

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2011SYE105
DA Number	D/2011/529
Local Government Area	Leichhardt Municipal Council
Proposed Development	Demolition of existing structures, construction of a mixed use development including 6 buildings with commercial / retail uses and gym, 108 residential units above, basement parking for 217 vehicles, and associated works, including landscaping and removal of trees, bulk earthworks and remediation.
Street Address	100-102 Elliott Street, BALMAIN NSW 2041
Applicant/Owner	Roche Group Pty Limited Wes van der Gardner Po Box 325 DOUBLE BAY NSW 1360
Number of Submissions	87 Submissions
Recommendation	Deferred Commencement Consent
Report by	Iain Betts & David Ruston

JOINT REGIONAL PLANNING PANEL REPORT



Development Application No.	Ø D/2011/529
Address	Ø 100-102 Elliott Street, BALMAIN NSW 2041
Description of Development	Ø Demolition of existing structures, construction of a mixed use development including 6 buildings with commercial / retail uses and gym, 112 residential units above, basement parking for 217 vehicles, and associated works, including landscaping and removal of trees, bulk earthworks and remediation.
Date of Receipt	Ø 4 October 2011
Value of Works	Ø \$66,662,610
Applicant's Details	Ø Roche Group Pty Limited Wes van der Gardner Po Box 325 DOUBLE BAY NSW 1360
Owner's Details	Ø Roche Group Pty Ltd PO BOX 325 DOUBLE BAY NSW 1360
Notification Dates	Ø <u>First Round</u> : 20/10/11 to 18/11/11 <u>Second Round</u> : 27/1/12 and 27/2/12
Number of Submissions	Ø 87 Submissions
Building Classification	Ø Class 2, 5, 6 , 7a and 9b
Integrated Development	Ø Yes

Main Issues	Ø Streetscape Ø Height, bulk and scale Ø Amenity – solar access, privacy and views Ø Traffic and parking Ø Open space dedication
Recommendation	Ø 'Deferred Commencement' Consent

1. PROPOSAL

Development consent is sought for the following works at Nos. 100-102 Elliott Street, Balmain:

1. Demolition of existing commercial and warehouse buildings and associated structures;
2. Bulk earthworks / excavation of up to 10 metres below ground level;
3. Remediation of the site;
4. Mixed use development generally within six (6) new buildings ranging between 3-5 storeys comprising the following Gross Floor Areas as per Council's Leichhardt Local Environmental Plan 2000:
 - 3732sqm of non-residential floor space comprising 3003sqm of commercial floor space and 320sqm of retail space (convenience store and café) and a 343sqm Gymnasium ancillary to the commercial and residential uses on the site at ground or street level; and
 - 14,740sqm of residential floor space comprising 112 Dwellings above the ground level.

The six buildings in question are identified on the plans as Buildings A-F, the following figure depicting the general layout and numbering of the buildings across the site.



Proposed site plan (as amended) detailing building locations and site context.

The nominated proposed uses of these buildings are as follows as per the submitted floor plans:

- Building A (4 storeys with part 5th storey at north-west of building) – commercial offices at the basement and lower ground floor and residential dwellings above, the residential being above existing ground or street level;
- Building B (part 2, 3 and 4 storey) – Gymnasium and associated lounge, spa and storage at lower ground floor and meeting room and residential dwellings above, the residential being above existing ground or street level;
- Building C (part 4 and 5 storey) – Commercial offices at the ground floor and residential dwellings above, the residential being above existing ground or street level;
- Building D (part 3 storey on Broderick Street and part 4 storey internally) – Commercial offices at the ground floor addressing the central courtyard precinct and residential dwellings above, the residential being above existing ground or street level;
- Building E (part 3 and 4 storey and Part 5 storey) – Commercial office, a convenience store and café at upper ground floor level, and residential at upper ground, ground, first, second and third floor levels with the residential being above existing ground or street level; and
- Building F (part 3 storey on Broderick Street and part 4 storey on Elliott Street) – Office suites at upper ground floor and first floor and residential dwellings above, the residential being above ground or street level.

The applicant has provided that the fitout and operation of the commercial / retail uses will be dealt with under a separate application.

5. Basement parking for 217 vehicles, accessed via two entries on Elliott Street, comprising:
 - Ground Floor Car Park: 56 commercial, retail and associated visitor spaces, a commercial bike area for 18 bikes, a commercial garbage room and a plant room;
 - Lower Ground Floor Car Park: 70 residential parking spaces for Buildings C-F, 12 residential visitor parking spaces, 2 car wash bays, 2 electric vehicle parking spaces, a loading bay, a residential bike area for 40 bikes, storage areas for dwellings, commercial and residential garbage rooms and two plant rooms; and
 - Basement Car Park: 75 residential parking spaces for Buildings A and B and three plant rooms.
6. On-site landscaping, open space and foreshore works, including:
 - Open Space Provision: Provision of 7284sqm of open space across the site in the form of private open space, public open space, semi-public open space and communal open space, the communal area, including a communal pool, recreation and barbeque area between Buildings A

and B and a recreational / children's play and barbeque area within the central courtyard precinct between Buildings C and E;

- Tree Removal: Removal approximately 70 trees;
- Tree Planting: Mass planting of shrubs, plants and trees across the site;
- Foreshore Works: Retain, expose and restore natural rock outcrop / shelves, remove existing masonry and timber log retaining walls and construct new sandstone retaining walls with associated levels changes along the waterfront;
- Provision of approximately 2680sqm of land along the foreshore and linking to Broderick Street adjacent to No. 2 Broderick Street as public open space, including a proposed boardwalk and stairs and viewing platform.

7. Provision of identification and directory signage across the site.

2. SITE AND LOCALITY DESCRIPTION



Aerial Photo of the Site

The site is located at 100-102 Elliott Street, Balmain within the Leichhardt local government area (LGA). The site comprises two lots, Lot 6 in DP 617944 and Lot 1 in DP 619996, and is essentially triangular in shape with frontages of 151 m to Iron Cove (west), 184m to Elliott Street (north) and 62m to Broderick Street (south), with an extension of this boundary along an adjoining property down to the foreshore of a further 84m. The site is 12,375m² in area and has a moderate slope from 17m AHD

in the eastern corner of the site to approximately 2m AHD at the sandstone retaining wall at the edge of the river. The waterfront location and topography means the site benefits from views across Iron Cove to the Iron Cove Bridge, Birkenhead Point and Drummoyne. The site is addressed from Elliott Street, a local two way street which runs between Darling Street to the east and Parramatta River to the west generally in a south east to north west orientation. Broderick Street intersects with Elliott Street and heads towards the river before turning at a right angle as it turns to the south as a dead end.

The site's current use is a mix of commercial, warehouse and convention centre uses by Nutrimetics, which is principally a cosmetics company. Built structures on the site include:

- § The main Nutrimetics office and warehouse building in the north western portion of the site, constructed over 2 levels and with a car park below, the building being setback between 1.1m and 2.8m from Elliott Street at maximum height of RL19.4AHD to this frontage, and is also erected in part up to the Foreshore Building Line (FBL) affecting the site; and
- § A two storey commercial building (corner of Elliott and Broderick Streets) and attached single storey, double height convention centre at the eastern end of the site, erected hard against Broderick Street at maximum heights varying between RL21.84AHD and RL22.56AHD to this frontage.

The main vehicular and pedestrian entry to the site is via a concrete driveway and gates from Elliott Street. The driveway leads to the commercial/warehouse building, the convention centre, and a bitumen and paved part single and part double storey car parking area towards the centre of the site, its ground level not exceeding RL11.74AHD. Two other vehicular crossovers are located at the eastern end of the site providing access to the two storey commercial building and rear access to the convention centre, and a further entry exists at the far western end of Elliott Street providing access to the car park below the main office and warehouse building noted above.

The site is currently secured with a combination of chain wire fencing and the high solid walls of the existing buildings which, as previously noted, are built on and / or close to the street boundaries. The site is bounded by an extensive sandstone seawall to the Parramatta River.

Landscaping across and adjacent to the site includes shrubs and trees along Elliott Street, hedges, garden beds and trees within and adjacent to the car parking area, and numerous large trees, including along the southern boundary of the site between the convention centre and the Parramatta River. The foreshore area is moderately vegetated with small and large trees, garden beds, hedges and grass providing a green space along the waterfront which is not currently publicly accessible. Amongst this vegetation is a paved outdoor area and stairs to the west of the commercial/warehouse building that extends below the FBL that is connected to a walkway leading to a timber jetty and floating pontoon accessed via the subject site. Timber log retaining walls and access stairs are located at the south western corner of the site with a natural sandstone retaining wall located further to the north. There are also several trees within the Broderick Street road reserve. In total, there are over 100 trees on / adjacent to the site.

2.2 Adjoining Sites

The only adjoining property that shares a boundary with the subject site is No. 2 Broderick Street to the immediate south. This adjoining site slopes down gently from Broderick Street before stepping down sharply to the waterfront. Located at No. 2 Broderick Street is a two storey freestanding contemporary style masonry, timber framed and metal clad dwelling that is setback substantially from the street and located on the steeply sloping portion of the site – this dwelling is listed in the Leichhardt Local Environmental Plan 2000 as a heritage item of local significance. The dwelling is sited behind a high fence / gate to Broderick Street providing access via to on-site car parking via a long driveway fronting the dwelling. There are large trees adjacent to the boundary shared between the subject site and No. 2 Broderick Street, including a tree within the front yard of No. 2 Broderick Street.

Located directly opposite the site on Broderick Street at Nos. 3 to 13 Broderick Street are residential dwellings varying in form, scale, style, age and siting. The dwellings vary from one to three storeys in form and scale, with heights varying between RL22.12AHD and RL27.57AHD and setbacks from Broderick Street varying between less than 1m and greater than 6m, and are all spaced less than 4m apart. Nos. 5, 7, 9, 11 and 13 all enjoy access to on-site parking via Broderick Street opposite the site.

Located opposite the site on the corner of Elliott and Broderick Street is a large two storey residence known as Braeside at No. 96 Elliott Street, a heritage item of local significance pursuant to the Leichhardt Local Environmental Plan 2000. The residence is an intact Victorian Filigree building c.1887 of rendered masonry construction with a slate roof, iron bullnose verandah and iron fence. The building is setback from the Elliott and Broderick Street boundaries and located within a landscape setting.

Located directly opposite the site on Elliott Street is a Housing NSW residential flat development rising between 3-5 storeys in height and scale, the buildings having setbacks from Elliott Street of 2m or greater and are generally spaced around (closest to Elliott Street) 10m or greater apart.

2.3 Locality Description

The site is located in the Birchgrove / Elkington Park Distinctive Neighbourhood as prescribed in the Leichhardt Development Control Plan 2000.

The local area is characterised by its proximity to the Parramatta River, the topography of the land which falls from the Balmain and Rozelle town centres towards the water, leafy green local streets, and a mix of 1, 2 and 3 storey residential dwellings, and residential flat buildings up to five storeys in height. Buildings are mixed in terms of their materials and style / appearance, but generally comprise masonry, timber, aluminium and metal finishes, with hipped, pitched, gable and parapet / flat and skillion roof forms and openings that are rectangular in shape and vertical and horizontal in proportion. Fencing varying between low, open styles to high walls / gates are characteristic of the immediate vicinity. Where building setbacks permit, landscaping is generally characteristic of front setbacks. On-site parking is also characteristic of some front setbacks.

The Elliott Street Ferry wharf and a restaurant are located at the western end of Elliott Street, adjoining the site.

The site is located in a heritage conservation area.

The site is not a heritage item, however, is located in the vicinity of various heritage items listed in the Leichhardt Local Environmental Plan 2000, including:

- Braeside at No. 96 Elliott Street (see above);
- The dwelling at No. 2 Broderick Street (see above);
- No. 4 Broderick Street: Nos. 2 and 4 Broderick Street were formerly one lot before the site was subdivided around 10 years ago, and hence, No. 4 Broderick Street is identified in orange on Council's heritage maps as being a heritage item. The dwelling on the site is a modified three level freestanding Victorian Gothic style dwelling with steeply pitched gabled roofs constructed on the upper portion of the site with its front orientated to the west facing the Parramatta River. An on-site car parking space under a skillion roofed carport is located in the north-eastern corner of the site, and is accessed via Broderick Street;
- Nos. 6 and 8 Broderick Street: a freestanding three (3) storey concrete frame and timber and glass infill residential building designed by modernist architect Roy Grounds – the dwelling is listed as a heritage item of local significance;
- A Ficus macrophylla and two Moreton Fig (near Glassop Street) street trees on Elliott Street – these trees are listed as heritage items of local significance.

The site is identified as a Foreshore Flood Control Lot.

3. SITE & IMMEDIATE ADJOINING PROPERTY HISTORY

Nos. 100-102 Elliott Street, Balmain

The following is a full history of the applications lodged with respect to the subject allotments:

Application No:	Proposal	Decision
DA 393/54	Manufacture of blinds	Refused
DA 678/56	Commence boilermaker	Refused
DA 746/56	Specialised marine boiler making and plumbing	Refused
DA1569/60	Erect building for offices, showroom and warehouse facilities for distribution of woollen goods	Approved
DA759/63	Subdivision	Refused
DA 843/65	Subdivision	Approved
DA 810/1967	Storage of cosmetics	Approved
DA 1454/69	Distribution and permanent use for bottle plant, winery administration office	Approved
DA 835/69	Use of premises for bottle plant, winery and administration office	Approved
DA 1033/79	Use property for manufacturing, assembly and warehousing of kitchen and bathroom cabinets and	Withdrawn

	fittings and offices	
DA 1116/79	Marine engineer repair and servicing of launches and boats	Approved
DA 3705/80	Demolish building and erect 5 townhouses	Refused
DA 463/82	Change of use from warehouse to export orientated warehouse for Con-Stam Pacific	Approved
DA 147/85	alteration and additions to existing warehouse buildings	Approved
DA 50/1987	Erected illuminated advertising sign	Approved
DA 560/1987	Alterations and additions	Approved
DA567/89	Alterations and additions, enclose existing balcony for use as a additional office space	Approved
DA 409/90	Alterations to convert warehouse to staff training facilities and additional parking	Approved
BA 1991/171		
DA 361/93	Extend first floor	Approved
D/2044/292	Enclosure of existing elevated ground verandah to form new office space	Approved
T/200/429	Removal of 3 x Gum trees at the main entrance to the left of the site.	Refused
T/2008/197	Removal of 2 x Eucalyptus spp from front entrance	Withdrawn

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The application was lodged 4 October 2011 following preliminary meetings with the applicant in August and September 2011, mainly for the applicant to outline the proposal and discuss information requirements. No formal Pre-DA Meeting was undertaken prior to lodgement.

Council forwarded various correspondence to the applicant during the assessment of the application, including letters dated 31 October 2011 and 9 December 2011. The primary matters raised in these letters included:

- Adequacy of information;
- Compliance with the Employment Objectives of Clause 20 of the Leichhardt Local Environmental Plan 2000;
- Streetscape and excessive bulk and scale to Elliott Street;
- Impacts on No. 2 Broderick Street in terms of overshadowing and privacy;
- Parking and traffic related matters;
- On-site drainage and stormwater related matters;
- Waste management;
- Unnecessary removal of trees;
- Various non-compliances or failure to demonstrate compliance with the controls of State Environmental Planning Policy No. 65; and
- Proposed land dedication.

The applicant responded by lodging amended plans and further information since 21 January 2012, these plans and information forming the basis of this assessment. The plans and information are of a detail that has allowed assessment to proceed. Numerous amendments have been carried out to the proposal since lodgement, including:

General

- Reduction in FSR from 1.5:1 to 1.49:1;
- Reduction in the number of dwellings from 118 to 112;
- Delineation of retail components (i.e. convenience store and café) on the eastern edge of 'Building E', and increase the size of the retail component from 198m² to 320m²;
- Provision of additional office space (fronting foreshore) on basement level of 'Building A';
- Extension of western basement level footprint within the site;
- General reconfiguration of basement levels, including reconfiguration of the loading bay movements within car parking area associated with the lower ground floor parking area;
- Separation of residential and commercial entries to all buildings;
- Addition of mail rooms within the development;
- Addition of an elevated residents area within the site between 'Buildings C' and 'E';
- Replacement of glass balustrade with wire and timber balustrade for balconies on all elevations except for those fronting Iron Cove; and
- Inclusion of a "Signage Strategy" for commercial/retail signage, building identification and directional signage.

Broderick Street / Foreshore Link

- Deletion of the pedestrian thru-site link between 'Buildings D' and 'E' connecting Broderick Street and Elliott Street through the middle of the site;
- Deletion of the accessible ramp and entry from Broderick Street fronting 'Building E';
- Increase the minimum building setback between Building B and the boundary shared with No.2 Broderick Street from 3m to 6m;
- Increase the minimum building setback from Broderick Street of Building D from 3.5m to 6m;
- Provide a pedestrian link from Broderick Street to the foreshore with a width of 6m, and provision of a timber and steel stair boardwalk structure along this link (extending down to a viewing platform on the foreshore and located in the south-western corner of the site – see below), this link being dedicated to Council;
- Addition of an approximately 500mm footpath along the Broderick Street edge;
- Addition of a new hammerhead turning configuration at the end of Broderick Street within the site;
- Increase floor to ceiling clearances to meet SEPP No.65, with subsequent increase in the wall and main roof ridge lines to 'Building D' of approximately 400mm, 'Building E' of approximately 600mm and 'Building F' of approximately 400mm; and
- Retention of Tree 66 (Euc. Saligna)

Elliott Street

- Provision of a general 3m landscaped setback to 'Buildings A', 'C' and 'E' to this frontage;
- Increase floor to ceiling clearances to meet SEPP No.65, with subsequent increase in the main ridge lines to Building C of approximately 550mm and Building E of approximately 500mm;
- Increase the Elliott Street building wall setback to the top-most level of Building C from 3m to 9m;
- Increase the Elliott Street building wall setbacks to the top-most level of Building E from between 3.05m to 6m to between 4.2m and 10m;
- Increase the separation distance between Buildings C and E from 7.47m to 9m;
- Provision of an increased clearance height of 4.5m to the entry ramp and loading bay; and
- Retention of Trees: Tree 86 (Jacaranda – in commercial plaza); Tree 95 (Populus nigra); and Tree 99 (Populus nigra)

Foreshore

- Dedication of foreshore land to Council (extending through to Broderick Street);
- Viewing platform in south-western corner of the site (as above);
- Narrow the width of 'Building B' (as a result of increased width of foreshore link dedication between 'Building B' and No. 2 Broderick Street);
- Retention of additional trees: Tree 17 (Alexander Palm on foreshore), Tree 20 (Alexander Palm on foreshore); and
- Trees 3 and 4 originally noted as being removed are now to be replaced by Casuarina glauca plantings.

The amended proposal has been advertised and notified, and a detailed assessment of the amended scheme follows from Section 4 of this report.

Nos. 2 & 4 Broderick Street, Balmain – post 1998

Application No	Proposal	Decision
D/1998/200	New subdivision at No. 2 Broderick Street, new residence at No. 2 Broderick and proposed refurbishment and new upper level addition with deck to the existing cottage at No. 4 Broderick Street	Approved
M/1999/112	Add deck, amend boatshed and pool	Part Approved / Part Refused
CC/1999/201	Erect new dwelling	Issued
CC/1999/202	New residence on 1 lot plus additions to existing cottage	Issued
S/2000/1	Proposed new subdivision	Approved
D/2000/337 & CC/2001/95	To relocate the boundary between the existing dwelling and the dwelling under construction, for an addition to the dwelling under construction, and for a 6 by 4 metre swimming pool	Approved & Issued

S/2001/13 D/2002/836 & PCA/2003/423 D/2006/546 & PCA/2007/145 BC/125/2006	Boundary adjustment Construction of a single carport to the side of the existing dwelling with access via Broderick Street at No. 4 Broderick Street Alterations and additions to existing elevated deck at No. 4 Broderick Street Unauthorised works that have been carried out without the proper consent of Council for the construction of a covered verandah and deck at No. 4 Broderick Street	Approved Approved & Accepted Approved & Accepted Approved
M/2007/84	Section 96 (1a) Modification of Development Consent D/2006/546 which approved alterations and additions to existing elevated deck at No. 4 Broderick Street. Modification seeks to remove stairs from application.	Approved
BC27/2008	Construction of a landing area mid way up an existing staircase measuring approximately 6.7 metres squared in association with rectification works of an existing external staircase	Approved
D/2009/294 BC/3/2010	Alterations and additions to an existing dwelling Unauthorised/illegal works comprising new basement area and associated stairs and new side pergola	Withdrawn Approved
M/2010/2	Section 96 application to modify D/1998/200 involving internal and external alterations and additions to the existing dwelling at No. 4 Broderick Street.	Approved

No. 5 Broderick Street, Balmain – post 1998

Application No:	Proposal	Decision
D/2003/551 & CC/2005/131	Ground and first floor alterations and additions to the rear of an existing dwelling including rear first floor deck.	Approved

No. 96 Elliott Street, Balmain – post 1998

Application No:	Proposal	Decision
D/2006/291	New garage to Elliott Street to replace previous.	Approved

No. 101-105 Elliott Street, Balmain – post 1998

Application No:	Proposal	Decision
D/2004/337	Addition of a gate house and garbage enclosures to existing residential flat buildings.	Approved
M/2005/233	Section 96 Modification of Development Consent D/2004/377 to correct an error in condition 1.	Approved

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.

4.1 Environmental Planning Instruments

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

- § Leichhardt Local Environmental Plan 2000;
- § State Environmental Planning Policy No. 55 – Remediation of Land;
- § State Environmental Planning Policy No. 64 – Advertising and Signage;
- § State Environmental Planning Policy No. 65 – Design Quality Residential Flat Building Development;
- § State Environmental Planning Policy BASIX 2004;
- § Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- § State Environmental Planning Policy Infrastructure 2007; and
- § Section 94 Plans.

The assessment of the proposal against the above Environmental Planning Instruments is as follows.

State Environmental Planning Policy No. 55 - Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 reads as follows:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The applicant has submitted a Phase 2 Contamination Assessment, prepared by Douglas Partners and dated October 2011. The report concludes that part of the site requires remediation, however, contaminated concentrations in the soil within the foreshore area showed that they were within adopted criteria for a recreational open space land use.

A Remediation Action Plan prepared by Douglas Partners and dated October 2011 concludes that full implementation of the Remediation Action Plan will result in the site being suitable for the proposed use / development. The applicant has also submitted a letter from Douglas Partners and dated 17 January 2012 that concludes that the amended plans that form the basis of this assessment will not alter the findings of the original Phase 2 Contamination Report and Remediation Action Plan.

Council's Environmental Health Section raises no objections, subject to the preparation of a validation report and the right to request a Site Audit Statement. The requirements of Council's Environmental Health Section and compliance with State Environmental Planning Policy No. 55 can be addressed via conditions of consent.

