properties, appeasing the concerns previously raised by the owners/occupants of No.16 Ewell Street within the previous development application.

#### Part B1.5 – Elevations and materials

The guiding principle in Part B1.5 of the Leichhardt DCP 2000 states with regard to new dwellings to *“design to respect the elevational character and appearance of the streetscape and locality.”*

The proposed Evans Street terraces (dwellings 8, 9 & 10) are considered generally acceptable within the context of Evans Street where considering height, bulk and scale. Where new buildings are proposed, elevational design should respect the size, location and proportion of windows and doors of neighbouring buildings. Further, developments should take reference from and complement the existing character of the streetscape in terms of scale, architectural style and materials.

An assessment of the Evans Street terrace component, as well as the remainder of the proposed development, achieves consistency with the controls and guidelines without mimicking adjacent development. The heights of the proposed terraces are consistent with the prevailing heights of the terrace style dwellings from No.25-41 Evans Street, and the separation between the two developments allows the proposed dwellings to be read separately from the existing dwellings.

Within the previous development proposal (D/2010/206), the three dwellings fronting Evans Street featured dominant box like elements on the façade which were extremely uncharacteristic of the area. The subject proposal has largely removed these elements and the proposal, providing more subdued façade detailing, whilst still maintaining a modern form. A wider assessment of the Evans Street streetscape from Ewell Street to Beattie Street sees a transition of dwelling types from terraces at No.25-41 Ewell Street to cottages and semi-detached dwellings at No.1-11 Evans Street. It is considered that the proposed development creates an effective transition between the terraces and cottages.

Furthermore, as outlined within Council’s Heritage Advisors comments, subject to replacing glazed balustrades with vertical steel balusters with steel bottom rail and handrail, and lowering the height of glazing to the façade at the first floor, the proposed terraces are considered acceptable on heritage grounds. It is also noted within Council’s assessment against Clause 16(8) – Conservation Areas of the Leichhardt LEP 2000, the proposal will not unduly affect the heritage conservation area.

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

The principles set down in Part B3.1 of the Leichhardt DCP 2000 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 DCP 2000 states:

*“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.*

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

- *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 applicant has provided shadow diagrams for Council’s assessment of solar access to demonstrate adequate solar access to living area of new dwellings (particularly dwellings 8-10) and maintenance of solar access to private open space of adjacent sites. The shadow diagrams have been assessed to portray an accurate reflection of the likely overshadowing to result from the proposal.

### ***Internal Solar Access to dwellings***

Concern was raised as part of the subject proposal and the previous proposal (D/2010/206) that dwellings 8, 9 & 10 did not receive compliant internal solar access to living areas. Additional shadow diagrams were provided for Council’s assessment which demonstrates some solar access will be received to the first floor living rooms.

It is considered that reasonable solar access is achieved for an hour from 9.00am to 10.00am, and from 1.00pm to 3.00pm which demonstrates compliance with Part B3.1 of the Leichhardt DCP 2000.

### ***Overshadowing to windows of adjacent dwellings***

The proposed development results in altered solar access impact to No.25 Evans Street. No.25 Evans Street has a number of windows on its northern elevation of varying sizes at the ground and first floor level. Shadow diagrams submitted show a comparison between the existing approved and proposed development.

While the impacts on the affected windows are altered, solar access is not generally reduced as a result of the proposal. On balance, the assessment found that there was virtually no reduction in solar access to windows during the period of 9.00am to 3.00pm at the winter solstice.

It is considered that the proposed development does not result in an unacceptable impact on No.25 Evans Street and complies with the 2 hour solar access requirements where windows achieve 2 hours solar access under the current scheme.

### ***Overshadowing to open space of adjacent dwellings***

The proposed development has a variable impact on overshadowing to southern adjacent properties predominantly resulting in reductions in overshadowing. In comparison to the impacts proposed under the former development application (D/2010/206), the subject proposal results in a substantial reduction in the impacts on southern properties.

The following table provides a brief breakdown of the affected southern properties, how many hours solar access is achieved and whether compliance is achieved.

<b>Property</b>	<b>Changes in solar access</b>	<b>Compliance</b>
172 Beattie Street	+0.3m <sup>2</sup> at 11.00am +1.3m <sup>2</sup> at 12.00pm +2.5m <sup>2</sup> at 1.00pm +4.4m <sup>2</sup> at 2.00pm +4.4m <sup>2</sup> at 3.00pm	Yes
4 Ewell Street	-1.6m <sup>2</sup> at 2.00pm -2.2m <sup>2</sup> at 3.00pm Note that > 50% solar access is received from 10.00am to 1.00pm	Yes
6 Ewell Street	-3.4m <sup>2</sup> at 3.00pm Note that > 50% solar access is received from 11.00am to 1.00pm	No (See below)
8 Ewell Street (H1)	Unchanged from existing	Yes
8 Ewell Street (H2)	Unchanged from existing	Yes
10 Ewell Street	-0.1m <sup>2</sup> at 1.00pm See comments below	No (See below)
12 Ewell Street	+0.5m <sup>2</sup> at 9.00am +0.8m <sup>2</sup> at 11.00am +0.6m <sup>2</sup> at 12.00pm +0.5m <sup>2</sup> at 1.00pm +0.2m <sup>2</sup> at 2.00pm -0.2m <sup>2</sup> at 3.00pm Note that a net increase in solar access is achieved. See comments below	Yes
14 Ewell Street	+0.6m <sup>2</sup> at 9.00am +1.2m <sup>2</sup> at 10.00am +3.0m <sup>2</sup> at 11.00am +5.1m <sup>2</sup> at 12.00pm +2.4m <sup>2</sup> at 1.00pm +0.5m <sup>2</sup> at 2.00pm Note that a net increase in solar access is achieved. See comments below	Yes



