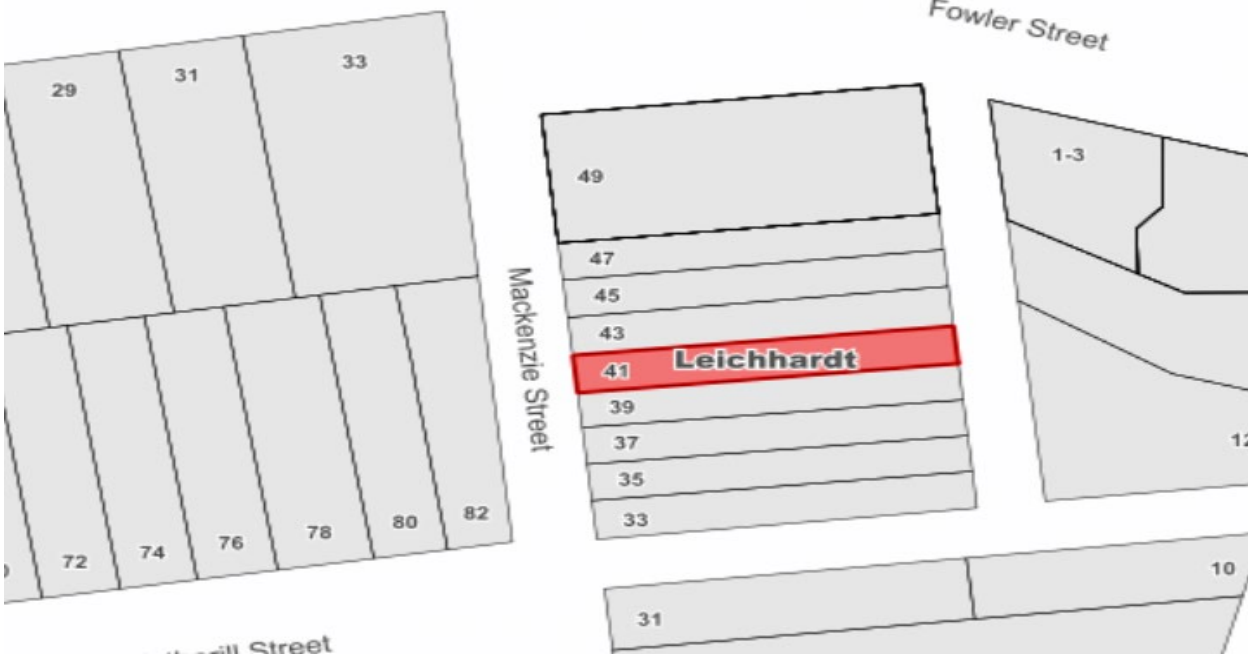





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/0998
Address	41 Mackenzie Street LEICHHARDT NSW 2040
Proposal	Demolition of the existing carport roof at the rear of the site and the construction of a new symmetrical gable roof and enclosure of the carport
Date of Lodgement	14 October 2021
Applicant	Sago Design
Owner	Mr Stephen P Cannane Ms Elise McHugh
Number of Submissions	Initial: 0
Value of works	\$95,000.00
Reason for determination at Planning Panel	Clause 4.6 variation for breaches to FSR and Site Coverage exceeds 10%
Main Issues	Departure from Site Coverage and FSR development standards
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 (Site Coverage)
Attachment D	Statement of Heritage Significance
Attachment E	Statement of Environmental Effects
Attachment F	Clause 4.6 Exception to Development Standards (FSR)
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	
 N	

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of the existing carport roof at the rear of the site and the construction of a new symmetrical gable roof and enclosure of the carport to form a garage at 41 Mackenzie Street Leichhardt.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Departure from the Landscaped Area (site coverage) and Floor Space Ratio development standards pursuant to the *Leichhardt Local Environmental Plan 2013*.

The proposal is considered acceptable in the context of the heritage conservation area and Piperston Distinctive Neighbourhood and is considered to have acceptable impacts to the amenity of the surrounding properties.

The departure from both the Landscaped Area (site coverage) and Floor Space Ratio development standards have also been assessed to be acceptable where the proposal meets all heads of consideration under the provisions of Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*.

Accordingly, the application is recommended for approval, subject to conditions.

2. Proposal

The proposal seeks the reconstruction of an existing carport fronting the rear laneway into a single car garage incorporating a laundry, bathroom, waste storage and non-habitable storage space within a symmetrical gable roof form.

The new parking structure will utilise the existing concrete slab and driveway crossing and will be constructed of white painted weatherboard with a metal roof.

The proposal also includes new 1.8m masonry fence to the northern and southern boundary adjacent to the proposed garage.

3. Site Description

The subject site is located on the western side of Mackenzie Street. The site consists of a single allotment and is rectangular shaped with a total area of 172sqm and is legally described as lot 4 in DP 108425. The site has a rear frontage to an unnamed lane.

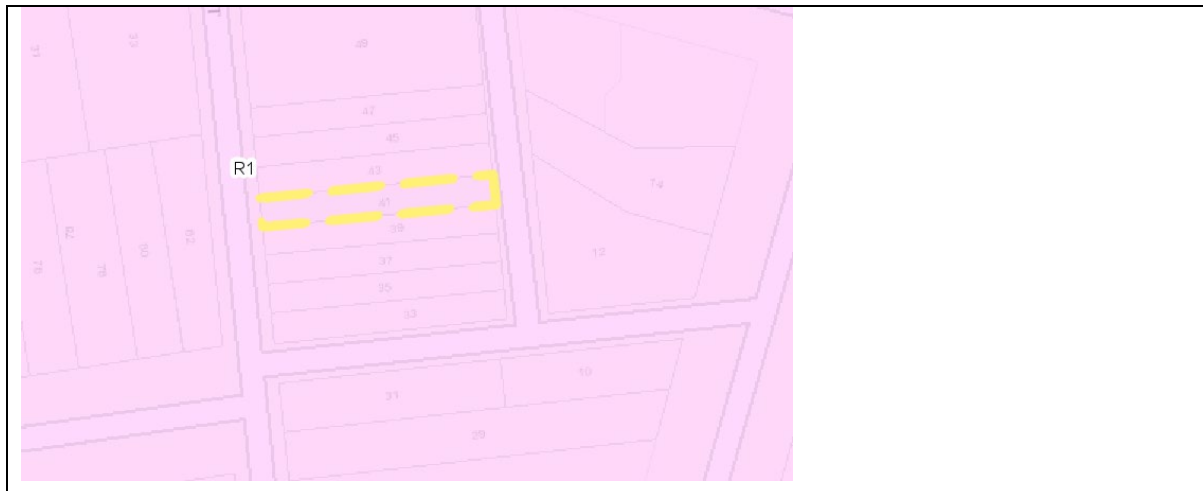
The site is a relatively narrow allotment with a frontage to Mackenzie Street of 4.61metres and a secondary frontage of approximately 4.6 metres to the rear lane. The site is also affected by a number of cross easements unaffected by the subject proposal. The site features a gentle cross fall towards the north.

The site supports a two storey attached rendered brick dwelling with a tiled and metal roof and rear carport with metal roof. The subject dwelling forms part of a row of like-terraces. The adjoining properties support two storey attached terraces and rear parking structures of a similar scale to that located on the subject property. Properties opposite the site fronting

the rear laneway are detached dwellings on comparatively larger, irregular shaped allotments.

The property is located within a heritage conservation area. The property is not identified as a flood prone lot. The site is located within the ANEF 25-30 aircraft noise contour.

The site supports a small Frangipani tree in the rear garden adjacent to the southern boundary which is proposed to be retained.



D/2007/214	Alterations and additions to ground, first floor and new loft room with dormer window, reinstate the front facade and construction of a new garage located at rear.	Refused 16/10/2007
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43 Mackenzie Street Leichhardt

Application	Proposal	Decision & Date
D/2010/318	Alterations and additions to an existing dwelling.	Approved 30/08/2010

4(b) Application history

PDA/2020/0502

The applicant previously sought pre-DA advice relating to construction of a two storey studio above a garage to the rear boundary. Council advice indicated that the proposed FSR breach could not be supported due to unacceptable bulk and scale, non-compliance with laneway controls (including building envelope) and solar access and visual privacy impacts to neighbouring properties. The proposed design addresses these concerns through retaining a single-storey appearance, reducing the wall-height by 1.78m and incorporating a compliant laneway envelope.

PDA/2021/0164

Subsequent to PDA/2020/0502, an additional pre-DA was lodged with Council including an amended design addressing key issues raised under PDA/2020/052. The proposed design subject of the pre-DA incorporated a single storey outbuilding with a gabled roof form to accommodate storage within the roof space. Some further minor amendments have been made to the proposal submitted with the subject DA in response to this pre-DA advice, including reduction in overall height of the proposed garage roof by 200mm (from RL32.11 to RL31.91). The roof form to the western elevation of garage has been amended from a gable form to a hip and the timber louvre in the rear (eastern) gable to the lane has been deleted.

Overall, these amendments are considered positive as they reduce the overall height and bulk of the previous concept proposal.

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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

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

In considering the above, there is no evidence of contamination on the site. There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use where it continues to be used for residential purposes with no excavation proposed and no indication of contamination. Accordingly, no further investigation is required and the matters pertaining to Chapter 4 of the SEPP are satisfied.

5(a)(ii) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP. No trees are proposed to be removed as part of the Development Application.

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(iii) 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 4.4A - Exception to maximum floor space ratio for active street frontages
- 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 6.2 - Earthworks
- Clause 6.4 - Stormwater management
- Clause 6.5 - Limited development on foreshore area
- Clause 6.8 - Development in areas subject to aircraft noise

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

The site is zoned LR1 under the *LLEP 2013*. The proposed development is for alterations and additions comprising a garage (ancillary to the dwelling) which is permissible with consent in the zone.

The Objectives of 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 proposal, subject to conditions, is considered to be consistent with the above zone objectives.

Clause 4.3A - Landscaped areas for residential accommodation in Zone R1 and Clause 4.4 – Floor Space Ratio

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

Standard	Proposal	non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 120 sqm	0.88:1 or 150.7 sqm	30sqm or 25%	No
Landscape Area Minimum permissible: 15% or 26 sqm	25% or 40sqm	N/A	Yes
Site Coverage Maximum permissible: 60% or 103.2sqm	68% or 117sqm	13.8sqm or 13%	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio (FSR)

The applicant seeks a variation to the Landscaped Area (site coverage) and FSR development standards under Clause 4.3A and 4.4b of the *Leichhardt Local Environment Plan 2013*, respectively.

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 *Leichhardt Local Environment Plan 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Leichhardt Local Environment Plan 2013* justifying the proposed contravention of the development standard which is summarised as follows:

Clause 4.3A - Landscaped areas for residential accommodation in Zone R1

- *The underlying purpose and objectives of the clause is unnecessary and unreasonable for the purposes of the development, as the existing non-compliance is fully retained.*
- *There is no additional footprint or site coverage proposed, as it is redevelopment of an existing outbuilding.*
- *Compliance would derogate from the existing amenities and enjoyment experienced by current and future residents, as well as depreciate the site circumstance and context by removing existing off-street parking or usable private open space.*
- *The proposed development provides adequate landscaped area suitable for tree planting and the amenity of future occupants. This is demonstrated through the compliance with Clause 4.3A(3)(a)(i) minimum landscaped area control of 15% of the site area.*
- *Whilst a variation is sought, the proposed works have no negative impacts to surrounding properties and the broader locality, while improving the amenity of the dwelling and ancillary, as will be detailed within this written justification.*
- *The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.*
- *The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.*
- *The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape.*
- *There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.*

- *The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.*
- *The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.*

Clause 4.4 – Floor Space Ratio

- *There are no changes to the footprint of the outbuilding, and the envelope is marginally modified to include non-habitable roof space for the purpose of storage; and the internal layout modified to incorporate residential amenities such as a bathroom and laundry.*
- *Whilst a variation is sought, the proposed works have no negative impacts to surrounding properties and the broader locality, while improving the amenity of the dwelling and ancillary, as will be detailed within this written justification.*
- *The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.*
- *The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.*
- *The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape.*
- *There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.*
- *The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.*
- *The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.*

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable / unnecessary 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 LR1, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- *To provide for the housing needs of the community*

Comment: The proposed development caters for the housing needs of the community by improving upon existing development for ongoing residential uses (e.g. storage, laundry and amenities and off-street parking).

- *To provide for a variety of housing types and densities.*

Comment: The proposal retains the existing single dwelling on the site.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Comment: The proposed reconstruction of the existing carport has been designed in a manner to be compatible with the character, style, orientation and pattern of surrounding development in the streetscape. As the existing carport footprint will be retained, there is no proposed exacerbation to site coverage or landscaped area departures beyond what is existing - the non-compliance of which is a legacy of the previously approved development issued under D/2020/17.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

Comment: Despite significantly narrow site constraints, the proposed development incorporates adequate and compliant landscaped area and private open space provision that will provide for ongoing amenity of current and future occupants.

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

Comment: The proposed development will not have any adverse impacts on the amenity of surrounding properties, with particular regard for solar access, visual privacy and bulk and scale. The proposed development is otherwise generally compliant with the Leichhardt LEP 2013 and Leichhardt DCP 2013 controls and thus will protect the existing amenity of adjoining developments.

It is considered the development is in the public interest because it is consistent with the objectives of the FSR and Landscaped Area development standards, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

Clause 4.3A - Landscaped areas for residential accommodation in Zone R1

- *To provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents*

Comment: The proposed development provides adequate landscaped area suitable for tree planting and the amenity of future occupants. This is demonstrated through the compliance with Clause 4.3A(3)(a)(i) minimum landscaped area control of 15% of the site area and retention of existing tree in the rear garden.

- *To maintain and encourage a landscaped corridor between adjoining properties*

Comment: The proposal meets the minimum landscaping requirement and maintains the landscape corridor along the western side of Mackenzie Street.

- *To ensure that development promotes the desired future character of the neighbourhood*

Comment: The subject site is located within the Piperston Distinctive Neighbourhood. The design of the development complements the character of the area and maintains the predominant scale (one storey) within the rear lane. The proposed gable roof form fronting the unnamed laneway is commensurate to gabled-ended pitch roof forms that exist in the area. Furthermore, the modified garage will not detract from the existing dwelling, and is not visible from Mackenzie Street, therefore will not compromise the desired future character of the Piperston distinctive neighbourhood.

- *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*

Comment: The proposal retains the existing and compliant quantum of soft landscaping on the site. Civil stormwater drawings by an engineer have been submitted with the development application, demonstrating that adequate stormwater drainage can be achieved. Council's stormwater engineer have reviewed and support the proposal, subject to conditions.

- *To limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

Comment: The proposed development provides for adequate and compliant landscaped area and private open space.

Clause 4.4 – Floor Space Ratio

- *To ensure that residential accommodation—*
 - (i) is compatible with the desired future character of the area in relation to building bulk, form and scale*

Comment: The subject site is located within the Piperston Distinctive Neighbourhood. The design of the development complements the character of the area and maintains the predominant scale (one storey) within the rear lane. The proposed gable roof form fronting the unnamed laneway is commensurate to gabled-ended pitch roof forms that exist in the area. The modified garage will not detract from the existing dwelling, and is not visible from Mackenzie Street, therefore will not compromise the desired future character of the Piperston distinctive neighbourhood. Furthermore, the maximum wall height of 3.6 metres is achieved, and the overall built form meets the laneway envelope requirements.

- (ii) Provides a suitable balance between landscaped areas and the built form*

Comment: The proposal provides adequate (and compliant) soft landscaped area in the rear yard and maintains a generally consistent landscape corridor across the adjoining properties, achieving an acceptable balance of landscaping and built form.

- (iii) Minimises the impact of the bulk and scale of buildings*

Comment: The proposed reconstruction of the existing carport into a garage complies with the maximum wall height and building envelope requirement for the laneway and provides acceptable scale in context of surrounding development which will not have adverse amenity impacts to neighbouring properties.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *Leichhardt Local Environment Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR and Landscaped Area (site coverage) development standards and it is recommended the Clause 4.6 exception be granted.

5(b) Draft Environmental Planning Instruments

There are no relevant draft SEPPs pertaining to the subject proposal.

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 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(d) Development Control Plans

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

The following provides discussion of the relevant issues:

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	Yes
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	Yes – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes – see discussion

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	
C.2.2.3.3 Piperston distinctive neighbourhood	Yes – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
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	Yes
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	Yes

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:

C1.3 Alterations and additions and C1.4 Heritage Conservation Areas and Heritage Items, C1.18: Laneways and C.2.2.3.3: Piperston Distinctive Neighbourhood.

The proposed design of the garage is sympathetic to the character of the heritage conservation area and maintains the predominant single storey scale of structures fronting the unnamed rear laneway. The proposed gable roof form is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings as seen from within the laneway and will not detract from the existing dwelling.

The rear laneway is of a medium size in terms of laneway hierarchy with a service character. The proposed development complies with the maximum 3.6m maximum wall height and 45 degree building envelope requirements for the laneway and Piperston Distinctive Neighbourhood and maintains a single storey presentation.

It is acknowledged that a number of amendments have been made to the subject proposal from the designs considered as part of the two previous Pre-DAs (refer to discussion under Part 4(b) of this Assessment Report). Overall, these amendments are considered positive as they reduce the overall height and bulk of the previous proposals. Colours and materials proposed are also considered acceptable and compatible in the context of surrounding development, the heritage conservation area and desired future character of the Piperston distinctive neighbourhood.