State Environmental Planning Policy No. 64 – Advertising and Signage

Pursuant to Clause 3(1)(a) of State Environmental Planning Policy No. 64:

(1) This Policy aims:

- (a) to ensure that signage (including advertising):*
 - (i) is compatible with the desired amenity and visual character of an area, and*
 - (ii) provides effective communication in suitable locations, and*
 - (iii) is of high quality design and finish, and*
- (b) to regulate signage (but not content) under Part 4 of [the Act](#), and*
- (c) to provide time-limited consents for the display of certain advertisements, and*
- (d) to regulate the display of advertisements in transport corridors, and*
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The applicant has submitted a signage plan detailing proposed identification, directional and information signs to be erected at the site. The location, size and type of signage will provide effective communication in appropriate areas at ground floor level and / or above entrances to tenancies and appropriately incorporated into the design of the buildings while not being excessive in extent, and will be externally illuminated via a lighting plan required to be provided as a 'Deferred Commencement' Consent condition and standard conditions to ensure that lighting does not cause undue adverse noise spill or amenity impacts for adjoining residents (while also promoting safety and security). The proposed signage as recommended is therefore considered to meet the objectives of State Environment Planning Policy No. 64 (as well as Council's signage controls prescribed in Part A9.0 of the Leichhardt Development Control Plan 2000).

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.

The development is more than three (3) storeys and contains more than four (4) dwellings, and therefore, the provisions of the SEPP apply.

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.

Principle	Assessment	Comment
Principle 1: Context	<p>The proposal seeks to interpret the Balmain terrace in a modern form, appropriate for the low domestic scale of Broderick Street, before achieving a larger form as the development turns the corner into and down Elliott Street where large built scales dominate. Subject to recommended conditions which seek to reduce the height, bulk and massing of Building E on Broderick Street to better reflect the existing built forms on this street, the development will be appropriate and responsive to the context of each street that it addresses.</p> <p>Landscaped front setbacks, adequate building separations and a stepped form responding to the fall of the land of acceptable height will be achieved to both street frontages.</p> <p>Natural and remnant landscape features of the site are retained such as large fig trees and natural sandstone outcrops to</p>	Satisfactory, subject to conditions

	<p>provide reference to past use and a focal point to both the public and private domain.</p> <p>See assessment later in this report and Appendix 1 for further details.</p>	
Principle 2: Scale	<p>See assessment under Principle 1 above and the detailed assessments later in this report regarding design changes that are recommended to address this issue.</p> <p>The larger forms are broken into components and are articulated to reduce their scale and visual impact. A small plaza has been formed on the Elliott Street corner around a large fig tree which provides a transition from the domestic scale of Broderick Street to larger Elliott Street forms.</p> <p>The buildings addressing Iron Cove fan around Sommerville Point and are greatly articulated to present as individual building forms. The fanned arrangement emphasises the turning of the point. They have a consistent floating balcony form to emphasise the raised embankment.</p>	Satisfactory, subject to conditions
Principle 3: Built form	<p>The proposed buildings interpret the typical Balmain terrace as a modern form. It includes a sandstone base, rendered masonry middle & seamed light-weight roof.</p> <p>The Broderick Street buildings are generally broken into a terrace bay width and setback from the street to create a footpath on the northern side of Broderick Street and allow the provision of appropriate scale street trees. These buildings are designed, and will be conditioned, to have forms that will provide a strong and appropriate contextual relationship to the existing street forms.</p> <p>As the development turns the corner into Elliott Street, the ground drops by a level and increases the scale and proportions appropriate to the Elliott Street context. The proposed buildings provide an active commercial frontage, and again, provide</p>	Satisfactory subject to condition

	a landscaped setback from the street.	
Principle 4: Density	<p>The development complies with the FSR controls within the LEP, however compatibility of the built form to its context is an important consideration which has been carefully considered. The relationship of the proposed buildings will sit acceptably with their immediate neighbours, subject to a reduction in the height, bulk and massing to Building E on Broderick Street to better reflect the forms and scales of existing development on this street.</p> <p>The commercial component of the development has also been carefully considered to provide a wide variety of mix for potential tenants, including a central commercial area, commercial and retail plaza spaces with active frontages and waterfront tenancies. These are designed to complement and not compete with the main Darling Street strip as they will be destination tenancies, not relying on passing trade.</p>	Satisfactory, subject to conditions
Principle 5: Resource, energy & water efficiency	<p>The proposal meets ESD principles as follows:</p> <ul style="list-style-type: none"> • Building designs are proposed that provide solar access to the living areas of as many dwellings as possible given the complexity of slope, shape and orientation of the site; • The majority of dwellings (79%) will be dual aspect providing for through ventilation; • The dwellings include features such as sunscreens, overhangs and external venetians and extensive glazing for natural daylight; • Proposed materials to be used provide appropriate thermal mass and insulation; • Energy and water saving commitments are proposed, such as energy efficient appliances, rainwater re-use and water efficient fixtures; • Energy efficient hot water systems will be in use; 	Satisfactory

	<ul style="list-style-type: none"> • Rainwater from roofs will be collected for reuse on the site; and • Retention of extensive deep soil zones across the site. <p>BASIX certificates for the proposal which outlines all energy and water saving commitments, such as energy efficient appliances and water efficient fixtures are also provided.</p>	
Principle 6: Landscape	<p>Detailed and significant landscape plans have been provided which include the creation of a landscaped edge around the site and a large foreshore landscaped space.</p> <p>The proposal has been designed as landscape 'precincts' which address each context within the proposed development, and includes retention of a large number of existing significant trees, including large figs and eucalypts & includes a significant portion of deep soil zones.</p> <p>These precincts include;</p> <ul style="list-style-type: none"> • Foreshore Open Space Precinct: This Precinct will be accessible to the public from both Elliott and Broderick Streets. Retention of existing features such as natural rock formations, seawalls and high value trees will occur in this Precinct. New indigenous plantings will be introduced in this Precinct association with the proposed commercial and residential buildings. • Lower Commercial Courtyard Precinct: This Precinct will be accessible directly from Elliott Street as well as internally within the proposed development. This large courtyard space is based on a deep soil profile and will be predominantly planted with indigenous trees, shrubs and groundcovers with hard paving limited to the commercial suite entry and access. The retention of the existing fig and sandstone cutting will provide a 	Satisfactory, subject to conditions

	<p>focal point for the sites common outdoor recreation space and will be retained.</p> <ul style="list-style-type: none"> • Central Commercial Courtyard Precincts: These Precincts will be accessible from Elliott Street. These two courtyard spaces are based on building structure and will feature large elevated planter boxes that will support medium sized indigenous trees, accent plants and an extensive garden area plus direct paved access to commercial suites. • The Commercial Plaza Precinct at the top of the site provides access to the upper ground floor level commercial suites, features the large existing Hills Fig tree and addresses the corner intersection of Elliott Street and Broderick Street with indigenous tree and shrub plantings. • Landscape setbacks are proposed to both Elliott and Broderick Streets, and again, indigenous tree and shrub plantings are proposed. <p>The proposal will be conditioned to ensure that adequate soil depths are proposed across the site, and to retain trees where appropriate as required by Council's Landscape Assessment Officer.</p> <p>By recognising and addressing each of these particular contexts, the landscaping provides a varied and appropriate experience for residents and the wider community which interplays with the architectural response.</p>	
Principle 7: Amenity	<p>Internal amenity for most occupants is of a high standard. The scheme has been generally well designed with regard to room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility. Where there are amenity concerns, the proposal will be conditioned</p>	Satisfactory, subject to conditions

	<p>to ensure acceptability.</p> <p>A common pool, spa and gym with views to Iron Cove have been incorporated for the buildings occupants.</p> <p>The provisions within the development are generally in excess of standard minimum requirements.</p>	
Principle 8: Safety & Security	<p>The buildings have been designed to address the respective streets to ensure overlooking of public and communal spaces: Balconies and living areas are oriented to look towards the street where practical. Entrance-ways and ground areas will be well lit in accordance with a lighting plan to be recommended via condition, and security systems can be provided to all vehicle and pedestrian entrances. Care has generally been taken to avoid secluded areas. All parking has been provided in secure basement areas.</p>	Satisfactory, subject to conditions
Principle 9: Social dimensions & housing affordability	<p>The proposed development will provide quality commercial spaces, through site links & private and public outdoor spaces, all combining to achieve a positive contribution to the social dimension of the Balmain peninsula. Through-site links provide easy foreshore access to the wider community. The residential mix was the product of a considered social analysis to arrive at the appropriate variety of dwelling sizes and meets the DCP provisions for the minimum and maximum percentage of 1, 3 and adaptable units respectively, although Council's Community Development Section has requested that a 3 bedroom adaptable unit be provided, which will be recommended via condition – see later discussions in this regard. The units are all single level to provide housing choice for the wider community. This product mix provides a range of "affordability" beneficial to a good social mix in this area.</p>	Satisfactory, subject to conditions
Principle 10: Aesthetics	<p>The composition of building elements such as facades, balconies, walls, columns, windows, roofs, sunshades and privacy screens, materials such as masonry glazing and metalwork, textures</p>	Satisfactory

	<p>such as render, paint, cladding, stone & colours, and the use of these modern materials and finishes, will result in a high quality external appearance of a modulated mixed-use development that will provide a strong contextual relationship to its surroundings and will make a generally positive aesthetic contribution to Balmain.</p> <p>The proposed buildings will provide a positive contribution to the desired future character of the area.</p>	
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The proposal has been considered against the Residential Flat Design Code, and subject to conditions, is deemed to be satisfactory with respect to the intent and provisions of the code. See Appendix 1 of this report for further details.

State Environmental Planning Policy BASIX 2004

The amended proposal meets BASIX requirements, and a copy of the BASIX Certificates and BASIX Assessment report is accompanied by the required ABSA documentation prepared by Vipac and dated 19 January 2012. The proposal meets the requirements of SEPP BASIX 2004.

State Environmental Planning Policy Infrastructure 2007

In accordance with SEPP Infrastructure 2007, the development is classified as a Traffic Generating Development, and in accordance with Schedule 3 of the SEPP, was referred to Roads and Maritime Services (RMS).

Council received a response to this referral on 24 November 2011, following consideration at the Sydney Regional Development Advisory Committee (SRDAC) meeting on 16 November 2011. The SRDAC raised no objection, as it was considered that the development was unlikely to have significant traffic impact on the classified state road network, however, provided the following advisory comments to Council for its consideration in the determination of the development application.

- The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2 - 2002 for heavy vehicle usage. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

Comment: Council's Engineers have recommended conditions to ensure compliance with AS 2890.1- 2004 and AS 2890.2 - 2002 will be achieved – see assessment later in this report for further details.

- The RMS would prefer that the service bays are located completely separate from the vehicle entry, however if the loading bays can not be separate, then warning signs accompanied by flashing lights should be installed to warn vehicles that service and delivery vehicles could be reversing into the loading docks.

Comment: Council's Engineers have recommended design changes to the on-site car parking provision in the aim of minimising conflicts arising from the proposed location of the loading / service bays and to separate the vehicle access and loading area via a 'Deferred Commencement' Consent – see assessment later in this report for further details.

- A Loading Dock Management Plan shall be prepared for the management of all deliveries to the proposed loading dock and shall implement appropriate measures to prevent more than two delivery vehicles accessing the site at anyone time.

Comment: The proposal is to be conditioned to facilitate loading and unloading for a minimum of two service vehicles at any one time. The control of deliveries can be addressed as part of future applications for the non-residential uses.

- The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

Comment: The car park has been amended to accommodate access for a medium rigid vehicle, however, amendments to the design of the car park as required by Council's Engineers mean that this requirement will have to be reinforced via appropriate conditions – see assessment later in this report for further details.

- The required sight lines to pedestrians or other vehicles in or around the carpark or entrances are not to be compromised by landscaping, signage, fencing or display materials.

Comment: The proposal is generally satisfactory in this regard, however, will be conditioned to ensure sight line requirements are met.

- Consideration should also be given to providing bicycle parking facilities either within the development or close to it, as well as end trip facilities such as showers, changing rooms, etc. to encourage bicycle use for travelling to and from the development.

Comment: Shower and change rooms have been recommended via condition.

- The proposed development will generate additional pedestrian movements in the area. Consideration should be given to ensuring pedestrian safety.

Comment: The proposal has been conditioned to ensure compliance with AS2890 and the requirements of Council's Engineers. This will ensure pedestrian safety in accordance with the above requirement.

- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

Comment: The proposal will be conditioned in accordance with the above.

- The proposed turning areas are to be kept clear of any obstacles, including parked cars, at all times.

Comment: The proposal will be conditioned in accordance with the above.

- All vehicles shall enter and leave the site in a forward direction.

Comment: The proposal will be conditioned in accordance with the above.

- All works / regulatory signage associated with the proposed development are to be at no cost to the RMS.

Comment: The proposal will be conditioned in accordance with the above.

- No changes to the existing pontoon, jetty structures and seawall. Any work below the Main High Water Mark or on Maritime wet or dry land will require land owners consent by RMS.

Comment: The proposal will be conditioned to ensure that any works associated with the above structures be with the consent of RMS .

- Council to ensure the proposed development shall be consistent with the requirements of clause 5.4 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005.

Comment: See assessment later in this report under Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. The proposal as recommended is satisfactory in this regard.

Sydney Regional Environmental Plan (Sydney Harbour) 2005 and Section 94 Plans

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 contains visual, environmental, and heritage provisions which are required to be addressed and satisfied.

The subject site is located within the Sydney Harbour Catchment, and is located within a Foreshores and Waterways Area, however, is not within a Wetlands Protection Area or identified as a Strategic Foreshore Site.

Given the subject property's waterfront location and substantial size, the site is has high visibility from the foreshores and waterways of the Parramatta River. The

application was referred and considered by the Roads and Maritime Foreshores and Waterways Planning and Development Advisory Committee on Friday 25 November 2011, where the Committee noted that:

- The proposal will provide the benefit of improved public access to the foreshore of Iron Cove;
- The site currently provides a pleasant landscape setting consisting of garden beds, lawn and large mature trees. While it is proposed to retain many of the trees, including large figs and eucalypts it is still proposed to remove a number of trees along the shore of Iron Cove;
- The proposed buildings will be up to five storeys high with four buildings of four storeys which will have significant bulk when viewed from Iron Cove, in particular 'Building A'.

The Committee recommended that the consent authority take into consideration the relevant matters as prescribed in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. In particular:

- Consider options for the reduction in the bulk and massing of 'Building A';
- Consider maximising the provision of mature replacement trees to the landscape area along the foreshore of Iron Cove;
- Ensure that retaining walls and other structures associated with landscaping works will be low enough to retain the natural land form to the maximum extent possible.

The amended proposal increases the proposal's compliance with the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP) and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (Harbour DCP) by maximising accessibility around the foreshore and increasing view opportunities to Iron Cove from the public domain.

The amended proposal includes an accessible path along the foreshore from Elliott Street. The amended proposal also includes the retention of additional trees on the foreshore which will provide a green buffer along the foreshore and minimise the bulk and scale of the development when viewed from Iron Cove and surrounding areas to the west.

In accordance with Council's request a 6m wide view corridor (public foreshore link) to Iron Cove from Broderick Street is provided between 'Buildings B' and 'D' and No.2 Broderick Street. There are currently no views of Iron Cove from the public domain in Broderick Street. Any views that are obtained as a result of this corridor, in addition the introduction of public access to the foreshore would provide significant public benefit.

The buildings addressing Iron Cove fan around Sommerville Point and are greatly articulated to present as individual building forms. The fanned arrangement emphasises the turning of the point. They have a consistent floating balcony form to emphasise the raised embankment.

The development as proposed and as recommended remains consistent with all other provisions and matters for consideration within the SREP. A further assessment has been undertaken against the *Sydney Harbour Foreshores and Waterways Development Control Plan*, which is detailed later within this report.

Leichhardt Local Environmental Plan 2000

Development Standards

Development Standard	LEP 2000 Requirement	Proposed	% / Ratio	Compliance
Diverse Housing Cl. 19(6)	Min 25% 1-bed (28 dwellings)	28 dwellings	25%	Yes
	Max 30% 3-bed or more (Max. 33.6 dwellings)	28 dwellings	25%	Yes
Adaptable Housing Cl. 19(7)	10% of total number of dwellings (Min. 11.2 dwellings)	12 dwellings	10.7%	Yes
Floor Space Ratio Cl. 23(1)	1.5:1 * (18562.5m ²)	18,482m ²	1.48:1	Yes
Foreshore Building Line Cl. 33	Erection of baths, swimming pools and enclosures, boatsheds, changing rooms, jetties and seawalls are permitted between the foreshore building line and mean high water mark only if the consent authority is satisfied that the building or work will not detract from the scenic qualities of the locality when viewed from the water	Boardwalk, viewing platform (including retaining walls) & park furniture	N/A	No

* Pursuant to clause 23(1)(b) of the Local Environmental Plan 2000, consent may be granted to the carrying out of mixed residential and other development on land within the Business Zone which results in a floor space ratio of a building on the land up to 1.5:1, but only if all floor space at the ground floor or street level is used for non-residential purposes (except for any floor space used for service and access purposes required for the residential component of the building in the floors above). Plans have been provided demonstrating compliance with the above, all residential uses being above ground or street level.

Note: For the reasons detailed later in this report, the total number of dwellings has been reduced to 108 units (recommended deletion of four two-bedroom dwelling). This does not result in any development standard non-compliances.

SEPP 1 Objection to Clause 33 - Foreshore Building Line

Pursuant to clause 33 of the Local Environmental Plan 2000:

- (1) *The foreshore building line is shown on the Foreshore Building Line Map as an unbroken red line.*
- (2) *Except as provided by subclause (3), a building must not be erected and a work must not be carried out on land between the foreshore building line and the mean high water mark.*
- (3) *Consent may be granted for the erection of baths, swimming pools and enclosures, boatsheds, changing rooms, jetties and sea walls on land between the foreshore building line and the mean high water mark, but only if the consent authority is satisfied that the building or work will not detract from the scenic qualities of the locality when viewed from the water.*

The major built forms and works associated with the proposed development are located behind the Foreshore Building Line (FBL). New landscaping works in the form of a boardwalk, viewing platform and retaining walls associated with the modified access to the foreshore off Broderick Street and dedication of land are below the FBL and are not accounted for within cl.33(3). The non-compliance varies across the foreshore given the varied placement of paths and retaining walls. The applicant has submitted a *State Environmental Planning Policy No.1 Objection* to the FBL encroachment, and an assessment of this Objection is detailed in the following.

SEPP No.1 – Foreshore Building Line

State Environmental Planning Policy No. 1 – Development Standards makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. The proposal has been considered against the following assessment criteria:

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

Clause 33(3) identifies the location of the Foreshore Building Line and development permitted within this area. This control is a numerical development standard (a defined measurement from the 'mean high watermark') and therefore is 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 development standard is to minimise development within the area between the foreshore building line and the mean high water mark as well as to ensure that any development within this area does not detract from the visual amenity of the development of the foreshore as viewed from the water.

The proposed works within this foreshore area satisfy the purpose of the development standard as follows:

- The proposed works employ high quality design to integrate with the existing environment;
- The elevation of the structures above ground, and the extent of the works within the foreshore area, especially those visible from the water at the southern end of the site, have been minimised;
- Part of the retaining elements are set behind vegetation and screened from view from the south west;
- The proposed works are setback from the boundary shared with the heritage listed adjoining site known as No. 2 Broderick Street; and
- Although these works are minor they will provide significant public benefit by introducing public access to the foreshore and through Broderick Street.

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 SEPP 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 following justification for the variation of the Foreshore Building Line standard was submitted by the applicant:

“In this instance, requiring compliance with the foreshore building line control would hinder the ability of the proposed development to meet the aims of the EP&A Act as:

- The proposed works within the foreshore area will not result in any detrimental impacts in terms of views from the water or biodiversity;
- It will provide significant public benefit by introducing public access to the foreshore and through to Broderick Street; and
- It promotes the orderly development of the highly valuable foreshore land for the benefit of the community.

In this instance compliance with the development standard is unreasonable and unnecessary because the proposed non-compliance is purely technical in nature. The types of development which the LEP lists as development that the consent authority can consent to within the foreshore area is limited and does not include those types of development which are typically found within publicly accessible foreshore areas i.e. pathways, park benches, viewing areas. Additionally, the intent of the development standard is achieved through a development which is consistent with all relevant provisions of the LEP, as demonstrated above.”

Council also notes that under the provisions of *Sydney Regional Environmental Plan (Sydney Harbour Catchments) 2005* and *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005*, the provision of foreshore access is encouraged on waterfront re-development sites. In order to achieve this access and provide infrastructure suited to public needs, the proposed landscaping works including paths, retaining walls, viewing areas and park benches are critical to the successful functionality of the space.

5. *Is the objection well founded?*

For the reasons outlined above, it is considered that the proposed variation to clause 33(3) is well founded and warrants support.

6. *The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*

- (a) *whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning:*
- (b) *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The proposed non-compliance with the development does not contravene any matters of state or regional significance, nor will it impact on the public benefit associated with maintaining compliance with the development standard set by the Leichhardt LEP 2000.

Clauses

Apart from the development standards prescribed above, the proposal has been considered against the following relevant clauses listed below:

- § Clause 7 – General Provisions in Relation to the Development of Land;
- § Clause 12 – Vision of Plan;
- § Clause 13 – General Objectives;
- § Clause 15 – Heritage Conservation;
- § Clause 16(7) – Development in the Vicinity of a Heritage Item;
- § Clause 16(8) – Conservation Areas;
- § Clause 17 – Housing Objectives; and
- § Clause 20 – Employment Objectives;
- § Clause 33 – Foreshore Building Line
- § Clause 34 – Foreshore Access.

The application as recommended is considered to meet the objectives of the above clauses, as clarified in the following assessment.

Clause 7 – General Provisions in Relation to the Development of Land

The requirements of Clause 7(3) read as follows:

(3) Land use objectives

Consent must not be granted for development proposed within a zone unless the consent authority has taken into consideration such of the objectives of the Plan as are relevant to the proposal and is satisfied that the development is consistent with those objectives.

For the purposes of this subclause, in the event of an inconsistency between the general objectives of the Plan and a specific objective applicable to the proposed use, the specific objective applicable to the proposed use prevails.

As detailed further within this report, the proposed development has been assessed against the cl.13 General Objectives, cl.15 Heritage Objectives, cl.17 Housing Objectives and cl.20 Employment Objectives. Equal consideration has been given to all objectives, and it is the view of Council that the proposed development, subject to recommended conditions, will be in accordance with the objectives as they apply to the subject site and development proposal.

Clause 12 - Vision of the Plan

The vision of the Plan is to conserve and enhance the quality and diversity (social and physical) of the natural, living, working and leisure environments of the local

government area of Leichhardt. The protection of the amenity of residents should be pre-eminent.

Various conditions are recommended to be imposed to ensure that the amenity of adjoining residents will not be unduly impacted upon, as well as ensuring amenity to proposed dwellings will be satisfactory - see assessment later in this report for further details.