16 Ewell Street	+0.2m <sup>2</sup> at 9.00am +0.1m <sup>2</sup> at 10.00am +0.9m <sup>2</sup> at 11.00am +3.2m <sup>2</sup> at 12.00am +0.7m <sup>2</sup> at 1.00pm Note that a net increase in solar access is achieved. See comments below	Yes
25 Evans Street	+8.2m <sup>2</sup> at 9.00am +10.4m <sup>2</sup> at 10.00am +10.1m <sup>2</sup> at 11.00am +11.0m <sup>2</sup> at 12.00pm +6.8m <sup>2</sup> at 1.00pm Note that a net increase in solar access is achieved. See comments below	Yes

The property at No's.6 & 10 Ewell Street do not at present receive 3 hours of solar access to 50% of their private open space at the winter solstice. Any further reduction in solar access is deemed non-compliance. Under the subject proposal, these properties remain virtually unaffected by the proposed development apart from a 3.4m<sup>2</sup> reduction at 3.00pm (which is not present at 2.00pm) at No.6 Ewell Street, and a 0.1m<sup>2</sup> reduction in solar access at 1.00pm at No.10 Ewell Street. These additional impacts are considered to be acceptable within the context of the development and would not justify amendments to the proposed development.

The properties at No's.12, 14 & 16 Ewell Street 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.12, 14 & 16 Ewell Street will actually receive improved solar access as result of the partially constructed church building not being completed.

It is further noted that No.25 Evans Street will also experience increased solar access as a result of the subject proposal. This increase will principally occur from 9.00am until approximately 2.00pm, resulting in a positive outcome for this property.

It is therefore considered that the proposed development demonstrates compliance with Part B3.1 of the Leichhardt DCP 2000, maintaining and often increasing solar access to the southern adjacent properties.

#### Part B3.3 – Visual Privacy

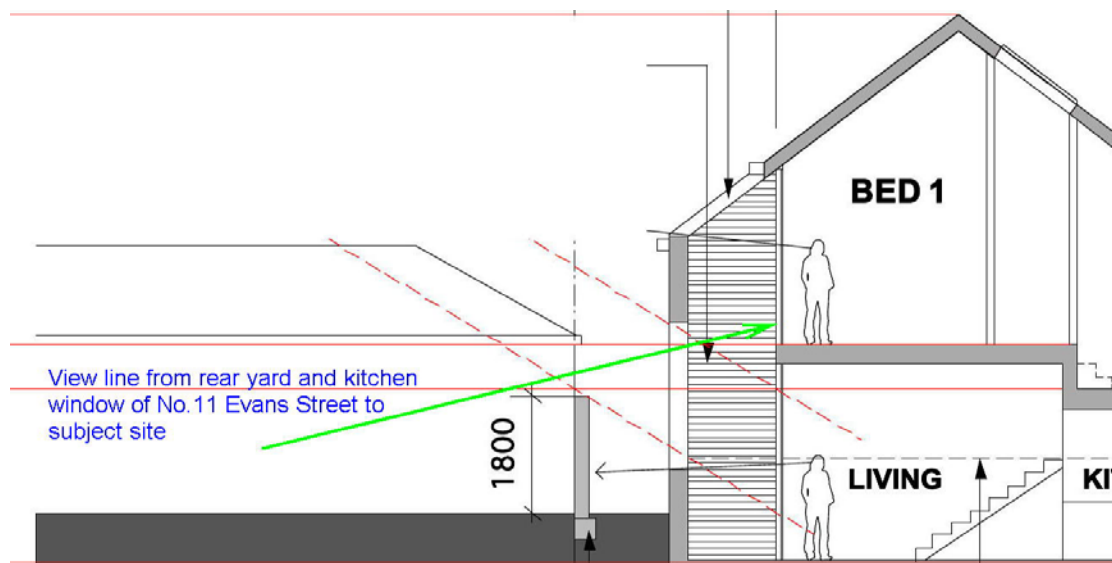
Visual privacy is a highly valued component of residential amenity. The privacy needs of both existing and future residents needs to be considered in the design of new development.

The following controls apply to the subject application:

- Ensure habitable room windows of one dwelling are not located opposite the windows of another dwelling within 15m unless direct views are restricted or they are separated by a street.

- Obscure outlook by providing screening if habitable room windows or private open space is overlooked:
- Screening devices should be 75% obscure, permanently fixed and made of durable materials. Use screening devices such as obscure glazing, timber lattice screens, external ventilation blinds, canvas blinds, window hoods and shutters.

The proposal generally demonstrates compliance with the visual privacy provisions of the Leichhardt DCP 2000. An objection was raised by No.11 Evans Street with regard to overlooking opportunities from the first floor bedrooms of dwellings 11-13 to No.11 Evans Street. This is depicted in the image below:



A condition of consent will be imposed to require obscure glazing or an opaque film over glazing achieving 75% opacity is to be installed to a height of 500mm along the full height windows of bedroom 1 in dwellings 11-13 to mitigate this concern.

#### **(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.

Clause 92(1)(b) of the Regulation Council to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. The demolition of the existing structures is to be carried out in accordance with a construction/demolition management plan, which is to be submitted prior to the issue of a Construction Certificate. Conditions to this effect are included in the recommendation section of this report.

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

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

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

The site is zoned residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

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

The Development Application was advertised for a period of 30 days. The notification period was from 10 February 2011 to 14 March 2011. 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.

18 objections were received during the advertising period. The following information is provided in response to the issues raised in the objections.

Loss of on-street parking

*Comment:* 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

*Comment:* These matters have been addressed above, and the proposal is considered satisfactory in this regard.

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

*Comment:* 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.

Breach of the floor space ratio

*Comment:* This matter has been addressed above in Council's SEPP No.1 assessment and is considered satisfactory.

The height of the buildings is excessive in the context

*Comment:* This matter has been addressed above. The height of the buildings is generally considered satisfactory.