C3.9 Solar Access

Given the adjoining sites are east-west orientated the following solar access controls apply to the proposal in relation to solar access of affected properties:

- *C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.*
- *C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

Solar access diagrams provided demonstrate that that there will be no self-shadowing of the subject site’s private open space and no increase in overshadowing of the southern adjoining properties private open space between 9am and 12pm mid-winter (worst-case scenario), where the majority of shadows are cast over existing shadows, shifting to the rear garage structures and rear laneway from 12pm-3pm.

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

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(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

5(h) 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.

Heritage

The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of the Leichhardt Street / Stanley Street Heritage Conservation Area and 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.

Engineering

The proposal is acceptable subject to conditions.

6(b) External

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are not payable for the proposal.

8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining 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 4.3A and 4.4 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. DA/2021/0998 for Demolition of the existing carport roof at the rear of the site and the construction of a new symmetrical gable roof and enclosure of the carport at 41 Mackenzie Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. 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 000 Rev A	Architectural Plans	08/09/2021	Sago Design
DA 010 Rev A	Planning Controls	08/09/2021	Sago Design
DA 011 Rev A	Planning Controls- FSR	08/09/2021	Sago Design
DA 100 Rev A	Existing + Demolition Site Plan	08/09/2021	Sago Design
DA 101 Rev A	Existing + Demolition Roof Plan	08/09/2021	Sago Design
DA 102 Rev A	Existing + Demolition Ground Floor Plan	08/09/2021	Sago Design
DA 103 Rev A	Existing + Demolition Ground Floor Plan	08/09/2021	Sago Design
DA 200 Rev A	Proposed Ground Floor Plan	08/09/2021	Sago Design
DA 202 Rev A	Proposed Roof Plan	08/09/2021	Sago Design
DA 300 Rev A	Proposed Elevation + Rear Laneway	08/09/2021	Sago Design
DA 301 Rev A	Proposed Elevation + Front	08/09/2021	Sago Design
DA 400 Rev A	Proposed Section A	08/09/2021	Sago Design
DA 401 Rev A	Proposed Section B	08/09/2021	Sago Design
DA 402 Rev A	Proposed Elevation A	08/09/2021	Sago Design
DA 403 Rev A	Proposed Elevation B	08/09/2021	Sago Design
DA 500 Rev A	Material Palette	08/09/2021	Sago Design
2122-014 Sheet 1 of 4	Concept Stormwater Drainage Project Information Sheet	September 2021	H&M Consultancy
2122-014 Sheet 2 of 4	Existing & Proposed Site Coverage	September 2021	H&M Consultancy

2122-014 Sheet 3 of 4	Roof Drainage Plan	September 2021	H&M Consultancy
2122-014 Sheet 4 of 4	Site Drainage Plan	September 2021	H&M Consultancy
N/A	Statement of Heritage Impact	August 2021	Graham Hall and Partners Architects and Heritage Consultants
Ref: 210802	Aircraft Noise Assessment	07/10/2021	DK Acoustics Pty Ltd
Certificate Number: A425088	BASIX Certificate	03 September 2021	Sago Design

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the 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:	\$2,254.00
Inspection Fee:	\$241.50

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 initial 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.

3. 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.

GENERAL CONDITIONS

4. 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.

5. Works Outside the Property Boundary

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

6. 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.

7. 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.

8. 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.

PRIOR TO ANY DEMOLITION

9. 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.

10. 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.

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 letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. Advising Neighbours 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.

PRIOR TO CONSTRUCTION CERTIFICATE

13. Dilapidation Report – Pre-Development – Minor

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.

14. Stormwater Drainage System – Minor Developments (OSD is not required)

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. 2122-014 prepared by H&M Consulting and dated 14 October 2021, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential

development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;

- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- h. As there is no overland flow/flood path available from the rear and central courtyards to the rear lane frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - a. 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;
 - b. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
 - c. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- i. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- j. No nuisance or concentration of flows to other properties;
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- l. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- m. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- o. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;
- p. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- q. No impact to street tree(s);

15. Parking Facilities – Domestic

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:

- r. The garage 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;
- s. 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;
- t. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
- u. The garage/carport/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;
- v. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- w. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- x. The external form and height of the approved structures must not be altered from the approved plans.

16. 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.

17. 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 13 20 92

DURING DEMOLITION AND CONSTRUCTION

18. 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.

19. 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

20. 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.

21. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier 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.

22. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

ADVISORY NOTES

Permits

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:

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;
A concrete pump across the roadway/footpath;
Mobile crane or any standing plant;
Skip Bins;
Scaffolding/Hoardings (fencing on public land);
Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
Awning or street veranda over the footpath;
Partial or full road closure; and
Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

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.

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

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.

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.

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.

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.

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; and
- 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.

Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Toilet Facilities

The following facilities must be provided on the site:

Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and

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.

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):

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

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.

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:

In the case of work for which a principal contractor is required to be appointed:
The name and licence number of the principal contractor; and
The name of the insurer by which the work is insured under Part 6 of that Act.

In the case of work to be done by an owner-builder:
The name of the owner-builder; and
If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

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.

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 Corporation	Payments 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.diysafe.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
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

DA ARCHITECTURAL DRAWINGS

REAR ADDITION TO
41 MACKENZIE STREET, LEICHHARDT 2040

DRAWING REGISTER

DRAWING REGISTER	SCALE	BASIX REQUIREMENTS
DA 000 COVER PAGE	NTS	
DA 010 PLANNING CONTROLS	NTS	
DA 011 PLANNING CONTROLS /FSR	1:100	
DA 100 EXISTING + DEMOLITION SITE PLAN	1:200 @ A3	
DA 101 EXISTING + DEMOLITION ROOF PLAN	1:100 @ A3	
DA 102 EXISTING + DEMOLITION GROUND FLOOR PLAN	1:100 @ A3	
DA 103 EXISTING + DEMOLITION GARAGE FLOOR PLAN	1:50 @ A3	
DA 200 PROPOSED GROUND FLOOR PLAN	1:50 @ A3	
DA 201 PROPOSED ROOF PLAN	1:50 @ A3	
DA 300 PROPOSED ELEVATION - EAST / REAR LANEWAY	1:100 @ A3	
DA 301 PROPOSED ELEVATION - WEST / FRONT	1:100 @ A3	
DA 302 PROPOSED ELEVATION - NORTH	1:100 @ A3	
DA 303 PROPOSED ELEVATION - SOUTH	1:100 @ A3	
DA 400 PROPOSED SECTION A	1:100 @ A3	
DA 401 PROPOSED SECTION B	1:100 @ A3	
DA 500 MATERIAL PALETTE	NTS	
DA 600 SOLAR ACCESS PLAN	1:200 @ A3	
DA 601 SOLAR ACCESS PLAN	1:200 @ A3	
DA 602 SOLAR ACCESS PLAN	1:200 @ A3	
DA 603 SOLAR ACCESS PLAN	1:200 @ A3	

BASIX REQUIREMENTS

- FIXTURES & SYSTEMS**
- HOT WATER: REUSE EXISTING
 - LIGHTING: ALL NEW LIGHTS TO BE 40% LED OR COMPACT FLOURESCENT
 - FIXTURES:
 - NEW TOILETS TO HAVE A FLOW RATE OF NO GREATER THAN 9L/MIN OR 3 STAR RATING
 - NEW TOILETS TO HAVE A FLOW RATE NO GREATER THAN 4L/FLUSH OR 3 STAR RATING.
 - NEW TRAPS TO HAVE A FLOW RATE NO GREATER THAN 9L/MIN OR MIN 3 STAR RATING.
- WINDOW & DOOR GLAZING REQUIREMENTS (MINIMUM SPECIFICATION ONLY)**
- W1: 1: Standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
 - Eave/verandah/balcony >=450 mm
 - W1: 2: Standard aluminium, single clear, (or U-value: 7.83, SHGC: 0.75), NONE
 - SK1: 3: Aluminium, moulded plastic single clear, (or U-value: 6.21, SHGC: 0.808), externally fixed awning or blind
- CONSTRUCTION & INSULATION (MINIMUM SPECIFICATION ONLY)**
- EXTERNAL WALL- BRICK/VENEER R1.15 (OR R1.70 INCLUDING CONSTRUCTION)
 - RAKED CEILING, PITCHED / SKILLION ROOF: FRAMED
 - CEILING: R1.76 (UP), ROOF: FOIL SARKING, LIGHT SOLAR ABSORPTANCE >0.475

AERIAL IMAGE



SITE IMAGE



ISSUE	DATE	REVISION	PROJECT	SCALE	UNIT
DA SUBMISSION	08/021	A	41 MACKENZIE STREET, LEICHHARDT 2040	SCALE 1:100	NTS
			DA	000	A

LANDSCAPED AREA | COMPLIANT

EXISTING: 40.2M² / 23.4%
CONTROL: 25.6M² / 15%



SITE COVERAGE | NO CHANGE TO EXISTING

EXISTING: 117.4M² / 68%
CONTROL: 117.4M² / 68%
PROPOSED: 117.4M² / 68%
(NO CHANGE HOWEVER TO GARAGE SO COMPLIANT)

NOTE:
-DOES NOT INCLUDE GARAGE
-DOES NOT INCLUDE PAVING
-CONTROL HAVE DELAYATION POWERS IF SITE COVERAGE IS OVER
-INCLUDES RAISED DECK, 500mm ABOVE NGL



SITE DETAILS

LGA: INNER WEST COUNCIL
LOT: 4
DP: 108/425
SITE AREA: 172M²
HERITAGE: CONSERVATION AREA
ZONING: R1 - GENERAL RESIDENTIAL
LANEWAY: MEDIUM LANEWAY, 5.1-8m

DCP PROVISIONS

SECONDARY FRONTAGE: MUST BE RECESSIVE - MATERIALITY

GARAGE: COMPLY WITH AS 2880.1 - COMPLIANT CAR CROSSOVER, 1:4 GRADIENT / CROSSOVER, CAR SPACE: 3M X 6M, GARAGE DOOR: 3M

PRIVATE OPEN SPACE: 16M² / MIN AREA 3m

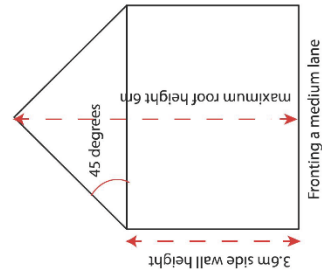
FLOOR SPACE RATIO: 4.42B/C - IN THE CASE OF DEVELOPMENT ON A LOT WITH AN AREA OF 150 SQUARE METRES OR MORE BUT LESS THAN 300-0.7:1

NCC PROVISIONS

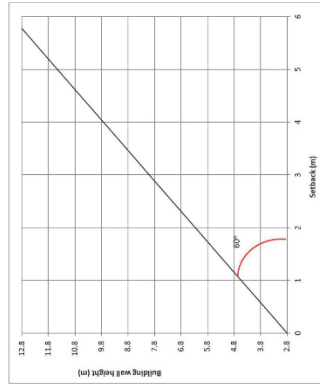
3.7.1 NCC FIRE SEPARATION: 60/60/60 FRW WITHIN 800 OF BDY, CLASS 10A (GARAGE) & CLASS 1A (SINGLE DWELLING), NO FIRE PROTECTION NEEDED FOR A WALL OR OPENING AT RIGHT ANGLES TO BDY.

SETBACKS

MEDIUM LANEWAY REAR SETBACK | COMPLIANT



SIDE SETBACK | COMPLIANT



SAGO DESIGN

DA SUBMISSION | DATE: 08/9/21 | REVISION: A

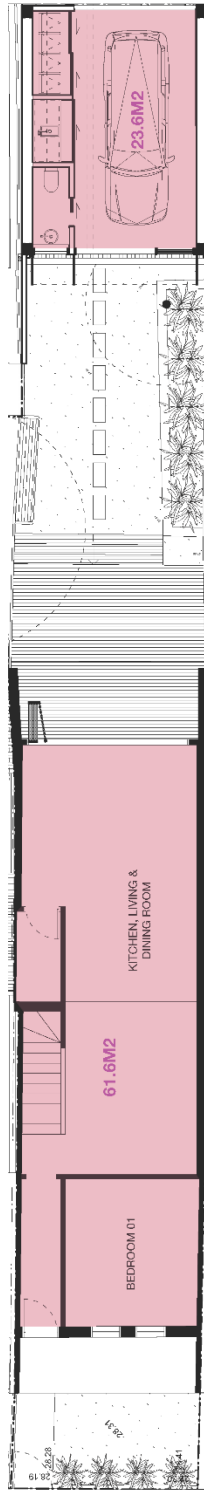
PLANNING CONTROLS: DA 010 | SCALE: A | DATE: 2010

41 MACKENZIE STREET, LEICHHARDT 2040

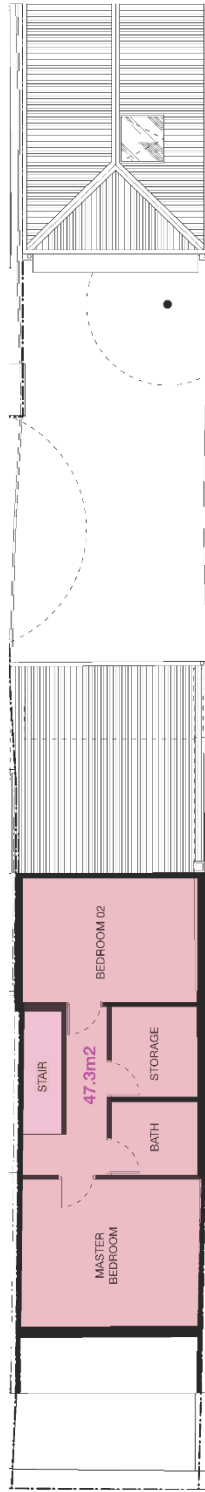
FLOOR SPACE RATIO | NO CHANGE TO EXISTING

SITE AREA: 172m²
 CONTROL FSR: 120m² | 0.7:1
 EXISTING FSR: 150.7m² | 0.88:1
 2009 DA FSR: 140m² | 0.81:1 (ASSUMED TO INCLUDE CARPORT: 23.8m²)
 PROPOSED FSR: 150.7m² | 0.88:1

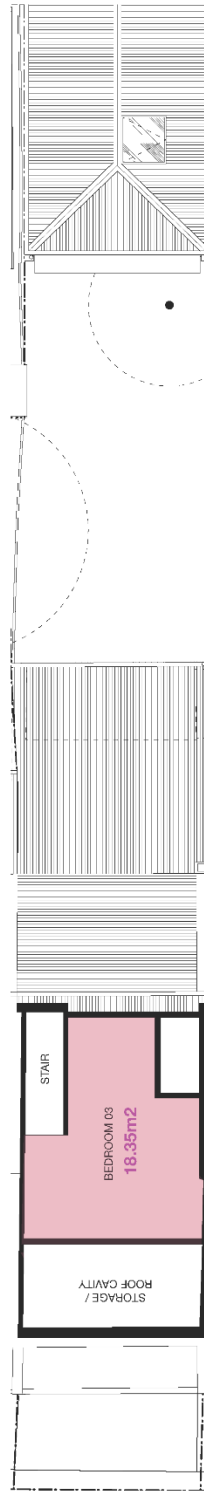
NOTE:
 - DOES INCLUDE GARAGE / CARPORT - ONLY EXCLUDED FROM FSR IF THERE IS A COUNCIL CAR PARKING REQUIREMENT - LEICHHARDT, NO CAR PARK REQUIRED.
 - MEASURED AT FINISH FLOOR LEVEL.
 - DOES NOT INCLUDE VOID SPACE, BALCONY



GROUND FLOOR



FIRST FLOOR



ATTIC

SAGO DESIGN

DATE	ISSUE	REVISION	DATE	REVISION	DATE	REVISION
08/01/21	DA SUBMISSION	A	08/01/21	A		

PLANNING CONTROL FSR
 PROJECT SCALE 6:AS
 DATE 2010
 SCALE 1:100

41 MACKENZIE STREET, LEICHHARDT NSW
 DA 011
 A



SAGO
DESIGN

ISSUE: DA SUBMISSION

DATE: 08/07/21

REVISION: A

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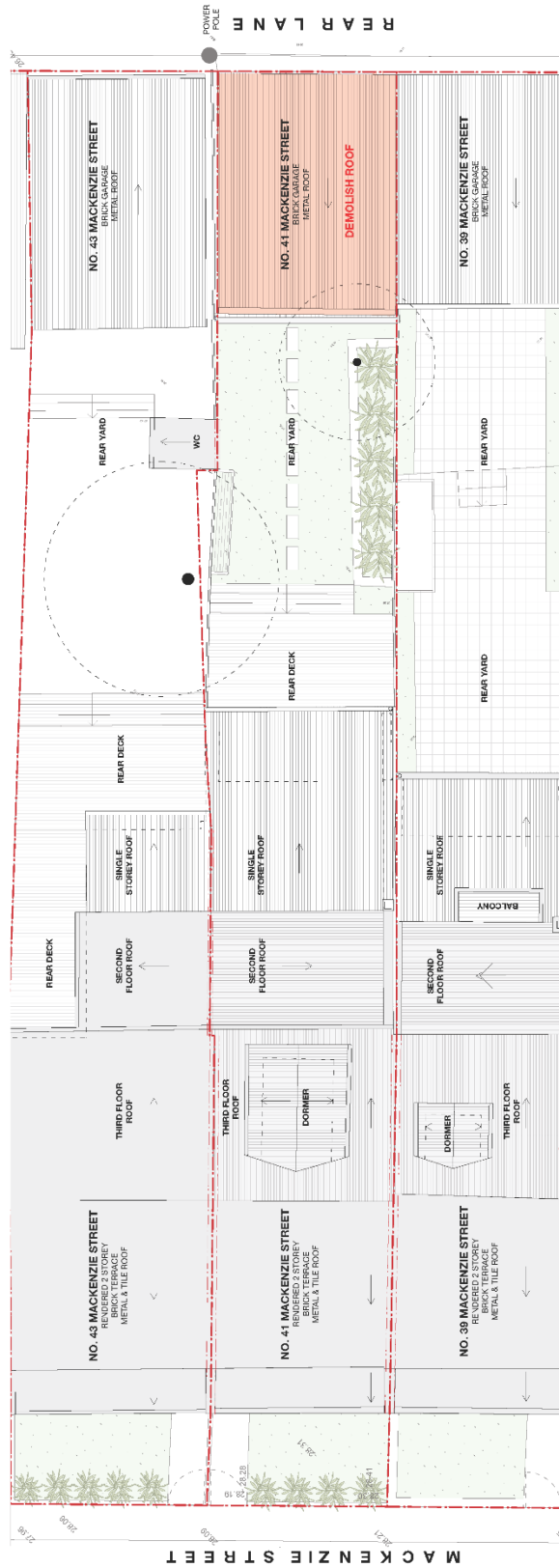
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PROJECT: 41 MACKENZIE STREET, LEICHHARDT NSW