Clause 13 - General Objectives

The general objectives of Clause 13 read as follows:

- (1) The general objective for ecologically sustainable development is to encourage the incorporation of the principles of ecologically sustainable development in the design and management of the built and natural environment to:*
 - (a) provide for the preservation of natural resources to ensure their availability for the benefit of future generations, and*
 - (b) minimise negative impacts of urban development on the natural, social, physical and historical environment, and*
 - (c) maintain and enhance the quality of life, both now and for the future.*
 - (2) The general objective for the built and natural environment and amenity is to encourage the design of buildings, structures and spaces which are compatible with the character, form and scale of the area to:*
 - (a) protect and enhance the area's natural features, character and appearance, and*
 - (b) protect, conserve and enhance the area's heritage, and*
 - (c) provide an environment meeting the principles of good urban design, and*
 - (d) maintain amenity and contribute to a sense of place and community, and*
 - (e) provide an environment which is visually stimulating, while being easy to manage and maintain, and*
 - (f) provide adequate access and linkages to public open space, and*
 - (g) accommodate the existing and future needs of the locality concerned, and*
 - (h) protect and conserve ecologically sensitive land, particularly that which is visually exposed to the waters of Sydney Harbour and the Parramatta River and of natural or aesthetic significance at the water's edge.*
 - (3) The general objective for transport and access is to encourage the integration of the residential and non-residential land uses with public and private transport and improve access to:*
 - (a) reduce the need for car travel and subsequent pressure on the existing road networks, and*
 - (b) maximise utilisation of existing and future public transport facilities, and*
 - (c) maximise the opportunity for pedestrian and cycle links, and*
 - (d) identify and ameliorate adverse impacts of all transport modes on the environment, and*
 - (e) improve road safety for all users, particularly pedestrians and cyclists.*
- Leichhardt Local Environmental Plan 2000*

For reasons discussed throughout this report, the proposal as recommended will be consistent with ESD objectives, will achieve acceptable urban design and amenity outcomes in this locality that will respect the existing built and natural environment with appropriate site and foreshore linkages, provides a place for residents to live and work and additional job opportunities on a site located in close proximity to public transport facilities with adequate parking and access requirements. The proposal as recommended raises no issues that will be contrary to the objectives of this part of the Plan.

Clause 15 – Objectives

The objectives of the Plan in relation to heritage conservation are as follows:

- (a) to protect, conserve and enhance the cultural heritage and the evidence of cultural heritage, including places, buildings, works, relics, townscapes, landscapes, trees, potential archaeological sites and conservation areas, and provide measures for their conservation,*
- (b) to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scenic and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, surface rock, remnant bushland, ridgelines and skylines,*
- (c) to prevent undesirable incremental change, including demolition, which reduces the heritage significance of places, conservation areas or heritage items,*
- (d) to allow compatible and viable adaptation and re-use of the fabric of heritage significance,*
- (e) to ensure the protection of relics and places of Aboriginal cultural significance in liaison with the Aboriginal community.*

The application was accompanied by a detailed Heritage Impact Statement, prepared by NBRS + Partners which concluded that the proposal will be appropriate in terms of impacts on the Conservation Area and nearby heritage items.

Subject to specific design changes, including conditions to reduce the height, bulk and massing impacts of Building E on Broderick Street, and relating to the design and detail of the development, the above conclusions of the Heritage Impact Statement are concurred with, the proposal as recommended having generally positive impacts on nearby heritage items, the Conservation Area and the foreshore. Therefore, the proposal as recommended will raise no issues that will be contrary to the objectives of this part of the Plan - see assessment throughout this report for further details.

Clause 16(7) - Development in the Vicinity of a Heritage Item

Pursuant to Clause 16(7) of Local Environmental Plan 2000:

Consent must not be granted for development on land in the vicinity of a heritage item, unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the heritage item and its setting as well as on any significant views to and from the heritage item.

The following local heritage items are within the vicinity of the subject development site:

Site Name & Address	Type of item	Grade of Listing
Braeside, No.96 Elliott Street Balmain	Built	Local significance
Street tree – Ficus Macrophylla, Elliott Street	Landscape	Local significance
Street Tree – Two Morton Bay Figs, Elliott Street (crn Glassop Street)	Landscape	Local significance
Nos.2-8 Broderick Street Balmain	Built	Local significance

See Section 2 of this report for further a more detailed description regarding some of these items.

The development has the greatest potential to impact on No.2 (and 4) Broderick Street, No.96 Elliott Street and one of the Ficus trees listed above due to their location immediately adjoining and across the road from the subject site.

A portion of 'Building E' extends to clearly present as a fourth level to Broderick Street, adding significant height and bulk to 'Building E', especially where viewed from neighbouring properties. This height and form is not considered acceptable given the maximum three storey forms and scales along Broderick Street. Therefore, it is recommended that three dwellings fronting Broderick Street in 'Building E', namely dwellings 3.12, 3.13 and 3.14 (including associated decks and terraces) be deleted via 'Deferred Commencement' Consent condition. The resultant height and (up to) three storey parapet form will provide a better and appropriate fit contextually with the height, form and appearance of the existing dwelling stock along Broderick Street, while ensuring no negative impacts on No. 96 Elliott Street located on the Broderick / Elliott Street corner.

The potential impacts on the heritage significance of 'Braeside' house - a Victorian Filigree dwelling set on a very large allotment (by comparative Balmain standards) at No.96 Elliott Street are considered acceptable on the basis that the primary views of this dwelling would not be directly impacted by the development, the development site is located further down the slope of Elliott Street, and there is a considerable separation of this heritage listed dwelling from the development site, which includes the width of Broderick street.

The relationship between 'Building B' and the Heritage Item at No.2 Broderick Street has been considered. The dwelling at No.2 Broderick Street is a modern building (identified as being a heritage item under the LEP 2000), with the actual built heritage item now known as No.4 Broderick Street. The amended development, subject to the recommended amendment conditions, in actuality is separated from the built heritage item at No. 4 Broderick Street by a modern infill dwelling (No.2 Broderick Street), and the scale of Building B on the waterfront steps down at the south to provide a satisfactory and appropriate stepping transition to this modern infill. As discussed later in this report, in the aim of addressing amenity impacts on No. 2 Broderick Street, Dwelling UG.15 within 'Building B' is recommended to be deleted via 'Deferred Commencement' Consent condition - this will result in this building stepping down at this point to a height more comparable to No. 2 Broderick

Street, and with no negative impacts on the appearance of the building when viewed from the water, as it will be conditioned to remain a similar design to that proposed.

Further to the above, the proposal has been amended to widen the public link between Broderick Street and the foreshore to 6m (greater than the 5m link requested by Council), with a subsequent increase in separation distances between 'Buildings B' and 'D' and adjacent (heritage listed) No.2 Broderick Street, and a resultant improvement in the landscape edge in this location. A suspended boardwalk is proposed along this link, setback from the boundary with this site, which will facilitate future growth of vegetation along this edge.

The proposed setbacks of the development from the street frontages and the Broderick / Elliott Street corner will ensure the retention of view lines up Elliott Street to the heritage listed Ficus on the opposite side of the street, and the significance, setting and prominence of this item on the streetscape will not be unduly compromised.

It is also noted that the proposed development also plans to retain a number of established trees, including a grand Ficus tree on the subject site. The Ficus on Elliott Street close to the corner of Broderick Street is one in particular which will form the centre point of a new public square, complimenting the heritage significant figs to the east up Elliott Street. It is also worth noting that Council's Heritage Advisor is of the opinion that the Ficus in reference would also be worthy of a heritage listing, therefore allowing this tree to be a focal point of the entry to the site results in a positive outcome within the context of Elliott and Broderick Streets.

In addition to the above, significant views from the heritage items in the vicinity will not be unduly impacted upon – see later assessment for further details.

Overall, for reasons discussed above and later in this report, the development as recommended will not have any unacceptable impacts on the significance and setting of the heritage items in the vicinity, in particular Nos. 2 (and 4) Broderick Street and No. 96 Elliott Street in closest proximity to the site, and will comply with the objectives of Clause 16(7) of the Leichhardt Local Environmental Plan 2000.

Clause 16(8) - Conservation Areas

Pursuant to Clause 16(8) of Local Environmental Plan 2000:

Consent must not be granted for the demolition, reconstruction, adaptation or erection of a building, the carrying out of a work, or the subdivision of land, within a conservation area unless the consent authority has made an assessment of the extent to which the carrying out of the development would affect the heritage significance of the conservation area, with particular regard to:

- (a) the heritage significance of any building, work, relic, tree or place, archaeological site or potential archaeological site or aboriginal site that would be affected, and the contribution it makes to the conservation area, and*
- (b) the compatibility of the proposed development with the conservation area, including the size, form, scale, orientation, siting, materials, landscaping and details of the proposed development.*

A detailed assessment of the proposal with respect to its size, form, scale, orientation, siting, materials, landscaping and details has been undertaken above and below in this report, this assessment concluding that the development will be an appropriate response to the site's controls and context, and will have acceptable impacts on the public domain (subject to condition), and hence, the Conservation Area, subject to conditions meeting the following requirements:

- The deletion of Dwellings 3.12, 3.13 and 3.14 within the third level of Building E in the aim of better reflecting the forms and scales of other development on Broderick Street;
 - Use of steel palisade fencing that is 75% open to the public domain; and
 - Ensuring that the front setback on Broderick Street has adequate soil depths.
- * Note: This will involve the reconfiguration of Dwellings 3.10 and 3.11 and associated entry lobbies, also recommended via 'Deferred Commencement' Consent.

Recommended design amendments will have no negative impacts on the appearance of the development when viewed from the public domain.

Council's Heritage Advisor also notes that the existing adjacent multiple Department of Housing apartment blocks and the existing development on the subject site i.e. multi-level offices, close to the waterfront, have resulted in this section of the Balmain Conservation Area, having an atypical character and built form, which differs markedly from other parts of the Conservation Area. Accordingly, it is considered that the built form of the proposed development on the subject site would not be out of context with its unique surroundings in this part of the Conservation Area.

Council's Heritage Advisor has also recommended that, due to the site's long and interesting non-residential history, a condition be imposed requiring that an interpretive strategy be prepared for the site including interpretive signage which can be viewed by the public within the vicinity of the foreshore (in addition to that proposed in the public plaza near the corner of Elliott and Broderick Streets). Such a condition has been recommended.

With respect to the *Foreshore Link Precinct* Council's Heritage Advisor supports the proposed retention of the existing sandstone sea walls, natural rock outcrops and significant vegetation within the foreshore precinct of the development site, and also supports the use of ashlar (large) sandstone blocks to replace the existing pine log retaining walls as this replacement material would be in keeping with the historic use of sandstone within the surrounding heritage conservation area.

The proposal as recommended complies with the objectives of Clause 16(8) of the Leichhardt Local Environmental Plan 2000.

Clause 17 – Housing Objectives

Pursuant to Clause 17 of Local Environmental Plan 2000:

The objectives of the Plan in relation to housing are as follows:

- (a) to provide development standards to ensure that the density and landscaped areas of new housing are complimentary to and compatible with the style, orientation and pattern of surrounding buildings, works and landscaping and to take into account the suite of controls in Leichhardt Development Control Plan 2000 to achieve the desired future character,*
- (b) to provide landscaped areas that are suitable for substantial tree planting and of a size and location suitable for the use and enjoyment of residents,*
- (c) to provide for a minimum residential allotment size in order to protect the area's diverse subdivision pattern and to ensure the orderly and economic use and development of residential land,*
- (d) 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,*
- (e) to improve opportunities to work from home.*

The objectives of Clause 17 are evident within the suite of development standards and development controls contained within the Leichhardt LEP 2000 and DCP 2000. The housing objectives have either been met satisfactorily, or will be met subject to recommended conditions - see assessments above and below for further details.

Clause 20 – Employment

The objectives of the Plan in relation to Employment are as follows:

- (a) to ensure the sustainable growth of Leichhardt's economy by retaining existing employment uses and fostering a range of new industrial and business uses to meet the needs of the community,*
- (b) to reinforce and enhance the role, function and identity of established business centres by encouraging appropriate development and to ensure that surrounding development does not detract from the function of these centres,*
- (c) to integrate residential and business development in business centres,*
- (d) to ensure that buildings to be used for employment are appropriately located and designed to minimise the generation of noise, traffic, car parking, waste, pollution and other adverse impacts, to maintain the amenity of surrounding land uses, and avoid harm to the environment,*
- (e) to ensure the continuation of commercial port uses and railway uses,*
- (f) to allow a range of water-based commercial and recreational facilities in waterfront areas in order to retain the visual diversity and maritime character of the area,*
- (g) to ensure non-residential development in residential zones does not detract from the function of the established business centres.*

The development proposal involves a mixed-use development with ground floor or street level commercial / business uses and residential dwellings above. The ground floor commercial and retail components total 3,003sqm and 343sqm respectively. The existing development on the site provides approximately 6,800sqm of commercial GFA, therefore, the proposed development represents a 50% reduction in commercial floor space. Despite this reduction, the current commercial floor space accommodates 109 employees; a number which is set to increase by an

additional 137 jobs as a result of providing a more suitable commercial product, according to the *'Market Study and Economic Impacts Assessment'* prepared by SGS Economics & Planning.

The proposal provides an enhanced role, function and identity to the existing business zone. It attempts to increase the number and diversity of jobs, focusing on providing space suited to occupations common within the Balmain area and services the site through the provision of retail tenancies (café and convenience store). This would also provide additional services to the existing local community which are somewhat remote from the Darling Street commercial precincts.

The integration of residential into the subject development proposal is a critical element of the proposal, which meets the objective within cl.20(c) above. It is also noted that given the sites location within a predominantly residential precinct, providing a residential component to the development is contextually appropriate.

Consideration has been given to the potential land use conflict that may result from having multiple land use on a single site. The buildings have been designed to separate commercial and residential building access, as well as separating parking and waste facilities. Consideration has also been given to wider impacts on the existing surrounding land uses with respect to traffic, parking and noise primarily. Subject to conditions of consent, it is considered that these issues will be adequately addressed.

Council requested that the applicant provide a legal opinion on the issue of permissibility with specific reference to whether the proposed development complied with the objectives of the zone. While the proposed uses are considered permissible with consent under cl.21(3) of LEP 2000 given they are not prohibited under cl.21(4) of the LEP, concern was raised as to whether the objective of the zone were being met given the significant proportion of residential floor space being proposed on the site.

Following the receipt of the applicants legal opinion, Council sought an independent review of the legal advice provided, to which the findings were generally in agreement. Pursuant to cl.7(3) – Land use objective, the consent authority cannot grant consent unless the objective of the zone have been considered. As such, an assessment of the permissibility and compliance with objective of the LEP 2000 are independent exercises. The proposed development is permissible with consent. Assessments against the various objectives applicable to the development were previously detailed above, and the proposal as recommended will comply with these objectives.

Clause 21 – Development Control Table: Business Zone

The proposed development is *'development allowed only with development consent'* pursuant to cl.21(3), and such is permissible development under the Local Environmental Plan 2000.

Clause 34 – Foreshore Access

Pursuant to clause 34 of the Local Environmental Plan 2000:

Consent must not be granted to development on land which could provide access to the foreshore and links to existing or proposed open spaces, unless the consent authority has taken into consideration the provision of that access.

The proposed development has allowed for the provision of foreshore access for both the development site and general public. The development involves a foreshore land dedication, including an access handle to Broderick Street, the dedication linking the foreshore with Elliott Street on the northern side of the site and Broderick Street on the southern side of the site.

The proposed development meets the requirements of this clause.

4.4 Draft Environmental Planning Instruments

No Draft Environmental Planning Instruments applicable to the subject application.

4.5 Development Control Plans

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

- § Leichhardt Development Control Plan 2000;
- § Leichhardt Development Control Plan No. 32 – Design for Equity of Access;
- § Leichhardt Development Control Plan No. 36 – Notifications;
- § Leichhardt Development Control Plan No. 38 – Waste;
- § Leichhardt Development Control Plan No. 42 – Contaminated Land Management; and
- § Sydney Harbour Foreshores and Waterways Area Development Control plan 2005.

The assessment of the proposal against these Development Control Plans is as follows:

Leichhardt Development Control Plan 2000

The proposal has been assessed against the following provisions of the Development Control Plan 2000:

- § Part A1.0 – General Information;
- § Part A2.0 – Urban Framework Plans;
- § Part A3.0 – Principles of Ecological Sustainable Development;
- § Part A3a.0 – Sustainable Water and Risk Management;
- § Part A4.0 – Urban Form and Design;
- § Part A4.1 – Development at the Business Zone / Residential Zone Interface;
- § Part A5.0 – Amenity;
- § Part A6.0 – Site Analysis;
- § Part A7.0 – Heritage Conservation;
- § Part A8.0 – Parking Standards and Controls;
- § Part A9.0 – Advertising and Signage;
- § Part 9a.0 – Colours and Tones;

- § Part A10.6.6 – Birchgrove / Elkington Park Distinctive Neighbourhood;
- § Part B1.1 – Demolition, Site Layout, Subdivision and Design;
- § Part B1.2 – Building Form, Envelope and Siting;
- § Part B1.3 – Car Parking;
- § 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 B1.9 – Corner Site Controls;
- § 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 B4.4 – Foreshore development;
- § Part B4.5 – Residential Development in Business Areas;
- § Part B4.7 – Diverse and Affordable Housing;
- § Part C1.1 - Site Layout and Building Design;
- § Part C1.2 – Parking Layout, Servicing and Manoeuvring;
- § Part C1.3 – Landscaping;
- § Part C1.4 – Elevation and Materials;
- § Part C1.5 – Site Facilities;
- § Part C1.6 – Shopfronts;
- § Part C2.0 – Ecologically Sustainable Non-Residential Development;
- § Part C2.1 - Site Drainage and Stormwater Control;
- § Part C2.2 – Energy Efficient Siting and Layout;
- § Part C2.3 – Building Construction, Thermal Mass and Materials;
- § Part C2.4 – Solar Control, External Window Shading and Internal and External Lighting;
- § Part C2.5 – Insulation;
- § Part C2.6 – Ventilation;
- § Part C2.7 – Space Heating and Cooling;
- § Part C2.8 – Using Solar Energy;
- § Part C2.9 – Appliances and Equipment;
- § Part C3.0 – Interface Amenity;
- § Part C3.1 – Noise and Vibration Generation;
- § Part C3.2 – Air Pollution;
- § Part C3.3 - Water Pollution;
- § Part C3.4 – Working Hours;
- § Part C4.1 – Home Based Employment;
- § Part C4.3 – Non-residential Foreshore Development; and
- § Part C4.5 – Public Domain.

The proposal as recommended will meet the objectives of the above controls, as clarified in the following assessment.

Part A3.0 – Principles of Ecologically Sustainable Development

The principles of Ecologically Sustainable Development provide a broad framework of planning and design controls for all uses, and aim to achieve a more ecologically responsible design of the built and natural environment, and contribution to the less wasteful use of natural resources. Sustainable design seeks to ensure that natural resources are replenished and available to support future generations rather than being depleted and wasted. Council's development controls require energy efficient design for new buildings, encourage good-quality landscaping, aim to increase open space, reduce the negative social and environmental impetus of traffic and create a pedestrian friendly and diverse urban environment.

The proposal is consistent with ESD objectives through a design which meets the relevant principles, objectives and requirements of SEPP No.65 and SEPP BASIX. A detailed assessment of the development in terms of ESD is addressed under the SEPP No. 65 / Residential Flat Design Code assessment above and in Appendix 1.

Parts A3a.0, B1.4 and C2.1 – Sustainable Water and Risk Management, Site Drainage and Stormwater Control – Residential and Site Drainage and Stormwater Control - Commercial

The development proposal has been assessed against the provisions above. Reference is made to the Integrated Water Cycle Plan (amended) prepared by RGH Consulting Group dated January 2012 and supplementary report from RPS dated 8 February 2012 regarding rainwater storage.

With regard to the onsite retention of stormwater, the applicant proposes that 20kL of rainwater storage be provided to service non-potable uses including residential and commercial toilet flushing, car washing bays and landscape watering. It is noted that the applicant's submission demonstrates that a storage volume of 20kL would be drained dry every day of the year on average, which means that no storage would be held for greater than a 24 hours period, no matter how significant the rainfall event.

In response to Council's advice that a significantly greater volume should be provided, the applicant advises a storage volume of 100kL could be accepted. The supplementary report provides a Sensitivity Analysis Plot to assist in determining the optimum storage volume for the development, taking into account overall water and cost savings. This analysis suggests a storage volume between 100-150kL. It is however apparent that the optimum storage volume is limited by the catchment draining to the reuse system. In addition, the supporting stormwater concept plan indicates that 3 separate rainwater tanks are proposed on 3 of the proposed buildings which would be unlikely to allow the calculated catchment area to be directed to the rainwater tanks.

It is apparent that the optimum rainwater reuse storage could be significantly increased by draining landscaped and paved areas to the reuse system. It is noted that stormwater from these areas is already proposed to be treated to a quality that would be suitable for reuse. In this regard, an increase in the catchment area for the reuse system of 50%, which could readily be achieved, would translate to an equivalent proportionate increase in the optimum storage volume.

In this regard, it is considered appropriate that a storage volume of 200kL be provided. To manage this within the site, the storage could be accommodated by

additional excavation at basement level. The storage should also be located in the vicinity of 'Building A' to allow gravity drainage of all areas to the storage(s). This matter will be addressed as part of a Deferred Commencement condition of consent.

Council also notes that the site is identified as a foreshore flood control lot. A Flood Risk Management Report was prepared by RGH Consulting Group dated January 2012. Conditions are recommended by Council to ensure the recommendations of this report are detailed on plans to be provided prior to the issue of a construction certificate.

Part A4.0 – Urban Form and Design

Part A4.0 of the Plan sets out the main principles and justification relating to urban form and design. A detailed assessment of the development in terms of the urban form and design criteria is addressed above and below in this report. The proposal as recommended will comply with this part of the Plan.

Part A4.1 – Development at the Business Zone / Residential Zone interface

The proposed development is located on a site zoned business, however is located within a predominantly residential precinct with residential zoning. Apart from the boundary between the subject site and No.2 Broderick Street, Elliott and Broderick Streets separate the site from the residential zone. Maintaining residential amenity has been a key consideration in the design of the amended development, with a setback of 6 metres being provided adjacent to No.2 Broderick Street. Further, and as discussed above and later in this report, Dwelling UG.15 is recommended to be deleted via condition, to assist in ameliorating overshadowing impacts on No. 2 Broderick Street.

As is demonstrated elsewhere within this assessment, the proposed development as recommended has an acceptable amenity impacts upon adjoining landowners in the residential zone.

Part A5.0 - Amenity

This part of Development Control Plan 2000 requires reasonable amenity be provided to future occupants of new development and maintained to residents in their existing homes.

As outlined above and below, the proposal will be conditioned to ensure that it will have acceptable amenity impacts on neighbours. Therefore, the proposal as recommended will meet this test.

Part A7.0 – Heritage Conservation

This part requires development to protect and enhance Leichhardt's heritage and ensure that changes to this heritage take place in an appropriate manner.