Loss of amenity and visual privacy concerns relating to dwellings 3 to 7 in the centre of the site

*Comment:* With the exception of dwellings 6 and 7, the dwellings in question maintain a 2 storey form given the sloping site. Setbacks from the boundary (6 metres at the first floor and 9 metres at the second floor) comply with side setback requirements and do not impose bulk and scale over the southern adjacent properties. The form of these dwellings is considered appropriated. As previously outlined within this report, the proposed development complies with visual privacy controls as they relate to this building. It is noted that vegetation is all proposed along the southern boundary of the site which will increase screening.

Reliance on Energy Australia land for overall inclusion in site area, improving FSR performance where Energy Australia has not sold the land

*Comment:* Energy Australia has provided their landowners consent for the subject development application. This site is considered part of the overall development site. Conditions of consent will require the consolidation of the lots prior to the issue of an occupation certificate.

Traffic and Parking Impact Assessment fails to address numerous traffic and hazard issues associated with vehicular access to the site and increased density

*Comment:* The Traffic and Parking Impact Assessment has been assessed by Council's Engineers and Council does not dispute the findings of this report. The report was written on the basis of the site catering for 19 dwellings. An addendum was provided with the subject application for 14 dwellings. This reduction in dwelling numbers will reduce traffic and parking related impact. It is also noted that the vehicle crossing to Evans Street has been reduced to a single width, reducing the loss in on-street parking.

Vehicle access should be from Beattie Street

*Comment:* 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

*Comment:* 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.

Eyesore of rubbish bins on Evans Street on collection day

*Comment:* 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.

#### Visual and acoustic privacy impacts

*Comment:* 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

*Comment:* 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.

#### Proposal is an overdevelopment of the site.

*Comment:* The proposal has addressed amenity related concerns, reduced the number of dwellings proposed by 3 from 17 dwellings to 14 dwellings. The floor space ratio and landscaped area provisions are comparable to the Distinctive Neighbourhood. The proposal is not considered to be an overdevelopment of the site.

#### Visual impact of contemporary buildings

*Comment:* 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.

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. The easement is also requested to cover wall maintenance.

*Comment:* Noted. A condition of consent will be imposed to address these matters regarding encroaching eaves and drainage lines. It is noted that there is a discrepancy between the development plans and the landscape plan. Council will condition that the landscape plan is updated prior to the issue of a construction certificate, thus bringing consistency to these plans.

An easement for wall maintenance cannot be created as this issue is addressed by the *Access to Neighbouring Land Act 2000*. Under the provision of this act an agreements for access to neighbouring land can be established under clause 33.

#### Impact on existing large trees at No.11 Evans Street

*Comment:* Appropriate conditions of consent have been recommended ensuring appropriate protection measures for the trees in question.

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

*Comment:* Noted. Conditions of consent will be imposed to require dilapidation reports to be undertaken prior to the issue of a construction certificate and prior to the issue of an occupation certificate. It is noted that a Geotech report has been submitted with the subject proposal; the recommendations will form part of the approved documentation.

No provision of visitor parking is a concern

*Comment:* The amended application provides three (3) visitor parking spaces and complies with the DCP in this regard.

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

*Comment:* 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.

Issues noted with rising damp and maintenance of the southern wall of No.168 Beattie Street which abuts the northern boundary of the subject site. Questions are raised regarding drainage in this location, level changes and air vents on the boundary.

*Comments:* The proposed development will result in upgrades to drainage in the yard adjacent to No.168 Beattie Street. The plans propose changes in levels in this general location which involve the construction of retaining wall.

In order for the owner of No.168 Beattie Street to maintain the wall on the common boundary, it will be conditioned that the retaining wall be set back 450mm from the property boundary with no increases in ground level between the retaining wall and wall of No.168 Beattie Street. This will allow for maintenance of the wall and maintain ventilation to air vents.

#### **(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 not contrary to the public interest.

## **5. SECTION 94 CONTRIBUTIONS**

Section 94 contributions are payable for the proposal. 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.

Contribution Plan	Calculations
Open Space	Proposed dwelling 53m <sup>2</sup> to 106m <sup>2</sup> – \$77,132.00 Proposed dwelling 106m <sup>2</sup> to 170m <sup>2</sup> – \$51,622.00 Proposed dwelling 160m <sup>2</sup> to 215m <sup>2</sup> – \$231,994.00 <b>Total = \$360,748.00</b>
Transport & Access	Residential LATM Rates – \$1,877.01 Access to Balmain Peninsular Rates – \$9,650.17 Bicycle Rates – 385.17 <b>Total = \$11,912.35</b>
<b>Total Contribution</b>	<b>\$372,660.35</b>

Despite the calculations above and as per the maximum contribution cap of \$20,000 per dwelling, a total contribution of \$280,000 is payable for the subject development.

## 6. INTERNAL REFERRALS

The Development Application was referred to the following Council Officers:

### Building

The proposed development was reviewed by Council's Building Surveyor. No issues were raised and standard conditions have been recommended.

### Development & Traffic Engineers

The proposed development was referred to Council's Development and Traffic Engineers. Issues with regard to the basement car park have been previously discussed within this report. Conditions have been provided to address these concerns. Further conditions of consent have been recommended pertaining to stormwater drainage and parking.

### Heritage Advisor

The proposed development was referred to Council's Heritage Advisor. The following amendments to the proposal were recommended:

1. Proposed dormers to original house to have traditional timber double hung windows with weatherboard cladding to sides and gable end of dormer roof;
2. Delete glazed balustrades to Evans Street units and replace with vertical steel balusters with steel bottom rail and handrail; and
3. Oversized doors to units in Evans Street to be reduced in height to maximum 2.7m high with glazed highlights over.

The proposed development has been amended accordingly in accordance with the above requirements.

#### Landscape Officer

The proposal was referred to Council's Landscape Assessment Officer. The proposal includes remediation of the site around the base of a *Corymbia citriodora* at the Beattie Street frontage of the site.