DA 100

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SAGO DESIGN

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41 MACKENZIE STREET, LEICHHARDT SH49

EXISTING + DEMOLITION ROOF PLAN

DATE: 08/01/21

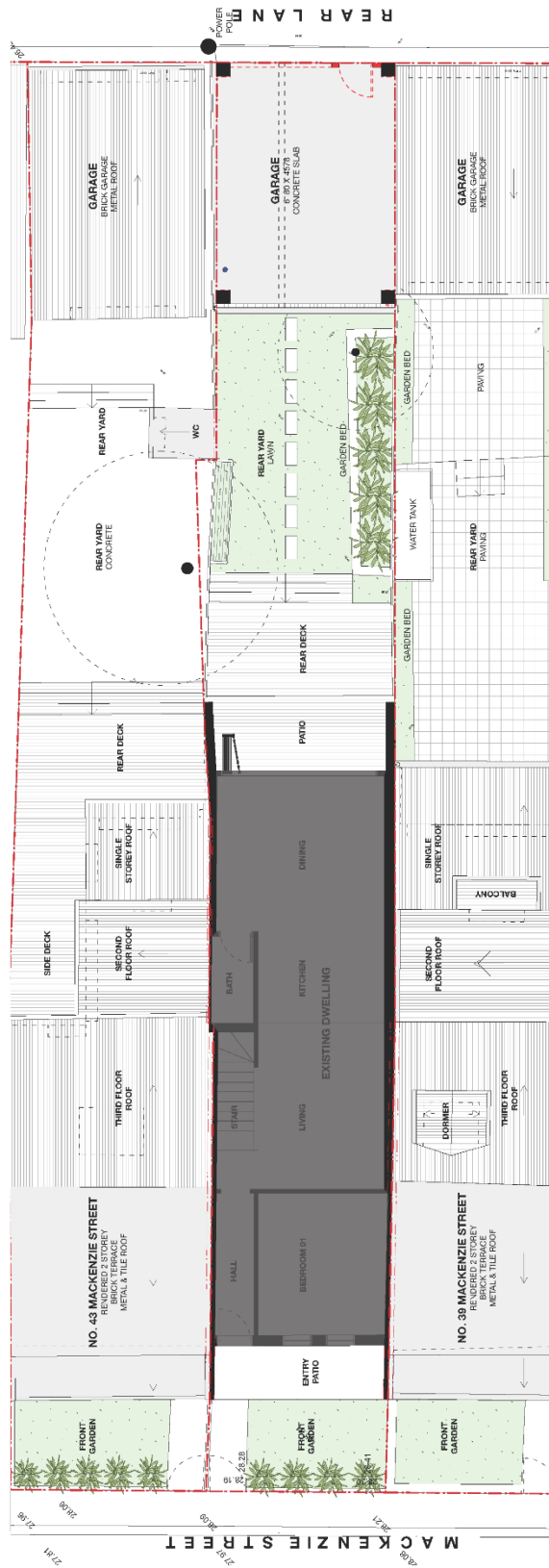
ISSUE: DA SUBMISSION

REVISION: A

SCALE: 1:100

PROJECT: 41 MACKENZIE STREET, LEICHHARDT SH49

DA 101

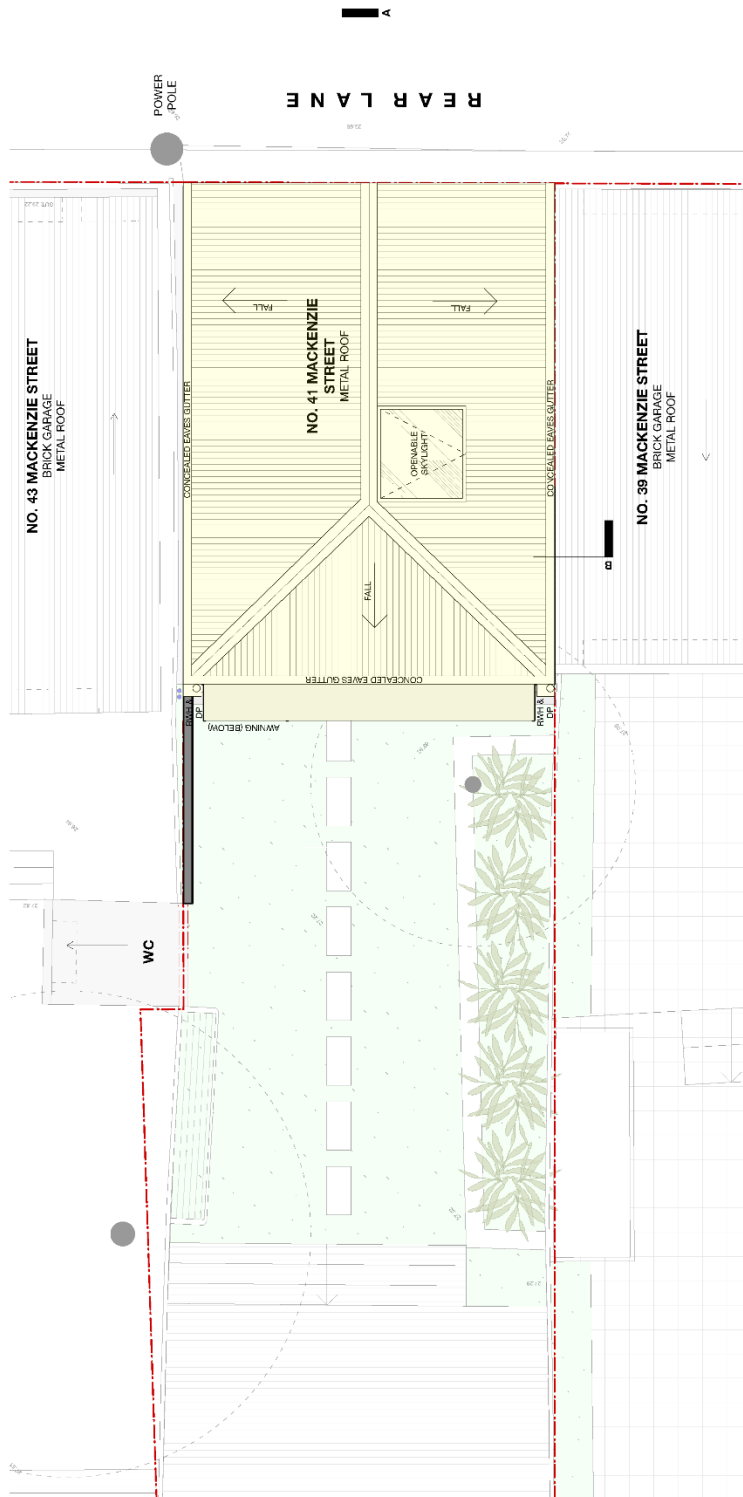


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EXISTING + DEMOLITION GROUND FLOOR PLAN
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 41 MACKENZIE STREET, LEICHHARDT NSW

DA 102
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DA
202

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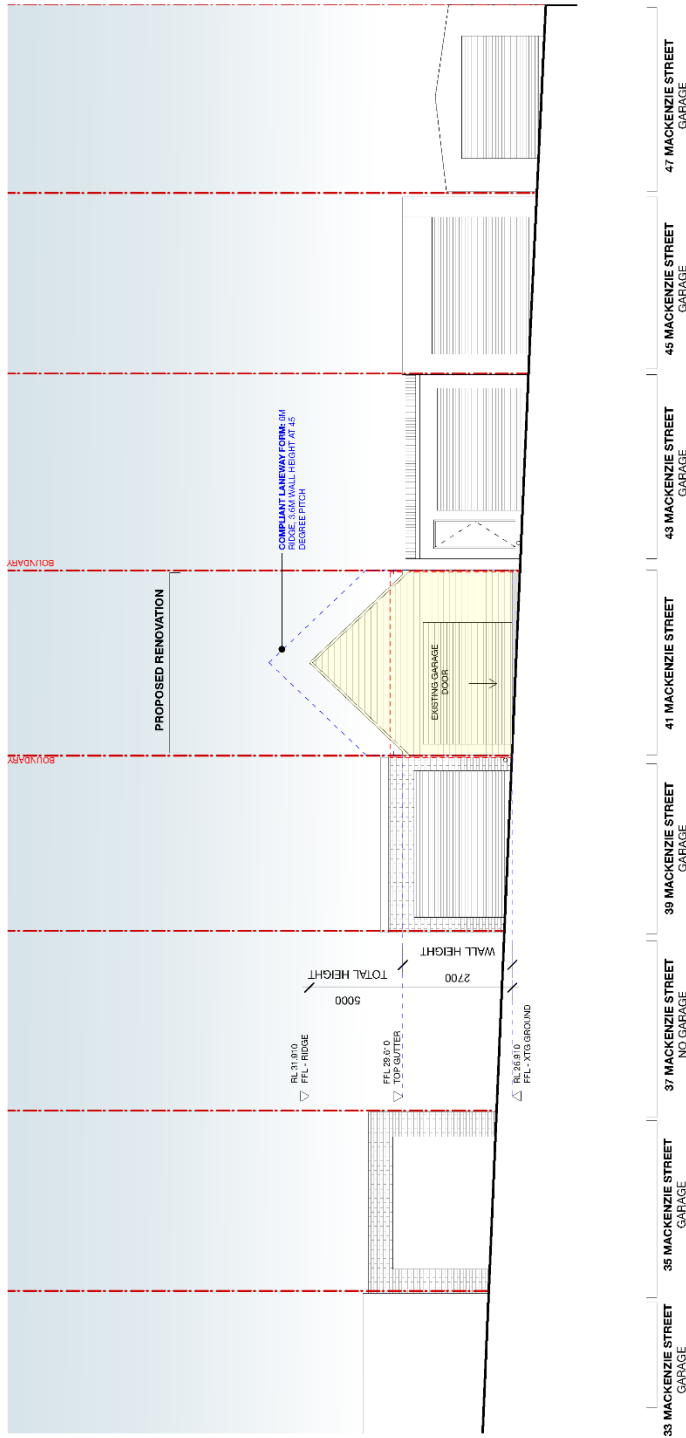
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DESIGN

PROJECT SCALE 1:500

DATE 08/01/21

41 MACKENZIE STREET, LEICHHARDT NSW



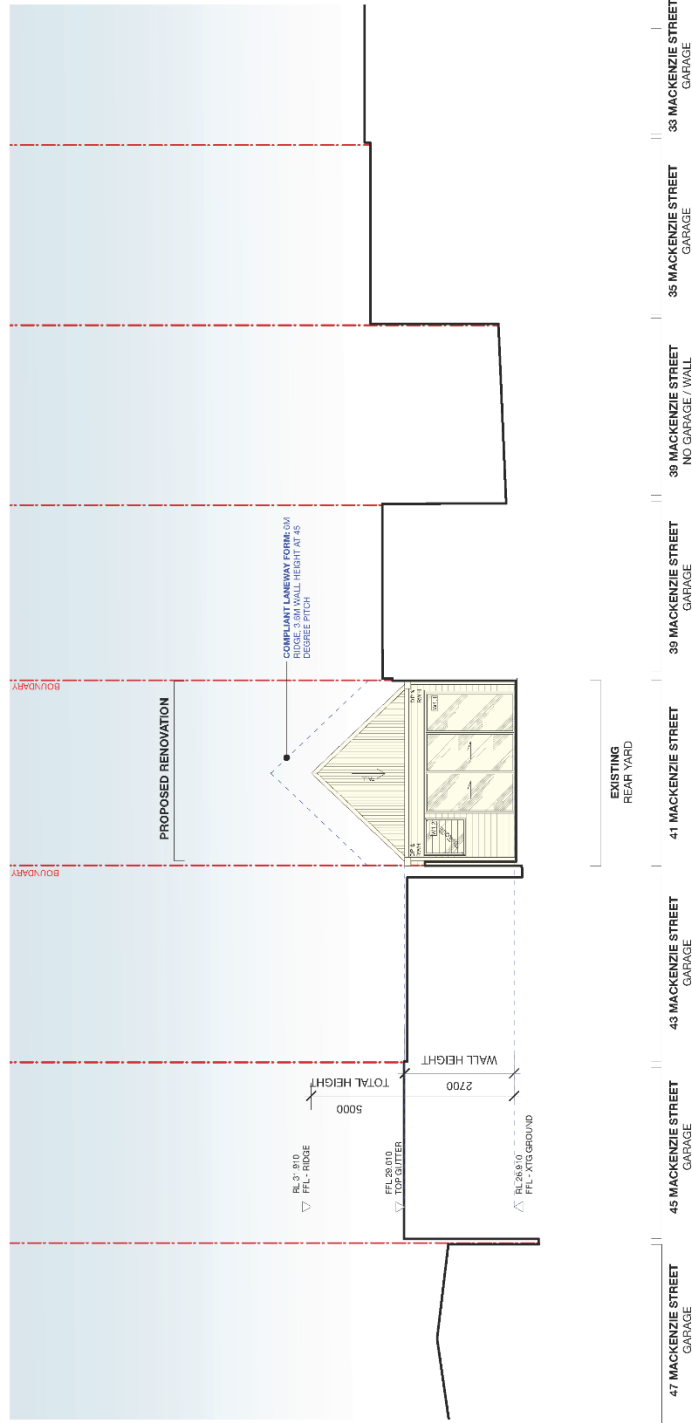
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SAGO DESIGN

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 DATE 2010
 41 MACKENZIE STREET, LEICHHARDT NSW