Subject to conditions to reduce the height, bulk and massing of Building E on Broderick Street, and to address various aspects of the design and detail of the development, the proposal will have acceptable impacts on the Conservation Area

and adjoining and nearby heritage items and will comply with this part; see assessments above and below for further details.

Part A8.0, B1.3, C1.2 – Car Parking Standards and Controls, Car Parking – Residential, Parking Layout, Servicing and Manoeuvring – Commercial

These parts of the Development Control Plan provide standards and controls relating to parking provision, including relating to ensuring that access and egress is safe and efficient and that car parking provision has acceptable streetscape impacts.

Parking compliance table

The following table details parking breakdowns for the proposed development.

Land use	Resident / staff		Visitor		Bike Storage (min)	Accessible (min)
	Min	Max	Min	Max		
<i>Residential</i>						
1-bed	14	28	10.8	21.6	36	12
2-bed	41.6	83.2				
3 + bed	28	56				
<i>Commercial</i>						
Office/Retail	55.8	112	-	-	12	1
Café (indoor seating)	1.8*	2.2*	7.6	15.2		
Café (outdoor seating)	-	-	3.8	7.6		
Totals	141.2	281.4	22.2	44.4	48	13
	Min = 163		Max = 326			
Proposed	217				71	13

* Calculation assumes 4 staff members onsite for the operation of the café.

Note: the above table has been updated based on the deletion of four two-bedroom dwellings.

As outlined within the outline of the proposal, parking is provided at three levels within the development. The upper level of parking is dedicated to commercial land uses, with the middle level recommended to be separated for use by both commercial and residential land uses. The lowest level of parking will only accommodate residential parking. The proposal will be conditioned to reinforce compliance with the numerical controls of the Plan.

Internal parking design

A number of issues have been raised within the functionality of the upper and middle car park levels that has triggered the requirement for a redesign. Council's Development Engineer has identified the following points be addressed via a Deferred Commencement consent:

The design of the vehicular access and off street parking facilities must be amended to address the following issues:

- a) The Residential carpark and loading dock must be redesigned to address the following issues:
- i. A clear separation must be provided between the residential access and the loading dock facilities. All manoeuvring associated with the loading dock must be clear of the residential access with the possible exception of manoeuvring associated with a medium rigid vehicle (MRV) for garbage collection.
 - ii. The loading dock must make provision for loading/unloading of a minimum of two service vehicles at any one time. The loading bays must accommodate a small rigid vehicle (SRV) and a medium rigid vehicle (MRV) and both vehicles must be able to manoeuvre into and out of each loading bay while the other vehicle is parked.
 - iii. Provision must be made for clear and convenient access between the loading dock and all commercial components of the development. In this regard, the following issues must be addressed:
 - o Lift access must be provided for delivery of bulky goods to the Ground and Upper Ground floor commercial areas of the development.
 - o The proposed delivery access route to the Upper Ground floor passes through the residential carpark. This is not acceptable and a separate delivery path must be provided.
 - iv. Provision for safe access to the Residential Bike Room, clear of the loading dock facilities.
 - v. Provision of twelve (12) Commercial/Retail (staff) and parking spaces and residential parking to all the dwellings in Buildings C, D, E and F in accordance with the minimum parking provisions contained in Part A8.0 of the Leichhardt Development Control Plan 2000.

The above amendments are likely to require relocation of the Commercial and Residential Garbage rooms, Residential Bike room, Car Wash bays, Electric Charge bays, Storage Cages and Residential parking spaces. The loss of residential parking spaces will be required to address these amendments.

- b) The Commercial, Retail and Associated visitor parking must be redesigned to address the following issues:
- i. Provision of a loading bay for vans and similar delivery/ service vehicles.
 - ii. Provision must be made for ten (10) unallocated Visitor parking spaces in close proximity to the carpark entry. A dedicated turning bay must be provided at the end of the visitor parking spaces.
 - iii. An accessible path of travel must be provided between the accessible parking space and the Commercial areas of Buildings A and B.

The design must be certified by a suitably qualified Civil Engineer and the architectural plans amended to the satisfaction of Council prior to the consent being operable.

It was also noted there is inconsistency in the plans and sections in relation to the floor level of the Lower Ground Floor Basement. Most sections show the floor level as RL 6.9, while levels of RL 8.0 and RL 8.6 as also shown. There is limited scope

for the carpark to be raised significantly above the minimum RL 6.9 due to limitations on the floor slope of the parking spaces. This issue should be addressed through amended plans and long sections submitted as part of a 'Deferred Commencement' condition.

Miscellaneous traffic considerations

Elliott Street frontage

The existing geometry of Elliott Street at the western end limits the potential for vehicles to safely turn around. The proposed development will significantly increase traffic and on street parking demand in Elliott Street. This intensification will increase the number of vehicles which will need to turn around at the western end of Elliott Street, impacting on pedestrian and vehicle safety and potentially create vehicle delays/ conflicts. To address this issue, a turning circle must be constructed at the western end of Elliott Street, the design of which will be the subject of a 'Deferred Commencement' Consent condition.

Council notes that there will be a loss of approximately 3 to 4 on street parking spaces on Elliott Street as a result of the proposed development. This is not considered to be unacceptable.

Broderick Street frontage

Vehicles currently park on both sides of Broderick Street. The proposed development introduces direct commercial access from Broderick Street. To accommodate safe pedestrian movements, a footpath is required along the full site frontage, the design of which will be the subject of a 'Deferred Commencement' Consent condition

There is not sufficient width in Broderick Street to accommodate an additional footpath without removing approximately 11 existing on street parking spaces, which is not acceptable. However, to accommodate the existing street parking in Broderick Street without loss, the kerb and gutter will have to be located immediately adjacent to the property boundary and the footpath provided entirely on the subject property. Therefore, a footpath will need to be provided within the property boundary with a minimum width of 1500m. The footpath must extend for the full Broderick Street frontage extending to Elliott Street. A Right of Way must be created over the footpath. Conditions of consent have been recommended to address this matter.

The existing geometry of Broderick Street at the western end limits the potential for vehicles to safely turn around. The proposed development will significantly increase traffic and on street parking demand in Broderick Street. This intensification will increase the number of vehicles which will need to turn around at the western end of Broderick Street. This increase will impact on pedestrian and vehicle safety and potentially create vehicle delays/conflicts. To address this issue, a hammer head turning facility as shown on the submitted plans must be constructed at the western end of Broderick Street. There is inadequate area within the road reserve to contain the turning facility. As such, land dedication will be required in the adjacent area of the development. The extent of dedication will be determined following the required detailed engineering design. Conditions are provided on this basis. Note that the location of the turning facility potentially conflicts with the proposed pedestrian path

associated with the foreshore link. Accordingly, the development will be conditioned to reinforce the required provision of safe pedestrian movements behind the facility.

Potential Roundabout at the intersection of Terry, Glassop and Elliott Streets

Reference is made to the letter report from TTPA dated 2 March 2012 which responds to concerns raised regarding the impact of the development on the Terry Street/ Glassop Street/ Elliot Street intersection. The report has adequately addressed concerns raised regarding the performance of this intersection post development.

The proposal as recommended will comply with these parts of the Plan.

Part A9.0 – Advertising and Signage

Part A9.0 of the Plan seeks to ensure that signage is in keeping with the size, scale, character and architectural treatment of the building to which it is attached or the development with which it is associated and conserves the heritage of significant places.

For reasons discussed previously under State Environmental Planning Policy No. 64 – Advertising and Signage, the proposal as recommended will meet the objectives of this part of the Plan.

Part 9a.0 – Colours and Tones

This part aims to provide guidance on the use of colour and tone for new buildings or to change the colour of existing buildings in the commercial distinctive neighbourhoods of Leichhardt, Rozelle and Balmain to ensure that they, amongst other things, complement and be part of the design characteristics of the building and streetscape, encourage earth and ‘natural’ colours, and avoid large, brightly coloured surfaces and corporate colour schemes.

The proposed development is considered to successfully achieve the above objectives through the use of a sandstone and grey base colours as represented on the supporting documentation submitted for assessment, including a materials and samples board, which will result in a high quality external appearance which provides a strong contextual relationship to its surroundings.

Part A10.6.6 – Birchgrove / Elkington Park Distinctive Neighbourhood

The development site is located within the south western part of the distinctive neighbourhood. The distinctive neighbourhood features many waterfront residential developments which follow the slope of the land and present lower scales to the street with four to five stories visible from the water. The development site is also within the visual catchment of the Iron Cove Distinctive Neighbourhood which includes the Balmain Shores and Balmain Cove developments. These sites contain a series of buildings up to eight storeys high with public open space established along the foreshore.

It is noted that the desired future character comments and neighbourhood controls detailed are not all relevant to the subject development site, as they are focused on

dwellings on residential sites. The following comments are provided with respect to those areas relevant to the development proposal.

Desired future character

Development should fit the following desired future character:

- *Preserve and where practicable, enhance public and private views over Parramatta River. Buildings on the waterfront should follow the slope and help preserve view lines by stepping down with the contours.*

Comment: The development slopes down with the land, responding primarily to the Broderick and Elliott Street frontages. Through such measures as opening a public link to the foreshore from Broderick Street, a view corridor is provided.

- *Promote a balance of landscape to built form in the view of the neighbourhood when viewed from the water.*

Comment: As addressed above and below, detailed and significant landscape plans have been provided which include the creation of a landscaped edge around the site and a large foreshore landscaped space, which subject to recommended conditions, are acceptable.

- *Maintain the diverse character of the area by ensuring new development is complementary in terms of its new architectural style, built form and materials.*

Comment: As discussed above and below, the proposed new development as recommended is an appropriate contemporary design, consisting of materials selections which are consistent with those commonly used within the distinctive neighbourhood. While the development draws on the scale of development from adjoining sites, the height, form and scale of Building E on Broderick Street is excessive and is recommended to be reduced to better and more appropriately reflect the height, form and massing of existing development along Broderick Street.

- *Conserve and compliment the established streetscape with regard to setbacks, street trees and general lack of driveway crossings.*

Comment: As discussed above and below, the proposal complements existing setbacks and will retain trees of greatest significance, including a number of street trees on both Broderick and Elliott Streets.

- *Maintain sandstone outcrops and remnant stone wall footings. Retain and encourage street trees on the wider streets.*

Comment: As discussed above and below, existing sandstone outcrops will be retained and re-exposed along the foreshore area. The proposal also includes front setbacks to both street frontages where planting is proposed (and conditioned where necessary to ensure adequate soil depths).

Neighbourhood controls

The following neighbourhood controls are applicable to the subject development:

- *A maximum building wall height of 6 metres applies to the neighbourhood.*

Comment: The proposal results in non-compliances with this wall height control, however, subject to a reduction in height, bulk and massing of Building E on Broderick Street, these non-compliances are supported in this instance for reasons discussed in this report, including under Part B1.2 of DCP 2000 assessment later within this report.

- *New development should maintain the use of hipped, pitched or gable roof forms and designs should be complementary to the existing unadorned built form.*

Comment: The proposed development has varying roof forms. On Broderick Street, dwellings will incorporate a mansard style pitched roof form, and the buildings fronting Elliott Street have low angled pitched/skillion style roofs. Both roof forms respond appropriately and / or sympathetically to the varied streetscapes of Broderick Street and Elliott Street. Note that the roof form on Building E fronting Broderick Street will be a flat roof with parapet as a result of the deletion of Dwellings 3.12 to 3.14. This roof form is appropriate given it is a response to the bulk and scale of Building E.

- *Building materials used shall be consistent with the existing character of the streetscape, including rendered and painted surfaces and roof materials such as corrugated iron as well as timber windows.*

Comment: The development proposes a variety of textures, materials and colours. A materials sample board has been assessed and materials will generally have a high standard finish and will compliment surrounding buildings. The incorporation of a strong base, middle and top assists in improving building modulation and breaking up the building bulk. The proposal involves extensive wide use of stone cladding, which is supported given the significance of this material to the historic development of the neighbourhood and its very positive contribution to the streetscape.

- *Development visible from the water is to be designed to preserve the conservation values of the area.*

Comment: The proposal as recommended will be satisfactory in this regard as addressed above and below in this report.

Part B1.1 – Demolition, Site Layout, Subdivision and Design

This section seeks to ensure that new housing integrates well within the neighbourhood and is consistent with, and enhances the existing street subdivision patterns, street character and maintain amenity to adjacent residents.

The provisions of State Environmental Policy No. 65 / Residential Flat Design Code are aimed at achieving outcomes consistent with the above, and therefore

assessment is best linked to those specific criteria – see Appendix 1 of this report for further details. However, the proposed development utilises many of the guiding controls detailed in this part of the Plan, and in this regard, the proposal is satisfactory for reasons including:

- Dwellings to both Elliott and Broderick Streets have orientations and grid patterns that respect existing adjoining development on these frontages Broderick and Elliott Streets and address the street where possible;
- The proposal results in significant improvements to the street edges compared to the existing development on the site which has large expanses of high building walls and fences along the site boundaries with little relief in building design and sight lines, the proposed development as proposed and as recommended include buildings that are appropriately scaled and relieved by landscaped setbacks and passages of open space which provide sight lines into and through the site and through to the water, including as a result of a public site through link to the water; and
- The proposal will be conditioned to ensure adequate provision for services and facilities and lighting is provided to promote safety and security.

Part B1.2 – Building Form, Envelope and Siting

The proposed development has been assessed in accordance with Part B1.2 of the DCP 2000 and results in non-compliance with the building envelope and side setback controls.

Building Envelope and Setbacks

In accordance with Part A10.6.6 – Birchgrove/Elkington Park Distinctive Neighbourhood Controls, a 6 metre building envelope is applicable to the subject site and surrounding neighbourhood. The proposed development results in various breaches to this control as outlined below:

Building	Proposed front wall height	Extent of breach
Building A	10.8m – 13.5m	4.8m – 7.5m
Building B	N/A (no street frontage)	-
Building C	14.3m – 15.2m	8.8m – 9.2m
Building D	8.4m – 10.6m	2.4m – 4.6m
Building E	<i>Broderick Street</i> 8.9m – 10.4m	2.9m – 4.4m
	<i>Elliott Street</i> 12.9m – 14.8m	6.9m – 8.8m
Building F	5.9m – 7.2m	Nil – 2.2m

In terms of street and building setbacks, Part B1.2 of the Development Control Plan 2000 requires the siting and setbacks of buildings to reinforce the character of the neighbourhood. The proposal will achieve the following setbacks between buildings:

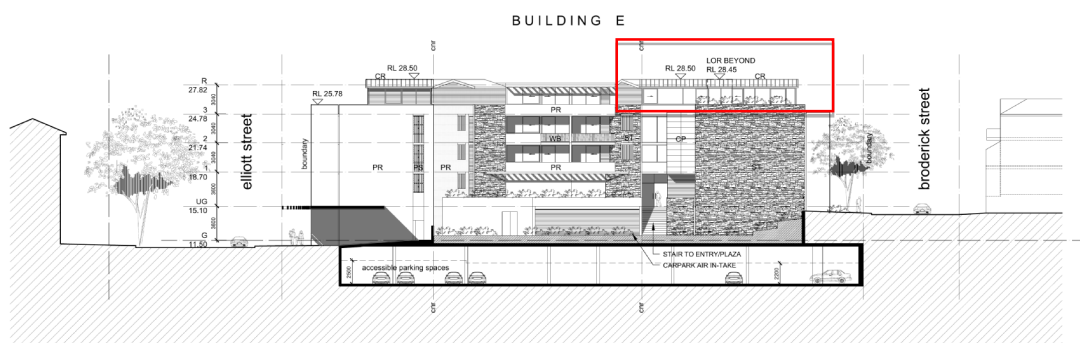
Buildings	Building Separation
Between Buildings A and C on Elliott Street	9.48m

Between Buildings C and E on Elliott Street	9m
Between Buildings B and D on Broderick Street	6.21m
Between Buildings D and E on Broderick Street	4.8m
Between Buildings E and F on Broderick Street	4.62m

The amended development proposal has incorporated generally 3 metre or greater building setbacks along the Broderick Street and Elliott Street frontages. While this does not result in compliance with the building envelope controls, it has facilitated an overall reduction in bulk and scale to the public domain and the provision of landscaped edges to both the Elliott and Broderick Street frontages which will assist and / or be effective in softening the street elevations of the development to these frontages.

The existing streetscape along Broderick Street is primarily a lower scale than Elliott Street with the existing dwellings varying between one and three storeys, with some existing dwellings breaching the building envelope control with three storey forms. The elements of the development fronting Broderick Street seeks to interpret the Balmain terrace in a modern form, appropriate for the low domestic scale of Broderick Street. The buildings are designed with lower front wall heights of up to three storeys to better replicate the scale of development on the southern side of the street, with a fourth level contained within mansard styled roofs that will assist in reducing the visual impact of the development on the locality. The development responds to the length and slope of Broderick Street by stepping down the development with the slope of the land. Proposed 3 metre setbacks from the street and between buildings are compatible with other buildings along Broderick Street.

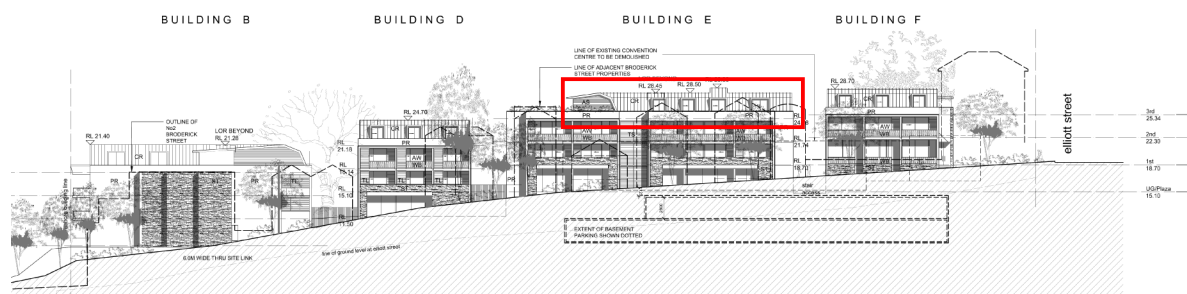
With consideration to the comments above, a portion of 'Building E' extends to clearly present as a fourth level to Broderick Street, adding significant height and bulk to 'Building E', especially where viewed from neighbouring properties. This height and form is not considered acceptable given the maximum three storey forms and scales along Broderick Street. Therefore, it is recommended that three dwellings fronting Broderick Street in 'Building E', namely dwellings 3.12, 3.13 and 3.14 (including associated decks and terraces) be deleted. While a lowering of height and form to 3 storeys will not result in full compliance with the Building Envelope controls, it will provide a better and appropriate fit contextually with the height, form and appearance of existing dwellings in Broderick Street.



This image demonstrates the relationship between 'Building E' and properties fronting Broderick Street. At the western elevation of 'Building E' the built form is clearly higher than the existing dwellings on Broderick Street.

Within the context of 'Buildings D' and 'F' also fronting Broderick Street, the siting and widths of these buildings results in a less impact to Broderick Street. 'Building F' responds to the corner and main arrival point to the site, therefore the additional height in this case is not considered unreasonable noting that this height is primarily read from Elliott Street. This building will also be substantially lower in height than the Braeside at No. 96 Elliott Street on the opposite corner. The highest point of 'Building D' is in a position of lower prominence at the western end of Broderick Street and setback approximately 6 metres from the side boundary and Broderick Street.

No opposition is raised to the 3 units (Units 3.12, 3.13 and 3.14) being resited elsewhere within the development provided issues with regard to bulk, scale and solar access are adequately addressed. Consideration of this could be made via a Section 96 application at a later point in time.



The area highlighted in red over 'Building E' is to be deleted as detailed in this report.

The proposed Broderick Street building setbacks will incorporate new landscaping and plantings (conditioned to achieve adequate soil depths), in addition to a new pedestrian footpath, which will effectively soften the existing hard street edge in this location where a large, high blank wall hard against Broderick Street currently dominates.

The proposed Elliott Street streetscape takes reference from the 4-5 storey height buildings within the Housing NSW complex on the northern side of the street which do not comply with the envelope control. While the scale and aesthetics of the Housing NSW complex makes little contribution to the streetscape, their large building setbacks from the street and building setbacks and their stepping down the slope, all combine to assist in improving its relationship with the public domain. The subject development has higher front wall heights and overall heights compared to the Housing NSW complex, and some building setbacks and separations are less than that established across the street. This considered, the proposed development has far superior design integrity that now incorporates a landscaped street edge to Elliott Street, substantial building setbacks of up to 9m at upper-most level and more substantial and appropriate setbacks between buildings, and together with the stepping of the development down the slope, will ensure that the Elliott Street frontage will be framed with an acceptable human scale in this locality, despite being up to 5 storeys.

In considering a variation to this control, Council has taken into account that to achieve an FSR in the order of 1.5:1, which is permitted as discussed previously within this report, a building envelope of 6 metres is an unrealistic imposition. Were the developer required to comply with the subject control, it is likely that a taller

development in the centre of the site would result, causing numerous other impacts with little relationship to the area. The scheme has been designed with a group of six buildings to minimise scale and bulk, with street and building setbacks that reflect the traditional streetscapes in the locality, subject to condition deleting additional bulk from 'Building E' on Broderick Street.

Side Setbacks

'Building B' in the south western part of the site shares a common boundary with No.2 Broderick Street and is subject to consideration against the side setback control plane prescribed in Part B1.2 of DCP 2000. At its greatest point, 'Building B' has an approximate side wall height of 10.7 metres and a side setback of 6 metres. At this proposed side wall height, a side setback of 8.2 metres is required, which is a 2.2m breach to the controls.

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.

The side setback in the amended proposal is substantially greater than what was previously proposed. As addressed within the solar access assessment, the proposed development raises residual concerns with respect to impacts on the adjoining property at No.2 Broderick Street. Solar access has been raised in association with bulk, scale and proximity impacts in submissions from the owners of No.2 Broderick Street. Options include resiting 'Building B' or lower the side wall height in the location where the impacts result. On close assessment, Council has considered a lowering of the side wall and the deletion of Unit UG.15 as the best option in this instance, which has been recommended via recommended design change condition as part of a 'Deferred Commencement' Approval. Impacts of resiting the building will result in the potential/probable loss of the fig tree, as well as other trees sought to be retained and additional bulk and massing impacts on the waterfront contrary to RMS recommendations. Further details regarding the deletion of Unit UG.15 are provided in the Part B3.1 – Solar Access assessment below.

On the remaining points 'Building B' is primarily oriented towards the foreshore and internal private open space within the development site, therefore visual privacy is satisfactory as it relates to the positioning on this building.

In summation, given compliance issues mentioned with the solar access controls (discussed in greater depth later within this report), significant improvements would be achieved by lowering a portion of the wall height of 'Building B'. It is therefore considered that the siting and side setback provided with respect to 'Building B' would be acceptable subject to the deletion of Unit UG.15 via condition.

Parts B1.5, C1.4 and C1.6 – Elevation and Materials and Shopfronts

These parts of the Plan require building elevations and shopfronts to respect the elevational appearance and character of the area and provide functional shopfronts that contribute to the vitality of the area.

