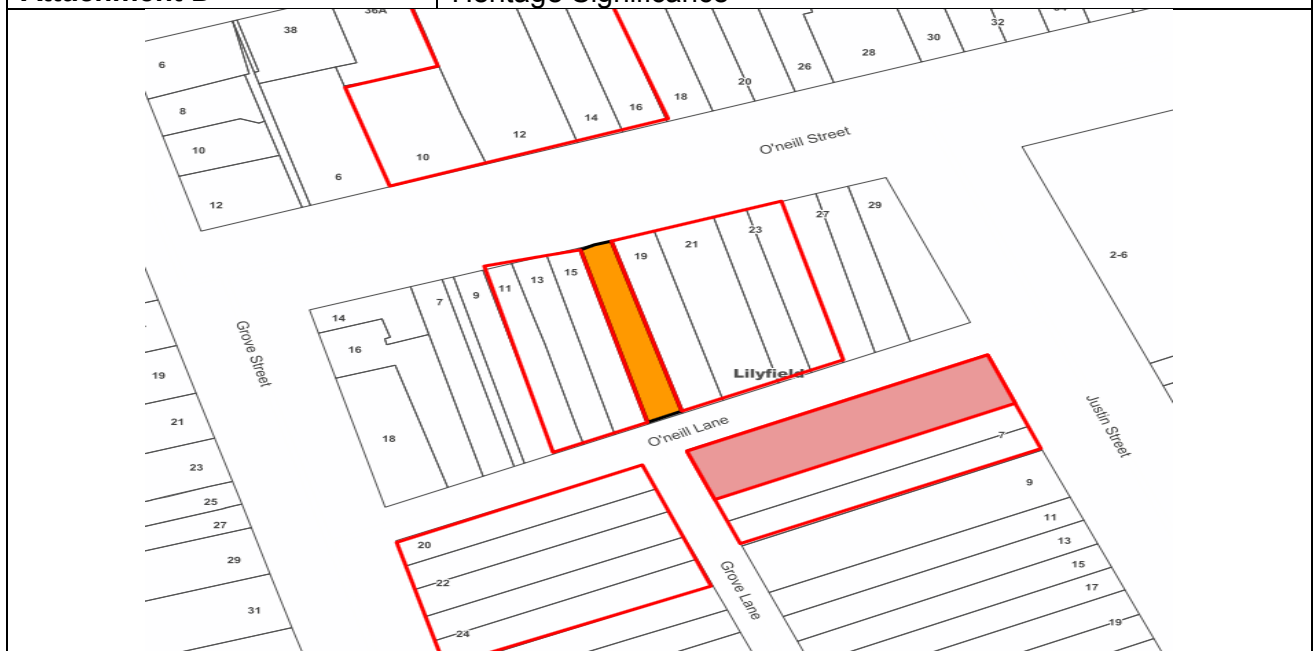




DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/379
Address	17 O'Neill Street, LILYFIELD NSW 2040
Proposal	New garage and studio at rear of site and associated works, including tree removal.
Date of Lodgement	26-Sep-2019
Applicant	Sn Studio
Owner	Mr B J Raper Mrs R A Raper
Number of Submissions	1 Submission in objection
Value of works	\$94,000.00
Reason for determination at Planning Panel	Floor Space Ratio variation exceeds officer delegations
Main Issues	Heritage Design issues Floor Space Ratio variation exceeds 10%
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Heritage Significance



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for new garage and studio at rear of site and associated works, including tree removal at 17 O’Neill Street Lilyfield. The application was notified to the surrounding properties and one submission was received.

The main issues that have arisen from the application include:

- Floor Space Ratio variation exceeds 10%

The non-compliances are acceptable given that the proposed increase in FSR will have no adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the, application is recommended for approval.

2. Proposal

The application seeks consent for a new garage and studio above to the rear of the site with a new skylight to the main dwelling with a tree removal.

3. Site Description

The subject site is located on the southern side of O’Neill Street and on the northern side of O’Neill Lane. The site consists of 1 allotment and is generally rectangular with a total area of 167.2 sqm and is legally described as LOT 9 SEC H DP 1474. The site has a frontage to O’Neill Street of 4.795 metres.



Figure A: Zoning Map R1 – General Residential



Figure B: Aerial Map of subject site

The site supports a two storey dwelling with a carport to the rear. The adjoining properties to the east and west support a single storey dwelling.

The subject site is zoned R1 – General Residential and is not listed as a heritage item. The property is located within a conservation area. The property is not identified as a flood prone lot.

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

- Bangalow Palm Tree to the rear of the subject site.



Figure 1: View facing south from the rear first floor balcony of 17 O’Neil Street.



Figure 2: View of subject site from the corner of O’Neill and Grove Lane facing north.

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
D/2012/643	To formalise an existing informal uncovered off street parking space located off the rear of O’Neil Lane boundary alignment.	Approved – 12/3/2013

PREDA/2011/168	Construction of a new detached garage to the rear of the site.	Advice Letter Issued – 28/11/2011
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Surrounding properties

Application	Proposal	Decision & Date
D/2017/443 – 19 O'Neill Street	Alterations and additions to existing dwelling, including a new first floor, new garage with loft over at rear of site and associated works.	Refused – 12/12/2017
D/2019/272 – 20 Grove Street	Alterations and additions to existing dwelling-house, including new first floor addition and alterations and new first floor over existing garage to facilitate use as a secondary dwelling.	Approved – 18/10/2019

4(b) Application history

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

Date	Discussion / Letter / Additional Information
11/10/2019	Council requested a Clause 4.6 to FSR development standard breach to the applicant.
18/10/2019	Clause 4.6 to FSR breach provided.
22/11/2019	Council request for additional/amended information.
17/12/2019	Applicant submitted additional/amended information.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

5(a)(ii) *State Environmental Planning Policy No 55—Remediation of Land*

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent. The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

5(a)(iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development not contrary to the aims of the plan.

5(a)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation (one Bangalow Palm) from within the site. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

"A review of section 6 of the Arboricultural Impact Assessment (AIA), prepared by Liam Strachan, dated 21/09/2019 and amended 18/11/2019 has been undertaken.

It is considered that the Arborist has satisfactorily demonstrated that there will be sufficient soil volume to support a replenishment specimen capable of attaining a mature height of 6m.

*There are no objections to the nominated replacement specimen of a straight species of *Magnolia grandiflora* (Bull Bay Magnolia) being planted on site, however, *Magnolia grandiflora* 'Little Gem' (Dwarf Magnolia), will not be accepted.*

The replacement specimen must be planted in accordance with the location marked in red as depicted in the amended AIA and planted at a sufficient distance from any building or structure to allow for the future growth of the specimen".

The application to remove the Bangalow Palm tree to the rear of the site is supported from a landscape perspective, subject to the recommended tree protection and replacement conditions being imposed on any consent granted. See attachment A for further details.

5(a)(vi) Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant clauses of *the Leichhardt Local Environmental Plan 2013*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid Sulfate Soils

- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

(iii) Clause 2.3 - Land Use Table and Zone Objectives

The application proposes a new garage and studio above with new skylights to the main dwelling with associated tree removal, all of which are permissible with consent within the R1 – General Residential zone. The objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development is considered to be consistent with the above objectives as it will provide a variety of housing types and densities for the community, improves opportunities to work from home while protecting and enhancing amenity for the existing and potential future residents and to the surrounding neighbouring properties, and will have minimal adverse undue impact on the existing streetscape or character of the area.

The following table provides an assessment of the application against the development standards:

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 0.8:1 or 133.76 sqm	0.99:1 or 165.3 sqm	31.54 sqm or 23.58%	No
Landscape Area Minimum permissible: 15% or 25.08 sqm	16.03% or 26.8sqm	Complies	Yes
Site Coverage Maximum permissible: 60% or 100.32 sqm	68.12% or 113.9sqm	13.58 sqm or 13.54%	No

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard:

- Clause 4.3A (3)(b) – Site Coverage for residential accommodation in Zone R1 – (proposed breach)
- Clause 4.4 – Floor Space Ratio – (proposed breach)

The applicant seeks a variation to the Site Coverage and Floor Space Ratio development standards under Clause 4.3A(3)(b) and 4.4 of the applicable local environmental plan.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

Clause 4.3A (3)(b) – Site Coverage for residential accommodation in Zone R1

The applicant seeks to vary the existing Site Coverage from 86.4sqm (51%) to 113.9sqm (68.12%) which does not comply with the Site Coverage development standard under Clause 4.3A of the LLEP 2013.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the LLEP 2013 justifying the existing/proposed contravention of the Site Coverage development standard which is summarised as follows:

- *The increase to the site coverage is by virtue of the provision of an enclosed garage and studio above (14.18sqm addition). The existing dwelling-incorporated a hard stand car parking space behind a garage roller door which, when viewed from the public domain, would appear as a similar proportion of site coverage to what is proposed.*
- *The additional site coverage is required to provide on-site car parking that complies with AS2890.1 and internal storage and bin enclosures within an enclosed environment. The additional accommodation above the garage area will be ancillary to the existing dwelling-house and provide additional opportunities to work from home (Zone R1 objective).*
- *Despite the increased site coverage, the landscaped area of the site will be increased by 6.7sqm (from 21.4sqm to 28.1sqm) to ensure compliance with the landscaped area development standard (15%).*
- *The proposal creates no significant additional overshadowing impacts when compared to a building with a compliant site coverage. That is, when considering the overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant or nil;*
- *results in no significant additional privacy impacts when compared to a building with a compliant site coverage as the only window facing towards the principal dwelling is off a bathroom for the first floor level studio.*
- *results in no significant additional view loss when compared to a building with a compliant site coverage.*
- *The proposed rear addition has been carefully considered and is supported by the context of other neighbouring and nearby developments with similar characteristics as the subject site (that is; a two storey .ancillary addition to the rear from O'Neill Lane). The proposed development adopts a similar typology and sits well within the context of the locality.*

The applicant's written rationale adequately demonstrates compliance with the Site Coverage development standard is unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is not inconsistent with the relevant objectives of the R1 – General Residential zone and the objectives of the Site Coverage development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

The proposed development is consistent with the relevant objectives of the zone as the proposal will:

- provide additional accommodation for the existing dwelling house to assist in meeting the housing needs of the community;
- be compatible with the character, style, orientation and pattern of surrounding buildings and the O'Neill Lane streetscape;
- facilitate opportunities for working from home;
- provide greater landscaped area on the site to contribute to the landscaped character; and
- protect and enhance the amenity of existing and future residents in the locality.