On inspection, the *Corymbia citriodora* is a very healthy and structurally sound tree, located at the front of the property. The tree is providing a high level of amenity in this location. The tree is also a native species. The remediation work required for this new proposal, is around the critical root zone of this tree. Dropping of soil levels within the critical roots zones of tree, has the potential to expose major critical roots and if left unattended, can dry out rootballs and equate to tree's declining.

Recommendation is given for the specific implementation of Clause 4.5.4 of AS4970-2009 "Protection of trees on development sites". This work should be overseen by a suitably qualified arborist.

#### Environmental Officer

The proposed development was referred to Council's Environmental Health Officer. Appropriate reports have been provided in accordance with the requirements of SEPP No.55 – Remediation of Land and Leichhardt DCP No.42 – Contaminated Land Management. The proposal is supported subject to the imposition of standard conditions.

#### Community and Development Officer

The proposed development was referred to Council's Community and Development Officer for comment. The proposed dwelling mix is considered adequate in this case and the development is considered generally acceptable.

#### Waste Officer

The proposed development was referred to Council's Waste Officer for comment.

Calculations should be based on 120 litres per unit for both waste and recycling. A total of 1680 litres per week for both waste & recycling is required for the proposed development. This will require 7 x 240 litre waste bins, 2 x 240 litre food waste bins, 4 x 240 litre recycling bins for paper & cardboard & 4 x 240 litre recycling bins for commingled containers. A total of 17 x 240 litre bins would be required. The proposed waste storage area of 20.44m<sup>2</sup> will be sufficient for these bins.

A condition stipulating that the residential bins are to be presented at the kerb (Beattie and / or Evans Streets) for collection by Council and the body corporate will be responsible to ensure all waste and recycling bins are returned to the waste storage area within 12 hours of collection was recommended for the ongoing use of the premises.

A condition stipulating that all waste and recycling disposal / weigh bridge – skip bin dockets are to be recorded during both demolition and construction stages with a copy provided to Council (depicting the name of the disposal facility) on completion of the project is also recommended. This is required for all materials removed from the site, whether the materials are destined for landfill or recycling.



## 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 Application has been assessed in accordance with Section 79C(1) of the Environmental Planning & Assessment Act 1979 and all relevant instruments and policies. The proposal satisfies the objectives of Leichhardt Local Environmental Plan 2000 and will not result in significant adverse impacts for locality. Accordingly the application is recommended for approval, subject to the conditions listed below.

## 9. RECOMMENDATION

That Council as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979 grant consent to Development Application No: D/2011/34 for Residential development comprising 14 dwellings (plus studio) and 24 off-street parking spaces. The proposal includes the retention of the existing timber cottage and adaptation of the existing hall for dwellings; construction of new dwellings; relocation of electricity substation; and the remediation of the site at 15 Evans Street, 13 Evans Street and 170 Beattie Street, Balmain 2041 subject to Council's standard conditions and the specific conditions.

## 10. CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No.D/2011/34 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Rev	Drawn By	Dated
DA01: Site Plan	A	X Squared Design	17/1/2011
DA02: Site Analysis Plan, Existing Floor Plan	A	X Squared Design	17/1/2011
DA03: Level 1 Plan	A	X Squared Design	17/1/2011
DA04: Level 2 Plan	A	X Squared Design	17/1/2011
DA05: Level 3 Plan	A	X Squared Design	17/1/2011
DA06: Level 4 Plan	A	X Squared Design	17/1/2011
DA07: Roof Plan	A	X Squared Design	17/1/2011
DA08: Sections – AA, BB, CC	A	X Squared Design	17/1/2011
DA09: Sections – DD, EE, FF		X Squared Design	
DA10 Sections – GG, HH, II	A	X Squared Design	17/1/2011
DA11: North Elevation, West Elevation	A	X Squared Design	17/1/2011
DA12: East Elevation, South Elevation	A	X Squared Design	17/1/2011

SK-01: Dormer Design	-	Unknown	Submitted 9/3/2011
H01: Note	B	Hughes Trueman Consulting Engineers	4/8/2010
H02: Level 1 Plan	C	Hughes Trueman Consulting Engineers	23/12/2010
H03: Level 2 Plan	C	Hughes Trueman Consulting Engineers	23/12/2010
H04: Level 3 Plan	C	Hughes Trueman Consulting Engineers	23/12/2010
H05: Level 4 Plan	C	Hughes Trueman Consulting Engineers	23/12/2010
H06: Roof Plan	C	Hughes Trueman Consulting Engineers	23/12/2010
H07: Details Sheet	A	Hughes Trueman Consulting Engineers	4/8/2010
LDA-01: Landscape Sketch Plan	B	Todd Cook Chris Houghton	12/1/2011
<b>Document Title</b>	<b>Prepared By</b>		<b>Dated</b>
BASIX Certificate No.331080M_02	NSW Dept of Planning		7/2/2011
Geotechnical Investigation	Jeffery & Katsuaskas Pty Ltd		28/1/2010
Remediation Action Plan	Environmental Geoscience		April 2010
Stage 2 (Detailed) Environmental Site Assessment	Environmental Geoscience		April 2010
External Finished Board	SJB Planning		14/3/2011

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

## PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

2. Amended plans are to be submitted incorporating the following amendments:
  - a) The floor/finished levels within the parking facilities must be lowered as required to achieve compliance with Condition No.14.
  - b) The structural column located within the proposed car wash bay must be relocated to the west to be clear of the car wash bay.
  - c) Obscure glazing or an opaque film over glazing achieving 75% opacity is to be installed to a height of 500mm along the full height windows of bedroom 1 in dwellings 11-13.
  - d) The retaining wall to the northern boundary adjacent to the southern wall of No.168 Beattie Street is to be setback 500mm from the boundary for the extent of the wall of No.168 Beattie Street. Existing ground level is to be maintained between this wall and the property boundary. This is to allow for the ongoing maintenance of this wall.

The amendments are to be provided prior to the issue of a Construction Certificate.