Following direction from Council, changes have been made to the balustrading styles with a reduction in the use of glass balustrades and an increase in the use of wire and timber balcony balustrades which will be in keeping with the materials utilised within surrounding development in this part of the Balmain Conservation Area. As discussed previously, proposed roof forms, materials and the composition of building elements such as facades, balconies, walls, columns, windows, roofs, sunshades and privacy screens are considered appropriate and acceptable.

The existing buildings fronting Elliott Street and Broderick Street deactivate the street frontages and have an imposing scale with high blank walls with minimal or no setbacks to the street, which will be addressed by the proposed landscaped setbacks and commercial and residential entries activating these street frontages. Where shopfronts are proposed, that will not be out of character with other shopfronts within commercial precincts in Balmain.

Given the above, the amended proposal is satisfactory with respect to the above clauses of the Leichhardt Development Control Plan 2000.

Part B1.6 – Front Gardens and Dwelling Entries

This part requires dwelling entries to improve security and provide a transitional space between the dwelling and the street. However, the dwelling entry controls contained in SEPP No.65 / Residential Flat Design Code provide more appropriate controls relating to this particular development, and assessment of the proposal against these controls is carried out later in this report.

Part B1.7 – Fences

This part requires fencing to be designed to complement the architectural styles of the area.

In order to ensure proposed fencing contributes positively to the public domain, it is recommended that the fencing / gates to the entry between Buildings A and C on Elliott Street be a steel palisade design that is 75% open, and that the fencing between 'Buildings B and D' and 'D and E' be recommended to be of a similar design.

The proposal as recommended complies with this part.

Part B1.8 and C1.5 – Site Facilities

These controls stipulate requirements relating to the location of storage facilities for residential and non-residential uses, requiring that such facilities are integrated into the development and do not detract from the streetscape, are convenient and adequate and comply with the requirements of Council's Development Control Plan No. 38 relating to waste.

The provisions of State Environmental Policy No. 65 / Residential Flat Design Code are aimed at achieving outcomes consistent with the above, and therefore assessment is best linked to those specific criteria. The proposal as recommended will comply with these parts.

Parts B2.8 and C1.3 – Landscaping

Approximately 102 trees within and adjacent to the site that are potentially affected by the development have been assessed as part of the application. The amended proposal involves the removal of around 70 of these trees, or six (6) less than originally proposed.

Council's Landscape Assessment Officer has reviewed the amended proposal, raising objection to the removal of the following trees. Council's Landscape Assessment Officer's initial and final comments relating to tree removal is provided under "Comment / Description."

Tree	Proposed	Recommended	Comment/Description
Tree 11 <i>Metrosideros spp</i>	Removal	Retained	The tree is outside the proposed works and overall has good health and vigour. The tree is located near the foreshore building line is providing screening to the existing built form. The tree will assist in providing this screening to the new development.
Trees 46, 47, 48 <i>Platanus hybrida</i>	Removal	Retained	All of these trees are within the footprint of the proposed pool. At present, these trees are all healthy and providing a large amount of amenity to the location. The trees are also only semi mature, so they also have a large amount of potential to provide long term amenity. They are worthy of retention, as they will also provide an improved outlook and shade and privacy to the new dwellings.
Trees 60 & 61 <i>Citharexylum spinosum</i>	Removal	Retained	The trees have overall good health and vigour. These trees are semi mature and as a species, their growth is rapid. The trees will provide screening to the new development. Their retention is viable, and the work is not within the Structural Root Zone as outlined in AS4970-2009 "Protection of trees on development sites".
Tree 85 <i>Populus nigra</i>	Removal	Retained	Tree is approximately 16 metres in height and providing amenity and screening. Tree will assist in providing scale and privacy to the new dwellings.

While the above is noted, Trees Numbered 60, 61 and 85 conflict with proposed building structures to be erected on the site and can not be retained.

Trees Numbered 46, 47 and 48 located adjacent to the proposed pool have been identified for removal. As noted by Council's Landscape Assessment Officer, the trees in question are all healthy and providing a large amount of amenity to the location, and given their semi mature nature, there is potential for these trees to provide long term amenity on the site. Consequently, the retention of these trees is desirable and recommended to be enforced via recommended conditions. In order for this to occur, the pool requires either:

- Re-siting, reconfiguration and reduction in size in accordance with Arborist advice; or
- Deletion.

The proposal has been conditioned to facilitate either option.

The latest landscape plans show retention of Tree Numbered 43 (a Peppercorn tree). This tree was previously nominated for removal.

With regard to future landscaping within the site, the applicant has submitted landscape plans detailing landscaping in and around the site, including the proposed dedication of foreshore land. Conditions of consent have been recommended regarding the landscaping, with particular focus on requirements within the foreshore land dedication. These conditions will include the following general requirements:

- Detailed plans and landscape plans depicting both the built and unbuilt features, contours and site levels (including recommended finished levels) of the site, proposed landscape features, existing trees to be removed or retained, lawn, and new trees and shrub plantings;
- Detailed plans and landscape plans showing the connection from Broderick Street to the foreshore being coordinated to achieve successful integration in regard to grade and the width of the foreshore link;
- All areas of land to be dedicated as public open space must not, by design cues or any other means, appear to be private land at any part or appear in any part to belong to the development rather than as public open space;
- All existing trees within the area of land to be dedicated to Council that are required to be retained must be identified on the detailed plans and landscape plans, along with a detail of the appropriate protection methods which will be instituted to preserve these specimens during the construction period. All trees required to be retained as part of this consent are to be clearly tagged, and protected during the construction by fences, hoardings or any other measures as recommended by a Level 5 AQF Qualified Arborist with a minimum of 5 years experience with trees on development sites.
- The location of all trees which are permitted to be removed within the area of land to be dedicated to Council must be clearly identified detailed plans and landscape plans.
- All detailed plans and landscape plans required by this consent showing existing trees to be retained and trees to be removed within the area of land to be dedicated must show the following details:

§ Tree location;

- § Trees to be numbered;
- § Species (predominantly native) with both botanical and common names;
- § Container size and mature height;
- § Planting details, mulching types and depth, soil cultivation and/or remediation details, edge treatments and irrigation details; and
- § Typical details for all landscape treatments including new stone retaining walls, access stairs and viewing platforms are to be submitted to Council for approval.
- § A maintenance plan with respect to all on-site landscaping work is to be provided;
- § Paving proposals for the path network are to be clearly identified on detailed plans and landscape plans;
- § Open Space furniture is to be clearly identified on detailed plans and landscape plans. Such plans must also show, detail and / or outline type and the fixing method for each item. Provision of park furniture is to include seats, litter bins, dog tidy bins, bollard lighting (pathways), signage, and provision of a water bubbler.

Council's Manager of Parks and Streetscape has also recommended the Coral trees (trees T28 to T31), located within the upper section of the existing retaining walls earmarked for demolition, be removed. The demolition of the retaining walls could destabilise these trees and would require extensive retaining wall reconstruction. As the levels are being altered and as these trees are a non desirable species, being known to drop large limbs, it is recommended that they be removed and replaced by more suitable native species which are to be nominated by the landscape architect preparing the landscape plan for the site.

Conditions of consent will detail all trees to be removed, in addition to any future landscaping requirements as detailed above.

Conditions will also be imposed to ensure adequate soil depths across the site.

Part B3.1 – Solar Access

The solar access assessment has been divided into two sections. Solar access within the proposed development is primarily subject to the requirements of SEPP No.65 (Residential Flat Design Code). The Leichhardt DCP 2000 is relevant with respect to impacts on adjoining properties.

State Environmental Planning Policy No.65 – Residential Flat Design Code

The proposed development has generally demonstrated compliance with the solar access requirements of SEPP No.65. Council raised a number of initial concerns with respect to the number of dwellings gaining access to adequate internal solar access to living areas, and the number of single aspect south facing dwellings.

The SEPPs better design practice guidelines suggest designs should:

- Optimise the number of apartments receiving daylight access to habitable rooms and principal windows:

- ensure daylight access to habitable rooms and private open space, particularly in winter; use skylights, clerestory windows and fanlights to supplement daylight access;
- promote two storey and mezzanine, ground floor apartments or locations where daylight is limited to facilitate daylight access to living rooms and private open spaces;
- limit the depth of single aspect apartments;
- ensure single aspect , single storey apartments have a northerly or easterly aspect; locate living areas to the north and service areas to the south and west of development;
- limit the number of south facing apartments and increase their window area; use light shelves to reflect light into deeper apartments.

The rule of thumb in this case is to ensure at least 70% of living rooms and private open space receive 3 hours of direct solar access between 9.00am and 3.00pm in mid-winter. Single aspect apartments should also be limited to 10% of the total units proposed.

The proposed development includes design elements such as those detailed above within the dwelling designs which improve solar access to the dwellings. Consideration has been given to other factors within this assessment such as the west south west orientation of the site and the focus on the maximising Iron Cove views to dwellings. This results in the dwellings in buildings A and B receiving the majority of their solar access in the afternoon western sun.

The development, as amended, presents the following in terms of compliance with the above requirements:

	Total number of apartments	Apartments receiving 3 hours or more direct sun to principal living rooms & private open space	Apartments receiving 2 hours or more direct sun to principal living rooms & private open space	Apartments receiving less than 2 hours of direct sun to principal living rooms & private open space
Number of apartments	112	78	92	20
% of total number	100%	69.6%	82.1%	17.9%

Note: The deletion of four two-bedroom dwellings as recommended will bring the development into full compliance with the above guidelines with respect to apartments receiving 3 hours or more internal solar access.

Four per cent of the proposed dwellings are single aspect with a southerly aspect. The proposal complies with the requirement of the SEPP in this regard. Council considers that the internal amenity of the dwellings is adequate in achieving the objectives of the SEPP. Given orientation of the site towards Iron Cove to the west south west, and the triangular shape of the site, it is considered that the design is suitable in achieving adequate amenity to the dwellings.

Leichhardt Development Control Plan 2000

The existing adjacent buildings have a predominantly east/west orientation, therefore the following controls must be complied with:

- Design to ensure solar access for a minimum of 3 hours between 9.00am and 3.00pm at the winter solstice, to living areas of new dwellings.

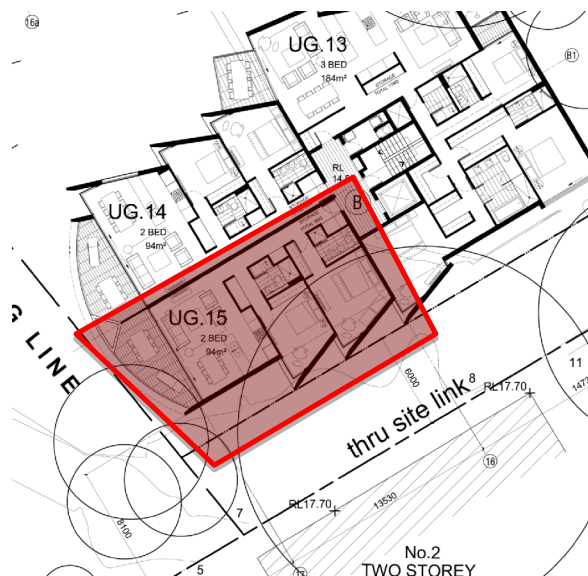
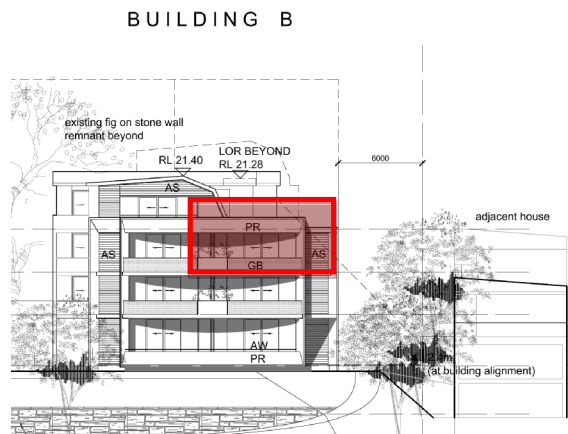
The requirements of SEPP No.65 take precedence over this control. Internal solar access to dwellings has been discussed above and is considered generally acceptable.

- 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.

Shadow diagrams in plan and elevation have been submitted for assessment in support of the subject development application. These have been checked for accuracy and are considered to portray a reasonable indication of the shadow impacts post development. What can be clarified from the diagrams supplied is that the northern facing windows on No.2 Broderick Street will be affected by the proposed development.

On close assessment, it is noted that the affected north facing side windows on No.2 Broderick Street service rooms with dual aspects; therefore given their predominantly western aspect, they are not strictly classified as side habitable rooms. This considered, the intent of the control is to retain solar access to north facing side windows. The DCP 2000 also states in this regard that *"maintain solar access to existing houses."*

The first floor north facing side dining room windows of the affected property receives in excess of the 2 hour requirement. The ground floor dining/living room window receives significantly less than the 2 hour requirement under the subject proposal. It has been considered what reasonable actions could be undertaken to maintain solar access to the window (in addition to other concerns raised by the owners of No.2 Broderick Street in their various objections). The deletion of Unit UG.15 would resulting an increase in solar access to the ground floor side window from around 11.00am.



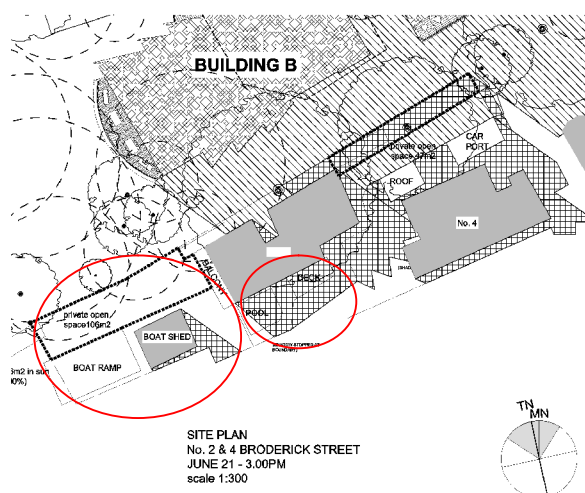
Unit UG.15 is recommended for deletion by way of condition in order to improve solar access to No.2 Broderick Street to the south and improve the bulk and scale impacts.

The deletion of dwelling UG.15 changes the element of the building casting the shadow from approximately 11.00am to the ridge at the top floor at RL21.40 which is located approximately 15 metres from the boundary. Under the proposal, a parapet at RL17.68 located within 6 metres of the boundary casts the shadows; the proximity to the boundary means the impact is greater even though the height is lower. The deletion of this dwelling represents a notable improvement in solar access to the affected side window, stair well and private open space of No.2 Broderick Street. An added benefit of ameliorating bulk and scale impacts also results. It is further noted that the rear part of 'Building B' (Unit UG.13) is recommended to be retained proposed. Council has considered the shadow angles and concluded that no significant gain will result from the deletion of this built form. Its siting is also such that it does not result in the same bulk and scale impacts as the south-western most dwelling.

In a submission, the owners of No.2 Broderick Street also drew Council's attention to glazing adjacent to the stairwell. It is noted that the subject windows are not protected by development controls within this part of the DCP 2000. The impacts of the development are detailed on the shadow diagrams submitted. An assessment has noted that the subject windows are in self-shade at 9.00am, partially overshadowed at 12.00pm and 3.00pm. The recommended changes to delete Unit UG.15 will improve this scenario.

- 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 9.00 a.m. and 3.00 p.m. at the winter solstice.

Due to the orientation of the allotment (east/west), the proposal only impacts on one property in regards to overshadowing, this being No.2 Broderick Street. This site has two areas of open space which are terraced as a result of the sloping site. The following image depicts these two areas:



Two areas of private open space; the area adjoining the foreshore, and upper area on the southern side of the dwelling.

Private open space at the foreshore (subject site to the left of the photo).

Given how separated these space are, it would be considered unreasonable to assess both together, therefore a separate analysis and assessment has been undertaken in this case addressing the impacts to both the lower and upper areas of private open space.

The amended shadow diagrams submitted and an assessment of the potential shadow impacts indicate that 50% of the rear private open space of No.2 Broderick Street will receive the requisite minimum 3 hours of direct sunlight between the hours of 12.00pm and 3.00pm at the winter solstice post development to the lower area of private open space (138sqm). The following table demonstrates the impacts of the proposed development as discussed:

Time	Existing	Proposed	Complies
9.00am	103.1sqm / 74.7%	Nil	No
12.00pm	132sqm / 96.1%	91sqm / 65.9%	Yes
3.00pm	138sqm / 100%	138sqm / 100%	Yes

It is noted that the recommendation to delete Unit UG.15 will improve solar access to the rear yard prior to 12.00pm.

As demonstrated within the applicants shadow analysis, the upper area of private open space is in shadow for the majority of the time between 9.00am and 3.00pm at the winter solstice. Crucially during this time, the proposed development does not create additional overshadowing in this location, maintaining compliance with the DCP 2000 with respect to this area.

Part B3.2 – Private Open Space

This part provides specific controls relating to size, dimensions and amenity to open space provision for residential dwellings, however, the provisions of State Environmental Planning Policy No. 65 / Residential Flat Design Code override these

controls. Notwithstanding, the application is deemed to be satisfactory with regard to the size, dimension and area requirements for private outdoor space – see Appendix 1 for further details.

Part B3.3 – Visual Privacy

The visual privacy controls detailed under SEPP No.65 and are aimed at achieving acceptable visual privacy outcomes within the development site, and therefore, any visual privacy assessments relating to residential development have been linked to those specific controls.

The site adjoins No.2 Broderick Street and a potential visual privacy issue results in this location. Under the provisions of the Leichhardt DCP 2000, the following controls are applicable as it relates to visual privacy on adjoining site:

- Obscure outlook by providing screening if habitable room windows or private open space is overlooked:
 - Within 15 metres;
 - Within an angle of 45°, measured perpendicular to the face of the opening from a height of 1.6m above the floor or deck level.
- Provide landscape screening either by using dense vegetation or new planting that can achieve 75% screening effectiveness within three years. Specify mature height to provide effective screening, while retaining access for light, sunlight and views. Deciduous planting may be used to screen outdoor living areas, decks, etc, which are less likely to be used in winter.

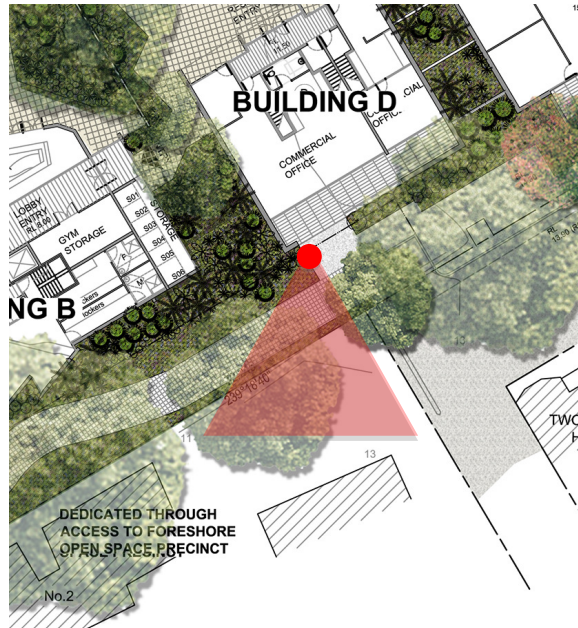
‘Building B’ and the public foreshore link are directly adjacent to No.2 Broderick Street and both have the potential to result in overlooking. This area is currently screened by moderate to dense planting, with limited access available within this area.

‘Building B’ has been designed to be oriented west towards Iron Cove, rather than towards No.2 Broderick Street. No overlooking of windows to No.2 Broderick Street will result from the positioning of openings to ‘Building B’, however some limited opportunities for overlooking over the private open space may result from balconies. It is noted however that the trees to be retained in this area, in addition to future landscape plantings as proposed and as recommended will assist in mitigating this overlooking issue.

‘Building D’ proposes residential balconies fronting onto Broderick Street and part of the boundary to No.2 Broderick Street in the area adjoining the front yard and vehicular driveway access to this site. The balconies to ‘Building D’ are detailed to include operable louvred screens for the provision on privacy. The main dwelling of potential concern is the western-most dwelling within this building because it has site lines within the 45° allowance under the DCP 2000. While a minor technical non-compliance results in this case, it is not deemed to be unacceptable as operable screening has been provided to the balcony, and existing and proposed vegetation will act as a visual barrier between sites.



Front garden and driveway area to No.2 Broderick Street, Balmain.



45° view corridor from 'Building D'

The proposed foreshore access will result in increased access and activity within proximity to No.2 Broderick Streets northern boundary. To address this issue and mitigate issues pertaining to loss of existing privacy, this area of the site will be re-landscaped in accordance with the landscape plan provided for Council's assessment. It is noted that a 6 metre width has been provided for the foreshore access path to provide adequate space for a path with a landscape buffer to No.2 Broderick Street. Also, Council will impose a condition of consent requiring the existing wire fence in this location to be replaced by a solid fence, increasing screening and privacy to No.2 Broderick Street.

A viewing platform has been proposed as part of the foreshore link located in front of 'Building B' part way down the existing rock escarpment, approximately 2 metres higher than the foreshore ground level. The platform serves as a transition area which results from the slope of the path in this location. The potential for people to congregate in this location is limited given the size of the area, therefore subject to adequate privacy screening and screen planting; visual privacy will not be an issue in this regard. It is noted that because this land will be dedicated to Council, conditions of consent have been recommended which require further Council approval with respect to landscaping / screening in this location.

Council notes that the roof terrace proposed atop 'Building E' accessed off Unit 3.12 raised a number of concerns with respect to amenity given its size and limited screening. Objections have been received with respect to the size of this terrace. Subject to a condition of consent being imposed deleting the subject unit, the terrace will also be removed from the development.

In summation, it is considered that subject to the retention and future provision of landscaping and other plantings, compliance with Part B3.3 – Visual Privacy of the DCP 2000 will be achieved.

Part B3.4 – Access to Views

Council relies on the Planning Principle relating to view sharing established by the New South Wales Land and Environment Court in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* for further assessment against view loss. A number of properties have lodged submissions relating to view loss. The following properties have listed view loss as part of their submissions to Council:

- No.5 Broderick Street, Balmain;
- No.9 Broderick Street, Balmain
- No.11A Broderick Street, Balmain;
- No.13 Broderick Street, Balmain;
- No.94 Elliott Street, Balmain;
- No.96 Elliott Street, Balmain;
- No.5 Bridge Street, Balmain; and
- No.7 Bridge Street, Balmain.

The following assessment has been undertaken in regards to the proposed view loss of the above listed sites. Their location within the context of the subject development site is shown on the image below:



Map detailing the location of the view loss affected properties.

The Land and Environment Court accepts that the attribution to the values to views is subjective and has published planning principles to help established a more structure approach in assessing the impact of development in terms of view loss.