The site coverage variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

The concurrence of the Secretary of the Department of Planning may be assumed for matters dealt with by Local Planning Panels.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Site Coverage development standard and it is recommended the Clause 4.6 exception be granted.

Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the FSR development standard under Clause 4.4 of the LLEP 2013 by 23.58% (165.3sqm) of this, 44.99sqm is “new”/proposed GFA as per Council Officers calculation.

A written request has been submitted to Council by the applicant in accordance with Clause 4.6(4)(a)(i) of the LLEP 2013 justifying the proposed contravention of the FSR development standard which is summarised as follows:

- *“The proposal will increase the gross floor area at the site from 120.31m² to 166.57m², resulting in an FSR increase from 0.72:1 to 0.99:1 (a variation of 24.5%).*
- *The extent of the variation to the FSR control (32.8sqm) will not be perceptible from the public domain and the existing building will continue to appear as a building that is compatible with the surrounding built form.*
- *The increase to the FSR is by virtue of the additional garage and studio which does not introduce a new or unexpected built form that is not already present within the O'Neill Lane streetscape.*
- *Despite the increased FSR, the landscaped area of the site will be increased by 6.7sqm (from 21.4sqm to 28.1sqm) to ensure compliance with the landscaped area development standard (15%).”*

The applicant's written rationale adequately demonstrates compliance with the FSR development standard is unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone and the objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale and the increased floor area would not be visible from the primary street, and will have acceptable impacts on O'Neill Lane;

- The proposal maintains a suitable balance between the existing landscaped areas and the built form and provides sufficient private open space on the site;
- The additional floor space is located to the rear of the site where it can be reasonably assumed that development can occur; and
- The proposal does not result in any adverse unacceptable amenity impacts to the surrounding properties.

The concurrence of the Secretary of the Department of Planning may be assumed for matters dealt with by Local Planning Panels.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended that the Clause 4.6 exception be granted.

Clause 5.10 – Heritage Conservation

The subject property at 17 O'Neill Street, Lilyfield, is a contributory dwelling located within the Brennan's Estate Heritage Conservation Area (C16 in Schedule 5 of the Leichhardt LEP 2013).

Clause 5.10: Heritage Conservation from the Leichhardt LEP 2013 and *Sections C1.4: Heritage conservation areas and heritage items, C1.18: Laneways, C.2.2.4.2: Nanny Goat Hill Distinctive Neighbourhood* and *C2.2.4.2(a) Eastern Residential Sub Area* from the Leichhardt DCP 2013 applies to the proposal.

The revised drawings prepared by SNS Architects, dated 20 November 2019, and the Cover Letter prepared by Planning Ingenuity, dated 12 December 2019, were reviewed as part of this assessment. These were provided in response to the previous heritage response provided on 15 October 2019. The heritage assessment concluded the proposal was not acceptable and provided alternative solutions. These are reiterated below, with additional commentary in respect to the revised drawings.

1. *The bulk and height of the garage and studio must be reduced by reducing the floor to ceiling height of the garage to 2.2m and the floor to ceiling height of the studio to 2.4m.*

Comment: The proposed height has not been reduced. The applicant describes the required head height being the main requirement for the ground floor, though states the ceiling height for the stair landing is 2.14m, which is 40mm greater than the minimum floor to ceiling height under the BCA. They state it is feasible to reduce the floor to ceiling height of the first floor studio by 200mm below the ridge. Though it would be preferable to lower the overall height to reduce the bulk, the applicant's argument that the height is less than that of the approved studio at No. 11 is acknowledged. This will mean the proposed studio will be lower in overall height than that at No. 11.

2. *Delete the skylight above the garage in the southern elevation.*

Comment: The skylight has been deleted.

3. *The dormer window in the southern elevation to the studio must be redesigned so that:*
 - a) *it sits at least 500mm in from each side of the garage;*
 - b) *the window opening must be vertically proportioned, employing traditional design (timber sash) and materials (timber frame).*

Comment: The width of the dormer window has been reduced and the windows have been redesigned to be vertically proportioned. The dormer window however needs to be centred in the southern elevation. The applicant may argue the dormers at No. 11 are not centred. These are not characteristic of the Brennan's Estate HCA or of attic additions generally.

It is noted that the relocation of the dormer window fronting O'Neil Lane would achieve a positive visual streetscape outcome if centred as per the heritage recommendation, however due to the internal constraints (proposed car space), a stair reconfiguration to comply with the above heritage requirements will result in a non-compliance with the BCA. The existing characteristics of dormer windows fronting O'Neil Lane are not all centred but are mixed. The proposed dormer window has been redesigned to complement the heritage conservation area but for the reasons mentioned above, the dormer as amended is considered to have minimal visual impact to the streetscape of O'Neil Lane. As a result, the above heritage recommendation insofar as it relates to the dormer is not supported on balance and is not recommended to be imposed on the consent.

4. *A revised Material Legend must be provided in accordance with the following:*

- a) *Provide details of the proposed material for the walls, e.g. F.C. cladding; and*
- b) *A pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby"*

Comment: Scyon Cladding in Dulux Self Destruct is proposed for the cladding, which is acceptable. A Zinc metal pan roof is proposed in Colorbond Wallaby. The roof material Zinc metal pan is not acceptable as this is not a complementary roofing material within the Brennan's Estate HCA. A pre-coloured traditional corrugated steel shall be used for the roofing.

5. *It is recommended the void adjacent to the stairs be deleted.*

Comment: It appears the void has not been deleted.

The proposal is supported in principle from a heritage perspective. However, the design changes below need to be implemented to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.

X. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a) *The zinc metal pan roof must be replaced with a pre-coloured traditional corrugated steel shall, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby."*
- b) *The overall height of the rear garage studio addition is to be lowered by 200mm.*

Any consent granted is recommended to be conditioned accordingly.

5(b) Draft Environmental Planning Instruments

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

- Draft SEPP Environment
- Draft Inner West Local Environmental Plan 2020 (*Draft IWLEP 2020*)

5(b)(i) Draft SEPP Environment

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. This consolidated SEPP proposes to provide a single set of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposal is consistent with the provisions of the draft Environment SEPP.

5(b)(ii) Draft Inner west Local Environmental Plan 2020

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(c) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes – Satisfactory, subject to conditions
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes – no change
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes – subject to conditions
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes – refer to Section

	5(a)(iv) above
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.4.2 Nanny Goat Hill Distinctive Neighbourhood C2.2.4.2(a) Eastern Residential Sub Area C2.2.4.2(c) Nanny Goat Hill Laneways Sub Area	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see below this report for further details.
C3.3 Elevation and Materials	Yes – subject to conditions
C3.4 Dormer Windows	Yes – see C5.10 of this report for further details.
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes – see below for further details.
C3.12 Acoustic Privacy	N/A
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
N/A	
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	No
D2.5 Mixed Use Development	No
Part E: Water	
Section 1 – Sustainable Water and Risk Management	N/A
E1.1 Approvals Process and Reports Required With Development Applications	N/A
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A

E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.14 Tree Management

The proposed tree removal is supported for the reasons mentioned previously in this report under Section 5(a)(iv), subject to the recommended tree replacement and protections conditions being imposed on any recommended consent.

C1.18 Laneways

O'Neill Lane has a width of approximately 4.8m which classifies it as a Narrow Lane where a maximum wall height of 3m is prescribed as per Control C5.

C5 - *Where fronting a Narrow Lane, (refer to Table C11 Laneway hierarchy) development shall comply with a laneway envelope that has:*

- a. a maximum side wall height of 3m;*
- b. a 450 building envelope taken from the top of the side wall; and*
- c. a maximum roof height of 5m (refer to Figure C14 Laneway envelope for development fronting a Narrow Lane).*

Comment: The proposed garage wall height will comply with the maximum allowed 3m sidewall height on the eastern end. However due to the site sloping down from east to west, the western end of the garage wall height will exceed the maximum allowed 3m but is considered acceptable from a planning perspective as there are existing garages with wall heights in the lane that exceeds 3m.