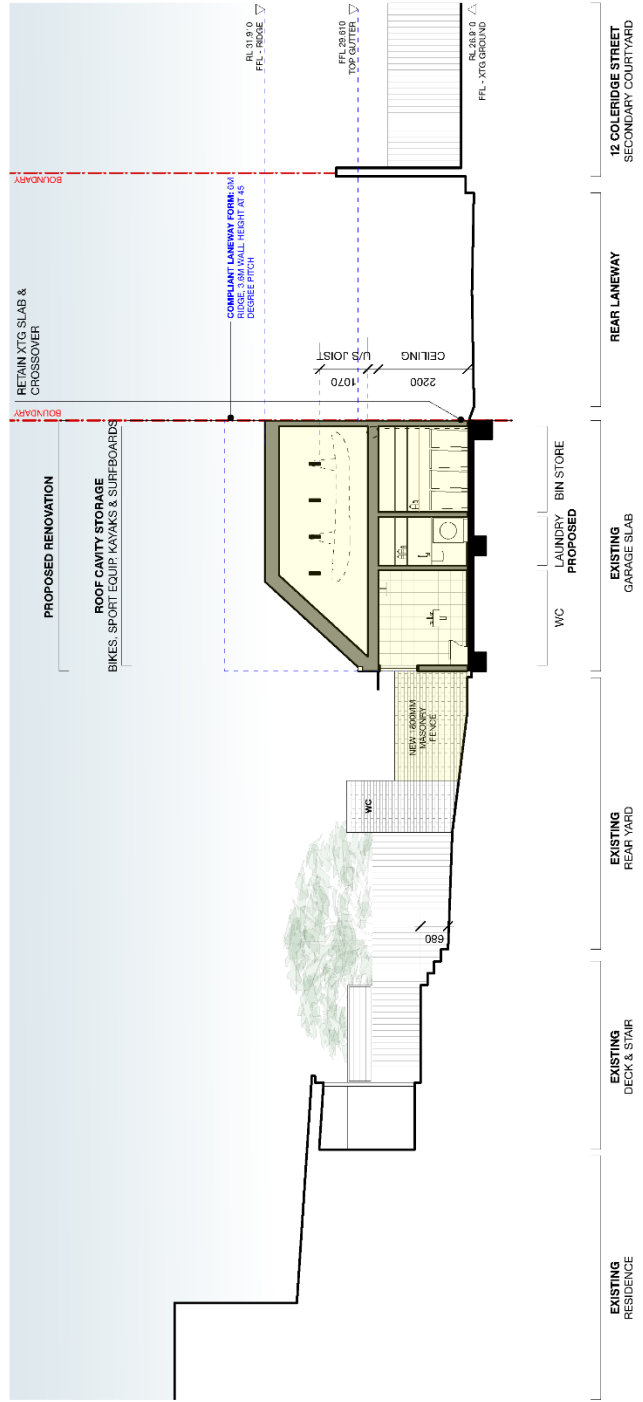
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DA 301
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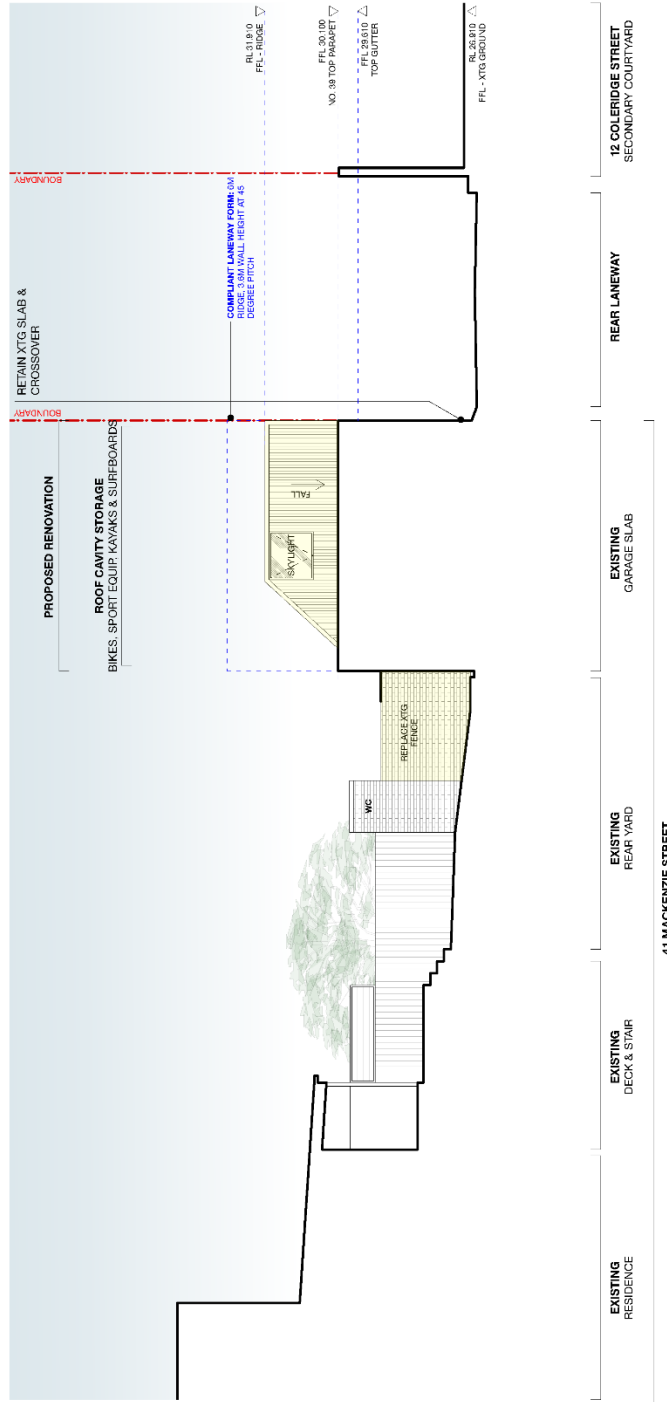
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04	29/01/2020	CONSTRUCTION DOCUMENTS
05	05/02/2020	AS-BUILT DRAWINGS

ISSUE: DA SUBMISSION
DATE: 08/01/21
REVISION: A

PROPOSED SECTION: A
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DA 400

41 MACKENZIE STREET, LEICHHARDT SH49

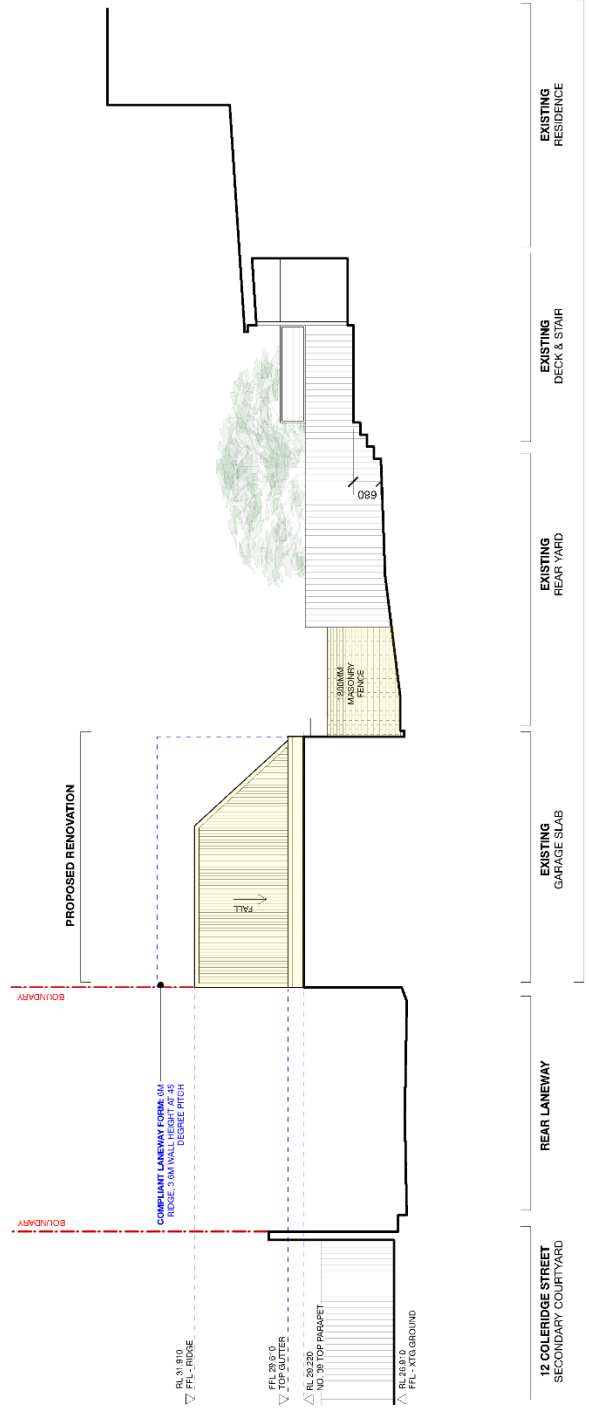


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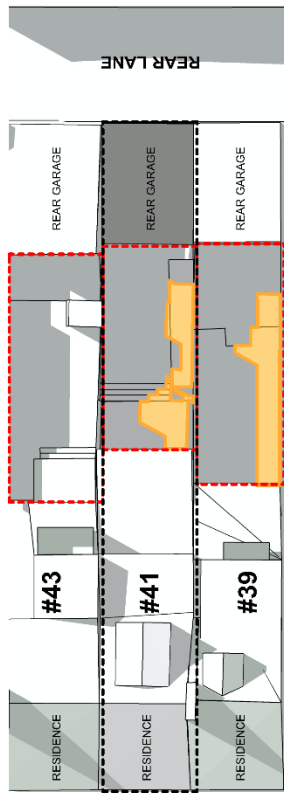
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DA 402
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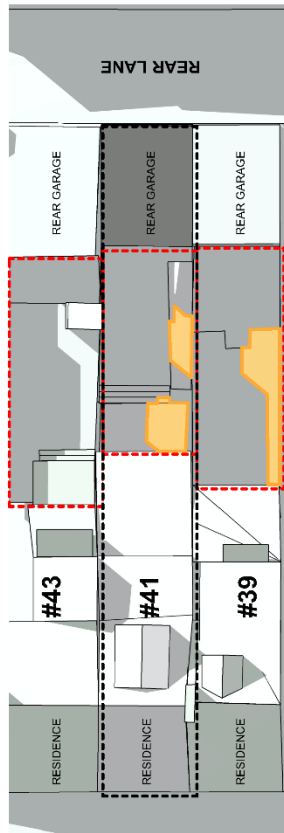


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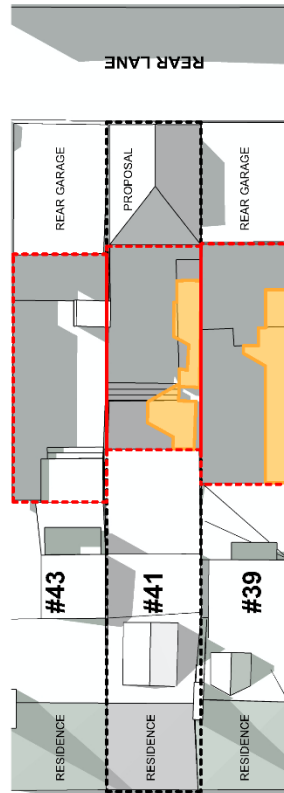
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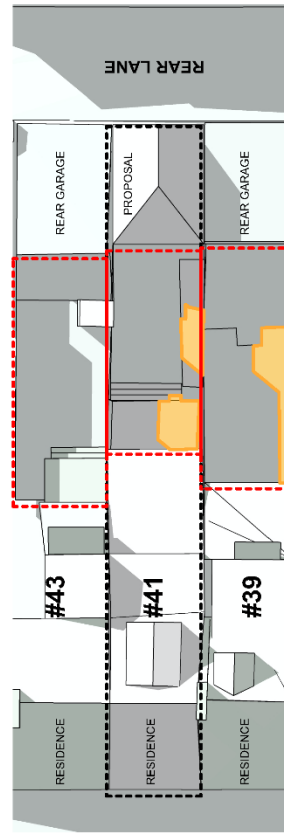
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 41 MACKENZIE | 10.3M² OF SOLAR ACCESS ACHIEVED
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 SOLAR ACCESS ACHIEVED



EXISTING |
10AM WINTER SOLSTICE
 41 MACKENZIE | 7.0M² OF SOLAR ACCESS ACHIEVED
 39 MACKENZIE | 7.0M² OF SOLAR ACCESS ACHIEVED
 SOLAR ACCESS ACHIEVED



PROPOSED |
9AM WINTER SOLSTICE
 41 MACKENZIE | 7.0M² OF SOLAR ACCESS ACHIEVED
 39 MACKENZIE | 7.0M² OF SOLAR ACCESS ACHIEVED
 SOLAR ACCESS CONTROL NOT ACHIEVED
 NO ADDITIONAL OVERSHADOWING CREATED



PROPOSED |
10AM WINTER SOLSTICE
 41 MACKENZIE | 10.3M² OF SOLAR ACCESS ACHIEVED
 39 MACKENZIE | 11.6M² OF SOLAR ACCESS ACHIEVED
 SOLAR ACCESS CONTROL NOT ACHIEVED
 NO ADDITIONAL OVERSHADOWING CREATED

SUBJECT SITE
PRIVATE OPEN SPACE

EXISTING SHADOWS

SOLAR ACCESS

PROPOSAL'S PROPOSED OVERSHADOWING TO POS

ISSUE

DA SUBMISSION

DATE

06/9/21

REVISION

A

THE

SOLAR ACCESS PLAN

PROJECT SCALE 6:15

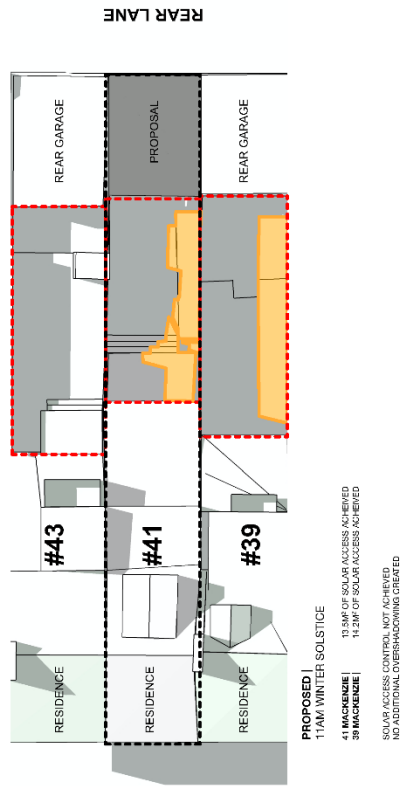
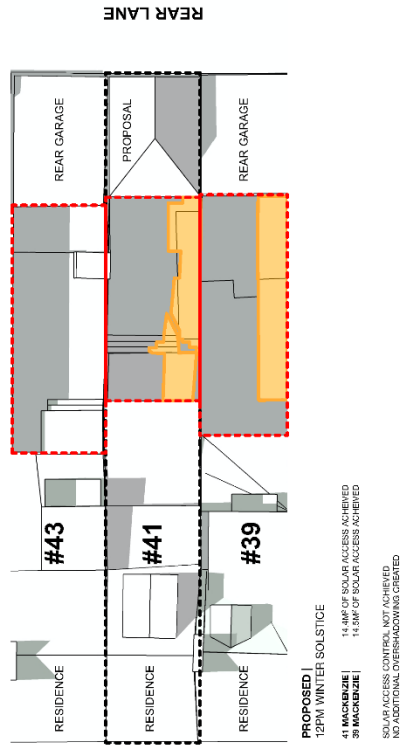
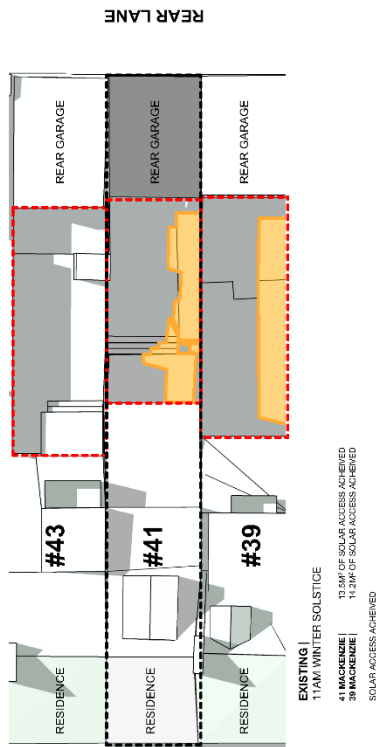
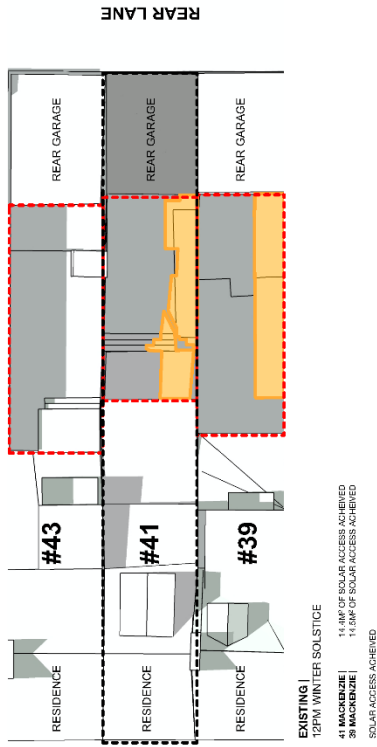
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41 MACKENZIE STREET, LEICHHARDT NSW

DA

600



SAGO DESIGN

ISSUE: DA SUBMISSION DATE: 06/9/21 REVISION: A

PROJECT: 41 MACKENZIE STREET, LEICHHARDT NSW

SUBJECT SITE: PRIVATE OPEN SPACE

EXISTING SHADOWS: PROPOSAL'S PROPOSED OVERSHADOWING TO POS

SOLAR ACCESS: SOLAR ACCESS

DA 601 A

DATE: 06/9/21

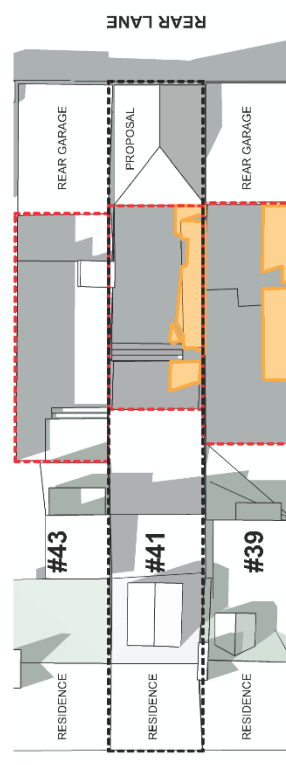
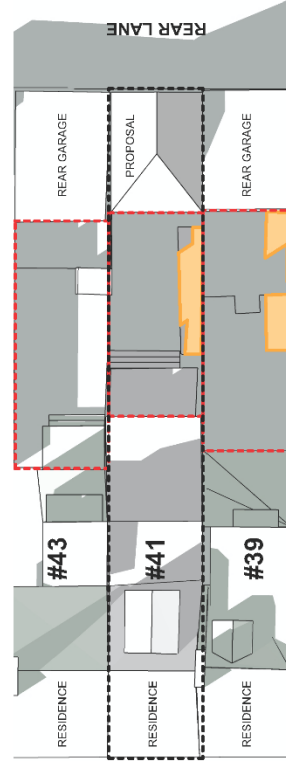
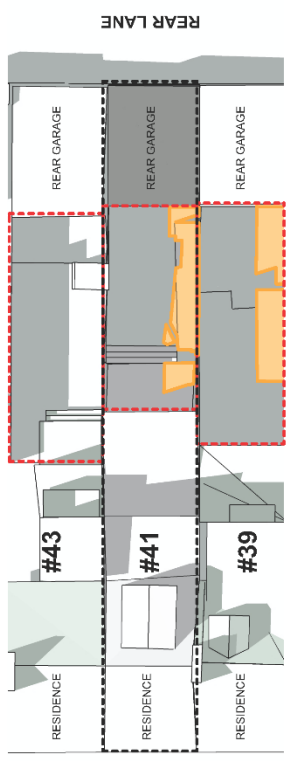
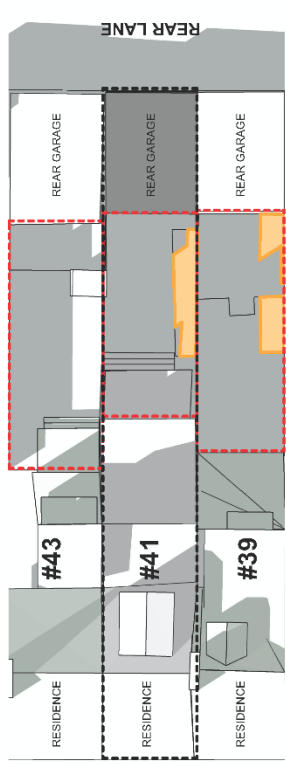
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ISSUE: DA SUBMISSION