The first step requires the assessment of views that the proposal will affect, and establishes a value system for assessing different kinds of views. It suggests that:

- *Water views are valued more highly than land views;*
- *Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons.*
- *Whole views are valued more highly than partial views (eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured)*

The subject properties, as viewed on the above map, all benefit from a variety of filtered views and outlook over the subject site and surrounding sites to the Parramatta River and Iron Cove. Potential features of views within the locality include:

- Parramatta River;
- Cockatoo Island;
- Spectacle Island
- Snapper Island;
- Iron Cove; and
- Iron Cove Bridge.

On analysis, there are no whole views of iconic landmarks or structures captured within these view corridors, making locations such as Cockatoo Island difficult to take in effectively given it is not able to be viewed in its wider setting. It is therefore considered that the views available, particularly to Broderick Street properties range in value dependent on how and where the views are obtained.

The second step is to consider how reasonable it is to expect to retain the views. It acknowledges that the following:

- *Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.*
- *Views enjoyed from a standing or sitting position is also relevant as many people who have a view from sitting position consider that they have lost the view if they have to stand up to see it.*

The geographic setting along with the subdivision pattern within the locality means that the properties within Broderick Street and Elliott Street listed above are vulnerable to view loss impacts resulting from development on the subject site, and other sites within the locality. While most views are obtained across front boundaries, they are also across two large sites at long distances before water and surrounding landscape is visible.

As a result of the existing buildings on the development site, the majority of views featuring water are obtained from a standing view point, with views from a seated position also obtainable from some properties. This narrowness of the view corridors over and between buildings makes any increases in height across the site impossible were these views to be maintained in their current form. As the

development proposal complies with the FSR requirements of the Leichhardt LEP 2000, it is not considered that the proposal is an overdevelopment of the site. The scale of the dwellings and their positioning across the site has kept heights to a relative minimum given the development complies with the FSR.

It is therefore generally considered that given the locality factors, which include the subdivision pattern and existing developments, and the location and way the views are obtained makes it unfeasible to maintain the limited existing views that are currently achieved by the properties on Broderick Street and Bridge Street.

The third step is to assess the extent of the impact, and should consider that the impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). Whilst the impact may be assessed quantitatively it is more useful to assess the view loss qualitatively as:

- Negligible
- Minor
- Moderate
- Severe
- Devastating.

As has been demonstrated in the assessment below with respect to the individual affected properties, Council has assessed the view loss range from severe to negligible. As detailed previously within 'Step 1', the majority of view corridors available to affected properties are partial views between and over buildings, existing vegetation, and directly across other sites, not just the development site. The rooms from where the views are achieved are detailed and discussed within the specific assessments below.

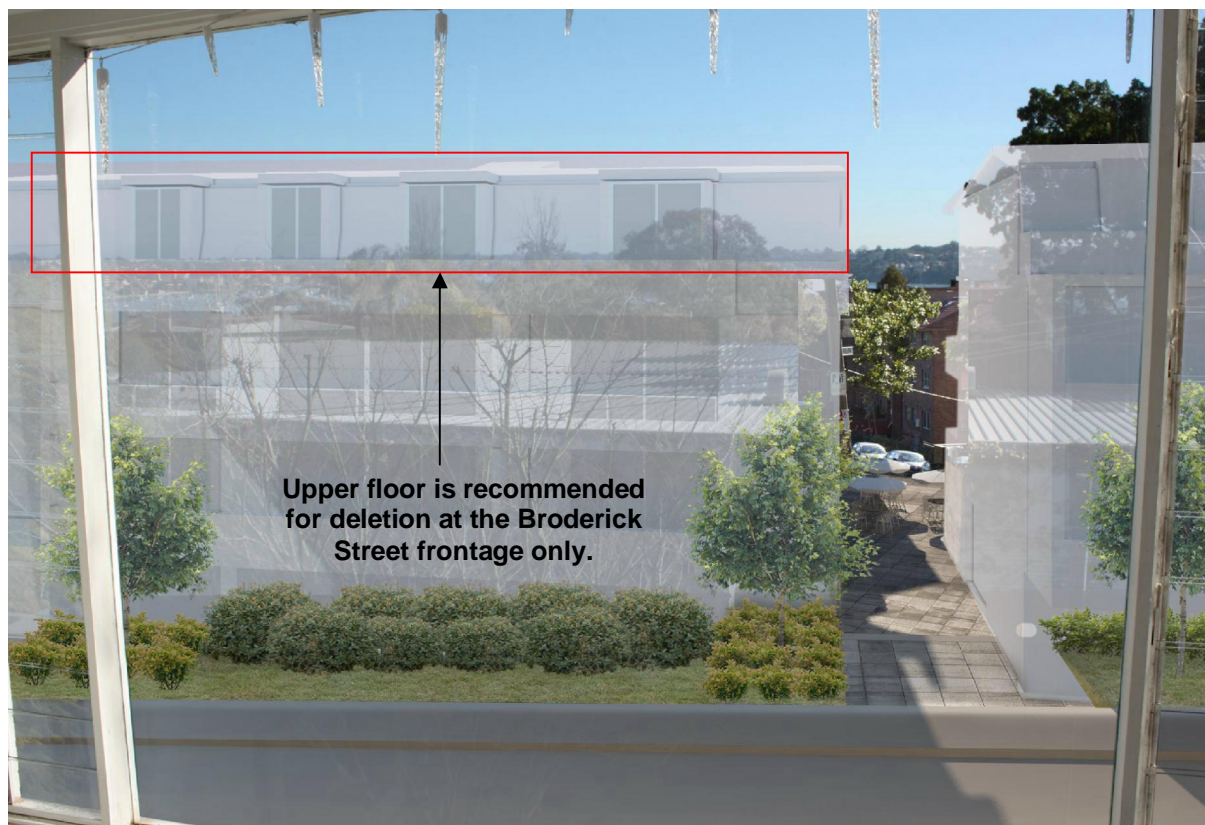
An assessment of view quality concluded that it varies quite considerably from site to site. This considered, maintaining the existing view corridors in many cases would make development on the subject site unfeasible given the firm limitations of the views currently achieved. View loss in many cases would range from minor to severe. As is detailed in the individual assessment however, a number of the views available to properties are minimal, restricted and highly vulnerable to any increases in height on the subject site.

The fourth and final step is to assess the reasonableness of the proposal that is causing the impact and the following factors should be considered:

- A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.
- With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development, as detailed elsewhere within this report, is generally compliant with the planning controls stipulated within the Leichhardt LEP 2000 and DCP 2000. While the proposed development does not comply with the 6 metre building envelope control, it is unlikely that compliance with this control would improve the view loss resulting from the proposal. It is noted that Council does not support the fourth storey to 'Building E' fronting Broderick Street, which is recommended for deletion by way of condition. In this regard, views would still be restricted by the remaining part of 'Building E'. Council notes that compliance with the building envelope could still theoretically allow greater building heights within the centre of the site which would almost certainly restrict views to a similar or greater level to the current proposal.

The following photomontage shows the proposed impacts from No.13 Broderick Street. It is noted that this is typical of the impacts to all affected dwellings along Broderick Street.



Photomontage from No.13 Broderick Street displaying the impacts of the subject proposal. The deletion of the upper floor at Broderick Street will have a minor improvement with respect to view loss.

View loss assessment for the affected properties

No.5 Broderick Street, Balmain

This site has a view corridor across the development site and the Housing NSW site. From the first floor, there are very limited, partial water glimpses and outlook across the Parramatta River (refer to images below). More expansive views are available from the second floor 'attic' level, which include more views of the Parramatta River and also of the Iron Cove Bridge, remaining unaffected by the subject development

Step 1:

The subject property benefits from a filtered view/outlook which includes water and other built and natural landscape features seen obscurely over and through existing buildings.

Step 2:

The views from the subject site are from a first floor front bedroom and associated balcony and an attic level and associated balcony, which are obtained directly across the development site and the NSW Housing site to the north. The views, including water, are obtainable in both seated and standing positions; however, the best vantage points are obtained when standing on the balconies in question. Given the partial view is obtained across two sites, this view is vulnerable.

Step 3:

The views are obtained from a bedroom and attic and their associated balconies, rather than a kitchen or living room which would receive greater benefit from these limited views, existing vistas of the Parramatta River and the Iron Cove Bridge from the attic level will remain obtainable, and this property is anticipated to also benefit from a public view corridor adjacent to 'Building B' over the proposed foreshore link, offsetting some of the impacts of the development. The view loss is therefore considered moderate in this case, given other views achieved from the site.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue to this site at first floor (water views of the Parramatta River and views of Iron Cove from the second floor will remain obtainable). It is also noted that the building forms and heights as proposed and as recommended on Broderick Street will not be out of character with nearby development on Broderick and Elliott Streets.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



First floor balcony fronting Broderick Street



Attic level balcony fronting Broderick Street

No.9 Broderick Street, Balmain

This site has a view corridor across the development site and the Housing NSW site. From the first floor, there are limited water glimpses and outlook to the Parramatta River.

Step 1:

The subject property benefits from a filtered view which includes water and other built and natural landscape features seen obscurely over and through existing buildings.

Step 2:

The views from the subject site are from a first floor front living space and balcony, directly across the development site and the NSW Housing site to the north. The best vantage point to enjoy the views is in a standing position on the balcony. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3:

The views in question, while from a living room and balcony, are restricted, filtered and distant views. This property is also anticipated to benefit from a public view corridor adjacent to 'Building B' over the proposed foreshore link, offsetting some of the impacts of the development. The view loss is considered minor/moderate in this case, given the limited views currently available.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue to this site. It is also noted that the building forms and heights as proposed and as recommended on Broderick Street will not be out of character with nearby development on Broderick and Elliott Streets.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



First floor balcony facing north across development site



First floor balcony facing west along Broderick Street

No.11A Broderick Street, Balmain

This site has a view corridor across the development site. A second floor living room deck and bedroom have filtered water glimpses and outlook across the Parramatta River over the subject site.

Step 1:

The subject property benefits from a narrow, filtered view which includes water and

other built and natural landscape features seen obscurely over and through existing buildings and street trees.

Step 2:

The views from the subject site are from a second floor front living room deck and bedroom directly across the development site. Given that only a partial view is obtained through vegetation and across the development site. The best views are obtainable from a standing position at the front of the deck and at the face of the first floor bedroom opening. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3:

Despite part of the view being obtainable from a living room deck, the filtered nature of the views involved means that, if asked to place a qualitative measure on the view loss, it would be no greater than minor, especially in comparison to neighbouring sites. The recommended design changes to the proposal also have the potential to open view corridors across the subject site.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue to this site. It is also noted that the building forms and heights as proposed and as recommended on Broderick Street will not be out of character with nearby development on Broderick and Elliott Streets.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



First floor balcony facing north across development site



First floor balcony facing west across Broderick Street and the development site.

No.13 Broderick Street, Balmain

This site has a view corridor across the development site and the Housing NSW site. In this regard, the second floor bedroom and adjacent sitting area benefit from water views and outlook to the Parramatta River directly across the development site.

Step 1:

The subject property benefits from views which include water and other built and natural landscape features. The dwelling's second floor is elevated significantly, and is characterised by a large glass front façade extending to ground floor, and together

with the fact that outlook is not significantly obstructed, the second floor bedroom and sitting room has a greater outlook over the development site than other Broderick Street properties. This view however is not considered to be of any greater importance than views available to other Broderick Street properties, as there are no distinguishable iconic views from the site.

Step 2:

Given the partial view is obtained across two sites, it is considered vulnerable and their total retention is not considered viable. The best views are obtained from a standing position, with more partial views from a sitting position. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3:

Despite views from this site being significantly affected by the proposal, the views that are impacted upon are not associated with a main living space, and the deletion of Units 3.12 – 3.14 will widen the view corridor provided between 'Buildings E' and 'F' which is located opposite this site. In the circumstances, the view loss is deemed to be moderate to severe given the location from where they are accessed.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue to this site. It is also noted that the building forms and heights as proposed and as recommended on Broderick Street will not be out of character with nearby development on Broderick and Elliott Streets.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



First floor fronting Broderick Street – no view available.



Second floor windows fronting Broderick Street with partial water views across development site from sitting area adjacent to bedroom.

No.94 Elliott Street, Balmain

The subject site faces west and has expansive views and outlook across the development site and the dwellings along the southern side of Broderick Street. From the first and second floor decks, the latter of which is substantial in size, there is an outlook across the Parramatta River. Water views and views of Spectacle Island and Iron Cove are obtainable.

Step 1:

The subject property benefits from expansive outlook / views over the development site over the subject site across Iron Cove and the Parramatta River. The views include water and other built and natural landscape features.

Step 2:

The outlook is enjoyed over the development site and a number of other adjacent sites, primarily from decks in both a sitting and standing position. Views within the foreground are mainly over the side boundaries of other properties.

Step 3:

The outlook/views are obtained from decks off bedrooms at the first and second floors. The loss of views is considered negligible in this case, as the development will only result in the obstruction of a small portion of water in the foreground. The expansive views and outlook benefiting the site, particularly from the second floor, will be largely maintained or unaffected.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue, which as previously noted, is negligible, with water views of the Parramatta River and views of Iron Cove being substantially retained.

In light of all the above factors, the impacts to this property are not considered unreasonable.



View from second floor deck facing west over No.96 Elliott Street and the development site.



Photomontage provided by the applicant which shows the proposed development shaded in the centre of the image.

No.96 Elliott Street, Balmain

This site is located on the corner of Elliott and Broderick Streets and enjoys views across the development site, the Housing NSW site and over Broderick Street properties to the south-west. From the first floor, there are views and outlook across the Parramatta River, including towards Iron Cove.

Step 1:

The subject property benefits from expansive outlook / views over the development site to the west across Iron Cove and the Parramatta River. The views include water and other built and natural landscape features.

Step 2:

The outlook is enjoyed over the development site and a number of other adjacent sites, primarily from the first floor kitchen, bedroom, sitting room and verandah. Views are obtainable in a sitting and standing position. The views are achieved over side and rear boundaries in this case.

Step 3:

The outlook/views are obtained from the first floor rear kitchen and bedroom, the front sitting room and the front verandah. The loss of views / outlook is considered moderate in this case, as the development will only result in the obstruction of part of the water view and the expansive outlook benefiting the site and views of Iron Cove towards the Iron Cove Bridge from the rear kitchen and bedroom will remain obtainable. It is noted that water glimpses from the front balcony at the first floor will also remain obtainable.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss issue to this site at first floor (water views of the Parramatta River and views of Iron Cove from the site will remain obtainable). It is also noted that the building forms and heights as proposed and as recommended on Broderick Street will not be out of character with nearby development on Broderick and Elliott Streets.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



Views from first floor kitchen over the development site.



Views north-west from first floor sitting room over the development site.



View south-west towards Birkenhead from first floor kitchen. This view will be largely retained with the proposed development located in the middle right of the image.

View from first floor rear bedroom over Iron Cove to the Iron Cove Bridge – this view will remain unaffected by the proposed development.

No.5 Bridge Street, Balmain

This site has a narrow view corridor in the direction of the subject site. In this regard, the view corridor obtainable from a first floor rear dormer associated with a bedroom is restricted by nearby buildings and surrounding / nearby vegetation across Broderick Street properties and the development site. It is noted that the property also has water glimpses of the Parramatta River and the Iron Cove Bridge from the front of the property.

Step 1:

The subject property has existing water glimpses across the site and adjoining and nearby sites. These views are not iconic and are partial at best.

Step 2:

The view is achieved across numerous boundaries which includes the development site and Broderick Street properties. The view, including water glimpses, is best obtained from a standing position at the face of the window in the bedroom.

Step 3:

The view loss results from a first floor bedroom. Given the existing development and vegetation in the locality between the subject site and the Parramatta River in the direction of the development site, and given that views to the west of the Parramatta River and the Iron Cove Bridge will remain obtainable, the view loss is considered to be negligible.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss in the direction of the subject site, and views of Iron Cove and the Iron Cove Bridge from this site will remain obtainable.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



Partial water glimpse from the first floor facing north. View passes through the rear of Nos.94 & 96 Elliott Street across the subject site.



Rear facing dormer window where the view is achieved.

No.7 Bridge Street, Balmain

This site faces has a view corridor in the direction of the subject site. In this regard, the view corridor from an elevated ground floor living space and rear deck and a first floor bedroom and deck is restricted by nearby buildings and surrounding / nearby vegetation across Broderick Street properties and the development site. It is noted that the property also has water glimpses of the Parramatta River and the Iron Cove Bridge from the living room and bedroom, and from the front of the property.

Step 1:

The subject property has existing water glimpses across the site and adjoining and nearby sites. These views are not iconic and are partial at best.

Step 2:

The view is achieved across numerous boundaries which includes the development site and Broderick Street properties. The view, including water glimpses, is best obtained from a standing position from the living room / deck. The protection of such a view would be difficult in the circumstances of this case.

Step 3:

The view loss results from an elevated living room and deck and first floor bedroom and deck. Given the existing development and vegetation in the locality between the subject site and the Parramatta River in the direction of the development site is of a low quality, and given that views of a high quality to the west of the Parramatta River and the Iron Cove Bridge will remain obtainable, the view loss is considered to be negligible.

Step 4:

The proposed development complies with the development standards relevant to the site. While there is a breach in building envelope, compliance with this control is unlikely to negate the view loss in the direction of the subject site, and views of Iron Cove and the Iron Cove Bridge from this site will remain obtainable.

In light of all the above factors, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



Partial water glimpse from the rear facing north. View passes across adjoining properties and the development site.



Alternate view from property captured from first floor bedroom.

In addition to the images taken by Council, the applicant has also provided a series of photomontages which can be in the applicant's submission documentation.

In summation, Council acknowledges that view loss will result from the proposed development, with the greatest impact to existing Broderick Street properties. On balance, having regard for the planning controls and vulnerability of the affected sites, the view loss is considered to be acceptable in this case. It is noted that any increase in height on the development site is likely to have a view loss impact on Broderick Street properties, thus potentially restricting development on the subject site. In light of the above, it is not considered the view loss concerns are such that the development should be refused.

Parts B3.5, C3.1 and C3.4 – Acoustic Privacy and Noise and Vibration Generation and Working Hours

The matters as raised within Parts B3.5 and C3.1 of the DCP 2000 are covered by *SEPP No.65* requirements and will be addressed by way of standard conditions recommended by Council's Environmental Health Officers. Part C3.4 of the DCP 2000 outlines appropriate trading hours for uses where in proximity to residential areas. Because all commercial tenancies will require separate development consent prior to occupation of their first use, this matter can be considered at that stage in greater specificity. It is noted however that it is expected that the proposed development will comply with the working hour provisions.

Part B4.4 and C4.3 – Foreshore Development Controls

These controls seek to ensure that new development respects the function of the site, heritage significance and cohesion and appearance of the foreshore as viewed from the water and land and ensure that development does not detract from the amenity of neighbouring residents.

In summation, view loss would result from the proposed development with impacts of varying scales. Having regard for the existing development on site and the planning controls applicable to the site, any increase in height from existing would result in a view loss impact to some or all of the affected properties. For reasons discussed above and below, the development as proposed and as recommended will comply with the above principles.

Part B4.6 – Residential Development in Business Areas

Where designing residential development for integration into business areas, the following matters are to be considered:

- Ensure separate and clearly defined dwelling entries where mixed use development is proposed;
- Innovative design solutions such as central light wells/atria and articulated facades should be incorporated to maximise solar access;
- Design new developments to allow conversion to other uses;
- Noise insulation measures should be incorporated into all development with particular attention to shared ceiling/floors and walls and mixed use development; and

- Residential development should be integrated with business development and not developed as separate 'enclaves' within a business zone.

The development is largely compliant with the controls detailed above. The development has been amended to separate the commercial and residential building entrances. A Noise Impact Assessment has been provided confirming that the development is capable of complying with all relevant noise control requirements, the proposal is therefore considered satisfactory in this regards.

The isolation of the development site away from the main business centre on Darling Street will not create an enclave for the residential component of the development. The residential component of the development will be suited to the locality, not resulting in a pocket of residential development isolated from similar surrounding land uses.

Part B4.7 – Diverse and Affordable Housing

The proposal meets the diverse housing requirements of the Leichhardt LEP 2000, including the minimum requirement for single bedroom dwellings.

Part C2.0 – 2.9 – Ecologically Sustainable Non-Residential Development

See previous comments. Relevant considerations such as energy efficient fittings and insulation will be the subject of appropriate conditions as required.

Leichhardt Development Control Plan No. 32 – Design for Equity of Access

With respect to access, the Building Code of Australia, Clause D3.2 requires:

- a) *an accessway must be provided to a building required to be accessible:*
 - (i) *from the main points of pedestrian entry at the allotment boundary; and*
 - (ii) *from another accessible building connected by an accessible link.*

The intent is for persons with a disability (including visitors) to be able to travel via a continuous accessway between buildings without having to go through the car park of which they may or may not have access. The only concern in this regard is that there is poor or no accessible link over the podium levels, and between some buildings and on-site disabled access provision. However, Council's Building Surveyor has raised no objections to the proposal proceeding on the basis that a condition be imposed requiring that final details be provided with the Construction Certificate, detailing compliance with Part D of the Building Code of Australia, AS1428.1 and the Disability (Access to Premises-Buildings) Standard 2010, including relating to Braille & tactile design, signage, access, finishes and fittings, including passageways, ramps, step ramps or kerb ramps, signs, doorways and other parts of the building.

Disabled parking is provided in accordance with the Plan and will be reinforced via appropriate conditions, particularly in light of the fact that Engineers require design amendments to the on-site car parking provision as previously noted.

The proposal as recommended will comply with the provisions of this part of the Plan.

Leichhardt Development Control Plan No. 38 – Waste

The amended proposal was considered by Council's Waste Section who provided the following comments:

Design and Ongoing Management - General

The entry level for garbage / recycling collection vehicles from Elliot St to the loading bay requires clearance height to be identified on the Floor Plans. Waste / recycling collection vehicles have a gross vehicle mass (GVM) of 26 tonne. Therefore Council will require an engineer's certificate confirming the driveway and loading bay can accommodate the above weight of this type of vehicle.

Collection frequency

Residential collection frequency of once per week is in line with Council's residential waste and recycling service.

Commercial

The collection frequency for the non-residential component may require more frequent collection if it is operating 7 days per week. The commercial collection will require a private contractor for this service.

Residential

The number of garbage bins has been calculated on the premise that these bins are shared by 4 units i.e. 1 x 240L garbage / 4 units. The residential Domestic Waste Charge will therefore be based on the above configuration. This configuration will remain for the life of the building i.e. the unit complex will not be able to increase the number of garbage bins.

Commercial

Council previously requested that the Retail component of the commercial sector be based on 240L per 100m² of floor area per day to accommodate food premises waste generation rates. A commercial contractor could provide the applicant with a variety of bin container systems for both garbage and recycling to accommodate these waste generation rates e.g. 660litre containers – to be discussed with commercial waste / recycling contractor.