3. An Access Management Plan must be provided prior to the issue of a Construction Certificate. Details of the Access Management Plan must include:
  - a) Access to the building for people with disabilities.
  - b) Sanitary facilities for people with disabilities. Such facilities must be accessible to all persons working in or using the building.
  - c) One motor vehicle parking space on the site for the exclusive use of people with disabilities.
4. 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. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be provided prior to the issue of a Construction Certificate.

5. In accordance with the provisions of Section 81A 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 "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, the Building Code of Australia and the relevant Australian Standards.

6. Consent is granted for the demolition of described building or part currently existing on the property, subject to strict compliance with the following conditions:
  - a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence 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 Council / 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 Council / 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:** Council requires 24 hours notice to carry out inspections. 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 Office, to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the plans will be stamped indicating that no further requirements are necessary.
- 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 5.30pm 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 Department of Environment and Climate Change NSW.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.

- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (i.e. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense.
- 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 Council / 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 / 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.
7. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit to the value of \$17,083 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.

Payment will be accepted in the form of cash, bank cheque or EFTPOS/credit card (to a maximum of \$10,000).

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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security.

An inspection fee of \$200 to determine the condition of the adjacent road reserve is also required to be paid to Council prior to the commencement of demolition works on the site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first). A request for release of the security may be made to the Council after all construction work has been completed and an 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.

8. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit to the value of \$78,200.00 must be paid to Council to cover the costs associated with the road, footpath and drainage works required by this consent.

Note that the above security deposit amount includes a \$10,000 allowance for the relocation of the power pole.

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee.

A request for release of the security may be made to the Council after all construction work has been completed accompanied by video inspection of the completed stormwater drainage works.

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.

9. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Council prior to the issue of a Construction Certificate. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
- a) 11 Evans Street, Balmain
  - b) 168 Beattie Street, Balmain
  - c) 172 Beattie Street, Balmain

The dilapidation report is to be prepared by a practising Structural Engineer agreed to by both the applicant and the owner of the adjoining property. All costs incurred in achieving compliance with this condition shall be borne by the applicant.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from the Certifying Authority in such circumstances.

10. A certificate prepared by a qualified Geotechnical Engineer must be provided prior to the issue of the Construction Certificate to the satisfaction of the Certifying Authority. This is to certify account the recommendations of the approved Geotech report in Condition 1 are undertaken and certify the existing rock formations and substrate on the site are capable of:
- a) Withstanding the proposed loads to be imposed.
  - b) Withstanding the proposed excavation, including any shoring works that may be required to ensure stability of the excavation.
  - c) Providing protection and support of adjoining properties.
  - d) The provision of appropriate subsoil drainage during and upon completion of construction works.
11. A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant must be provided prior to the issue of a Construction Certificate, generally in accordance with the plan approved in condition 1. 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) At least one tree capable of a height of four (4) metres.
  - e) Details of planting procedure.
  - f) Details of earthworks including mounding, retaining walls, and planter boxes.
  - g) A landscape maintenance strategy for the owner / occupier to administer over a twelve (12) month establishment period.
  - h) Details of drainage and watering systems.
  - i) Native Screen Tree planting proposed to the southern boundary is limited to native trees capable of reaching a minimum height of **three (3) metres** and a maximum height of **five (5) metres** mature height. This will ensure adequate solar access can be maintained to southern adjacent properties.
12. 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 0.0035 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.
13. Materials and finishes other than those approved in condition 1 (External Materials Sample Board) must be complementary to the character and streetscape of the area. Highly reflective roofing materials must not be used. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Certifying Authority.
14. The design of the vehicular access and off street parking facilities must be amended to address the relevant provisions of Australian Standard AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking. The following specific issues must be addressed in the design:

The proposed parking facilities accessed from Evans Street

- a) The driveway sections on Drawing No C1 prepared by Denvenuit SC dated 8 March 2011 must be amended to show:
  - i. That the boundary levels are 210mm above the adjacent road gutter invert for the full width of the crossing.
  - ii. Provision of 2200mm Headroom clearance throughout the parking facilities. Headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, sprinklers, ducts, open garage, supporting beams etc. The floor/finished levels within the parking facilities must be lowered as required to achieve this while facilitating gravity drainage of sub soil waters to Evans Street.



- iii. The sections must extend into the parking facilities and demonstrate compliance with the ground clearance and headroom requirements of AS/NZS 2890.1-2004.
- b) The proposed parking facilities design must be amended to include the recommendations of the Traffic and Parking Assessment prepared by McLaren Traffic Engineering. The design must address the following:
  - i. The access to the parking facilities must be designed to clearly give right of way to entering vehicles. In this regard, the temporary waiting bay, together with associated line marking and signposting must be redesigned.
  - ii. Provision of a signalised light system activated by the operation of the roller shutter.
  - iii. Provision of stop signage and hold lines.
- c) All vehicles must enter and exit the facilities in a forward direction.
- d) The vehicular accesses must be provide clear sight lines to pedestrians in Evans Street in accordance with the requirements of Clause 3.2.4 of AS/NZS 2890.1-2004.
- e) The proposed parking facilities must comply with the size, grade, ground clearance, manoeuvrability and headroom requirements of the Standard.
- f) Parking space dimensions and aisle widths must comply with Figure 2.2 and 2.3 of AS/NZS 2890.1-2004.
- g) A bicycle storage area must be provided to accommodate the numerical requirements of DCP 2000 and be designed in accordance with relevant provisions of AS 2890.3-1993.
- h) The proposed parking spaces must not be enclosed.

The proposed parking spaces accessed from Beattie Street

- i) The proposed parking spaces accessed from Beattie Street must have:
  - i. Minimum internal dimensions of 5700 x 3000mm (Length x width)
  - ii. A clear access gate width of 2700mm.
  - iii. The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary are 200mm above the adjacent road gutter invert for the full width of the vehicle crossing. The longitudinal profile must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.