PROJECT: 41 MACKENZIE STREET, LEICHHARDT NSW

SOLAR ACCESS PLAN

SCALE: 1:500



ISSUE	DATE	REVISION
DA SUBMISSION	06/9/21	A

PROPOSAL: PROVISIONAL OVERSHADOWING TO POS

LEGEND:

- EXISTING SHADOWS
- SOLAR ACCESS
- SUBJECT SITE
- PRIVATE OPEN SPACE

41 MACKENZIE STREET, LEICHHARDT SH95

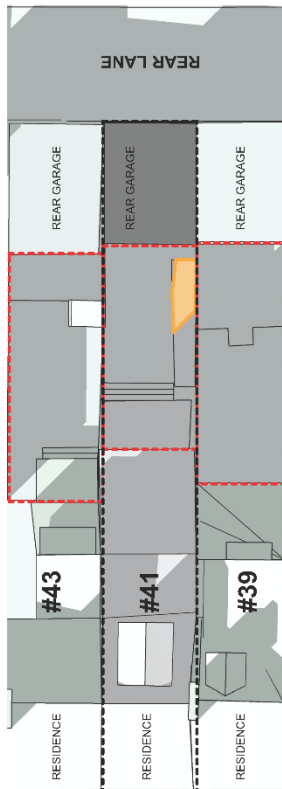
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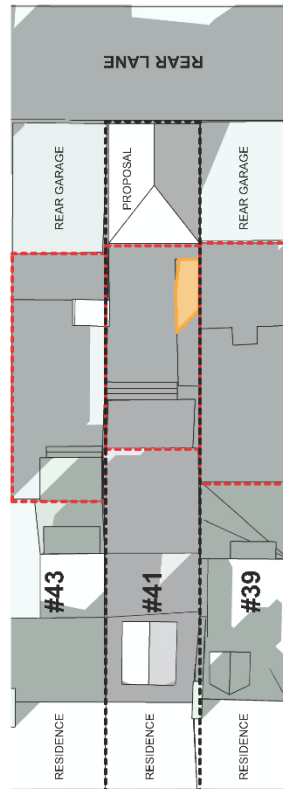
DATE: 06/9/21

REVISION: A

DA 602



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39 MACKENZIE | 0M² OF SOLAR ACCESS ACHIEVED
SOLAR ACCESS NOT ACHIEVED



EXISTING |
1PM WINTER SOLSTICE
41 MACKENZIE | 3.4M² OF SOLAR ACCESS ACHIEVED
39 MACKENZIE | 0M² OF SOLAR ACCESS ACHIEVED
SOLAR ACCESS CONTROL NOT ACHIEVED
NO ADDITIONAL OVERSHADOWING CREATED

SAGO DESIGN

SUBJECT SITE PRIVATE OPEN SPACE

EXISTING SHADOWS SOLAR ACCESS

PROPOSAL: OVERSHADOWING TO POS OVERSHADOWING TO POS

ISSUE DA SUBMISSION DATE 06/9/21 REVISION A

PROJECT SCALE 6.15 2010

DATE CODE 41 MACKENZIE STREET, LEICHHARDT 2049

DA 603 A

Attachment C- Clause 4.6 Exception to Development Standards (Site Coverage)

Page | 1

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD CLAUSE 4.3A LANDSCAPED AREAS FOR RESIDENTIAL ACCOMODATION IN ZONE R1 LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This submission seeks a variation to Clause 4.3A of the Leichhardt Local Environmental Plan 2013, which relates to site coverage for residential accommodation in Zone R1.

This submission has been prepared with regards to a development application seeking alterations and additions to the existing garage outbuilding.

As detailed in this written request for a variation to 4.3A of the Leichhardt Local Environmental Plan 2013, a numerical variation is sought to subclause 4.3A(3)(b) for the maximum site coverage. It is discussed that the proposal meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

2. Site Background

The subject site is commonly known as 41 MacKenzie Street, Leichhardt, and is legally known as Lot 4 in Deposited Plan 108425. The site is located on the eastern side of MacKenzie Street; has rear access to an unnamed laneway; and is on a block bounded to the north by Fowler Street and to the south by another laneway. Refer to Figure 1 Site Location Map for the context of the site within its immediate locality.

The site is generally rectangular, but is irregular in shape with a 4.61m frontage to Mackenzie Street and 4.565m rear lane frontage. The northern side boundary measures 37.29m, while the southern measures 36.665m. The overall site is 172m².

Currently located on the subject site is a two storey with attic rendered brick terrace with a part tile, part metal roof. A partially enclosed garage abuts the rear laneway with a garage door and separate pedestrian doorway.



FIGURE 1: AERIAL SITE CONTEXT (SOURCE: SIX MAPS)

4.6 – Site Coverage

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential garage outbuilding is permissible in the zone.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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 a 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 Director-General has been obtained.**
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General 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:*

4.6 – Site Coverage

- (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 all 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 use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7; and

4.6 – Site Coverage

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which this variation relates is the Leichhardt Local Environmental Plan 2013.

The development standard to which this variation relates is to **Clause 4.3A Landscaped areas for residential accommodation in Zone R1**, which reads as follows:

- (1) *The objectives of this clause are as follows—*
 - (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.*
- (2) *This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.*
- (3) **Development consent must not be granted to development to which this clause applies unless—**
 - (a) *the development includes landscaped area that comprises at least—*
 - (i) *where the lot size is equal to or less than 235 square metres—15% of the site area, or*
 - (ii) *where the lot size is greater than 235 square metres—20% of the site area, and*
 - (b) the site coverage does not exceed 60% of the site area.**
- (4) *For the purposes of subclause (3)—*
 - (a) *the site area is to be calculated under clause 4.5 (3), and*
 - (b) *any area that—*
 - (i) *has a length or a width of less than 1 metre, or*
 - (ii) *is greater than 500mm above ground level (existing),**is not to be included in calculating the proportion of landscaped area, and*
 - (c) *any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if—*
 - (i) *it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or*
 - (ii) *the finished floor level is 500mm or less above ground level (existing).*

4. Extent of Non-Compliance

The proposed development complies with the minimum landscaped area requirement of 15% under subclause (3)(a).

However, under subclause (3)(b), the site coverage proposed as part of the development application remains the same as the existing site circumstance at 117.4m², being 68.26% of the site. The maximum permissible site cover based on 60% of the site area (172.0m²) would be 103.20m². Therefore, a non-compliance of 14.20m², or 13.76% will continue to result from the extent of works on the subject site.

A written justification is required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49]

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
Second (applicable)	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that 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.</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.</i>

In respect of the site coverage development standard, the second method is principally invoked. Nevertheless, it will be discussed in this written variation to the standard that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard, as per the first method outlined in the table above.

The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying purpose and objectives of the clause is unnecessary and unreasonable for the purposes of the development, as the existing non-compliance is fully retained. There is no additional footprint or site coverage proposed, as it is redevelopment of an existing outbuilding. Compliance would derogate from the existing amenities and enjoyment experienced by current and future residents, as well as depreciate the site circumstance and context by removing existing off-street parking or usable private open space.

Compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives supporting Clause 4.3A for landscaped area and site coverage are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

It is acknowledged that the *Draft Inner West Local Environmental Plan 2020*, which has completed public exhibition at the time of preparing this variation, has maintained the objectives of this standard, however revised the objectives of the R1 General Residential zone, and these objectives have been considered as well.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3A.

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

(a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,

The proposed development provides adequate landscaped area suitable for tree planting and the amenity of future occupants. This is demonstrated through the compliance with Clause 4.3A(3)(a)(i) minimum landscaped area control of 15% of the site area.

...(b) to maintain and encourage a landscaped corridor between adjoining properties,

As per the first objective, the proposal meets the minimum landscaping requirement and contributes to the landscape corridor of Mackenzie Street. See Figure 1, where landscaping is central to each allotment.

...(c) to ensure that development promotes the desired future character of the neighbourhood,

The subject site is notably within the Piperston Distinctive Neighbourhood. The proposal is considered to align with the desired future character of the Piperston Distinctive Neighbourhood. The following comments are made with regard to the objectives of the desired future character of the distinctive neighbourhood:

- The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.

- The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.
- The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape. As previously mentioned, the unnamed laneway is a service lane utilised solely by dwellings with rear lane access and for waste collection. The laneway itself also does not form part of the heritage conservation area.
- There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.
- The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.
- The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.

...(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,

Civil stormwater drawings by an engineer have been submitted with the development application, demonstrating that adequate stormwater drainage can be achieved. Existing drainage patterns will not be significantly affected by the enclosure and modified roof form.

...(e) to control site density,

The proposed development continues to provide for the existing dwelling, and the outbuilding footprint is not modified. Consequently, the site density is not significantly modified by the proposal, which only seeks to formally enclose the existing footprint of an existing structure, with additional roof space.

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

As stated previously, the proposed development incorporates adequate space for landscaping, demonstrated through the compliance with Clause 4.3A(3)(a)(i) for the minimum landscaped area control of 15% of the site area. Furthermore, the proposed development includes approximately 20m² of private open space in the form of a raised deck (which contributes to the existing non-compliance), with over 30m² of landscaped area within the rear setback, which is significantly more than the minimum 16m² requirement specified in part C3.8 of the Leichhardt DCP 2013. Thus, despite the variation to the site coverage control, the proposed building envelope will still allow for adequate landscaped area and private open space.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

6. Are there Sufficient Environmental Planning Grounds?

A contravention of Clause 4.3A of LEP 2013 is justified as there are sufficient environmental planning grounds to do so. The assessment above demonstrates there are no adverse environmental impacts that specifically as a result of the proposed development for the general renovation of an existing outbuilding with no increase to the footprint and site coverage of the existing site.

The proposal does not affect the primary Mackenzie Street streetscape characteristics or relevant objectives of both the numerical standards, and the residential zone. The proposal therefore will not result in any unreasonable amenity or environmental impacts. As such the proposal provides a respectful response to the general character of the locality.

It is worth noting that the amenity of the site and surrounds, existing view corridors and solar access patterns will not be impacted by breach in Council's site coverage standard. The continued variation in site coverage still allows for adequate landscaping and private open space on the subject site.

The proposal will provide ongoing and existing residential amenity and increase the availability of residential storage and off-street parking within a defined residential area. Further, the development does not detract from the future desired character of the locality and does not compromise neighbouring residential amenity.

In this case, strict compliance with the development standard for site coverage in the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable as the development is an existing numerical non-compliance that is appropriate scale for the site; promotes ongoing residential uses and; does not cause a detriment to the site's existing environmental context.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under **Part 5** and **Part 6** of this written request.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Each objective is addressed individually below, to demonstrate consistency.

Zone R1 General Residential

(1) Objectives of zone:

- *To provide for the housing needs of the community.*

The proposed alterations and additions to the outbuilding will enhance the provision of housing amenities on the site. The proposed development caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking.

- *To provide for a variety of housing types and densities.*

The proposed development relates to the modification of a detached garage outbuilding that caters for the housing needs of the community by improving upon existing development, for

ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking. The density of development is not modified in terms of site coverage, and the modified roof and height of the outbuilding results in notably minor environmental impact.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development seeks to retain the existing residential use. No other land uses are proposed.

- *To improve opportunities to work from home.*

The original intention of the development was to provide a space to work from home in the form of a two-storey studio outbuilding, however this was contradicted during Pre-DA discussions, and consequently the current proposal remains in a single storey garage form, with roof storage.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposed garage outbuilding has been designed in a manner to be compatible with the character, style, orientation and pattern of surrounding buildings and streetscape.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

As previously stated, the proposed development incorporates adequate landscaped area that will provide for ongoing amenity experienced by current and future occupants of the site.

- *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.*

No subdivision proposed.

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development maintains adequate landscaping and private open space on the site. The proposed development is otherwise generally compliant with the Leichhardt LEP 2013 and Leichhardt DCP 2013 controls and thus will protect the existing amenity of adjoining developments.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3A, as well as the objectives of the R1 General Residential Zone, and overall does not result in any negative environmental outcome by maintaining the present circumstances of existing development on the site: the proposed development does not detract from the existing pattern and rhythm of development within Mackenzie Street.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a development that is in keeping with the existing character of the locality and nature of the R1 General Residential zone.

The proposal provides for the orderly and economic development of the site. Given the site's context and extent of existing development, it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

The built form, height and scale of the development are considered to be consistent with the character of the R1 General Residential zoning applying to the site, while also respecting the adjoining and opposite properties, as well as the wider neighbourhood and local context.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5, 6 and 7 of this written request. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the LLEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied (Clause 4.3A(3)(b) maximum site coverage) as well as the objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with Council's Development Control Plan.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(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*

4.6 – Site Coverage

- (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.
- (c) **Note.** When this Plan was made it did not include all 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."

Comment:

This variation does not relate to the subdivision of land in the listed zones under subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was prepared as part of the development application.

The development is not affected by Clause 5.4.

9. Conclusion

The proposal does not strictly comply with the maximum site coverage control as prescribed by Clause 4.3A of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum site cover control of 60% is not necessary for the circumstance of the site, and that a better outcome is achieved for this development by allowing flexibility in the application.

Krystal Narbey
GAT & Associates
Plan 4011

Attachment D – Statement of Heritage Significance

STATEMENT OF HERITAGE IMPACT FOR A REAR ADDITION TO 41 MACKENZIE STREET LEICHHARDT



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AUGUST 2021

CONTENTS

1 INTRODUCTION2

 1.1 Purpose 2

 1.2 Authorship 2

 1.3 Site identification 2

 1.4 Planning instruments 2

 1.5 Heritage status and proximity to heritage items 2

2 HISTORICAL EVIDENCE4

 2.1 Aboriginal occupation and early land grants 4

 2.2 Development of Leichhardt 5

 2.3 The conservation area and the terraces at 33-47 Mackenzie Street 7

 2.4 The subject house 7

3 PHYSICAL EVIDENCE9

 3.1 The original design 9

 3.2 Style 10

 3.3 Alterations to the row 10

 3.4 Alterations to the subject house 11

 3.5 Condition 11

 3.6 Streetscape 11

4 HERITAGE CONCEPTS19

 4.1 Values 19

 4.2 The Burra Charter 19

 4.3 Nature, degree and level of significance 20

 4.4 The NSW Heritage Assessment Procedure 20

 4.5 Gradings of significance 21

 4.6 Conservation areas 21

5 HERITAGE ASSESSMENTS22

 5.1 Heritage significance of the Leichhardt Street/Stanley Street Heritage Conservation Area 22

 5.2 Contribution of the house and row to the significance of the conservation area 22

 5.3 The proposal 23

 5.4 Impact on the significance of the Conservation Area 23

6 CONCLUSION23

7 REFERENCES24

1

Cover: Nos. 43, 41 and 39 Mackenzie Street (l-r)

1 INTRODUCTION

1.1 Purpose

This report was commissioned by Ms. E. McHugh and Mr. S. Cannane, owners of a house at 41 Mackenzie Street, Leichhardt. It is intended to assist Inner West Council, its professional advisers and interested members of the public when considering a Development Application for a rear lane addition designed by Sago Design, Architects.

The basis of assessment is the ICOMOS *Burra Charter* and the *NSW Heritage Manual (Heritage Assessments and Statements of Heritage Impact)*.

1.2 Authorship

The author is Graham Hall, who is registered as an architect by the Architects Registration Board of New South Wales (No. 2600), and listed as a Conservation Architect and Heritage Consultant by Heritage NSW.

He is or has been Heritage Adviser to several metropolitan and country councils since 2002, advising on development applications, conservation work and grant applications. He has co-ordinated community-based heritage studies in Fairfield, Walgett and Moree; undertaken assessments of numerous potential heritage items, notably for the City of Parramatta and the National Parks and Wildlife Service; and written Conservation Management Plans and schedules of conservation work for the Coonamble Museum, the State-listed Old Dubbo Gaol and various other items.

2

Photographs are by Graham Hall or Sago Design unless otherwise noted.