C8 - Development is not visible from the primary street frontage.

Comment: The proposed garage studio fronting O'Neil Lane will not be visible or discernible from the primary street frontage and is keeping in pattern of development, character and context with the surrounding area.

C3.2 Site Layout and Building Design

Side Setback Control

It is noted that the proposed rear garage and the first floor level of the studio dwelling will partially not comply with the side setback controls to the eastern and western boundaries. However as previously mentioned in this report, the proposed garage and first floor studio above will generally adhere to the maximum wall height (3m) allowable under the Laneway Provisions. Nevertheless, the side setback breaches are shown in the table below.

Rear First Floor Studio

<u>Elevation</u>	<u>Wall height (m)</u>	<u>Required Setback (m)</u>	<u>Proposed Setback (m)</u>	<u>Complies (Y / N)</u>
East (Adjacent to 19 O'Neill Street)	Approximately 3 ~5	0.1~1.2	0	No
West (Adjacent to 15 O'Neil Street)	Approximately 3.2 ~5.4	0.2 – 1.5	0	No

Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks a variation of the side setback control graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP2013 and complies with streetscape and desired future character controls.

Comment: The proposed rear garage and first floor studio above the garage raises no issues that will be contrary to the Building Typologies Statements prescribed in the LDCP 2013. The proposal will also comply with the objectives and controls set out in the Nanny Goat Hill Distinctive Neighbourhood character controls. Given that a condition to reduce the overall height of the addition by 200mm, the proposal is considered to be keeping in context with the existing pattern of development in the immediate area. As a result the proposal will not have adverse overbearing impacts on the streetscape and will have acceptable impacts on the public domain.

- The pattern of development is not adversely compromised.

Comment: The proposed location of the rear studio above the proposed will not compromise the pattern of development within the area.

- The bulk and scale of the development has been minimised and is acceptable.

Comment: The proposal is of an acceptable scale and massing and will not result in unreasonable visual impacts when viewed from the public domain and rear yards of the adjoining properties for the reasons:

- The rear garage studio is considered to be in-line with the neighbourhood controls that is more sympathetic to the existing built forms and to complement the rhythm of the existing residential streetscape.
- The wall height of the rear garage studio on the eastern end will comply with the Laneway controls.
- The proposed development is not out of character to the existing built forms of O'Neill Lane.
- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.

Comment: The proposal will have no undue adverse solar access impacts to the adjoining properties rear yards and will result in acceptable privacy implications and no view loss implications. As a result, the proposal is considered acceptable.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The proposal raises no issues in this regard.

In light of the above, the proposal is considered to be satisfactory with respect to the intent and objectives of the side setback controls prescribed in this Clause.

C3.11 – Visual Privacy

The following controls are applicable:

C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.

Privacy and overlooking concerns have been raised by No. 5 Justin Street as the proposed dormer window on the rear first floor studio fronting O'Neil Lane will be within 9m of their first floor loft storage window located on the northern elevation as depicted below.



Image 1. First floor storage loft window of 5 Justin Street

As the proposed rear first floor dormer window will be servicing the stairs connecting the garage level to the first floor studio, as is separated by a laneway, the proposal will comply with Control 1 of this provision. As a result, the proposal is considered acceptable and will have minimal adverse privacy impacts to the rear private open areas/rear yards of the adjoining properties or the loft storage window at 5 Justin Street.

5(d) The Likely Impacts

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

5(e) The suitability of the site for the development

The site is zoned R1 General Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. One submission was received.

The following issues raised in submissions have been discussed in this report:

- Tree removal objection - See section 5(a)(iv) of this report, however the proposed tree removal is supported, subject to a tree replacement.
- Privacy implications from the new dormer window fronting O'Neill Lane – see C3.11 Visual Privacy. For the reasons mentioned under C3.11, the proposal will have minimal adverse privacy impacts to the surrounding neighbouring properties. As such, the proposal is acceptable.
- Floor/space ratio of this application exceeds the allowable limits – A Clause 4.6 to the FSR breach has been provided by the applicants providing justifications to the breach. See Section 5(a)(v) of this report for further details.

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Development Engineer – No objections to the proposal, subject to standard engineering conditions being imposed in any consent recommended.
- Landscape – No objections to the proposal, subject to standard tree replacement conditions being imposed in any consent recommended.
- Heritage – Satisfactory, subject to recommended design, materials and finishes amendment conditions being recommended in any consent granted.

6(b) External

The application was not required to be referred to any external bodies.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.4 Floor Space Ratio & Clause 4.3A(3)(b) – Site Coverage of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2019/379 for a new garage and studio at rear of site and associated works, including tree removal at 17 O'Neill Street Lilyfield, subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Conditions of Consent

Fees

1. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

2. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

General Conditions

3. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA 2001 Rev B	Elevations	29.11.2019	SNS Studio
DA 3001 Rev B	Sections	29.11.2019	SNS Studio

DA 1102 Rev B	Floor Plans	29.11.2019	SNS Studio
DA 1005 Rev B	Site Plan	29.11.2019	SNS Studio
DA 2002 Rev A	Streetscape Plan	29.11.2019	SNS Studio
Rev 1.1	Landscape Plan	3/12/2019	Camerons Creations
DA 7041 Rev B	Schedule of Finishes	29.11.2019	SNS Studio
Un-stated	Arboricultural Impact Assessment	21.9.19	Liam Strachan
A35273_02	BASIX Certificate	11.12.2019	Frys Energywise

As amended by the conditions of consent.

4. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a) *The zinc metal pan roof must be replaced with a pre-coloured traditional corrugated steel shall, finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby.*
- b) *The overall height of the rear garage studio addition is to be lowered by 200mm.*

5. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

6. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

7. Works on Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree No/location	Approved works
1) <i>Archontophoenix cunninghamiana</i> (Bangalow Palm) located in rear property.	Remove

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

8. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

9. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

10. Works Outside the Property Boundary

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

Prior to any Demolition**11. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letters that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. Advising Neighbors Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

13. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.

14. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

Prior to Construction Certificate**15. Dilapidation Report – Pre-Development**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

16. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

17. Acoustic Report – Aircraft Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

18. Alignment Levels – Rear Lane

The internal vehicle hardstand area shall be redesigned such that the level at the boundary shall match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above Alignment Levels. Amended plans shall be submitted to and approved by Council before the issue of the Construction Certificate.

The garage slab or driveway must then rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

19. Parking Facilities

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a) The car port slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- c) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided at a natural scale of 1:25, demonstrating compliance with the above requirements.
- d) The parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width) and a door opening width of 3000 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
- e) A plan of the proposed access and adjacent laneway, drawn at a 2:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with the AS/NZS 2890.1:2004 shall be submitted. The plan must include any existing on street parking spaces.

20. Stormwater Drainage System

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a) The design must generally be in accordance with the Stormwater Drainage Concept plan on Drawing No. 190285/D0 revision (A), prepared by SMART STRUCTURES AUSTRALIA and dated 19 September 2019;

- b) Stormwater runoff from all pervious and impervious areas must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of O'Neil Lane;
- c) Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- d) The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
- e) As there is no overland flow/flood path available from the rear of the garage to the O'Neil Lane frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - i. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
 - ii. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
 - iii. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
 - iv. Allowance must be made of disposal of stormwater runoff from trapped landscaped area at the rear eastern boundary;
- f) A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas.
- g) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- h) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

21. As Public Domain Works

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a suitably experienced Chartered/Registered Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the Roads Act 1993 incorporating the following requirements:

- a) The construction of light duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;

22. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork including stormwater downpipes within the outer walls of the building so they are not visible.

During Demolition and Construction

23. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

24. Canopy Pruning

Canopy pruning of the following tree which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, a Project Arborist.

Tree No	Botanical/Common Name
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2	<i>Jacaranda mimosifolia</i> (Jacaranda) located on adjoining property
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The person acting on this consent has approval under Council's Tree Management Controls to; prune selected branches in accordance with Appendix 5 of the submitted Arboricultural Impact Assessment (AIA), prepared by Liam Strachan, dated 21/09/2019 and amended 18/11/2019, to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 100 mm.

25. Limited Root Pruning

No tree roots of 40mm or greater in diameter located within the specified radius of the trunk/s of the following, tree/s must be severed or injured in the process of any works during the construction period.

Tree No	Botanical/Common Name	Radius in metres
2	<i>Jacaranda mimosifolia</i> (Jacaranda) located on adjoining property	6.6m

If tree roots less than 40mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and fit for purpose tool. The pruning must be undertaken by a practicing Arborist.

26. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

Prior to Occupation Certificate

27. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the Roads Act 1993 including:

- a) Light duty concrete vehicle crossing(s) at the vehicular access location(s).
- b) The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

28. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

29. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any damaged stone kerb has been replaced including all kerb outlets in stone kerb must be carefully core drilled.

30. Aircraft Noise –Alterations and Additions

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft Noise Assessment Report required by this consent has been satisfied.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

31. Parking Signoff

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

32. No Weep Holes

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with evidence that any weep holes to Council road or footpath resulting from the building works have been removed.

33. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a suitably qualified arborist that:

A minimum of 1 x seventy five (75) litre size straight species Magnolia grandiflora (Bull Bay Magnolia) must be planted in accordance with the location marked in red as depicted in section 6 of the submitted Arboricultural Impact Assessment (AIA), prepared by Liam Strachan, amended 18/11/2019 and planted at a sufficient distance from any building or structure to allow for the future growth of the specimen.. The tree is to conform to AS2303—Tree stock for landscape use

Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

[On-going](#)

34. Tree Establishment

The canopy tree required by this consent is to be maintained in a healthy and vigorous condition until it/they attain a height of 5 metres whereby it will be protected by Council's Tree Management Controls. If the tree is found to be faulty, damaged, dying or dead it shall be replaced with the same species within 1 month (up to 3 occurrences).

Advisory notes

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a) the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

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

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the Access To Neighbouring Lands Act 2000 to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—Pruning of amenity trees and the Safe Work Australia Code of Practice—Guide to Managing Risks of Tree Trimming and Removal Work. Any works in the

vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's Development Fact Sheet—Trees on Development Sites and AS4970—Protection of trees on development sites.

Tree Pruning or Removal

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

Failure to comply with conditions

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

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

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a) Application for any activity under that Act, including any erection of a hoarding.
- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
- d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
- f) Development Application for demolition if demolition is not approved by this consent.
- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

Chartered/Registered Engineer

An engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

Public Domain and Vehicular Crossings

The vehicular crossing and/or public domain works are required to be constructed by your contractor. You or your contractor must complete an application for 'Design of Vehicle Crossing and Public Domain Works – Step 1' form and/or 'Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Notification of commencement of works

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i.the name and licence number of the principal contractor, and
 - ii.the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
 - i.the name of the owner-builder, and
 - ii.if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath

- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Construction of Vehicular Crossing

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior.toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diyasafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
SafeWork NSW	13 10 50 contact@safework.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

1 NORTH ELEVATION
SCALE 1:50

2 SOUTH ELEVATION
SCALE 1:50

3 COURTYARD ELEVATION - NORTH
SCALE 1:50

4 COURTYARD ELEVATION - SOUTH
SCALE 1:50

CC ISSUE

Architect
Domestic Alvaro
Newly Registered Architect
11 O'Neil St, Uffield NSW
Drawing Title
ELEVATIONS
Drawing Number
1.50 @ A1
ACC0
B

DATE
01/09/20
20/07/20
20/07/20
20/07/20

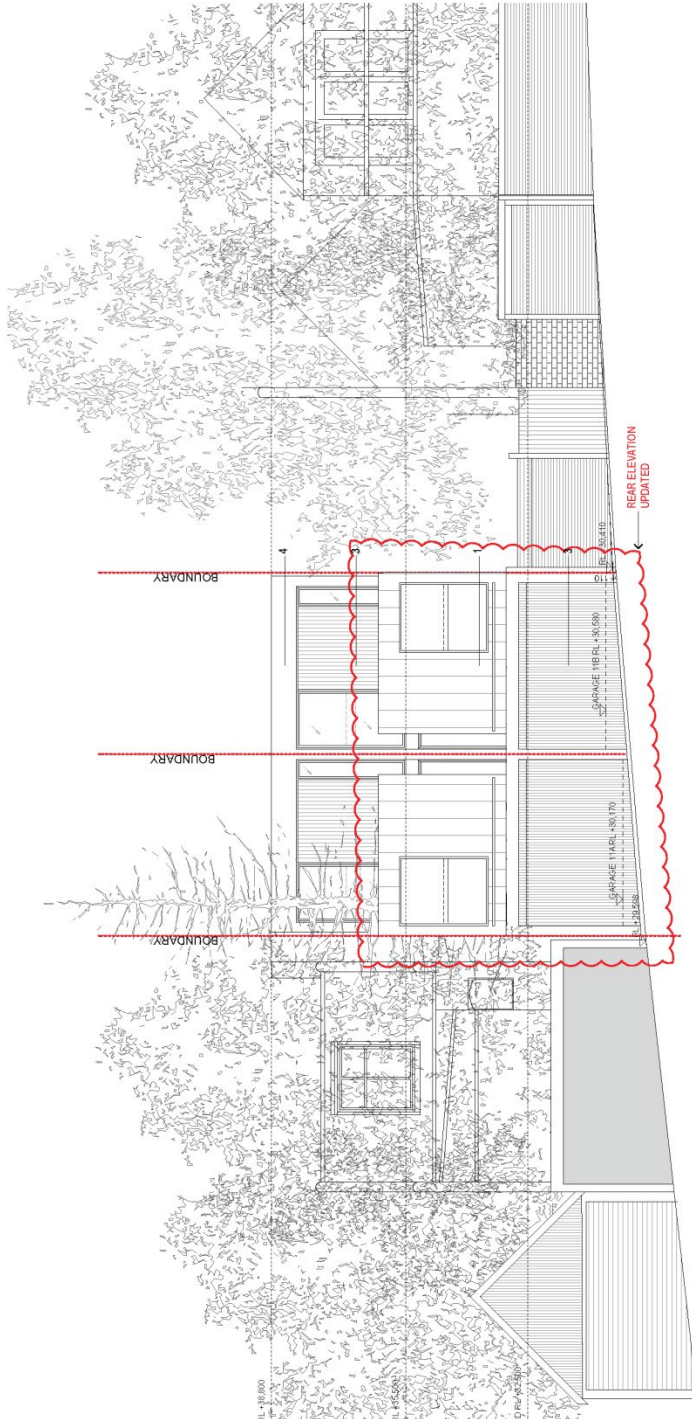
PROJECT INFORMATION
11 O'NEIL ST, UFFIELD NSW
11 O'NEIL ST, UFFIELD NSW
11 O'NEIL ST, UFFIELD NSW
11 O'NEIL ST, UFFIELD NSW

UNIVERSITY OF WOLLONGONG
CENTRE FOR ARCHITECTURE
CONSTRUCTION & URBAN DESIGN
Reference Number: CC02016006
The work completed in accordance with these plans and specifications is the property of the University of Wollongong. Planning & Assessment Act 1978.

SELECT BRIDGE HANDRAIL
REMOVABLE PANEL FOR ACCESS TO COURT

REVISIONS
R1. 20/07/20
R2. 20/07/20
R3. 20/07/20
R4. 20/07/20
R5. 20/07/20
R6. 20/07/20
R7. 20/07/20
R8. 20/07/20
R9. 20/07/20
R10. 20/07/20

LEVELS
RL 30200
RL 30190
RL 30180
RL 30170
RL 30160
RL 30150
RL 30140
RL 30130
RL 30120
RL 30110
RL 30100
RL 30090
RL 30080
RL 30070
RL 30060
RL 30050
RL 30040
RL 30030
RL 30020
RL 30010
RL 30000



02 NORTH ELEVATION
SCALE 1:100

LEICHHARDT COUNCIL
DEVELOPMENT CONSENT
Date: 8/4/2014
Reference Number: D/2013/496

- LEGEND**
- 01 ZINC METAL PAN ROOF - DARK GREY
 - 02 CLADDING - DARK GREY
 - 03 TEAK SOLID TIMBER CLADDING
 - 04 RENDERED MASONRY WALL - WHITE
 - 05 FLAT PLATE STEEL BALUSTRADE - DARK GREY
 - 06 RETRACTABLE TIMBER BALUSTRADE

Drawing Title
ELEVATIONS

Scale
1:100 @ A3

0 1 2 4m
SCALE 1:100

Drawing Number
DA09

Rev.
A

11 O'Neill St, Lilyfield
Architect:
Dominic Avvaro
NSW Registered Architect 7446
PH: 02 922 8265
WWW: www.dominicavvaro.com.au
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 E info@sme.com.au
 A 93/97 The Esplanade St. Ryde
 G 02 9387 8888

COMMENTS

1. The site is located on a corner of the intersection of O'NEILL STREET and GROVE LANE. The site is currently zoned R15 (RESIDENTIAL SINGLE DWELLING). The site is currently occupied by a single dwelling. The site is currently occupied by a single dwelling. The site is currently occupied by a single dwelling.



List of Amendments:

- The slight above the average in the southern elevation has been deleted.
- The slight above the average in the northern elevation has been deleted.
- A replacement tree has been proposed (a per 100m² of the site).
- A replacement tree has been proposed (a per 100m² of the site).

B 20/11/2018 AMENDMENT
 A 12/08/2018 SUBMISSION

Scale: 1:200
 0 2 4 6 8
 0 2 4 6 8
 0 2 4 6 8
 0 2 4 6 8

NOTES

1. THE SITE IS CURRENTLY OCCUPIED BY A SINGLE DWELLING. THE SITE IS CURRENTLY OCCUPIED BY A SINGLE DWELLING. THE SITE IS CURRENTLY OCCUPIED BY A SINGLE DWELLING.