The design must be certified by a suitably qualified Civil Engineer with NPER registration with the Institution of Engineers Australia and be provided prior to the issue of a Construction Certificate

15. An engineering design of roadworks in Beattie Street and Evans Street and stormwater drainage works in Evans Street must be prepared by a qualified practicing Civil Engineer. The design must be prepared/ amended to make provision for the following:

- a) Council's piped stormwater drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit must be installed. The pipeline must 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 and the inlet pit must have a lintel with a minimum length of 2400mm.

Note that the submitted catchment plan showing areas draining to the proposed stormwater pit adjacent to the Evans Street frontage is incorrect. This plan must be amended to show private property draining to this stormwater pit.

- b) The existing stormwater inlet pit at the corner of Evans and Ewell Street must be reconstructed and provided with a minimum lintel length of 2400mm.
- c) The design must be accompanied by detailed engineering drawings including relevant long and cross sections, hydraulic grade line analysis and location of utility services. Note that test holes will be required to confirm service utilities depths.
- d) The following works are required to facilitate the proposed vehicular access from Evans Street. Note that the boundary levels must be 210mm above the adjacent road gutter invert for the full width of the vehicle crossing.
- i. Reconstruction of the double sandstone kerb, concrete gutter and asphalt footpath as required by Council.
  - ii. Construction of a Disability Discrimination Act complaint ramp, including hand rails and tactile indicators, either side of the proposed vehicular access, transitioning over equal distance.
  - iii. Construction of a concrete vehicle crossing.
  - iv. Relocation of the existing power pole clear of the proposed vehicular access and sight lines.
  - v. The design must show how the new levels will integrate into the existing roadway levels and elements beyond. The design must be

accompanied by detailed engineering plans, longsections and cross sections. The location of utility service must be shown on all plans.

- e) Reconstruction of the concrete kerb and asphalt footpath for the remainder of the Evans Street frontage of the site.
- f) Construction of a concrete vehicle crossing at the Beattie Street frontage of the site.
- g) Reconstruction of the asphalt footpath, including grass verge, across the full Beattie Street frontage of the site.
- h) Relocation of parking/ traffic signs as required.
- i) Video inspection must be carried out of completed stormwater drainage works in Evans Street and a copy provided to Council to support the certification of the works.
- j) The design must be in accordance with the relevant requirements of Austroads and all Australian Standards.
- k) The applicant must consult with Council's Manager – Assets in relation to the design of all works in the public road reserve.

Development Consent does NOT give approval to undertake any works on Council property. **An application must be made to Council for a Roadworks Permit under Section 138 of the Roads Act 1993 and Section 68 of the Local Government Act 1993 for approval to construct these works.**

The application must be accompanied by the above engineering design. The Roadworks Permit will only be issued when the design has been approved by Council. A copy of the Roadworks Permit must be obtained from Council prior to the issue of a Construction Certificate.

The design will need to be submitted to and approved by Council's Local Traffic Committee prior to Council issuing an approval.

The applicant must bear the cost of construction of all works, including the cost of any required adjustment or relocation of any public utility service. Where the finished levels of the new works will result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.

These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of an Occupation Certificate.

16. A stormwater drainage design, incorporating on site stormwater retention and detention facilities (OSR/OSD), prepared by a qualified practicing Civil Engineer

must be provided prior to the issue of a Construction Certificate. The design must be prepared/ amended to make provision for the following:

- a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing Nos 10P023 – H01 Rev B dated 4 August 2010, 10P023 – (H02, H03, H04, H05 and H06) Revision C dated 23 December 2010 and 10P023 – H07 Revision A dated 4 August 2010 prepared by Hughes Trueman Consulting Engineers.
- b) Design amendment to facilitate the lowered parking facilities floor levels as required by Condition No.14.
- c) The stormwater system must connect at least 300mm above the floor of the receiving stormwater pit.
- d) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- e) Provision of an oil and grease trap collecting runoff from the parking facilities and driveway.
- f) The water supply to the car wash bay must be from the OSR tank.
- g) All plumbing within the site must be carried out in accordance with relevant provisions of Australian Standard AS/NZS 3500.3-2003 Plumbing and Drainage – Stormwater Drainage.
- h) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- i) The proposed rainwater tank must be connected to a pump system for internal reuse in all proposed residential units for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation in common areas.

#### 17. Fire Safety upgrading where building works proposed

The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:

- (a) The building is to be provided with either a smoke alarm system that complies with AS 3786-1993 / Amendment 4 – 2004: Smoke Alarms or a smoke alarm system that is listed in the Scientific Services Laboratory Register of Accredited Products – Fire Protection Systems. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2.3 of the Building Code of Australia 1996 (Housing Provisions). The smoke alarm system must be connected to the mains electrical power supply and must have a stand-by (battery backup) power supply.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the certifying authority with the application for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

18. A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposal additional, or altered structural loads must be provided prior to the issue of a Construction Certificate to the satisfaction of the certifying authority.
19. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be compatible with the Construction Management and Traffic Management Plan referred to in condition 21 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.
  - j) A durable sign, available from Council must be erected during the works in a prominent location on site, warning of penalties should appropriate measures required by the Soil and Water Management Plan not be maintained.

20. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Service Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) see Building Developing and Plumbing then Quick Check or telephone 132092.

The Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

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

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

civil works or a survey company of Registered Surveyors with “preliminary accreditation” from the Institution of Surveyors New South Wales Inc. or an accredited certifier.

- b) Construction Noise  
During excavation, demolition and construction phases, noise generated from the site must be controlled.
- c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
- d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site.
- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Traffic Authority publication “Traffic Control Worksite Manual” and prepared by a suitably qualified person (minimum ‘red card’ qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

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

22. The trees identified below are to be retained:

- a) *Corymbia Citriodora* (at the Beattie Street frontage)

Details of the trees to be retained must be included on the landscape plan prior to the issue of a Construction Certificate.