1.3 Site identification

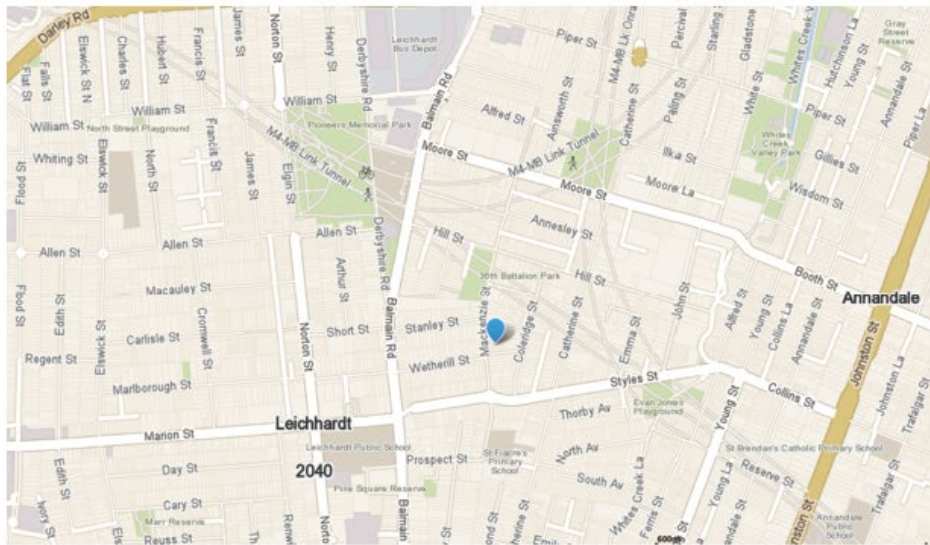
The site known as 41 Mackenzie Street, Leichhardt, comprises Lot 4 in DP 108425. Its location is shown on the maps overleaf.

1.4 Planning instruments

The relevant planning instruments are the Leichhardt Local Environmental Plan 2013 ("the LEP") and the Leichhardt Development Control Plan 2013 ("the DCP").

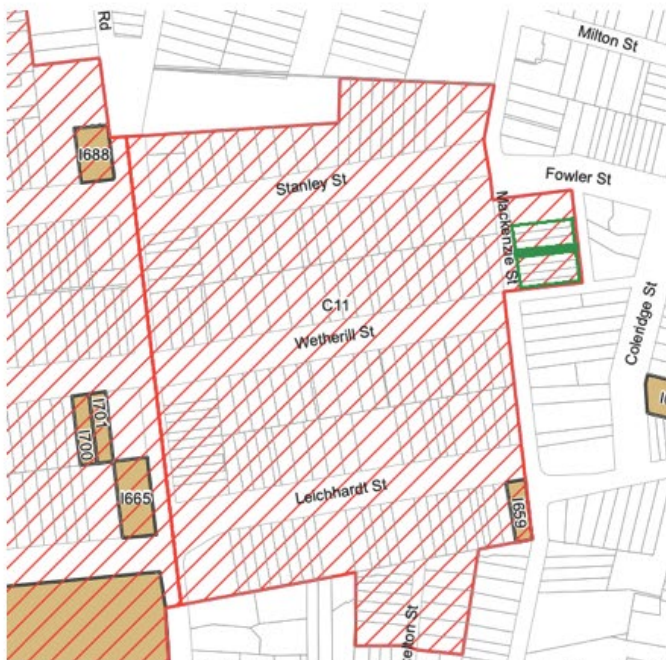
1.5 Heritage status and proximity to heritage items

The house is one row of terraces, 33-37 Mackenzie Street. The row is not listed as an item of environmental heritage in Schedule 5 of the LEP, but it lies within the Leichhardt Street/Stanley Street Heritage Conservation Area. There are no individually listed items within its visual catchment.



Map showing the location of the subject site

www. whereis.com



Part of the Leichhardt heritage Map with 33-37 Mackenzie Street outlined and No. 41 shaded in green

2 HISTORICAL EVIDENCE

2.1 Aboriginal occupation and early land grants

The first occupants of the former Leichhardt LGA were the Gadigal and Wangal people, who spoke the Eora language. Following the establishment of the penal colony of New South Wales in 1788, land grants were made by successive governors. Most grants became large country estates. Where the land was thought to be suitable, farms were established. Over the decades, the estates were sometimes consolidated, then subdivided and resubdivided into residential suburbs, and in many cases redeveloped into today's medium and high density residential and urban landscapes.

Captain John Piper and his younger brother Ensign Hugh Piper, officers in the NSW Corps, were amongst the earliest recipients of grants in present-day Leichhardt. The subject site lies within John Piper's 105 acre grant, made in 1811. The eastern boundary was White's Creek, his neighbour on that side being Major, later Lt.-Col. and Lieutenant -Governor, George Johnston. Hugh Piper's grant abutted John's on the west.



John Piper by Augustus Earle:
State Library of New South Wales



Earliest map of the Parish of Petersham with John Piper's grant outlined in red

4

John Piper arrived in the colony from Scotland as an ensign in 1792. He served two terms on Norfolk Island, returning to England in 1811. He resigned his commission as a captain and returned to the colony as Naval Officer, a lucrative senior civilian administrative post. Granted land in the eastern suburbs he purchased Vacluse House and built Henrietta Villa where he entertained lavishly. Governor Macquarie appointed him as a magistrate, and he became chairman of the Bank of New South Wales and held other prestigious posts.

According to his biographer he accumulated more land in the eastern suburbs, the city, at Bathurst, and Botany Bay, while his farm at Petersham (presumably Leichhardt) grew to 295 acres.

Inquiries initiated by Governor Darling into his administration as Naval Officer and the Bank of New South Wales found Piper to have mismanaged both, and he had to sell most of his property over subsequent years, much of it cheaply.



Parish map of 1899 with Mackenzie Street shown and location of subject site ringed in red

5

2.2 Development of Leichhardt

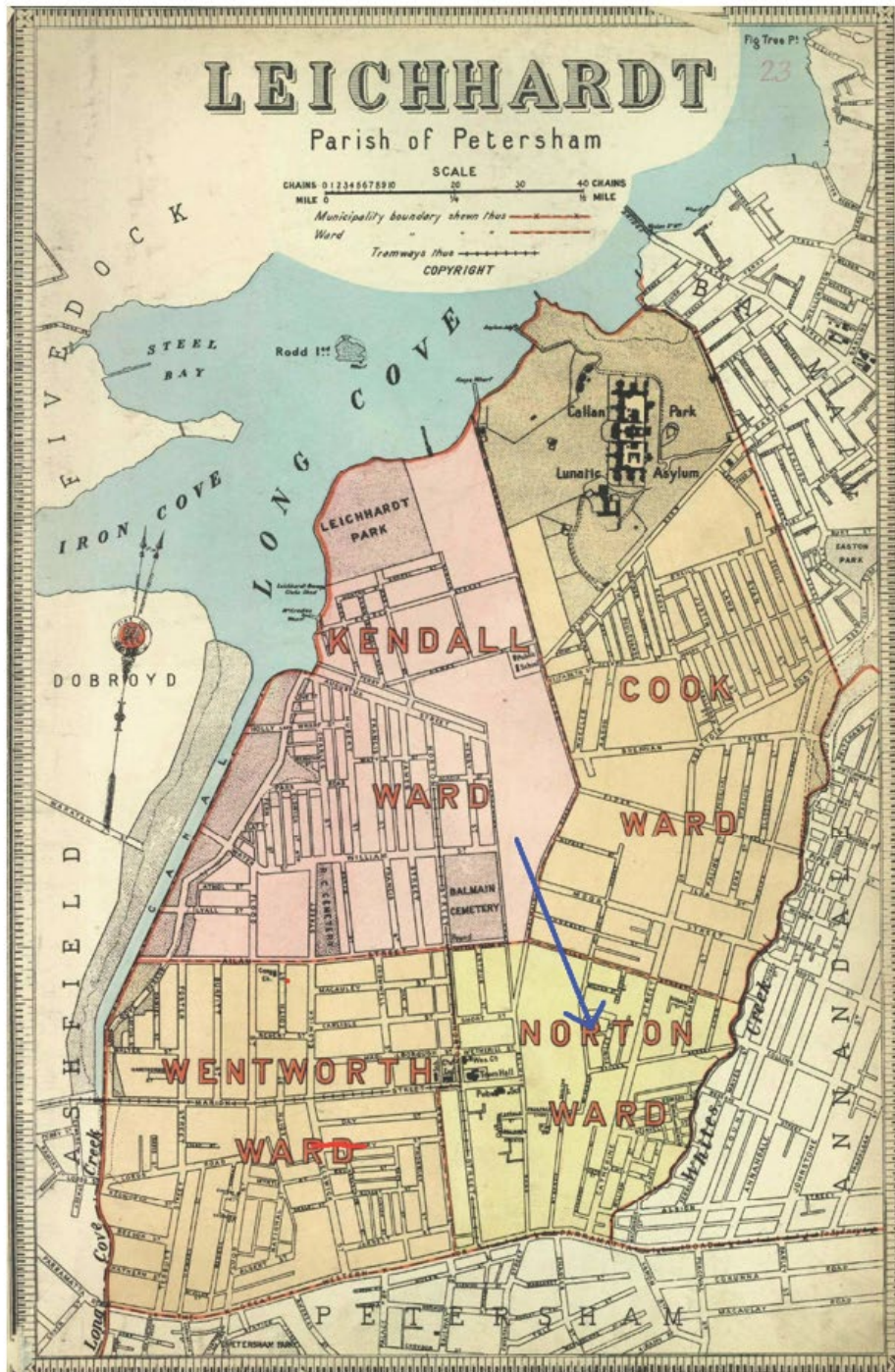
In 1831-32 he sold large portions at Leichhardt to James Forster (Elswick Estate), Abraham Hearn, Prosper de Mestre (Helsarmel Estate), and David Ramsay. Walter Beames purchased this land in 1842¹ or 1846,² and began to resubdivide it in 1849.

These first subdivisions did not meet with the same success as those in Balmain, most likely because of the uncertainty and difficulty of transport, as well as the effects of a severe economic depression during the early years of the 1840s.³ The area remained rural in character until the railway station at Petersham began to make suburban development viable.

¹ According to Pollon, *The Book of Sydney Suburbs*, and Inner West Council history website

² According to Thorp, *Leichhardt Heritage Study: Thematic History*, 1990

³ *Ibid.*, p. 16



6

Map of the Municipality of Leichhardt, 1894-96, Higinbotham and Robertson, with location of subject site arrowed. No streets shown between Mackenzie Street and Balmain Road
Dictionary of Sydney

2.3 The conservation area and the terraces at 33-47 Mackenzie Street

Stage 1 of the Leichhardt Heritage Review comprised the preparation of a thematic history by local historians, David Lewis and Sasha Jenkins. Stage 2, a review of the conservation areas, was undertaken by Godden Mackay Logan, which states at 1.3 that further specific historical research and advice was provided by Max Solling, Historian. Some historical details can prove elusive, and despite these considerable resources, the Stage 2 Review states,

The subdivision history of this area has proved difficult to unravel, and has not been possible to research within the constraints of this study. Fieldwork suggests that the process of building up the area was well under way by 1891, with Leichhardt and Wetherill Streets being built upon in the 1890s–1910s period. The northern part of Stanley Street appears to have been developed in the late 1930s, with double fronted face brick hipped roof houses, low brick fences and Art Deco glass to the front windows.

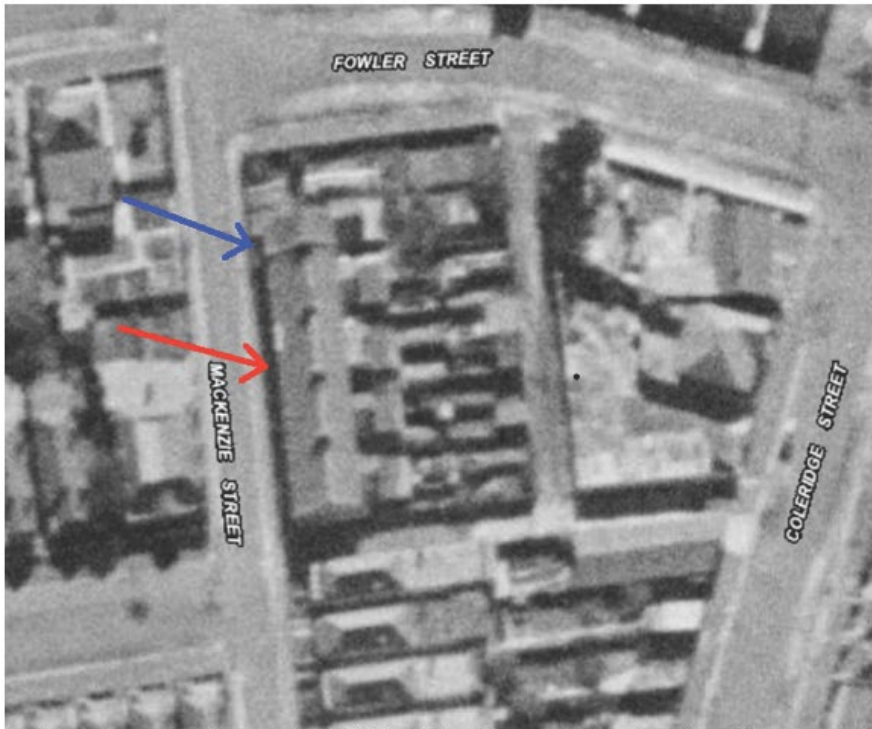
The Review, in advocating that area boundaries be adjusted to reflect the estate boundaries, (p. 7), observes that the terrace row on the eastern side of Mackenzie Street appear to be outside an estate boundary. The physical evidence indicates that the row is older than the houses in remainder of the area. It comprises eight terrace houses, but the 1943 aerial photograph on p. 7 and the physical evidence show that there was originally a ninth house at the northern end.

7

2.4 The subject house

The physical evidence and the 1943 aerial photograph on following pages demonstrate that the row originally comprised nine houses. An examination of Sands' Sydney Directory reveals that the row first appeared in 1889, but only three houses were listed as occupied. The subject house, later numbered 41, was one of these. In 1890, all nine houses were occupied. This suggests a construction year of 1889. The occupants until the Directory ceased to be published were as follows:

1899-1894	Orr, Lavington, constable
1895-98	No occupant listed
1899	Nunn, Walter
1900-03	Wilson, Simon
1904	Record inaccessible
1905-33	Brown, Patrick



Aerial photograph of the area from 1943 with No. 41 arrowed in red and No. 49 in blue LPI



Recent aerial photograph with No. 41 arrowed and home unit block to the north of the row

3 PHYSICAL EVIDENCE

3.1 The original design

The row comprised nine two-storey terrace houses of moderate width, with pitched roofs, two-storey front verandas under separate bullnosed roofs, and one and two-storey rear wings (see plans, p.11). The row steps gently down to the north, with every second party wall and integral chimneys projecting above the roof. Walls were ashlar-ruled stuccoed brick at the front, and would have been unpainted at the sides and rear. The fin walls had arched recesses, and decorative moulded consoles on the ends. First floor verandas had cast iron lace balustrades, with brackets and friezes to both levels.

Each house's front door and two ground floor window openings had semi-circular arches with label mouldings. The door was four-panelled timber. The fanlight was semi-circular.

The first floor veranda was accessed through two pairs of French doors in shallow segmentally arched openings. The glazed upper panels of the doors were semi-circular at the top. The ground floor windows were double-hung with single-pane sashes, the upper sash being semi-circular at the top.



Detail from recent aerial photograph with subject site outlined in yellow

LPI

9

3.2 Style

The definitive framework for identifying architectural styles in Australia is that of Apperly, Irving and Reynolds.⁴ These authors provide a perceptive account of what a style is. They are mainly concerned with “high” or “contrived” architectural styles rather than “popular” styles, or the vernacular.

Using this framework the terrace row is best classified as being in the Victorian Filigree style.

3.3 Alterations to the row

The terrace row is readily recognisable from Mackenzie Street and retains much of its original form and detailing. Nevertheless it has been considerably altered. The major changes are listed below.

- The most northerly house was demolished, probably in the early 1960s, at. The site has been incorporated into the lot to the north where a red texture brick unit block was built. The former party wall, including blocked fireplaces and chimney shafts, has been cement rendered.
- All the original roofing, no doubt either slate or corrugated galvanised iron, has been replaced with red Marseilles pattern terra cotta tiles which differ slightly in colour from house to house. The verandas still have separate corrugated steel roofs, some retaining the original bullnose profile and others including No. 41 now being straight and lined on the underside.
- The front veranda of No. 47 is enclosed.
- Most, including No. 41, retain the same pattern of cast iron lace balustrades, friezes and brackets, but some have different patterns and in some cases the frieze is missing. Several, including No. 41, have had the height of the balustrade subtly raised to 1m, the height now required under the Building Code of Australia.
- Nos. 41 and 37 have what appears to be the original simple cast iron picket fences, with the pickets set into a rounded sandstone base and fitted with fleur-de-lys spearpoints. No. 37 has a matching gate while No. 47 has a later wrought iron and wire mesh gate. The others houses have a variety of timber picket, brick and wrought iron fences.
- Most front doors, but not No. 41, are partly obscured by screen doors, but some can be seen to have been replaced with modern or reproduction doors.
- The end wall of No. 33, on the lane to the south, has been cement rendered and painted.
- All but No. 37 have dormer windows to the rear roof plane, no two of which are the same.
- All but possibly No. 37 have rear additions at ground and mostly also first floor level.
- All but Nos. 37 and 47 have modern garages or carports with flat roofs, roller doors and in some vases separate pedestrian doors on the rear lane. No. 37 has a ramshackle timber framed garage while No. 37 has none.