Commercial on-site organics systems

Examples of on-site systems (Note: Information only – Council does not endorse any particular composting equipment):

§ Closed Loop – www.closedloop.com.au

§ Commercial Composters - <http://stores.vitality4life.com.au/Composters/>

Demolition, Excavation and Construction

- Form 1 – Demolition: Council notes 90 tonnes of mixed waste. There may be potential to sort this mixed waste further and this should be discussed with the waste contractor / reprocessing facility.
- Form 3 – Excavation: Council notes that the site requires assessment for both asbestos and contaminated fill.
- Form 4 – Construction: The purpose of Form 4 is to detail leftover materials from the Construction phase. The estimated volume/tonnes of materials are therefore excessive for metal; timber; masonry; plasterboard & mixed waste.

Council notes limited on-site reuse of materials from the demolition / excavation stage and would recommend the applicant plans for greater opportunities for the reuse of materials from demolition – construction stage.

In response to the above concerns, the following conditions are recommended to be imposed on any consent:

- The entry level for garbage / recycling collection vehicles from Elliot Street to loading bay requires the clearance height to be identified on the Floor Plans;
- An engineer's certificate confirming the driveway and loading bay can accommodate a waste / recycling collection vehicles gross vehicle mass (GVM) of 26tonne;
- The residential Domestic Waste Charge will be based on bins being shared by 4 units i.e. 1 x 240L garbage / 4 units, and this configuration will remain for the life of the building i.e. the unit complex will not be able to increase the number of garbage bins without consent;
- The Waste Management Plan is to be amended to plan for greater opportunities for the reuse of materials during demolition and construction stages.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The subject site is located on Map 8 and the following assessment has been provided with respect to the Foreshores and Waterways DCP 2005.

2.0 – Ecological Assessment

The subject property is not identified as a site of ecological significance, therefore no assessment is required against the provisions of Part 2 of this plan.

3.0 – Landscape Assessment

Landscape Character Type 7 applies to the Balmain Area including Snail Bay, Mort Bay and Balmain. Any development within this landscape is to satisfy the following criteria:

- It retains the vitality of the area by retaining the mixture of land uses;

Comment: the proposed development provides a mixture of commercial and residential uses.

- New residential development is in a style, form and spacing compatible with existing residential development;

Comment: The proposed new development is of a form which is compatible with other mixed use / residential flat developments fronting the foreshore within the Balmain area. The development uses depth to respond to the foreshore with adequate spacings as considered under SEPP No.65. The proposal as proposed and as recommended will meet this test.

- Vegetation is integrated within the development to minimise the contrast between natural and built elements;

Comment: The development retains a portion of existing healthy trees within proximity to the foreshore, as well as other significant vegetation within the site. This vegetation breaks up the built form, especially the form of 'Building A' when viewed from the water and Birkenhead Point. Additional vegetation is recommended to be retained via condition.

- Measures are introduced to mitigate noise and amenity impacts between incompatible land uses.

Comment: This issue has been considered within the provisions of SEPP No.65. Subject to condition, no noise or amenity issues are expected to result from the proposed development.

5.0 – Guidelines for Land Based Developments

Part 5.2 – Foreshore Access encourages maximisation of public access to the Sydney Harbour Foreshore. Map 8 within the Foreshores and Waterways DCP 2005 also detail existing and future pedestrian access to the foreshore, which encompasses the foreshore portion of this site. The proposed development is in direct compliance with this part of the DCP, with a foreshore land dedication forming part of the section 94 contributions for the subject site.

Under Part 5.3 – Siting of Buildings and Structures, in addition to the FBL set by the Leichhardt LEP 2000, the consent authority must lend consideration to the following points:

- Where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbing it;
- Buildings should address the waterways;
- Buildings should not obstruct views and vistas from public places to the waterways;
- Buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP; and
- Where there are cliffs or steep slopes, buildings should be sited on the top of the cliff or rise rather than on the flat land at the foreshore.

The subject development is generally compliant with the points as raised above. It is noted that public views and vistas will be created as a result of the development, particularly from Broderick Street. The development also addresses all frontages, including the foreshore.

Part 5.4 – Built Form, Part 5.5 – Signage and Part 5.6 – Planting are all captured within other State and Local planning instruments and policies applicable to the development. These matters have been considered previously within this report.

Part 5.10 – Multi-unit Residential Developments require developments to consider the site context of the river, and provide public access where appropriate and feasible. The development complies with the minimum building siting of 12 metres from the foreshore boundary and allows for a minimum 6 metre building setback. The appearance of the public domain will be to Council's specification and will be detailed in conditions of consent. This public open space will be clearly discernable from the private open space within the site.

The objectives of Part 5.14 – Inclinator, Stairs and Driveways are to minimise the visual intrusion and minimise disturbance to the topography and vegetation. The proposed development involves the introduction of a new stair to allow access to the foreshore off Broderick Street. These matters have been considered within the Public Foreshore Land Dedication discussions within this report. It is noted that certain works will be undertaken to remove timber retaining walls and provide an access with acceptable grade, facilitating better public access to the foreshore. A small 'viewing platform' will be reconstructed as part of the access works. The landscape plan details vegetation which will provide screening to this platform, mitigating any potential visual impacts where viewed from the water.

4.6 Environmental Planning and Assessment Regulation 2000

Clause 92(1)(b) of the Regulations

Clause 92(1)(b) of the Regulation Council to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. In the event of an approval being granted, the consent authority would need to ensure that the demolition of the existing structures is carried out in accordance with comprehensive construction/demolition/waste management plans.

4.7 Building Code of Australia

Council's Building Surveyor provided the following comments based on a development with building classifications of 2, 5, 6, 7a and 9b:

- Final details are to be provided with the Construction Certificate, detailing compliance with Part D of the Building Code of Australia, AS1428.1. and the Disability (Access to Premises-Buildings) Standard 2010 (see above).
- The applicant has a number of ways to comply with the performance provisions of the BCA by compliance with either:
 - the *deem-to-satisfy* provisions; or

- an *alternative solution*; or
- a combination of (a) & (b) above;
- The building appears to have an Effective Height of <25m and is not required to be protected (other than the car park) with a sprinkler system.
- It is noted that most buildings appear to have areas where vertical separation of openings in external walls has not been achieved as required by Clause C2.6 of the BCA. Where full height glass windows and/or doors are provided and on the edges of balconies, all areas are to comply.
- The fire isolated stairs serving building C, D and E do not appear to have separation of rising and descending stair flights as required by clause D2.4 of the BCA.
- Building “E” lower ground floor has egress distances on level 2 and 3 of up to 10m to a single exit, the maximum distance to a single exit is 6m as permitted by clause D1.4 of the BCA.
- Building “E” requires compliance with the requirements for “Bounding Construction” in accordance with clause C3.11 to the walls and doors between the commercial and residential units.
- Travel distances within the basement car park (grid 1) do not comply with clause D1.4 as the travel distance to an exit and/or point of choice appear to exceed the maximum distance permitted.
- The basement car park does not provide access to the alternate exit adjacent to the car space No. 41.
- A number of the commercial units on the lower ground floor appear to have extended travel distances to a single exit contrary to the requirements of clause D1.4 of the BCA.
- The ground floor car park appears to have travel distances exceeding the requirements of clause D1.4 around grid 1 from car space No. 43.
- Bounding construction is required to the meeting room on the ground floor of Building “B” in accordance with clause C3.11.
- The doors to the spa area on the lower ground floor may need to be reviewed to comply with the requirements of AS1926.
- Notwithstanding the items as identified above, full compliance with the requirements of the Building Code of Australia - Volume One and the relevant Australian Standards will be required throughout.

Conditions have been recommended addressing the above requirements of Council's Building Surveyor.

4.9 The likely environmental impacts both natural and built environment, and social and economic in the locality

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way.

Social Impacts

Council's Social Impact Assessment Policy and guidelines require that a Social Impact Assessment be submitted with the application. The applicant submitted a Social Impact Assessment, prepared by Elton Consulting, which has been reviewed

in associated with the plans by Council's Community Development Section. The following comments from Council's Community Section have been provided:

The proposal will contribute to diversifying housing stock in the local government area. The proposal will maintain commercial activities in a mixed-use development.

- The proposed proportion of adaptable housing meets Council's planning guidelines.
 - Reviewers note that the Revised Plans increase the number of adaptable 2 bedroom units
 - It is proposed that the development reinstates an adaptable 3-bedroom unit to allow accommodation for a carer/visitor, thus enhancing the possibility a person to 'age-in-place', in keeping with the SIS proposal that likely residents could include older people down-sizing to smaller residences

Comment: Council will recommend a condition of consent to require one 3-bedroom unit to be an adaptable unit.

- The revised Plans respond to an earlier request that design of private space be child-friendly by introducing a child friendly play area and bbq facilities for residents and tenants.
 - Propose that layout of current terrace design for children's play area and residents' outdoor area optimise access to winter sunlight for children's play area.

Comment: There are no viable options for relocating the children's play area without locating it on the foreshore land dedication area or within the Commercial Plaza. On balance, the proposed location is the most suitable and is therefore considered acceptable.

- The revised Plans do not respond to the previous request that consideration be given to future development of services supporting incoming residential population as one of the commercial uses such as childcare centre:
 - Propose that design of the commercial space be able to support provision of childcare service on site in the future as this would:
 - § Respond to the need for childcare services, noting that there are currently waiting lists for childcare services in the local government area
 - § assist in building linkages between the existing and new communities in this area of Balmain, arising from the connections and community building that occurs between families through access to children's services
 - Noting the concern that onsite childcare may increase vehicular movements to the site,
 - § People accessing childcare from the surrounding community may be encouraged to arrive onsite as pedestrians
 - Should configuration of commercial elements of site not make provision for childcare propose that s94 contribution funds be allocated to community facilities

Comment: While it is noted that the provision of a childcare facility would fill a recognised need within the area, the subject application does not give consideration to specific uses. Any proposal for a childcare centre would need to be considered by way of a separate development application to Council. Generally, it is possible that a childcare facility could be retrofitted to Commercial units within 'Buildings C' or 'E'.

Community Development comment – request for a design/public art component linking the new development with its history, noting this site has been part of the industrial and working harbour history. The existing site features a number of sculptures, and plaques communicating the history of Nutrimetics as a company.

- The Revised Plans propose dedication of Building F Elliott Street façade for interpretation
- Offer the suggestion for consideration, that the Developer creates a placemaking approach to public art throughout the development, in a holistic response to the history of the site and its future development.

Comment: Council will be requiring the applicant to provide an interpretive strategy for the site that includes interpretive signage which can be viewed by the public within the vicinity of the foreshore and the public plaza near the corner of Elliott and Broderick Streets.

Environmental Impacts

The proposal as recommended/conditioned will have acceptable environmental impacts. See assessment throughout this report.

Economic Impacts

The applicant submitted a Market Assessment and Economic Impact Study (Economic Study) prepared by SGS Economics and Planning. This assessment has been reviewed and the following comments are made:

- The subject study makes consideration of economic viability of both the commercial and residential components of the development, providing justification of the viability of the development within the context of the Balmain area.
- The existing use of the site by the existing long standing tenant is unlikely to continue in its current capacity, if at all, therefore consideration needs to be placed into the viability of the commercial product being delivered to the market, and whether it is likely to be successfully tenanted. Council's primary interest and objective in this regard is *to ensure the sustainable growth of the Leichhardt economy by retaining existing employment uses and fostering a range of new industrial and business uses to meet the needs of the community (cl.20(a) LEP 2000)*. According to the Economic Study, despite the 50% reduction in commercial floor space, providing a more suitable commercial product will create an additional 137 jobs (totally an expected 244 workers). This will result in a positive economic benefit for the area.
- It is also noted that the development, as amended, includes a two retail tenancies to be used as a convenience store and cafe to support both the commercial and residential development on site, as well as the surrounding

community. Council is supportive of these uses given the site is a satellite commercial site, away from the Darling Street commercial centres in Balmain and Rozelle.

The proposal is therefore satisfactory with respect to economic impacts.

4.10 The suitability of the site for the development

The site is zoned Business and is subject to a series of specifically targeted objectives. As demonstrated within this report, the development meets the applicable objectives, and therefore the site is suitable for the proposed development.

4.11 Any submissions made in accordance with the Act or the regulations

The Development Application was initially advertised and notified between 20th October 2011 and 18th November 2011. The plans that form the basis of this assessment were advertised and notified between 27 January 2012 and 27 February 2012.

Both notification periods included:

- § Letters sent to approximately 4200 properties.
- § A yellow site notice placed on the site.
- § Listing under the notification section on Council's website.
- § Advertisement in the local paper.

83 objections were received and 4 submissions in support were received.

The following concerns were raised in the submission from or on behalf of residents:

Numerous submissions refer to the Land & Environment Court Planning Principle – Criteria for assessing impacts on neighbouring properties detailed in the decision in *Paiburn v. North Sydney Council* [2005] NSWLEC 444.

Comment: The planning principle states:

“26. The following questions are relevant to the assessment of impacts on neighbouring properties:

- How does the impact *change* the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
- How necessary and/or reasonable is the proposal causing the impact?
- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?
- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”

The specific issues pertaining to impacts on adjacent properties have been detailed within the Leichhardt DCP 2000 assessment previously within this report. In order to respond to this planning principle, the following general comments are provided:

- The proposal as amended, with conditions recommended to delete 3 units off the 'Building E' and 1 dwelling from 'Building B', manages the impacts on adjoining properties with respect to sunlight, views and privacy. It is acknowledged that view loss will result to dwellings on Broderick Street; however the view loss was generally considered to be minor to negligible. It is noted that a public view corridor will be established between Broderick Street and the foreshore;
- The proposal is generally compliant with the development standards and subject to conditions, is reasonable;
- The affected properties on Broderick Street are mainly vulnerable to view loss. The views available are largely filtered and sensitive to any increases in height on the development site;
- Subject to the deletion of dwellings (and associated built form), the impacts can be improved and in many cases addressed. It is not considered by Council that the impacts result from poor design; and
- The proposal complies with all relevant development standards (with the exception of the Foreshore Building Line which is a technical non-compliance). Compliance with the building envelope control is unlikely to completely resolve the view loss concerns.

Traffic impacts associated with the intensification of the use of the site will occur. Concerns raised include increased traffic congestion, road safety at numerous intersections, and increased use of Broderick Street.

Comment: The Traffic Impact Assessment Report prepared by the applicant's traffic consultant assessed the Darling Street/Elliott Street and Elliott Street/Glassop Street/Terry Street intersections and indicated that the intersections can operate satisfactorily with the additional traffic generated by the development.

No assessment of the Darling Street/Victoria Road and Terry Street/Victoria Road intersection has been undertaken.

Parking impacts including adequacy of on-site parking, loss of parking on both Broderick and Elliott Streets.

Comment: The applicant has provided 217 onsite parking space to service the residential and commercial components of the development. As outlined within the DCP 2000 parking assessment, the development provides / will be conditioned to provide for more than the minimum and less than the maximum number of onsite parking spaces, and will be satisfactory with respect to car parking considerations.

There will be no loss of parking along Broderick Street, with the proponent detailing works to upgrade the footpath and roadway to ensure parking can be accommodated as it currently is along Broderick Street. Council's recommended conditions of consent detail final guidelines for these works to ensure the roadway in Broderick Street is not narrowed as a result of the works. It is noted that direct

pedestrian access to the site has been removed from Broderick Street to discourage users of the site from using street parking as an alternative to onsite parking.

It is envisaged that there will be a loss of 3-4 on-street parking spaces along Elliott Street as a result of the proposed new double vehicle crossings and associated signage requirements to ensure safe sight lines. Council does not consider this to be of detriment to the availability of on-street car parking in the locality.

No information has been provided about loading and unloading facilities and arrangements for the commercial component of the development.

Comment: Loading facilities have been provided onsite within the main (mid-level) basement. Council Officers are of the opinion that an additional smaller on-site loading dock should be provided on the site to allow for smaller delivery vehicles and couriers. As part of the recommended deferred commencement consent, Council has required the applicant to redesign the car park to provide these facilities.

Council also notes that loading and unloading associated with the commercial tenancies will also be reviewed under Development Applications lodged for the use of each commercial tenancy.

Numerous objectors believe the proposal will result in unacceptable impacts on surrounding heritage buildings, particularly No.96 Elliott Street Balmain. It was outlined that loss of views from this site would impact on the heritage significance of the dwelling.

Comment: The proposal has been considered against cl.16(7) – Development in the vicinity of heritage items of the Leichhardt LEP 2000. This assessment is detailed within Part 4.1 of this report. Giving specificity to the issue of view loss, Council did give consideration to the potential impacts on the heritage significance of 'Braeside' house - a Victorian Filigree dwelling set on a very large allotment (by comparative Balmain standards) at No.96 Elliott Street. The impacts on this heritage item were considered acceptable on the basis that the primary views of this dwelling would not be directly impacted by the development; the development site is located further down the slope of Elliott Street and there is a considerable separation of this heritage listed dwelling from the development site, which includes the width of Broderick street. As such, Council is of the opinion the proposal will not result in unacceptable impacts on adjacent and nearby heritage items.

The size, bulk and scale of the buildings are not characteristic of development in the surrounding area.

Comment: The proposal reflects a similar scale to the Housing NSW development on the northern side of Elliott Street and transitions to a lower scale along Broderick Street. The site also benefits from a greater FSR than adjoining sites as a result of its Business Zoning; therefore larger buildings are a reality of a site with a greater density allowance.

The development, as amended and as conditioned, presents an acceptable scale with the highest levels setback from the street frontage behind the front building lines to prevent them from imposing onto the street. These issues have been previously

discussed within this report within both the LEP 2000 and DCP 2000 assessments and are now considered acceptable within the context of the locality and the development standards applicable to the site.

Comments were received that Council should consider a Residential Parking Scheme as a result of the development.

Comment: Council has conditioned that residents within the subject development cannot partake in a Residential Parking Scheme (RPS) if one were to be established in this precinct. Comments from Council's Traffic Engineers are that there is no current plan to implement a RPS in this area. Council can monitor the on-street parking occupancy in the vicinity of the development once occupied and if the need arises a RPS could be investigated.

The development will result in a long construction period with significant impacts (noise, dust, sediment control, traffic congestion) and access issues for large vehicles accessing the site via narrow streets will result in major problems.

Comment: The conditions of development consent will be stringent with respect to how the works are undertaken, detailing construction hours, dust and sediment management measures and methodologies, construction and traffic management plans, acoustic impact reporting aimed at reducing noise impacts from the excavation works etc.

Conditions have been recommended requiring measures such as providing dedicated construction site entrances and exits controlled by a certified traffic controller, restricting construction related vehicle movements into and out of the site via Elliott Street (rather than narrow Broderick Street) and spreading truck / heavy vehicle movements along Elliott and Terry Streets, which will assist in mitigating adverse amenity impacts.

Materials selection for the balustrading is not in keeping with the character of the area and should be changed from glazing to a more appropriate material

Comment: Council raised similar concerns with the proponent. The amended proposal provides primarily metal balustrading, apart from the waterfront apartments which remain glass. Council is now comfortable with the balustrade materials as proposed.

The development does not provide enough diversity for families to be attracted to the development.

Comment: The proposal has been reviewed by Council's Social Planner and has been assessed against the diverse housing provisions within cl.19(4) of the Leichhardt LEP 2000. The proposal complies with the applicable development standards as detailed within Part 4.1 of this report. The diversity of housing proposed is supported by Council's Social Planner as the development caters for housing which is characteristic of the demographic prevalent to this type of development within the locality.

The development should be designed to improve stormwater quality and provide re-use alternatives.

Comment: As detailed within the Engineering comments earlier within this report, Council has recommended a condition to increase onsite stormwater retention for reuse to a 200kL storage volume. This quantity of stormwater reuse will provide capacity for improved water quality in addition to reuse capacity.

An objector disputes the FSR calculations and notes that the foreshore land dedication should be omitted from the calculation because it will no longer form part of the site.

Comment: The proposed foreshore land dedication is correctly included within the FSR calculation for the proposal. Under Part C.4 – Land Dedication within Development Contributions Plan No.1 – Open Space and Recreation, it states, *“the area of land being dedicated for public open space is permitted to be utilised in the maximum floor space area calculations for the contributing development site.”*

The development will result in the removal of large number of trees from the site.

Comment: Council has made an assessment of the trees to be removed from the site. The amended proposal retains a number of trees which were originally sought for removal, including trees along Broderick Street and Elliott Street. A detailed assessment can be found in Part 6 of this report within the Landscape Assessment Officers assessment of the tree removals.

Numerous objections have been lodged with respect to view loss to properties in Broderick Street, Elliott Street and Bridge Street.

Comment: A detailed view loss assessment has been undertaken previously within this report from each of the objector’s properties.

There has been no setback provided along Broderick Street, contributing to the bulk and scale issues.

Comment: Setbacks of at least 6m have been provided along Broderick Street consistent or greater than building setbacks already established on Broderick Street, and the proposal as recommended will be of a satisfactory bulk and scale to this frontage.

The proposal will result in overshadowing and visual privacy issues to No.2 Broderick Street.

Comment: The original development proposal resulted in a number of overshadowing and visual privacy concerns to No.2 Broderick Street. Council sought more detailed modelling from the applicant with respect to the issue of overshadowing. An assessment of this compliance is detailed previously within Part 4.5 of this report.

Visual privacy issues are key considerations given the proposed public thoroughfare from Broderick Street to the foreshore. A visual privacy assessment with respect to No.2 Broderick Street has been detailed within Part 4.5 of this report.

Visual privacy impacts associated with the pedestrian link to the foreshore, including the changes in landscaping (particular reference was made to trees T41, T42 and T43).

Comment: This issue has been generally discussed within Part 4.5 of this report. Council has considered landscaping in this location and while general details of proposed landscaping are detailed on the amended landscape plan, Council has recommended a condition of consent requiring all final landscaping details within future public land to be to the satisfaction of Council.

With specific respect to the trees listed above, only T43 (Pepper Tree) is identified for retention under the amended proposal. Trees T41 and T42 are located within the footprint of the proposal and cannot be retained. It is considered that replacement planting will be acceptable in this circumstance.

The applicant has not undertaken adequate community consultation in this development process.

Comment: The applicant, as Council understands it, undertook limited community consultation prior to lodging the development application with Council which was separate from any legislative obligation. Council has undertaken its own community consultation process well in excess of the requirements of Leichhardt DCP No.36 – Notifications. Council has also held a number of public information evenings to assist the residents with a background for the original and amended proposals.

The adjoining resident at No.2 Broderick Street works from home and during the construction works is likely to have amenity severely impacted as a result of the development, especially during the construction works.

Comment: Noted. Council has recommended conditions of consent to manage and mitigate construction impacts. While Council cannot guarantee there will be no loss in amenity during the construction works, the conditions will restrict how the works are undertaken to ensure amenity is not unreasonably compromised.

Objector raises compliance issues with SEPP No.65 (Residential Flat Design Code), especially with regard to the context, scale, built form and amenity of the proposed development, and solar access to dwellings within the site.