DA 1925

Alterations and Additions to Existing Dwelling

17 O'Neill St, Ryde NSW 2112

DA 1925

DA 1925

DA 1925

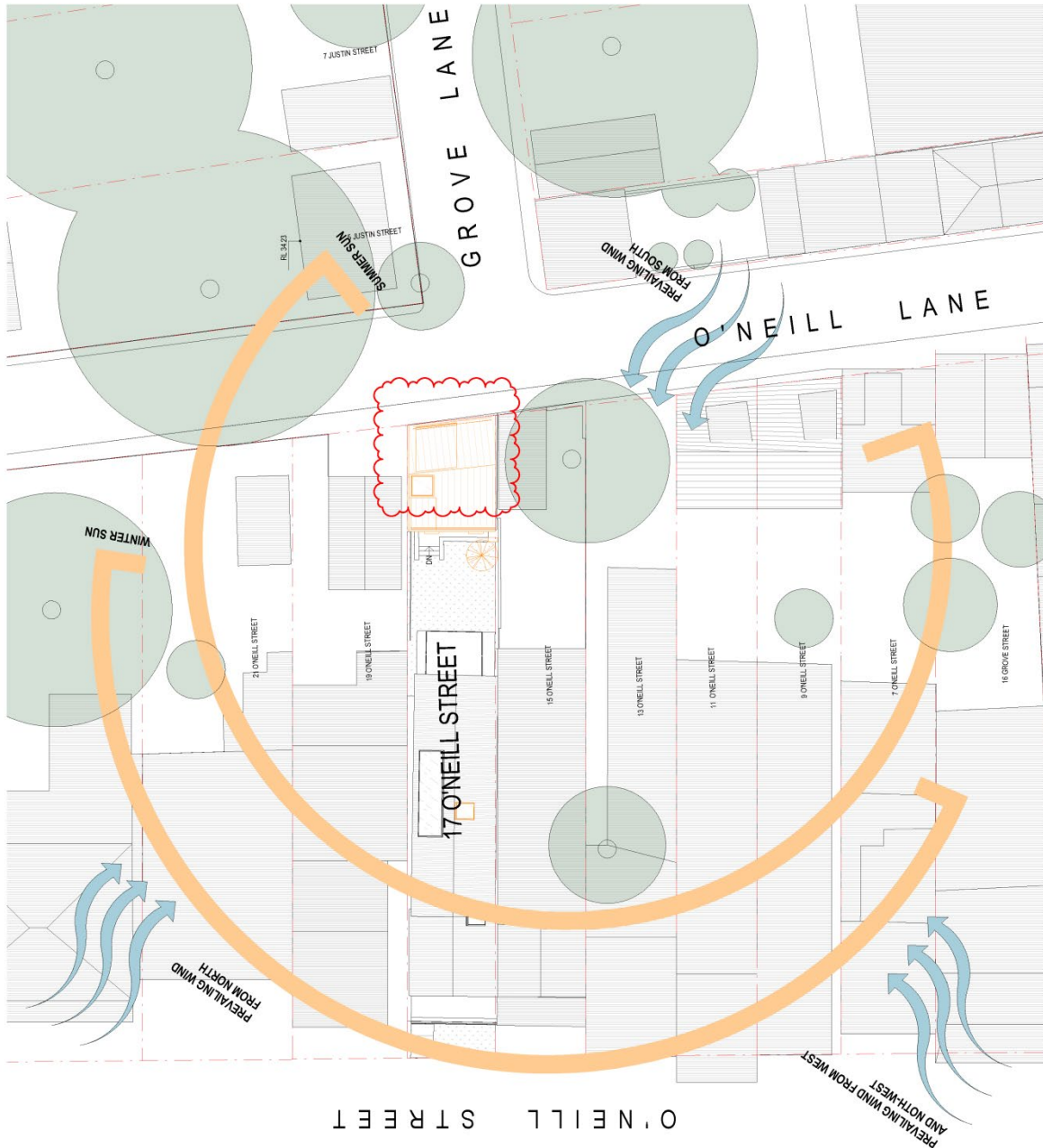
DA 1925

DA 1925

DA 1925

DA 1925

DA 1925





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 1100 000 000
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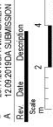
PROVISIONAL: THIS DRAWING IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION. THE CLIENT ACCEPTS THAT THE DRAWING IS PROVISIONAL AND THAT SMA MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE ACCURACY, COMPLETENESS OR SUITABILITY OF THE INFORMATION PROVIDED HEREIN. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREIN. SMA SHALL NOT BE RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT AS A RESULT OF THE CLIENT'S FAILURE TO OBTAIN ALL NECESSARY APPROVALS. SMA SHALL NOT BE RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT AS A RESULT OF THE CLIENT'S FAILURE TO OBTAIN ALL NECESSARY APPROVALS. SMA SHALL NOT BE RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT AS A RESULT OF THE CLIENT'S FAILURE TO OBTAIN ALL NECESSARY APPROVALS.



List of amendments:

- The skylight above the pergola in the southern elevation has been demolished and the pergola structure has been re-designed as per council comments.
- A replacement tree has been proposed as per architectural impact assessment.

B 26.11.2019 ICA AMENDMENT
 A 12.09.2019 ICA SUBMISSION



REFERENCES:

1. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF STEEL FRAMED BUILDINGS
 2. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF CONCRETE FRAMED BUILDINGS
 3. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF ALUMINIUM FRAMED BUILDINGS
 4. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF WOOD FRAMED BUILDINGS
 5. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF COMPOSITE FRAMED BUILDINGS
 6. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF BRICK FRAMED BUILDINGS
 7. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF MASONRY FRAMED BUILDINGS
 8. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF TIMBER FRAMED BUILDINGS
 9. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF STEEL FRAMED BUILDINGS
 10. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF CONCRETE FRAMED BUILDINGS
 11. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF ALUMINIUM FRAMED BUILDINGS
 12. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF WOOD FRAMED BUILDINGS
 13. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF COMPOSITE FRAMED BUILDINGS
 14. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF BRICK FRAMED BUILDINGS
 15. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF MASONRY FRAMED BUILDINGS
 16. NSW DEVELOPMENT STANDARDS AND CODES OF PRACTICE (AS/NZS 1170:2002) - STRUCTURAL DESIGN OF TIMBER FRAMED BUILDINGS

PROJECT DATA:

DA Alterations and Additions to Existing Dwelling

17 ONMI SL Lined NSW 246

FLOOR PLANS

DATE	DESCRIPTION	CHECKED
1925	AS INITIATED A3	SM
1925	DA 1102	SM

1 GROUND FLOOR PLAN - EXISTING
 1:200 at A3 1:100 at A1

2 GROUND FLOOR PLAN - DEMOLITION
 1:200 at A3 1:100 at A1

3 GROUND FLOOR PLAN - PROPOSED
 1:200 at A3 1:100 at A1

4 LEVEL 1 FLOOR PLAN
 1:200 at A3 1:100 at A1

5 ROOF PLAN
 1:200 at A3 1:100 at A1

LEGEND

- EXISTING WALLS & COLUMN TO BE RETAINED
- PROPOSED NEW WALLS
- EXISTING AREA TO BE REMOVED



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 111 St Georges Road
 Melbourne VIC 3000
 Australia
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List of amendments:
 - Finishes schedule amended

B - 26.11.2018/04 AMENDMENT
 A - 12.09.2018/04 SUBMISSION

NOT TO SCALE

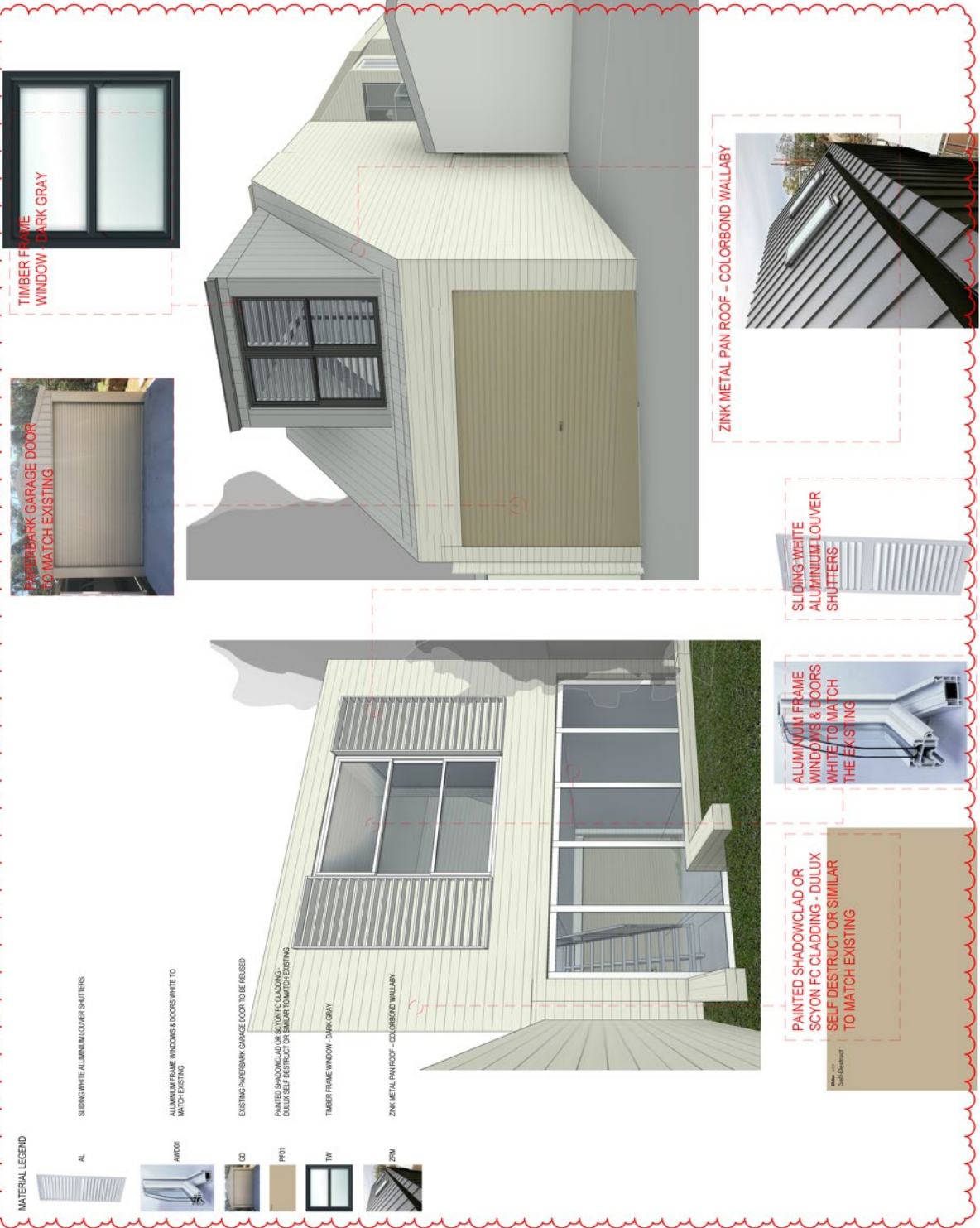
REFERENCES
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PROJECT NAME
DA
 Alterations and Additions to Existing Dwelling