10

⁴ Apperly, Richard, Robert Irving and Peter Reynolds, *A Pictorial Guide to Identifying Australian Architecture*, Angus and Robertson, Sydney, 1994

3.4 Alterations to the subject house

By 2010 the front veranda had been enclosed, the front door replaced with a flush door, grilles had been fitted to the windows and the front yard concreted over, but the house had not been extended, as the plans and photograph below show.



The house in 2010
Bresic Whitney Real Estate



Plans of the house in 2010
Bresic Whitney Real Estate

11

Since then the enclosure to the veranda has been removed, a four-panelled front door with obscure glazing to the upper panels has been fitted and the garden has been landscaped. At the rear there have been major alterations and additions.

The ground floor rear wing has been replaced by a full width extension, covered patio and deck. The first floor has a smaller full width extension with a skillion roof. There is also a wide attic with a rear-facing dormer. The main rear roof plane, the attic and the roofs of the extensions are covered with corrugated steel roofing.

A carport has been built to the rear and side boundaries. It has a brick wall, access door and roller door to the lane and brick piers in all corners. It and is open at the sides, contained by the boundary fences. The flat metal roof is timber-framed.

3.5 Condition

The house appears to be in good condition.

3.6 Streetscape

The photographs on following pages illustrate the streetscape of Mackenzie Street and the rear lane in the vicinity of the subject house and terrace row.



The terrace row from the south-west: No. 41, left, screened by landscaping



Original fence of No. 37, centre left, matches that of No. 41, screened by shrubbery, left

12



The terrace row from the north-west. No. 49 demolished, leaving No. 47 with end wall, chimneys and blocked fireplaces rendered and painted, and veranda enclosed.



No. 41 from the front gate



No. 41 from the south-west

13



The front door



Ground floor veranda with recessed arch



Rear of the house with recent dormer and extensions. Neighbouring houses also extended.



View towards house from carport



The back garden, from the deck



Rear of carport



Red brick units extend over site of former demolished terrace house at No. 49, with end wall of No. 47 beyond

15



Facing north from the Southern end of the unnamed rear lane



Facing west in the unnamed lane at the side of No. 33 (centre right)



Facing south up the rear land from the corner of Fowler Street



The varied rear extensions to the terrace row with No. 41 arrowed



Rear extensions seen from lane to south of No. 33



Facing south-west towards garages or carports of Nos. 45 (right), 43, 41 (lamp post in front) 39, 35, 33.



Facing north-west in the lane: part view of rear of No. 41; 43 (centre), 45, 47; home units at No. 49 beyond

17



Rear of 41 Mackenzie Street



Single storey terraces, western side of Mackenzie Street



Home units, corner of Mackenzie and Flood Streets

4 HERITAGE CONCEPTS

4.1 Values

Heritage may be defined as *valuable things from the past*. Heritage can be seen broadly as including many aspects of culture – such as art, music, dance, language, literature, philosophy, religion, political institutions – as well as aspects of the physical environment, with which this report is concerned. The physical environment in turn comprises the *natural landscape* – untouched by man – and the *cultural landscape* – any place that has been modified by human activity.

Buildings are the most obvious examples of places in the cultural landscape, but streetscapes, engineering structures, movable items and rural landscapes are other examples. (In practice, the cultural and natural landscapes are not always easily distinguished, at least until a place has been studied in some depth.)

If our environmental heritage comprises *valuable* places or items that remain from the past, it follows that they should be conserved, so that present and future generations may understand and enjoy them. But we all have different *values*. If we did not, there would be no need for heritage controls.

4.2 The Burra Charter

Although values are individual and subjective, there is a rigorous method or framework for considering them: the *Burra Charter*.⁵ This has been developed by Australia ICOMOS (International Council on Monuments and Sites, linked to UNESCO). The key concept is an item's *significance*. What does this item *signify*, what *sign* does it make, what *signal* does it send to us about our past - about why our culture and physical environment are as they are? The *Burra Charter* gives five bases of significance. An item may be significant in one or more of these ways.⁶

Historical significance arises when an item is important in the course of an area's history or has strong associations with a historical figure or event.

An item can have aesthetic significance if it has visual appeal or demonstrates a particular architectural style.

Scientific value is present if the item yields, or has the potential to yield, technical information useful in research, for example about history, anthropology, construction techniques, or the natural world.

Social significance means that people hold a place in particular esteem: it is a focus of community sentiment: there would be a sense of loss if it were no longer there.

Spiritual significance was introduced as a distinct category in the 1999 revision of the Burra Charter. It relates to places that have meaning at a spiritual level.

⁵ Australia ICOMOS, *The Burra Charter (The Australia ICOMOS charter for places of cultural significance)*, 2013.

⁶ Author's wording. The *Burra Charter* itself does not define these terms, but they are explored in Australia ICOMOS, *Practice Note: Understanding and assessing cultural significance*, Nov.2013

4.3 Nature, degree and level of significance

The above terms define the *nature* of an item’s significance. Another dimension is the *degree* of significance. On this dimension, an item may be significant because it is rare or representative, or sometimes both. Rarity means signifying a rare, endangered or unusual aspect of history or the environment. Representativeness means being a fine example of an important class of items.

A third dimension is the *level* of significance. It should be noted that the level is not a hierarchy of importance, but is concerned with the geographical spread of the people to whom an item is significant, e.g. local, state.

Expert studies over the years have relied on this three-dimensional matrix, or variations of it. It is particularly appropriate for complex items and heterogeneous sets of items. The significance of conservation areas should also be assessed on against such criteria.

4.4 The NSW Heritage Assessment Procedure

The *Heritage Act 1977* defines *heritage significance* as the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item. The NSW Heritage Council has used its powers under the Act to gazette the following seven *criteria*: They are clearly derived from the Burra Charter. An item that satisfies at least one of the criteria is *significant*. It is then assessed to determine whether it is significant at local or at the State level.

20

Historical significance SHR criteria (a)	An item is important in the course, or pattern, of NSW’s or the area’s cultural or natural history
Historical association SHR criteria (b)	An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW’s or the area’s cultural or natural history.
Aesthetic significance SHR criteria (c)	An item is important in demonstrating aesthetic characteristics &/or a high degree of creative or technical achievement in NSW or the area
Social significance SHR criteria (d)	An item has strong or special association with a particular community or cultural group in NSW or the area for social, cultural or spiritual reasons.
Technical/Research significance SHR criteria (e)	An item has potential to yield information that will contribute to an understanding of NSW’s or the area’s cultural or natural history.
Rarity SHR criteria (f)	An item possesses uncommon, rare or endangered aspects of NSW’s or the area’s cultural or natural history.
Representativeness SHR criteria (g)	An item is important in demonstrating the principal characteristics of a class of NSW’s or the area’s cultural or natural places or cultural or natural environments.

This framework is the basis of the *NSW heritage assessment procedure*⁷, in which rigorous, though necessarily subjective, *guidelines* for inclusion or exclusion are set down.

⁷ NSW Heritage Office, NSW Heritage Manual, *Assessing Heritage Significance*, 2001, p. 6.

4.5 Gradings of significance

A potential heritage item is either significant (against at least one criterion) or it is not. It cannot have “high” or “low” significance. But as the Heritage Manual states,

Different components of a place may make a different relative contribution to its heritage value. Loss of integrity or condition may diminish significance. In some cases it may be useful to specify the relative contribution of an item or its components. While it is useful to refer to the following table when assessing this aspect of significance it may need to be modified to suit its application to each specific item.

Grading	Justification	Status
EXCEPTIONAL	Rare or outstanding element directly contributing to an item’s significance.	Fulfils criteria for local or State listing.
HIGH	High degree of original fabric. Demonstrates a key element of the item’s significance. Alterations do not detract from significance.	Fulfils criteria for local or State listing.
MODERATE	Altered or modified elements. Elements with little heritage value, but which contribute to the overall significance of the item.	Fulfils criteria for local or State listing.
LITTLE	Alterations detract from significance. Difficult to interpret.	Does not fulfil criteria for local or State listing.
INTRUSIVE	Damaging to the item’s heritage significance	Does not fulfil criteria for local or State listing.

21

4.6 Conservation areas

A heritage conservation area is more than a collection of individual heritage items. It is an area in which the historical origins and relationships between the various elements create a sense of place that is worth keeping. A heritage area is identified by analysing its heritage significance and the special characteristics which make up that significance. These may include the subdivision pattern, the consistency of building materials or the common age of its building stock. The least important characteristic is the “look” of the place, although the commonly held community view is that this is the determining factor.⁸

Heritage significance is embodied in the actual fabric or physical remains of an item or place, its relationship with its setting, and the photographs public records and associated documents which help to tell the story. Historic significance underlies most of the other values...An area might reveal the cultural, political or economic development of a precinct, suburb..... or the nation.⁹

Individual buildings may be defined and/or mapped as being contributory to the area’s significance, neutral or intrusive depending on their construction date and the extent to which they remain recognisable (or some similar framework.) The process is analogous to the grading of components of an individually listed item.

⁸ Heritage Office and Department of Urban Affairs and Planning, *Conservation Areas*, 1996, p.3

⁹ Ibid pp. 7, 8;

5 HERITAGE ASSESSMENTS

5.1 Heritage significance of the Leichhardt Street/Stanley Street Conservation Area

The following Statement of Significance is taken from the State Heritage Inventory and appears in the 2004 Heritage Review by Godden Mackay Logan Pty Ltd:

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth, particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (i.e. prior to World War II). This area was developed mostly between 1890s–1910s and is significant for its surviving development from that period and the later group of houses in Stanley Street most likely belonging to the 1930s.
- Demonstrates, by contrast with Balmain Road or McKenzie Street, the effect of the Width of Streets and Lanes Act of 1881 on the layout of suburban subdivisions.
- Through its pattern of subdivision allowing for double and single-fronted detached and attached houses, and terraces, and through the scale, shape, siting and materials of its buildings, it provides a good example of a turn-of-the-century artisan's and tradesmen's suburb.
- It demonstrates, through its architectural embellishments, the social aspirations of its first residents.
- It is of streetscape value for the unity of its scale, shape and consistency of materials, for the pattern of spaces between buildings and for the gardens between buildings and nature strips.
- It clearly illustrates through its construction materials the ready availability of machine-made face bricks during the period of its development.

22

The Heritage Review recommended that the boundary of the conservation area be redrawn to align where possible with the boundaries of the early estates. This would have placed the row outside the Leichhardt Street/Stanley Street Conservation Area. However this was not done, but the Statement of Significance is robust enough to provide a basis for assessing the proposal.

5.2 Contribution of the house and row to the significance of the conservation area

In some LGAs there is a formal listing of identified contributory, neutral and intrusive items in conservation areas, and/or a series of definitions to be applied, as outlined in 4.6 above. Contributory items may be defined as dating from a key period of development with any alterations being minor or reversible. Neutral items may be recognisable but irreversibly altered buildings from the key period, or complementary infill. Intrusive items are unsympathetic infill.

There is no such system in the Leichhardt DCP, but if the Statement of Significance is taken to apply to the whole area, the house and the entire row as viewed from Mackenzie Street can be considered to be contributory. However the streetscape of the back lane has been irreversibly altered, and even the variably altered backs of the houses cannot be seen over the modern garages. The lane does not impart the sense of place of a heritage conservation area.

5.3 The proposal

The proposal is fully described in the drawings. In brief, it is proposed to remove the roof of the carport, enclose it with a weatherboard-clad wall to the lane and brick veneer side walls. A shower and toilet, laundry and bin store are proposed adjacent to the car space. A gabled roof will provide storage space for sports equipment such as bicycles. The proposed colours and finishes are shown on the material palette drawing.

5.4 Impact on the significance of the Conservation Area

Every care will be taken in both documentation and construction to ensure that there is no damage to the subject or adjoining terrace houses.

There are no significant views to the east from the subject site. There will be obstruction to views towards any contributory element of the conservation area from the public domain.

The proposed building uses traditional forms, timeless materials and simple detailing to provide a contemporary rendering of a traditional utilitarian outbuilding. It will be sympatric and subordinate to the terrace house and row.

6 CONCLUSION

The proposal will enhance the streetscape and have a small positive impact on the heritage significance of the Leichhardt Street/Stanley Street Conservation Area.

7 REFERENCES

Apperly, Richard, Robert Irving and Peter Reynolds, *A Pictorial Guide to Identifying Australian Architecture*, Angus and Robertson, Sydney, 1994.

Australia ICOMOS, *The Burra Charter (The Australia ICOMOS charter for places of cultural significance)*, 2013.

Barnard, Marjorie, *Piper, John (1773–1851)*, Australian Dictionary of Biography, National Centre of Biography, Australian National University, <https://adb.anu.edu.au/biography/piper-john-2552/text3449>, published first in hard copy 1967, accessed online 17 August 2021.

Godden Mackay Logan, Heritage Consultants, *Leichhardt Heritage Review: Stage 2*. Report prepared for Leichhardt Municipal Council, January 2004.

NSW Heritage Office, NSW Heritage Manual, *Assessing Heritage Significance*, 2001

NSW Heritage Office, NSW Heritage Manual, *Statements of Heritage Impact*, 1996

Pollon, Frances, *The Book of Sydney Suburbs*, Collins/Angus and Robertson, Sydney, 1990.

Sands' Sydney Directory, 1880 to 1932-33

Thorp, Wendy, Heritage Consultant/Historical Archaeologist, *Leichhardt Heritage Study: Thematic History*, 1990

Attachment E – Statement of Environmental Effects



Statement of Environmental Effects

September 2021

41 MacKenzie Street, Leichhardt

Alterations and Additions to Existing Detached Garage
Outbuilding

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41 MacKenzie Street, Leichhardt



Table of Contents

1. Introduction 5

1.1 Response to Pre-Development Applications 6

 1.1.1 PDA/2020/0502 6

 1.1.2 PDA/2021/0164 6

2. Site context 8

2.1 Photographic Context and Streetscape/Landscape10

3. Proposal 12

4. Section 4.15 Evaluation..... 13

4.1 Relevant State, Regional and Local Environmental Planning Instruments13

 4.1.1 State Environmental Planning Policy – Building Sustainability Index (BASIX)..... 13

 4.1.2 State Environmental Planning Policy No. 55 – Remediation of Land 13

 4.1.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 14

 4.1.4 Leichhardt Local Environmental Plan 2013 15

4.2 Draft Relevant State, Regional and Local Environmental Planning Instruments19

 4.2.1 Draft Environment SEPP..... 19

 4.2.2 Remediation of Land SEPP 2018 19

 4.2.3 Draft Inner West Local Environmental Plan 2020 20

4.3 Development Control Plans21

 4.3.1 Leichhardt Development Control Plan 2013 21

4.4 Regulations25

4.5 Likely Impacts25

 4.5.1 Impact on the Natural Environment 25

 4.5.2 Impact on the Built Environment..... 25

 4.5.3 Social and Economic Impacts on the Locality 25

4.6 Suitability of the Site.....25

4.7 Submissions made in accordance with this Act or the Regulations.....26

4.8 The Public Interest.....26

5. Conclusion 27



List of Appendices

Appendix A	Leichhardt Local Environmental Plan 2013 Compliance Table...	29
Appendix B	Leichhardt Development Control Plan Compliance Table 2013.	33
Appendix C	Pre-DA Minutes 1	51
Appendix D	Pre-DA Minutes 2	52
Appendix E	Clause 4.6 for Site Coverage	53
Appendix F	Clause 4.6 for Floor Space Ratio	54



List of Figures

Figure 1: Aerial Site Context (Source: SIX Maps) 8

Figure 2: Existing rear garage outbuilding upon laneway.....10

Figure 3: Rear laneway perspective looking north10

Figure 4: Rear laneway perspective looking south.....11

Figure 5: Rear yard view from existing dwelling timber deck toward existing garage.....11

Figure 6: 1943 SIX Maps Aerial Imagery.....14

Figure 7: Land Zone Map (Leichhardt LEP 2013, Map LZN_005)15

Figure 8: Land Zone Map (Leichhardt LEP 2013, Map LZN_005)18

Figure 9: Section A- showing reduced bulk and scale of the proposed outbuilding with a gabled front and hipped rear roof form.....21

Figure 10 Leichhardt Distinctive Neighbourhood (Source: Leichhardt DCP)22

Figure 11 Piperston Distinctive Neighbourhood Sub Area (Source: Leichhardt DCP)22



1. INTRODUCTION

This Statement of Environmental Effects has been prepared in support of a proposal at 41 MacKenzie Street, Leichhardt. The proposal before Council seeks alterations and additions to the existing car port to the rear of the site (fronting an unnamed laneway) to create a new garage outbuilding with attic/roof storage. The new structure will be ancillary to the existing dwelling house.

GAT & Associates has been retained by Sago Design to prepare a Statement of Environmental Effects to accompany the Development Application for consideration by Inner West Council.

The submission of this Development Application follows on from two (2) Pre-Development Application Meetings held with Inner West Council, being PDA/2020/0502 and PDA/2021/0164. The points of consideration raised under both of these Pre-DAs are summarised below, with a comment added as to how the proposal now submitted under this Development Application has addressed the issues raised.