Comment: Council has provided a detailed assessment with regard to the 10 principle considerations of SEPP No.65 (Part 4.1 of this report) and the Residential Flat Design Code (Appendix 1). Council is comfortable with the development, subject to the recommended amendment conditions affecting 'Buildings B' and 'D'. A detailed assessment and frequent consultation has been conducted with respect to internal solar access to dwellings.

In this regard, the proposal is considered acceptable under the provisions of the Residential Flat Design Code. While there are new dwellings which do not receive

the 3 hours solar access as required by the Leichhardt DCP 2000, the guidelines set under SEPP No.65 take precedence in this regard. Details of the result of the solar access assessment are covered in Part 4.5 and Appendix 1 of this report.

The bulk and scale of 'Building A' where viewed from the foreshore is unacceptable and inconsistent with the context of the area.

Comment: The proposal has been assessed against the relevant planning controls, including *Sydney Regional Environmental Plan (Sydney Harbour Catchments) 2007* and the *Foreshores and Waterways DCP*. The proposal is considered generally acceptable in this regard. The assessment is detailed previously within this report.

An objector has stated that the amended development fails to satisfy the outcomes required by Part A5.0 – Amenity, of the Leichhardt DCP 2000.

Comment: As detailed previously within this report, the proposal as assessed and detailed within this report meets the test detailed with Part A5.0 of the DCP 2000.

A number of objections were received from Broderick Street residents regarding parking impacts on Broderick Street resulting from inadequate onsite visitor parking, courier delivery impacts, connectivity to the convenience store, inadequate turning facilities and other impacts resulting from the physical constraints of Broderick Street.

Comment: Conditions have been recommended requiring the northern side of Broderick Street to be upgraded. These works will involve a new kerb, gutter and footpath, and the construction of a 'hammerhead' to allow vehicles to turn around at the end of Broderick Street. No vehicle parking spaces will be lost along the northern side of Broderick Street as a result of the development. With respect to visitor car parking provisions, the proposal complies with the requirements of the Leichhardt DCP 2000. Council has recommended a condition to provide an additional loading bay within the basement car park for use by smaller delivery vehicles, which would include courier vehicles.

With respect to pedestrian access from Broderick Street adjacent to the convenience store, this access is required for the residents and users of 'Building F' to gain access to the site. It is unlikely to generate large amounts of pedestrian traffic and is also unlikely to result in traffic/parking impacts on Broderick Street. Council raises no objections to this access.

There will be a notable loss of street parking along Elliott and Broderick Street.

Comment: Council has undertaken a survey of the existing parking situation and the likely impacts on street parking as a result of the development proposal. This assessment has found there will only be a loss of 3-4 on-street parking spaces in Elliott Street. This is not considered unacceptable.

Objections have been received concerning the proposed roof terrace adjoining Unit 3.12 within 'Building E'.

Comment: This terrace (and unit 3.12) is recommended for deletion as detailed within Part 4.5 of this report. An assessment is within the visual privacy assessment.

Given the extent and number of issues and non-compliances, objectors regard the proposal as an overdevelopment of the site.

Comment: Subject to the recommended conditions of consent, the proposed development is not considered to be an overdevelopment of the site.

An objector raised the internal layouts and footprint of dwellings resulted in spaces of low quality.

Comment: Council's assessment under SEPP No.65 found all units to be generally acceptable subject to minor conditions to ensure compliance with floor to ceiling height requirements and room depths. Council does not raise any further concerns in this regard.

An objection on behalf of No.2 Broderick Street outlines that the bulk and scale of 'Building B' results overshadowing and visual bulk/scale impacts on No.2 Broderick Street as a result of inadequate transitioning between the development site and existing built form. In this regard, 'Building B' should be resited with a 14 metre setback from the southern boundary and consolidated into 'Building A'.

Comment: Council acknowledges the overshadowing issues resulting from the siting, bulk and scale of 'Building B'. In order to improve solar access, Council has recommended the deletion of Unit UG.15 which is on the south-western edge of 'Building B'. This will reduce the side wall height of the portion of 'Building B' causing the solar access, and bulk and scale concerns. It is noted that resiting 'Building B' as proposed will result in the removal of additional trees which Council is seeking to retain, including the large ficus perched on the rock outcrop in the courtyard between 'Buildings A', 'B', 'C' and 'D'.

A number of objections have raised that no additional retail should be permitted within the development site given the area is adequately serviced by the retail (commercial) precincts within Balmain and Rozelle along Darling Street.

Comment: Council is supportive of the development including a small component of retail (café and convenience store) which will service the new development in addition to the existing population. It is noted that all first use will be required to come through Council via separate development applications to ensure the uses are acceptable against the relevant controls.

A number of objections have been lodged which raise concerns about the remediation of the site including possible health implications.

Comment: The proposed development involves the remediation of the site to prevent any possible future health related issues. Council has undertaken an assessment in accordance with the provisions of *SEPP No.55 – Remediation of Land* and *Leichhardt DCP No.42 – Contaminated Land Management*. The actions detailed within the applicant's reports have been considered acceptable and conditions of consent controlling the remediation have been recommended on this

basis. Finally, it is expected that the remediation of the site will be undertaken in accordance with the relevant best practice criteria and no public health issues will result.

Numerous objections have been received concerning an insufficient tree canopy being provided within the development site, particularly at the foreshore. Objections have also been received to the extent of tree removal proposed on the site.

Comment: Subject to the recommended conditions, the future landscaping within the site and along the foreshore is considered to be generally appropriate, save further consideration of screen planting to the southern boundary with No.2 Broderick Street.

With regard to the tree removal, the trees recommended for removal are only those necessary to undertake the approved works and remediation of the site. The proposal involves substantial new plantings and landscaping across the site and especially along the foreshore.

The Joint Regional Planning Panel must undertake an inspection of the site and also view the site from surrounding streets including Broderick Street.

Comment: The JRPP will undertake a site inspection prior to deliberating on the proposal. This inspection will include viewing the site from the adjoining streets and those affected properties agreed to by the Panel Secretariat prior to the meeting.

An objector has commented that Council should limit uses on the site to those which will have minimal traffic impacts.

Comment: No development application for the use of the commercial tenancies will be issued under the subject proposal - they will require consideration under separate development applications for assessment on a case by case basis. This will require the various uses to comply with the relevant parking provisions applicable to the development type.

A number of properties on the southern side of Broderick Street have objected to overlooking from the proposed development site, particularly the dwellings fronting Broderick Street.

Comment: As addressed within this report, the proposed development complies with Part B3.3 – Visual Privacy of the Leichhardt DCP 2000 subject to condition. With specific regard to this matter, the Part B3.3 states the following, “*ensure habitable room windows of one dwelling are not located opposite the windows of another dwelling within 15 metres unless direct views are restricted or separated by a street.*” Given Broderick Street separates the existing and proposed development, the development is compliant in this regard.

Broderick Street must be widened to the width of Elliott Street.

Comment: Council does not consider widening Broderick Street necessary works where looking at the amended proposal. As detailed previously, the proposal as conditioned will maintain the existing width of Broderick Street and also retains

parking spaces. The proposal, as recommended, includes a 'hammerhead' turning point at the western end of Broderick Street, improving the existing situation.

The excavation on the development site may result in vibration damage to properties close to the development site (the objectors primary concern is excavation of Iron Stone which runs beneath the site).

Comment: Council has recommended a number of conditions of consent with respect to the excavation and potential damage to adjacent properties. A Noise and Vibration Management Plan and dilapidation reports will be requested prior to the issue of a construction certificate. A second round of dilapidation reports will be required prior to the issue of the occupation certificate.

It was commented that Council should enter into a Voluntary Planning Agreement (VPA) to fund positive outcomes for the community via affordable housing initiatives.

Comment: Council has a number of section 94 plans which seek to gain public benefit through an established nexus - this includes the dedication of foreshore land within the site. Council does not consider a VPA is warranted in this case, nor were Council approached to enter into a VPA.

The foreshore land dedication should be a minimum of 50 metres wide.

Comment: Council has undertaken an assessment of the site and considered its various public open space needs. The land dedication as detailed within Part 5 of this report is considered adequate for Council's needs in this regard.

The site should be connected to the Bay Run, providing a link along the foreshore.

Comment: The proposed development will provide a link for the extent of the site. Links between the site and the Bay Run are a consideration for Council's Strategic Planning division.

The Rozelle Iron Cove Precinct Committee has noted that they are not supportive of a Marina accessed from the subject site.

Comment: Council has not discussed any proposal for a marina on the subject site. Any proposal for such development would need to be considered by way of a separate development application at which point, the community would be further consulted.

The following submission is in response to the Leichhardt Councillors submission to the application prepared by Willana Associates:

The objection in general touches on a number of Environmental Planning Instrument and Development Control Plan standards, controls and objectives that Council has assessed in detail previously in this report. The following points respond to the key areas of concern to the Councillors and residents.

The development seeks to rely on the Business zone objectives to trigger opportunities for floor space but then results in a predominantly residential development.

Comment: Under the provisions of cl.23(1) of LEP 2000, a FSR of 1.5:1 is permitted where commercial land uses are proposed at the ground floor. While a significant portion of the development is residential, the proposal complies with this control. Council also assessed the proposal against the relevant objectives of the Leichhardt LEP 2000, where the assessment found the development was consistent with these objectives.

The layout and location of the proposed commercial activity would minimise the chance for ongoing viability and is likely to, ultimately, result in an application to convert areas back to residential.

Comment: The development standard within cl.23(1) of the LEP 2000 requires commercial at the ground floor to achieve the 1.5:1 FSR. Economic reports have been provided by the applicant to support the types of specific commercial uses that will be viable on this site. To prevent the applicant from making any future development application to convert these commercial tenancies to residential uses, Council has recommended a condition requiring a restriction (Covenant) to be placed on the Section 88B Instrument detailing that the ground floor uses can only be used for non-residential purposes. This will ensure that regardless of any future changes in Environmental Planning Instruments, the ground floor commercial uses will be restricted for use for non-residential purposes.

The development is of a bulk and scale which is inappropriate for the waterfront location given the nature of the surrounding development.

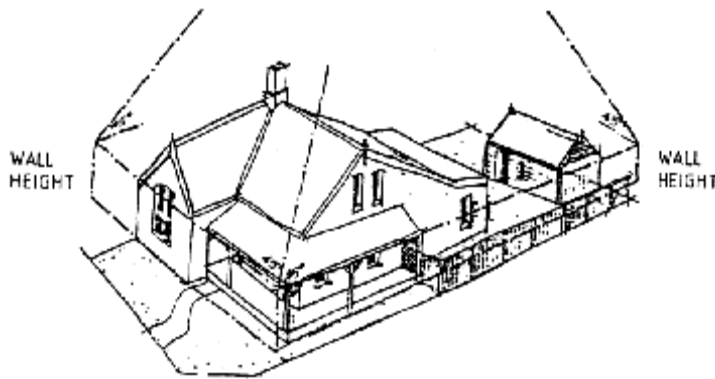
Comment: This report explores in detail the issues surrounding the built form of the proposed development where viewed from the waterfront and its relationship with existing adjoining development, including the heritage listed properties adjoining. This assessment has deemed the proposal to be acceptable as proposed and as recommended via condition.

The development is of a bulk and scale which is uncharacteristic of the area and fails to meet expectations for the desired future character.

Comment: Council's assessment of the site/area context found the existing adjacent Housing NSW apartment blocks and the existing development on the subject site i.e. multi-level offices, close to the waterfront, have resulted in this section of the Balmain Conservation Area, having an atypical character and built form, which differs markedly from other parts of the Conservation Area. Accordingly, it is considered that the built form of the proposed multi-level development on the subject site, would not be out of context with its unique surroundings in this part of the Conservation Area.

This objection also relates to the building envelope control. The objection refers to a maximum height for the development being 6 metres - this is not the correct interpretation of the control. The Building Envelope controls relate to a 6 metre front

wall height which allows the building to exceed 6 metres as detailed in the diagram below:



Excerpt from the Leichhardt DCP 2000.

Council has acknowledged within the assessment that the proposed development does not comply with the Building Envelope control. Justification on the acceptability for the non-compliance has been detailed, as well as design amendments to address the height, bulk and scale issues of Building E to ensure the development reflects a built form consistent with existing development in Broderick Street in particular.

The presentation of the public domain, particularly Broderick Street, is inconsistent with the character of the area and results in unacceptable amenity impacts.

Comment: As detailed above and previously within this report, subject to the recommended conditions, Council is satisfied the Broderick Street frontage to the development reflects an acceptable bulk, scale and amenity outcome.

The extent of view loss is unreasonable given the widespread, non-compliance with the height controls for the site and the importance of views and vistas in and around the site.

Comment: Significant detail has gone into the assessment of view loss associated with the development proposal. Council acknowledges that views will be reduced and/or lost as a result of the proposed development and does not generally agree with the opinion provided by the proponent in their assessment of the issue. To assist in ameliorating these concerns, opportunities have been created for new view corridors along the line of Broderick Street which will be visible from both private properties and the public domain.

While the building envelope control has been breached, this control would still theoretically allow for taller development centred on the site compliant with the building envelope control.

The overshadowing and amenity impacts, both internally and externally, do not meet reasonable planning expectations.

Comment: Council's assessment of the amended application, subject to the recommended design amendment conditions, concludes that the development provides a reasonable level of amenity to future residents within the site and existing

development adjacent to the site. Council is of the opinion that the proposal meets reasonable planning expectations.

4.12 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.

Subject to recommended conditions, the approval of this application will not be contrary to the public interest.

5. SECTION 94 CONTRIBUTIONS

The proposed development is subject to the following Section 94 Contribution Plans:

- Developer Contribution Plan No.1 – Open Space and Recreation;
- Developer Contribution Plan No.2 – Community Facilities and Services; and
- Developer Contributions Plan No.3 – Transport and Access.

As discussed previously within this report, the site is subject to a land dedication under Part D.2.2.f – Works/Land dedication schedule with Developer Contribution Plan No.1 – Open Space and Recreation. The subject site is listed within Table 16 as a site on which Council will require the dedication of land for open space purposes. As a result, the following developer contributions are payable for the subject site:

Under Developer Contribution Plans, the following calculations have been made:

Developer Contribution Plan		Contribution	Total Contribution
Open Space	Monetary Contribution	\$2,248,373	\$936,054
	Land Dedication (2680sqm)	\$1,312,319	
Transport & Access	LATM	\$14,390	\$91,134
	Access to the Balmain Peninsular	\$73,985	
	Bicycle	\$2,759	
Community Facilities	-	\$343,628	\$343,628
Total			\$1,370,816

Within the above calculations, Council has considered the provision of credits for the existing commercial development on the site. It is noted that there is a neutral outcome with respect to the existing and proposed commercial components; therefore the contributions calculated are based solely on the residential component of the development.

Under the NSW Government's 16th September 2010 direction limiting contribution for residential development to \$20,000 per dwelling, the maximum monetary contribution payable would be \$2,160,000. Given the above contribution does not exceed the limits of the cap; no adjustments to this contribution are required.

A condition of consent has been recommended requiring the above monetary contribution to be paid prior to the issue of the Construction Certificate. The timing of the dedication of land is recommended to be prior to the issue of any Occupation Certificate given the works to be undertaken by the proponent in this location.

Foreshore Land Dedication

Comments have been provided by Council's Property Officer and Council's Open Space Planner with respect to the proposed Foreshore Land Dedication triggered under *Developer Control Plan No.1*. The proposed dedication is detailed on the following plan.



Proposed foreshore land dedication and access handle to Broderick Street (shaded in green).

Council's Property Officer has raised the following points which need to be considered when imposing conditions of consent with respect to the dedication of land:

- With regards to contaminated land considerations, Council will require either remediation of the land or confirmation satisfactory to Council by an appropriately qualified Environmental Consultant that the site does not have any hazardous materials, pollutants or contaminants and is suitable for its future use as public open space and recreation in accordance with the requirements of SEPP 55 – Remediation of Land and the Guidelines for Consultants Reporting on Contaminated Sites 1997;
- Repairs to, or confirmation of the structural soundness of the seawall (which is on the land to be dedicated to Council), that it has a 50 year life; and

- Landscaping is to be done by applicant to Council's approved design in particular that it is landscaped as public open space and does not by design cues or any other means (including possibly access to the pontoon) appear to be private land at any part or appear in any part to belong to the development rather than as public open space.

The above are recommended to be addressed via conditions of consent.

It was also noted that Council's Property Officer has some concerns with the proposal for the site owner to retain the pontoons and seek a right of way across the land to be dedicated. The issue primarily relates to the private use of (future) public land by potentially impeding the use of open space by other members of the public. If consent was given or otherwise agreed to, any right of way (which would have to be retained on the dedication as it cannot be granted on community land after it is in Council's ownership) would have to be carefully prepared in terms of location and conditions so as not to effectively privatise the open space. The site and terms and conditions of any reserved right of way must be subject to Council's prior approval. This is recommended to be addressed via a 'Deferred Commencement' Consent condition.

Council's Parks and Recreation Planner has recommended the following conditions of consent for the proposed development, in addition to those detailed within the landscape assessment listed previously within this report:

- A foreshore land dedication to Leichhardt Council of 2680 square metres (similar to that highlighted in Dwg No.1121-05 Issue E prepared by Peter Glass & Associates).
- Detailed landscape plans drawn and provided to scale showing both the built and unbuilt features, contours and site levels (including recommended finished levels) of the site, proposed landscape features, existing trees to removed or retained, lawn, new trees and shrub planting, is to be submitted with the building application for approval by Council Officers;
- The area of public open space for dedication is to be completed in accordance with an approved landscape plan including all embellishment and planting to Council's satisfaction and is to be dedicated prior to the issue of any Occupation Certificate.
- A detailed drainage design for the open space dedication which incorporates a subsoil drainage line at the toe of the rock escarpment to pick up seepage shall be submitted to Council prior to the release of the approved building plans.
- Connections to Broderick Street at the upper and lower level will need to be coordinated to achieve successful integration in regard to grade and the width of the path. A detailed plan showing this integration, including a cross-section, is to be submitted prior to the release of approved stamped building plans. Detailed engineering plans will also need to be submitted in relation to any proposed public viewing platforms. Any raised viewing platforms must comply with BCA requirements for balustrading. The location of which must take into account privacy issues for adjoining residents and is subject to final sign off by Council Officers.
- Before demolition/excavation/construction is commenced on the site, the applicant must submit to Council for approval an erosion and drainage control plan. The plan must describe the controls to be provided to prevent soil erosion

and stormwater pollution. The control strategies must be consistent with Leichhardt Council's Development and Control Plan Part A A3a.0 Sustainable Water and Risk management.

- A management plan for dust suppression on the site is to be formulated and approved by Council prior to commencing with any works on the site. The plan is to be implemented upon commencement of any works on the site. This condition is to ensure the protection of the environment.
- Demolition or construction work, or any remediation activities associated with the proposed open space development shall be carried out only between the hours of 7.00 a.m. and 5.30 p.m. Monday to Friday inclusive, 7.00 a.m. and 1.00 p.m. Saturday and must not be carried out on Sunday or Public Holidays unless in the case of emergencies arising from unforeseen circumstances. *Should out of hours work be necessitated for emergency purposes the applicant is to advise Council in writing within 48 hours of the work occurring of the nature of the work and the reasons for the work occurring during that time.*
- Sediment and erosion controls must be provided before demolition/excavation/construction is commenced on the site to protect the existing stormwater system from sediment inflow and prevent the off-site migration of soil into neighbouring streets or Parramatta River. The control strategies must be consistent with the requirements of Leichhardt Council's Development and Control Plan Part A A3a.0 Sustainable Water and Risk management.
- Prior to the commencement of works the applicant is to provide Council with a copy of the following information:
 - The Construction and Traffic Management Plan;
 - A Soil and Water Management Plan / Erosion and Drainage Control Plan;
 - A Management Plan for Dust Suppression; and
 - A Noise and Vibration Monitoring Report.
- The existing wharf is to be demolished as part of the landscape scheme and removed from the harbour. Notification and approvals for such removal must also be provided and obtained from NSW Maritime prior to the commencement of the proposed works.
- Negotiations on the retention of the pontoon are subject to a license agreement and confirmation that such a use can continue. The use of this structure as a privatised facility is not to interfere in any way with public access, use and enjoyment of the foreshore area.
- The applicant is to provide a report from a suitably qualified Coastal Engineer on the condition of the existing seawalls on the full foreshore frontage. The report must address remediation works that are required to bring the seawall to "excellent condition" with a design life of 50 years. Excellent condition is defined as requiring no work other than normal maintenance. Council will subject the report to independent review prior to the consent becoming operable. The applicant must provide certification of the seawalls prior to final handover to Council.

The above recommendations have been included within the conditions of consent primarily as part of the Deferred Commencement Condition.

6. INTERNAL REFERRALS

The Development Application was referred to the following Council Officers / Departments:

JRPP (Sydney East Region) Business Paper – Item 1 – 21 March 2012 – 2011SYE105

- Building
- Drainage Engineer
- Traffic Engineer
- Heritage Advisor
- Community Development
- Parks and Streetscapes and Open Space Planner
- Landscape Assessment Officer
- Strategic Planning
- Environmental Health Officer
- Waste Services
- Property Manager

All these Officers raised no objections to the proposal proceeding, subject to recommended conditions – see Section 4 of this report for further details.

7. EXTERNAL REFERRALS

Roads and Maritime Services (RMS)

See previous discussions under SEPP Infrastructure 2007 and SREP 2005 discussions. Matters raised by RMS have been addressed via recommended conditions of consent.

Ausgrid

Council referred the original and amended application to Ausgrid regarding power supply requirements for the proposed development. Ausgrid responded to the original application submission, but not with respect to the amended scheme.

The response received from Ausgrid required that, prior to any electrical work commencing, an 'Application for Connection' form must be submitted to Ausgrid. Ausgrid advised that they do not have the capacity to provide a 3 phase electrical service to the proposed development and that additional network assets will need to be constructed, including an electrical distribution substation or substations within the site boundary.

In response to Ausgrid's requirements:

- The applicant has amended the development proposal to accommodate the additional burden the development would have on the existing network, including providing for electricity substations within the site boundaries.

Specific conditions of consent as required by Ausgrid have been recommended and have been incorporated within the Notice of Determination.

Department of Primary Industries – Office of Water

The proposed development is classed as Integrated Development under section 91 of the *Environmental Planning and Assessment Act 1979*. The subject development

therefore requires the Office of Water's General Terms of Approval (GTA) for work/s on waterfront land requiring a controlled activity approval under the *Water Management Act 2000*. The Office of Water has provided their GTA, which under section 91A(3) of the Act, and these will be included within Council's Notice of Determination.

8. CONCLUSION

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

9. RECOMMENDATION

That the Joint Regional Planning Panel as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979 grant a Deferred Commencement Development Consent to Development Application No: D/2011/529 for demolition of existing structures, construction of a mixed use development including 6 buildings with commercial / retail uses and gym, 108 residential units above, basement parking for 217 vehicles, and associated works, including landscaping and removal of trees, bulk earthworks and remediation at 100-102 Elliott Street, Balmain 2041 subject to the conditions in Appendix 2.