23. Details and location of the proposed garbage room are to be provided prior to the issue of a Construction Certificate. Rooms used for the storage of garbage and rooms used for the washing and storage of garbage receptacles are to be constructed of solid material, cement rendered and trowelled to a smooth even surface and subject to the following requirements:

- a) The floor must be of impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room.
- b) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

24. A Waste Management Plan is to be provided prior to the issue of a Construction Certificate. The Waste Management Plan is to be prepared in

accordance with Council's Development Control Plan No 38 – Avoid, Reuse, Recycle. The plan must address all issues identified in Development Control Plan No 38 including but not limited to:

- a) Estimated quantities of materials that are reused, recycled, removed from site.
- b) On site material storage areas during construction.
- c) Materials and methods used during construction to minimise waste.
- d) Nomination of end location of all waste generated.

All requirements of the approved Waste Management Plan must be implemented during the construction of the development.

## **PRIOR TO THE COMMENCEMENT OF WORKS**

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

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

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

26. The proposed structure(s) to be erected must stand wholly within the boundaries of the allotment. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the boundaries must be set out by a registered surveyor prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the basement level and ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the: -

- a) location of the building with respect to the boundaries of the site;



- b) level of the floor in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
  - c) site coverage of the buildings on the site.
27. The site must be secured and fenced prior to works commencing. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

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.

Separate approval is required to erect a hoarding or temporary fence 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.

28. 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.
- If Council is nominated as the Principal Certifying Authority then a copy of the certificate of insurance must be submitted to Council 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 Council.

In all other cases, written notice must be given to Council of:

- a) the name and licence number of the principal contractor and
- b) the name of the insurer by which the work is insured under Part 6 of the *Home Building Act 1989*.

If arrangements for doing the residential work are changed while the work is in progress, further work must not be carried out unless the Certifying Authority has given Council written notice of the updated information.

This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the *Environmental Planning and Assessment Act 1979*, to comply with the technical provisions of the State's building laws.

29. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation

to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

30. Prior to the commencement of 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.
31. Prior to the commencement of works, a Noise and Vibration Management Plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant Australian Standards. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works. The Plan shall address, but not be limited to, the following matters:

- a) Identification of activities carried out and associated noise sources.
  - b) Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment.
  - c) Determination of appropriate noise and vibration objectives for each identified sensitive receiver.
  - d) Noise and vibration monitoring, reporting and response procedures.
  - e) Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles.
  - f) Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction.
  - g) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency.
  - h) Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration.
  - i) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.
32. At least forty-eight (48) hours prior to the commencement of works, a notice of

commencement form and details of the appointed Principal Certifying Authority shall be submitted to Council.

33. An application for any of the following on public property (footpaths, roads, reserves) shall be submitted and approved by Council prior to the commencement of works.
- a) Construction zone.
  - b) A pumping permit.
  - c) Mobile crane.
  - c) Skip bins other than those authorised by Leichhardt Council.
34. Prior to the commencement of works, a sign must be erected in a prominent position on the site 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 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.

35. The area beneath the canopies of the trees to be retained must be fenced prior to the commencement of works. The fencing must encompass the maximum possible area covered by the drip line of the canopy and must remain in place until the completion of building works. The fencing should be a minimum of 1.8 metres high chain-link or welded mesh fencing. The fencing is to be maintained for the duration of the building works.

Services should be located to avoid disturbing tree roots. Trenches required for the installation of services should be located outside of the fenced area.

All areas within the perimeter of the safety fencing are to be covered with woodchip mulch to a depth of 100mm. All steep gradients unable to be effectively covered with mulch are to be protected with hessian cloth to be kept at a moisture level sufficient to ensure the preservation of tree root systems.

## **DURING WORKS**

36. Building materials and machinery are to be located wholly on site.
37. 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 structural engineer.

If an 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.

- 38. The site must be appropriately secured and fenced at all times during works.
- 39. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.
- 40. Excavation, building or subdivision work must be restricted to the hours of 7:00am to 5:30pm Monday to Friday inclusive, 7:00am to 1:00pm Saturday. Work is not be carried out on Sunday or Public Holidays.
- 41. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
  - a) At the commencement of the building work, and
  - b) After excavation for, and prior to the placement of, any footings, and
  - c) Prior to pouring any in-situ reinforced concrete building element, and
  - d) Prior to covering of the framework for any floor, wall, roof or other building element, and
  - e) Prior to covering waterproofing in any wet areas, and
  - f) Prior to covering any stormwater drainage connections, and
  - g) After the building work has been completed and prior to any occupation certificate being issued in relation to the building by the Principal Certifying Authority.
- 42. The development site must be inspected at the following stages during construction:
  - a) At the commencement of the building work, and

- b) Prior to covering waterproofing in any wet areas, and
  - c) Prior to covering any stormwater drainage connections, and
  - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.
43. The development site must be inspected at the following stages during construction:
- a) At the commencement of the building work, and
  - 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.
44. 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.
45. A copy of the approved plans must be kept on site for the duration of site works and be made available upon request.
46. Construction material and vehicles shall not block or impede public use of footpaths or roadways.
47. 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,, excavation for test holes, 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.

48. 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 Environment 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 Department of Environment and Conservation.

Results of the testing are to be forwarded to Leichhardt Council and the Department of Environment and Conservation for acknowledgement before any off-site disposal and before proceeding with any construction works.

49. The requirements of the Soil and Water Management Plan must be maintained at all times during the works and any measures required by the Soil and Water Management Plan shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not be tracked into the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

50. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works unless specifically approved in this consent.
51. All trees to be retained on site are to be protected in accordance with Clause 4.5.4 of Australian Standard AS 4970-2009 "Protection of trees on development sites". All building and site remediation works within proximity of trees to be retained must be overseen by a suitable qualified arborist.

#### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

52. Prior to the issue of an Occupation Certificate, the site is to be remediated in accordance with:
- a) The relevant approved Remedial Action Plan, and
  - b) Development Control Plan No. 42 – Contaminated Land Management; and
  - c) State Environmental Planning Policy No. 55 – Remediation of Land; and
  - d) The guidelines in force under the Contaminated Land Management Act.