17 DUNE ST LYFORD NSW 2146
 CLIENT DETAILS
 Brad Pagar

FINISHES SCHEDULE
 CHECKED
 DATE

1925
 DRAWING SCALE: 1:50
 SHEET SIZE: A3
 DRAWING NUMBER: DA-7041
 DESIGN: B

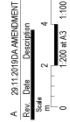




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- list of amendments:**
- The style above the garage in the southern elevation has been changed to match the style above the garage in the northern elevation.
 - The storm window in the southern elevation to the garage has been redesigned as per council.
 - A replacement tree has been proposed as per council.
 - The location of the proposed tree has been changed as per council.
 - Additional section plans of the proposed rear garage also provided as per council recommendation.



REFERENCES
 DOWNSIDE DESIGN CONSULTANTS (PVT) PTY LTD (DSC) ARCHITECTS
 17 ONIALL STREET NSW 2040
 SYDNEY NSW 2040
 PH: 02 9550 1234
 WWW: www.dsc.com.au

DA
 Alterations and Additions to Existing Dwelling

17 ONIALL STREET NSW 2040

BRAD ROYER

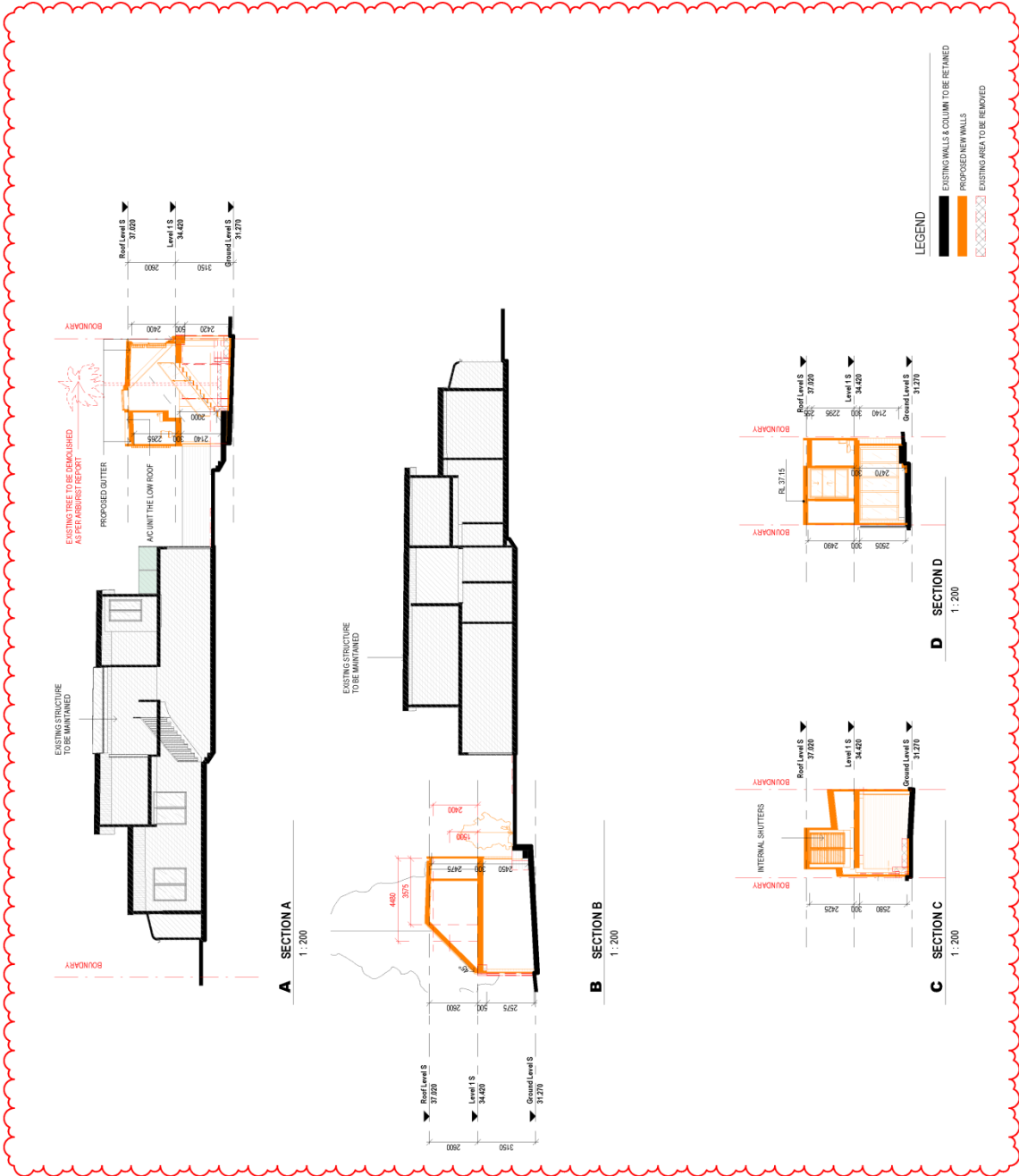
SECTIONS

DRAWN: SM
 DESIGNED: SM
 CHECKED: SM

PROJECT NUMBER: 1925

DRAWING NUMBER: 3001

REVISION: A



Attachment C- Clause 4.6 Exception to Development Standards



**Clause 4.6 Variation Request –
Floor Space Ratio**



Clause 4.6 variation statement – Floor Space Ratio (Clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Leichhardt Local Environmental Plan 2013 (LLEP2013) to accompany an application for alterations and additions to an existing dwelling at No. 17 O'Neill Street, Lilyfield ('the site').

2. PROPOSED VARIATION

Clause 4.4 (2B)(a)(ii) of LLEP 2013 relates to floor space ratio and identifies a maximum FSR of 0.8:1 for the subject site which has an area of 167.2m². Floor Space Ratio is defined as:

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

The proposal will increase the gross floor area at the site from 120.31m² to 166.57m², resulting in an FSR increase from 0.72:1 to 0.99:1 (a variation of 24.5%). This increase results from the provision of the studio and garage at the rear of the site, both of which are included as Gross Floor Area (GFA).

The floor space ratio control is a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of the LEP.

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of clause 4.6 are as follows:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include any of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

The development standards in Clause 4.4 are not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the

objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The judgement goes on to state that:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the maximum FSR development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum FSR of 0.85:1 (142.6sqm) which equates to a variation of 6.61%.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum site coverage:

1. The extent of the variation to the FSR control (32.8sqm) will not be perceptible from the public domain and the existing building will continue to appear as a building that is compatible with the surrounding built form. The increase to the FSR is by virtue of the additional garage and studio which does not introduce a new or unexpected built form that is not already present within the O'Neill Lane streetscape. That is, the additional FSR is accommodated within a built form that is reasonably anticipated on the site as detailed at Nos. 7-11 O'Neill Street in the image below.