Within thirty (30) days after the completion of the remediation works, a notice of completion, including validation and/or monitoring report is to be provided to Council. This notice must be consistent with Clause 18 of State Environmental Planning Policy No. 55 – Remediation of Land.

The validation and/or monitoring report is to be independently audited and a Site Audit Statement issued. The audit is to be carried out by an independent auditor accredited by the New South Wales Department of Environment and Climate Change. Any conditions recorded on the Site Audit Statement are to be complied with.

53. All allotments involved in this proposal must be consolidated into one allotment. Evidence of registration shall be submitted to Council or the Principal Certifying Authority prior to the issue of an Occupation Certificate.
54. An easement in favour of Lot 11 DP 1103739 must be obtained over (existing) Lot Y DP 164334 traversed by the encroaching gravity drainage line and eave overhang. The easement width must be established by a survey to determine the extent of the encroachments and provide an additional 200mm past the encroachment.

The easement must be registered on the title of the relevant lot(s) with the NSW Department of Lands. The easement plan must be approved by Council prior to lodgement at Lands and Property Information NSW.

Proof of registration of the easement with NSW Department of Lands must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

55. A second Dilapidation Report including a photographic survey must be submitted after the completion of works. A copy of this Dilapidation Report together with the accompanying photographs must be given to the property owners referred to in this Development Consent. A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate.
56. The existing boundary fences between the site and the adjoining properties are to be replaced with new fencing at the applicant / owners expense prior to the issue of an Occupation Certificate. Any new fencing between the building and street alignment shall match the height of similar adjacent fences.
57. 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.
58. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species, have been undertaken in accordance with the approved landscape plan and conditions of Development Consent.
59. 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 an Occupation Certificate.
60. A street number must be clearly displayed at the ground level frontage of the building prior to the issue of an Occupation Certificate. A separate application must be made to Council if new street numbers or a change to street numbers is required.
61. 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 compliance with the approved Construction Certificate plans and all conditions of this Development Consent.

62. 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 detention and on-site retention/re-use facilities 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 detention facilities (“OSD”) and on-site retention/re-use facilities (“OSR”).
- b) The Proprietor shall have the OSD and OSR 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 OSD and OSR 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 OSD and OSR, or failure to clean, maintain and repair the OSD and OSR.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Proof of lodgement with the Lands and Property Information NSW must be submitted to and approved by the Principle Certifying Authority prior to the issue of a Occupation Certificate / Subdivision Certificate.

63. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on-site detention and retention facilities. 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 Principle Certifying Authority prior to the issue of an Occupation Certificate.

64. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property, where applicable:
- a) The car park has been completed, line marked and all signage relating to car parking erected.
  - b) A notice has been clearly displayed at the Evans Street frontage to indicate that there are 3 visitor parking spaces available within the property.
  - c) Sign(s) have been erected that clearly indicate that entering vehicles have right of way into the parking facilities accessed from Evans Street.

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

65. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with Council Roadworks Permit.

Works-as-executed plans of the extent of roadworks, including any component of the stormwater drainage system that is to revert to Council, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the works have been constructed in accordance with the approved design and relevant Australian Standards, must be provided to Council prior to the issue of an Occupation Certificate.

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

Video inspection must 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.

Written notification from Council that the works approved under the Roadworks Permit have been completed to its satisfaction and in accordance with the conditions of the Permit, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

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

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

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

67. 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.

## **ONGOING CONDITIONS OF CONSENT**

68. All vehicles must enter and exit the site in a forward direction.
69. An annual Fire Safety Statement must be given to Council and the New South Wales Fire Brigade commencing within twelve (12) months after the date on which the initial Interim / Final Fire Safety Certificate is issued.
70. Pedestrian access to the basement car park must be kept clear of obstacles, including parked vehicles, at all times.
71. Any basement car parking space must not be individually enclosed without prior development consent.
72. All owners, tenants and occupiers of this building are not eligible to participate in any existing or proposed Council Resident Parking Schemes. All occupants and/or employees of this building will be ineligible to obtain Council Resident Parking Scheme parking permits. The owner of the dwelling must advise in writing all intending owners, tenants and occupiers of the dwelling, at the time of entering into a purchase / lease / occupancy agreement, of this prohibition.
73. Signs reading "all owners, tenants and occupiers of this building are advised that they are not eligible to obtain Resident Parking Scheme parking permits from Council", must be located in prominent places such as at display apartments and on directory boards or notice boards, where they can easily be

observed and read by people entering the building. The signs must be erected prior to the issue of an Occupation Certificate being issued and must be maintained in good order at all times.

74. All newly planted trees on site must be appropriately maintained on an on-going basis. Maintenance includes watering, weeding, removal of rubbish from tree bases, pruning, fertilizing, pest and disease control and any other operations required to maintain a healthy vigorous tree.
75. The Operation and Management Plan for the on-site detention and retention facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
76. The proposed studio is ancillary to the residential use of dwelling 1 and is to be used by the permanent residents of the dwelling only. No approval is given for the use of the studio as a self contained dwelling or as a home occupation.

## **PRESCRIBED CONDITIONS**

### **A. BASIX Commitments**

Under clause 97A(3) 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 the 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 80A (11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on

adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

(2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

## NOTES

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 82A of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development, integrated development or a complying development certificate. The request for review must be made within twelve (12) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. A decision on a review may not be further reviewed under Section 82A.
3. If you are unsatisfied with this determination, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within twelve (12) months of the determination date.
4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
5. Works or activities other than those approved by this Development Consent will require the submission of a new development application or an application to modify the consent under Section 96 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):
  - a) Application for any activity under that Act, including any erection of a hoarding.

- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
  - c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
  - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
  - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
  - f) Development Application for demolition if demolition is not approved by this consent.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.