Figure 1: Nos. 7-11 O'Neill Street (rear lane garages with studios above)

2. The majority of the variation to the FSR development standard is due to the inclusion of the single garaged car parking space and bin storage area in the calculation (23.97sqm). The provision of these elements within the garage and on the site will have a significant benefits to the public domain and amenity of adjoining properties by:
 - a. Retaining the quantum of off-street car parking that already exists on the site. Insistence on full compliance with the FSR development standard would necessitate the deletion of the off-street car parking space and force the occupants to compete for on-street car parking in an area where on-street car parking has almost reached saturation; and
 - b. Providing the bin storage area on the site within an enclosed space to limit the impacts on the amenity of the occupants and adjoining property owners in terms of odours and visual appearance of the garbage bins.
3. Despite the increased FSR, the landscaped area of the site will be increased by 6.7sqm (from 21.4sqm to 28.1sqm) to ensure compliance with the landscaped area development standard (15%). That is, the increase in FSR is offset by an increase in landscaped area.
4. It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically, the extent of non-compliance with the FSR development standard:
 - a. creates no significant additional overshadowing impacts when compared to a building with a compliant FSR. That is, when considering the overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant or nil;

the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(i). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

The objectives and relevant provisions of Clause 4.4 are as follows, inter alia:

(a) to ensure that residential accommodation:

- b. results in no significant additional privacy impacts when compared to a building with a compliant FSR as the only window facing towards the principal dwelling is off a bathroom for the first floor level studio. Therefore, when considering the visual and acoustic privacy against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil; and
 - c. results in no significant additional view loss when compared to a building with a compliant FSR. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.
- 5. The proposed FSR variation does not bring with it a form of development on the site that is noticeably larger than anticipated by the controls or inconsistent with the character for the locality generally. The massing of the building will not be incompatible with the character of surrounding development.
 - 6. The proposed rear addition has been carefully considered and is supported by the context of other neighbouring and nearby developments with similar characteristics as the subject site (that is, a two storey ancillary addition to the rear from O'Neill Lane). The proposed development adopts a similar typology and sits well within the context of the locality.
 - 7. The existing building is 13.45sqm below the maximum FSR for the site. The provision of additional accommodation towards the rear of the site will ensure the additional floor area required is redistributed away from the significant principal building form fronting O'Neill Street towards the less significant areas of O'Neill Lane.
 - 8. The scale and form of the proposed garage and loft is entirely compatible with the scale and form of adjoining garages and lofts within O'Neil Lane. The additional GFA is located at the rear of the site, away from the significant dwelling-house and represents a form that is reasonably anticipated and already present in O'Neill Lane. The consistency with adjoining properties and absence of any adverse amenity impacts demonstrates that the proposed additional GFA can be accommodated on the site in the form of a garage and loft addition.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional GFA provides for a high quality urban design and streetscape outcome specific to the site and the development (as advanced above).

It is noted that in *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

56. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that

(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and

(ii) provides a suitable balance between landscaped areas and the built form, and

(iii) minimises the impact of the bulk and scale of buildings,

(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

Clause 4.4(2B)(a)(ii) nominates a maximum floor space ratio of 0.8:1 for the site which has an area of 167.2m². It is requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum floor space ratio of 0.85:1 (142.6sqm). This represents a variation of 6.61%.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.4 are addressed in turn below.

Objective (a)(i) – The development proposes a bulk, form and scale is compatible with the desired future character of the area. The proposed garage and studio addition is not visible from O'Neill Street, since it is located at the rear of the site. The bulk and scale of the built form to O'Neill Lane is considered to be entirely reasonable and consistent with other recent lane development at Nos. 7, 9 and 11 O'Neill Street (refer to Figure 1 above). The built form proposes a nil setback to the lane, consistent with other development. Shadow impacts are cast onto the lane or the garages of adjacent properties, ensuring no adverse effects on adjoining living rooms or private open spaces. The first floor level studio will not have any adverse visual privacy impacts, since no windows are provided to side elevations and the only window facing the existing dwelling is off a bathroom.

The proposed additional FSR occurs to the rear of the site and is considered to have an insignificant or nil additional impact on adjoining development when compared to a complaint or reasonably anticipated development. The rear additions will comprise of a form and envelope that is entirely compatible with adjoining development and will not appear visually jarring or out of character when viewed from the public domain.

The existing heritage fabric of the façade to O'Neill Street is entirely retained, including the single-storey appearance and roof form. The form of the rear additions are contemporary in nature but will not be visible from O'Neill Street, thereby maintaining the significance of the locality.

For these reasons the proposed floor space ratio meets objective (a)(i).

Objective (a)(ii) – It is considered that the proposal provides a suitable balance between landscaped areas and the built form. Notwithstanding that the proposal is non-compliant with FSR (and site coverage), the proposal does provide a compliant landscaped area. That is, as the density increases so does the landscaped area to offset this increase.

The proposal increases landscaped area on the site by 6.7m² from 21.4m² (12.7%), to 28.1m² (16.8%). Landscaped areas are provided in the front setback and between the dwelling and the rear garage/studio. The size of the central landscaped area is increased through the removal of the existing timber deck and will enhance the amenity of the residents.

For these reasons the proposed floor space ratio meets objective (a)(ii).

Objective (a)(iii) – The bulk and scale of the rear garage and studio addition is entirely consistent with the scale of garage and studio additions in O'Neill Lane. The location of the addition ensures new shadows are cast over O'Neill Lane. The bulk and scale of the new addition is not visible from O'Neill Street and given the scale of buildings on O'Neill Lane can be reasonably anticipated as part of future redevelopment.

The proposed first floor studio is predominantly located within a pitched roof form, with a dormer window proposed for adequate head height within the space. The bulk and scale of the proposed first floor is therefore effectively minimised.

For these reasons the proposed floor space ratio meets objective (a)(iii).

Objective (b) – This objective is not relevant to the proposal.

The proposed development is therefore consistent with the objectives for floor space ratio, despite the numeric non-compliance.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the Zone R1 General Residential are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development is consistent with the relevant objectives of the zone as the proposal will:

- provide additional accommodation for the existing dwelling house to assist in meeting the housing needs of the community;
- be compatible with the character, style, orientation and pattern of surrounding buildings and the O'Neill Lane streetscape;
- facilitate opportunities for working from home;
- provide greater landscaped area on the site to contribute to the landscaped character; and
- protect and enhance the amenity of existing and future residents in the locality.

The floor space ratio variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the floor space ratio development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the floor space ratio standard. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed FSR exceeds the maximum permitted on the site by 32.81m² (a 24.51% variation), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



ANNEXURE B

Clause 4.6 Variation Request –
Site Coverage



Clause 4.6 variation statement – Site Coverage (Clause 4.3A)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Leichhardt Local Environmental Plan 2013 (LLEP 2013) to accompany an application for alterations and additions to an existing dwelling located at No. 17 O'Neill Street, Lilyfield ('the site').

2. PROPOSED VARIATION

Clause 4.3A(3)(b) of LLEP 2013 relates to maximum site coverage. Maximum site coverage is identified as 60% of the site area.

Site coverage is defined as:

site coverage means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage:

- (a) any basement,*
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,*
- (c) any eaves,*
- (d) unenclosed balconies, decks, pergolas and the like.*

The proposal will increase the site coverage on the site from 86.4m² (51%) to 114.5m² (68%) or a 14.13% variation to 4.3A(3)(b). This is as a result of the proposed new garage and first floor studio building at the rear of the site.

The maximum site coverage control is a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of the LEP.

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of clause 4.6 are as follows:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(e) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(f) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include any of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

The development standards in Clause 4.3A are not "expressly excluded" from the operation of Clause 4.6.

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum site coverage of 66% (114.5sqm) which equates to a variation of 14.13%.

Compliance with the maximum site coverage development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum site coverage:

1. The increase to the site coverage is by virtue of the provision of an enclosed garage and studio above (14.18sqm addition). The existing dwelling-incorporated a hard stand car parking space behind a garage roller door which, when viewed from the public domain, would appear as a similar proportion of site coverage to what is proposed.
2. The existing car parking space did not comply with AS2890.1. The additional site coverage is required to provide on-site car parking that complies with AS2890.1 and internal storage and bin enclosures within an enclosed environment. The additional accommodation above the garage area will be ancillary to the existing dwelling-house and provide additional opportunities to work from home (Zone R1 objective).
3. Despite the increased site coverage, the landscaped area of the site will be increased by 6.7sqm (from 21.4sqm to 28.1sqm) to ensure compliance with the landscaped area development standard (15%). That is, the increase in site coverage is offset by an increase in landscaped area.

4. It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically, the extent of non-compliance with the site coverage development standard:
 - a. creates no significant additional overshadowing impacts when compared to a building with a compliant site coverage. That is, when considering the overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant or nil;
 - b. results in no significant additional privacy impacts when compared to a building with a compliant site coverage as the only window facing towards the principal dwelling is off a bathroom for the first floor level studio. Therefore, when considering the visual and acoustic privacy against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil;
 - c. results in no significant additional view loss when compared to a building with a compliant site coverage. When considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.
5. The proposed site coverage variation does not bring with it a form of development on the site that is noticeably larger than anticipated by the controls or inconsistent with the character for the locality generally.
6. The proposed rear addition has been carefully considered and is supported by the context of other neighbouring and nearby developments with similar characteristics as the subject site (that is, a two storey ancillary addition to the rear from O'Neill Lane). The proposed development adopts a similar typology and sits well within the context of the locality.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional site coverage provides for a high quality urban design and streetscape outcome specific to the site and the development (as advanced above).

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2016] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The judgement goes on to state that:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

The objectives and relevant provisions of Clause 4.3A are as follows, inter alia:

- (a) *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) *to ensure that development promotes the desired future character of the neighbourhood,*

(d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,

(e) to control site density,

(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

Clause 4.3A (3)(b) nominates a maximum site coverage of 60% for the site. It is requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum site coverage of 68%. This represents a variation of 14.13%.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3A are addressed in turn below.

Objective (a) – The proposal retains the existing landscaped area at the frontage to O'Neill Street and increases the size of the landscaped area within the central courtyard by 6.7sqm via the removal of the existing timber deck. The landscaped area between the dwelling and rear garage/studio is entirely suitable for substantial tree planting and the use and enjoyment of residents in accordance with the objective. However, due to the limited size of the area and given it is the principal area of private open space for resident's, additional tree planting is not proposed. Despite this, the landscaped area is entirely capable of providing substantial tree planting in the future and therefore satisfies the objective.

For these reasons the proposed site coverage meets Objective (a).

Objective (b) – The proposal provides the central landscaped area in the same or similar location as landscaped areas on sites in the locality. Although there is no continuous landscaped corridor between properties currently, the proposal is capable of providing improved landscape corridors in the future.

For these reasons the proposed site coverage meets Objective (b).

Objective (c) – The proposed development promotes the desired future character of the Nanny Goat Hill distinct neighbourhood. The proposed additions are located to the rear off O'Neill Lane and therefore ensures that the most significant elements of the locality, the frontage to O'Neill Street, is retained in its existing state. The variation to the site coverage development standard does not result in a significantly different development to a complying development and would therefore promote the desired future character of the neighbourhood.

For these reasons the proposed site coverage meets Objective (c).

Objective (d) – The proposal encourages the absorption of surface drainage water, since it increases the landscaped area on the site by 6.7m² from 21.4m² (12.7%), to 28.1m² (16.8%). The proposal therefore improves landscaped area from a previous non-compliance to achieve compliance. The proposal has no impact on the underground flow of water, since no bulk excavation is proposed.

For these reasons the proposed site coverage meets Objective (d).

Objective (e) – The proposal does not increase the density of development on the site as the studio is ancillary to the existing dwelling (not a separate domicile). The proposed rear addition has been carefully considered and is supported by the context of other neighbouring and nearby developments with similar characteristics as the subject site (that is; a two storey ancillary addition to the rear from O'Neill Lane). The proposed development adopts a similar typology and sits well within the context of the locality.

For these reasons the proposed site coverage meets Objective (e).

Objective (f) – The proposal provides compliant levels of landscaped areas and private open space. The proposal provides 16.8% landscaped area, being in excess of the 15% required. The existing private open space will be retained and landscaping increased in this space. Despite the increase in site coverage, this will be offset by the increase in landscaped area and useable private open space to the benefit of residents.

For these reasons the proposed site coverage meets Objective (f).

The proposed development is therefore consistent with the objectives for maximum site coverage, despite the numeric non-compliance.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the Zone R1 General Residential are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development is consistent with the relevant objectives of the zone as the proposal will:

- provide additional accommodation for the existing dwelling house to assist in meeting the housing needs of the community;
- be compatible with the character, style, orientation and pattern of surrounding buildings and the O'Neill Lane streetscape;
- facilitate opportunities for working from home;
- provide greater landscaped area on the site to contribute to the landscaped character; and
- protect and enhance the amenity of existing and future residents in the locality.

The site coverage variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum site coverage development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum site coverage. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed site coverage exceeds the maximum permitted on the site by 14.18m² (a 14.13% variation), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum site coverage development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

Attachment D – Heritage Significance

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Area 9 Brennan’s Estate Conservation Area

This area comprises all of JR Brennan’s estate, excepting the southwestern allotments recently redeveloped from industrial purposes to multi-unit residential uses. It also includes on its northern boundary, the allotments facing O’Neill Street, created from the last subdivision of the Maida Estate in 1915.

Landform

This conservation area is sited on the southeast slopes of the main Lilyfield Road/Darling Street ridge. It overlooks Whites Creek and across to Annandale. From the eastern end there are extensive views northeast across Rozelle Bay towards Anzac Bridge and the industrial structures on Glebe Island. Streets run parallel across the slope of the land, following the line of the estate’s boundaries.



Figure 9.1 Brennan’s Estate Conservation Area Map.

History

The rapid growth of Sydney’s population and the consolidation of wealth and investment following the gold rush led to a westward expansion of the city and its industries. Numerous small water dependent industries found sites among earlier maritime activities on the edges of the harbour, while other manufacturing sought the flatter land and creek beds of the colonial estates which had once encircled the city. For the majority of people transport was by foot, so where industry went workers housing soon followed.

This area comprises workers’ housing built to serve the industries along Whites Creek and Rozelle Bay. It covers much of John Ryan Brennan’s subdivision of the land he inherited after his father’s death in 1874, from his bankrupt estate. Its northeastern boundary (Foucart Lane) abuts the southwestern boundary of Balmain’s 550-acre grant of 1800. Brennan’s subdivision provided wide roads aligned north/south and 875 very small regular allotments (18-20ft-

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wide), perhaps indicating a determination to gain as much from the land as possible, and to avoid the financial failure of his father. Roads were extended from adjoining estates: Joseph Street from the Orange Grove Estate to the west was quickly narrowed to provide two additional allotments at each street frontage. In 1890 64 per cent of the dwellings then constructed were of weatherboard, free standing and single-storey. There were two small groups of shops – on the corners of Joseph and Ryan Streets, and on the highest part of the land in Lamb Street.

The 1890s Depression halted industrial growth and its associated residential development, and some parcels of land, generally furthest from the major employment centres on the mouth of Whites Creek and in Rozelle Bay, were not taken up until the 1920s – some with housing, others with small industry. Some of those early twentieth century industrial buildings remain, now converted to residential purposes. Others outside this conservation area have been demolished and the land redeveloped for housing.

Most of the conservation area was developed in the 1880s/1890s, with the more remote sections taken up in the 1920s. The estate appears to have been fully developed by 1940.

Sources

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

Significant Characteristics

- Wide streets.
- Back lanes.
- Buildings step up and down the slopes, following the landform.
- Regular shaped allotments.
- Regular modules of development – mostly one single-fronted house on one allotment. Some double-fronted houses cover two adjoining allotments.
- Single-storey scale predominates.
- Frequent groupings of two to five houses – as terraces, or pairs of semis or as single-fronted detached dwellings.
- Uniformity of building style generally, of 1880s and early 1900s.
- Small pockets of 1920s and 1930s free-standing cottages.
- Consistent setbacks.
- Lack of decoration generally – these are workers houses.
- Occasional decorative detail suggests some pretension to style – painted tiles to front of house, timber bargeboard detail, tile paths.
- Weatherboard is the dominant building material: in 1890 64 per cent of houses were of weatherboard. Note early timber church, O'Neill Street.

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- Brick is second most important building material, used either plastered, where bricks were of lesser quality, or as face brick.
- A number of fibro clad buildings.
- Roofs largely of terracotta tile or iron, occasional slate.
- Many sandstone kerbs and gutters; most uninterrupted by vehicular access.
- Street tree planting of *melaleuca quinquinerva* and of *callistomen* from the 1970s.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas that collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area was intensely developed 1880s-1890s, and this forms the major element of its identity. It is significant for its surviving development from this period and the pockets of later infill development prior to World War II (ie up to 1939).
- Through its pattern of subdivision and the scale, shape, siting and materials of its buildings it provides a very intact example of a late nineteenth, early twentieth century suburb built for working men and tradesmen.
- The density and regularity of its development across the landform, the views so created out of the area, together with the small-scale detail of its modest architectural decoration result in a place of aesthetic value.
- It demonstrates through its remaining factories and the town houses that have replaced others, the mixed industrial/residential/retail nature of suburban development of that period, before the rise of cheap public transport, and before the urban reform movement sought to separate land uses into zones.
- Through its small scale regular housing and the narrowed width of Joseph Street, it demonstrates a continuing theme in residential development throughout suburban Australia – the owner's determination to gain as much as possible from his land.
- The concentration of free-standing houses in an area of narrow allotments demonstrates possibly both early fire regulations and the social status attached to a free-standing house.
- Demonstrates the role of timber as a building material in nineteenth century Sydney especially for the most modest end of the housing market, and the proximity of the timber yards in Whites Bay.
- Demonstrates, through its groupings of three to five identical houses, the work of small-scale building contractors who constructed the suburb.
- Illustrates through the existence of back lanes the reliance on the night soil cart before the reticulation of sewerage systems throughout suburban Sydney.

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Management of Heritage Values

Generally

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

Retain

- All pre-1939 buildings especially timber and fibro-clad buildings except those which are so compromised that they can no longer demonstrate their history.
- All original face brick buildings, unplastered and unpainted.
- All original plastered and painted finishes to external walls.
- The form of the original buildings and in particular, the roof form over the main part of the building.
- Back lanes.
- All original architectural details.
- Sandstone kerbs and gutters, uninterrupted by vehicular access.

Avoid

- Amalgamation of existing lots to create larger building sites.
- Demolition of any timber or fibro-clad building.
- Demolition of any pre-1939 building except as outlined above.
- Skinning or recladding of original external walls except with the same material but only where necessary for safety of structure.
- Two-storey additions. (This is an area of modest workers housing.)
- New two-storey buildings.
- High front fences which hide the front garden from public view.
- Interruption to the almost continuous kerb and gutter line.

Notes

Further work could include investigation of whether low two-storey pavilion additions could be added to the rear of these houses, without an adverse impact on the original building and its setting, and on the streetscape.