This Statement of Environmental Effects is based upon the information and details shown on the following architectural plans prepared by Sago Design dated 08/9/21 which are submitted with the Development Application:

- Drawing DA 000 Cover Page
- Drawing DA 010 Planning Controls
- Drawing DA 011 Planning Controls | FSR
- Drawing DA 100 Existing & Demolition | Site Plan
- Drawing DA 101 Existing & Demolition | Roof Plan
- Drawing DA 102 Existing & Demolition | Ground Floor Plan
- Drawing DA 103 Existing & Demolition | Garage Floor Plan
- Drawing DA 200 Proposed | Ground Floor Plan
- Drawing DA 201 Proposed | Roof Plan
- Drawing DA 300 Proposed | Elevation – East/Rear Laneway
- Drawing DA 301 Proposed | Elevation – West/Front
- Drawing DA 302 Proposed | Elevation – North
- Drawing DA 303 Proposed | Elevation – South
- Drawing DA 400 Proposed | Section A
- Drawing DA 401 Proposed | Section B
- Drawing DA 500 Material Palette
- Drawing DA 600 Solar Access | Plan
- Drawing DA 601 Solar Access | Plan
- Drawing DA 602 Solar Access | Plan
- Drawing DA 603 Solar Access | Plan

This Statement of Environmental Effects is also based on the following supporting documents and plans:

- Site Survey prepared by Peak Surveying Services;
- Statement of Heritage Impact prepared by Graham Hall;
- Stormwater Management Plan prepared by Harrison and Morris Consultancy;



- BASIX Report prepared by Sago Design;
- Acoustic Report by DK Acoustics Pty Ltd;

This Statement of Environmental Effects has been prepared in support of the proposed development. This report is based on the above plans, documents, site inspections and general knowledge of the locality with the aim of:

- Assessing the proposal against relevant statutory controls.
- Determining whether the proposal is acceptable within the existing and likely future context of the area.
- Considering whether the proposal is acceptable within the broader planning controls.
- Addressing any likely environmental external impacts (positive and negative).

The proposed development has been assessed in relation to:

- Section 4.15 Evaluation under the Environmental Planning & Assessment Act, 1979.
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- State Environmental Planning Policy No.55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Draft State Environmental Planning Policy Environment;
- Leichhardt Local Environmental Plan 2013;
- Leichhardt Development Control Plan 2013; and
- Draft Consolidated Inner West Local Environmental Plan 2020.

1.1 Response to Pre-Development Applications

1.1.1 PDA/2020/0502

Initially, the proposed development considered a two-storey studio and garage outbuilding, with the intention to provide an upper level study space to accommodate work-from-home circumstances.

The meeting minutes, dated 2 March 2021, outlined four key issues:

1. Impact on Heritage Conservation Area
2. Non-Compliance with Floor Space Ratio
3. Neighbouring Amenity Impacts (visual bulk, solar access, privacy and views)
4. Laneway Controls (Bulk and Scale, Envelope)

It was advised that additional FSR would not be supported due to the bulk and scale upon the laneway, and that a reduced bulk and scale should address heritage impacts, non-compliances with laneway controls and improving solar access. The proposed design has been amended to retain a single-storey appearance, and has been reduced wall-height by 1.78m. A compliant laneway envelope has been illustrated on the plans, demonstrating that the proposed form has been reduced to a reasonable envelope.

1.1.2 PDA/2021/0164

A second Pre-DA was held with Council, with written minutes dated 21 June 2021. The proposal had been amended from PDA/2020/0502 to a single storey outbuilding with a gabled roof form to accommodate storage within the roof form.



Written advice outlined five key issues:

1. Impact on Heritage Conservation Area
2. Neighbouring Amenity Impacts (Bulk, solar access, privacy)
3. Stormwater
4. Parking
5. Non-compliance with Development Standards

In terms of heritage, Council's Heritage Specialist was generally supportive, with the proposal considered acceptable from a heritage perspective, as the reduced form would not detract from the significance of the *Leichardt and Stanley Street Heritage Conservation Area*.

The proposal intends to retain the existing vehicle crossing and concrete slab utilised by the existing garage, with all existing RLs retained. Internal dimensions for the garage and roof form have been labelled on the submitted Architectural Plans for the current proposal.

Additionally, the proposal has been amended with a modified roof form to the west (previously gabled, now hipped) to assist in minimising the proposed bulk and scale, and therefore the extent of overshadowing upon the open space of the southern neighbour. Stormwater diagrams have also been submitted under a separate cover.

As will be detailed within this Statement of Environmental Effects, the proposed development has taken into consideration the comments from the two Pre-DAs, and encompasses a built form suited for the context of the site. It is our opinion that the proposal now submitted to Council under this development application has satisfactorily addressed the comments from Council with particular regard given to height, solar access, privacy, access and stormwater design.



2. SITE CONTEXT

The subject site is commonly known as 41 MacKenzie Street, Leichhardt, and is legally known as Lot 4 in Deposited Plan 108425. The site is located on the eastern side of MacKenzie Street; has rear access to an unnamed laneway; and is on a block bounded to the north by Fowler Street and to the south by another laneway. Refer to Figure 1 Site Location Map for the context of the site within its immediate locality.

The site is generally rectangular, but is irregular in shape with a 4.61m frontage to Mackenzie Street and 4.565m rear lane frontage. The northern side boundary measures 37.29m, while the southern measures 36.665m. The overall site is 172m².

Currently located on the subject site is a two storey with attic rendered brick terrace with a part tile, part metal roof. A partially enclosed garage abuts the rear laneway with a garage door and separate pedestrian doorway (Figure 2).



Figure 1: Aerial Site Context (Source: SIX Maps)

Development in the area generally consists of one and two storey dwellings, however the built form is varied. Development on the same subdivision block as the site are generally two storey terraces on narrow allotments, some with attic space. The northernmost property on the block is a two storey older stock residential flat building known as “Wendover Court”. Properties opposite on the rear laneway are detached dwellings on larger, significantly irregular allotments.



Both the adjoining properties to the north and south at 43 and 39 MacKenzie Street respectively are two storey rendered brick terraces with tile and/or metal roofs. They both also have brick garages with metal roofs located on the rear boundaries, abutting the rear lane. An outbuilding/outhouse is located on the northern side boundary of the site, owned by 43 MacKenzie Street toward the rear of the private open space area however it is positioned over the boundary with a brick partition wall.

Over the rear laneway at 12 Coleridge Street (to the east) is a large two storey dwelling that was approved by Council in 2008 (D/2008/462). The private open space of this property is located along their northern boundary, immediately adjoining the subject site. This area is encased by a very high boundary wall of approximately 2.8m (by brick count). The dwelling presents a non-traditional façade to the corner of Coleridge Street and the laneway, with generally blank painted/rendered walls and metal roofing. There are no traditional windows presenting to the streetscape or laneway.

To the rear and east of the laneway, at 14 Coleridge Street, is a single storey dwelling with a detached garage at the rear of the site. There is currently a development application under assessment for a similar proposal in the form of the demolition of the existing garage and the erection of a new garage with living space above, amongst other works (DA/2020/0826).

Reference should be made to the photos of the site and surrounds in **Section 2.1** on the following pages.

The site is located in proximity to Norton Street and the commercial area of Leichhardt. It has good proximity to public transportation and services.

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential property is permissible in the zone.

2.1 Photographic Context and Streetscape/Lanescape



Figure 2: Existing rear garage outbuilding upon laneway



Figure 3: Rear laneway perspective looking north



Figure 4: Rear laneway perspective looking south



Figure 5: Rear yard view from existing dwelling timber deck toward existing garage



3. PROPOSAL

The proposal before Council seeks partial demolition of the existing garage at the rear of the site and the construction of a new garage outbuilding comprising a ground floor garage with bathroom, laundry and waste storage, and non-habitable roof space for general residential storage. The new structure will utilise the existing concrete slab and crossing, and continue to be used in conjunction with the existing dwelling on the site.

The outbuilding will be built to the rear boundary (to the lane), and to the northern and southern side boundaries, which contain existing neighbouring outbuildings. The zero building alignment to the rear boundary is consistent with all properties along this laneway. The modified outbuilding is to be constructed of white painted weatherboard with a metal roof.

To the north-west of the outbuilding, a new masonry fence at a height of 1.8m within the boundary is proposed, with the intention of linking the partition wall (marked on the survey as VIDE DP108425) of the out-house outbuilding and the modified garage together.

As the existing outbuilding footprint will be retained, there are no proposed modifications to site coverage or landscaped area. It is appreciated that while the original outbuilding was unenclosed it contributed to gross floor area as a parking space, and with the proposed modifications and modified internal layout, the outbuilding will continue to contribute to gross floor area and therefore the floor space ratio (FSR) of the site. The existing site also exceeds the current permissible site coverage.

- A Clause 4.6 written variation has been provided for site coverage (Appendix E)
- A Clause 4.6 written variation has been provided for FSR (Appendix F)
-

It is noted that the rear outbuilding was originally approved under D/2010/17 for "*Alterations and additions to an existing dwelling, including a new carport to rear*" and that the application had previously relied on a SEPP No. 1 Objection (now a 'Clause 4.6') to floor space ratio.

There are no changes proposed to the main dwelling as part of this application. The modified outbuilding will not be used as a secondary dwelling; it will be ancillary to the main dwelling. The modified garage outbuilding will retain parking for one car, and provide the occupants of the site with more storage space, and dedicated spaces for amenities such as waste storage, laundry and additional bathroom.

The design has considered the orientation of the site and the built form on adjoining properties. Privacy will be maintained as there are no side-facing windows or doors. Solar access has been modelled and considered as part of the proposed design, with the bulk and scale minimised, while still meeting the intention of the modified outbuilding (i.e. storage, parking and amenities).



4. SECTION 4.15 EVALUATION

The following section provides an assessment of the proposed development in accordance with the provisions of Section 4.15 Evaluation of the Environmental Planning and Assessment Act, 1979.

(1) Matters for consideration – general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development, the subject of the development application.

The provisions of:

4.1 Relevant State, Regional and Local Environmental Planning Instruments

4.1.1 State Environmental Planning Policy – Building Sustainability Index (BASIX)

The proposal has been assessed against the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The proposal satisfies the targets set by the Policy in relation to water, thermal and energy.

A BASIX Certificate has been issued for the development and is attached under a separate cover to this Statement of Environmental Effects. This certificate shows compliance with the required water, thermal and energy provisions under BASIX.

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

Clause 7 of the State Environmental Planning Policy No. 55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

Based on the residential character of the immediate vicinity, and history of approved and completed developments within proximity to the subject site, it can be determined that remediation of the land is not necessary for the purposes of the development. Such development includes D/2010/178 and CC/2015/130 for the original carport/garage outbuilding, as well as recent approvals for similar development within Coleridge Street (to the east of the site).

Furthermore, the 1943 SIX Maps imagery highlights the long term residential use and small-scale dwelling development within the immediate vicinity (Figure 6).



Figure 6: 1943 SIX Maps Aerial Imagery

In accordance with State Environmental Planning Policy No. 55, Council is able to conclude that the ongoing residential use of the site is appropriate, and no further assessment of contamination is necessary.

4.1.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is located within the area covered by Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP). This plan has a number of general aims and objectives to protect the catchment, foreshores, waterways and islands of Sydney Harbour.

Part 3 Division 2 of the SEPP lists matters for consideration by Council when determining an application. It further states that Council shall not grant consent to an application unless it is satisfied that the proposal is consistent with the relevant objectives of the SEPP.

The stormwater disposal has been designed in accordance with Council's stormwater management policies, to ensure that there is no detrimental impact to adjoining properties or to the broader catchment area. The proposal is therefore not contrary to the provisions of the



Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is noted further stormwater design and certification occurs during the Construction Certificate stage of development.

4.1.4 Leichhardt Local Environmental Plan 2013

4.1.4.(a) Zoning

The subject site is zoned R1 General Residential under the Leichhardt LEP 2013. “*Dwelling houses*” are listed as permissible development. This proposal seeks the construction of a new outbuilding at the rear of the site which will provide parking, amenities and storage for the residents, which will be ancillary to the existing dwelling. Accordingly, the development is permissible in the zone. Refer to Figure 7 below.

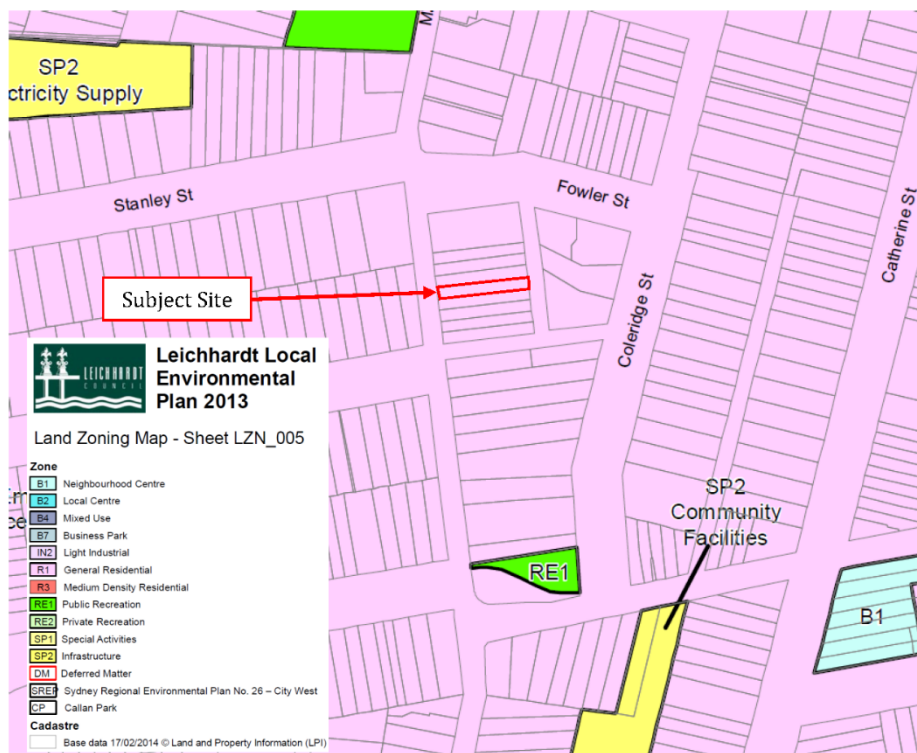


Figure 7: Land Zone Map (Leichhardt LEP 2013, Map LZN_005)

The objectives of the R1 General Residential 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 following comments are made with regard to the zone objectives:

- The proposed development will retain the residential use of the site through the retention of the existing dwelling.
- The proposal seeks a structure that is ancillary to the principal dwelling, to provide a additional storage spaces and amenities for current and future residents of the site, consequently meeting the needs of residents within a residential zone.
- The use on the site will remain as a dwelling house (low density residential) and does not preclude other land uses in the zone.
- The built form of the new garage outbuilding will be compatible with the character of built form in the local area and retains a garage (i.e. off-street parking) to the rear lane. The appearance of the site from the primary Mackenzie Street frontage will not be altered. The unnamed lane is unnamed and used only as vehicular access by dwellings that share this lane; therefore not detracting substantially from the surrounding area.
- No change is sought to the existing extent of landscaped areas on the site, which will continue to be used for the enjoyment of existing and future residents. It is noted the extent of landscaping complies with current numerical standards.
- No subdivision is sought.
- The proposal has been designed to have minimal impact on the adjoining properties. Where an additional impact is proposed, it remains compliant with the Council controls.

Given the above comments, the proposed development is consistent with the objectives of the zone.

4.1.4.(b) Landscaped areas for residential accommodation in Zone R1

Clause 4.3A of the Leichhardt Local Environmental Plan 2013 stipulates a minimum landscaped area requirement, and maximum site coverage on the subject site:

"(3) Development consent must not be granted to development to which this clause applies unless—

*(a) the development includes **landscaped area** that comprises at least—*

(i) where the lot size is equal to or less than 235 square metres—15% of the site area, or



- (ii) where the lot size is greater than 235 square metres—20% of the site area, and
- (b) the **site coverage does not exceed 60%** of the site area.”

The subject site has a total site area of 172.0m², which results in the following requirements:

- Minimum landscaped area of 15%, being 25.80m²
- Maximum site cover area of 60%, being 103.20m²

The development will provide a landscaped area to both the front and the rear of the dwelling, which totals an area of 40.2m². This is equal to 23.37% of the site area, which exceeds the minimum requirement and therefore complies.

The site coverage includes the existing dwelling footprint (and existing deck that is more than 500mm above ground level), and the footprint of the modified outbuilding. The site coverage proposed is 117.4m², which is equal to 68.26% of the site area. It should be noted that the proposed development does not modify the existing extent of site coverage, and it is an existing non-compliance with the current 60% standard. Nevertheless, a Clause 4.6 written variation has been provided to justify the non-compliance (Appendix E).

4.1.4.(c) Floor Space Ratio (FSR)

In accordance with the Leichhardt LEP 2013, the Floor Space Ratio Map and Clause 4.4(2) prescribes a maximum FSR of 0.50:1. However, Subclause 4.4(2B)(C) applies to the site and allows for an increased floor space ratio of 0.70:1, based on the site area of 172m².

It is acknowledged that the garage is required to be included in the floor space ratio calculation as Council does not require parking for dwelling houses on single allotments under the Leichhardt DCP 2013 (Clause C1.11).

The existing dwelling has a gross floor area of 127.1m². The modified garage outbuilding has an area of 23.8m². The total gross floor area will be 150.8m², which result is in a floor space ratio of 0.88:1. The floor space ratio therefore exceeds the current numerical standard.

It should be noted that the proposed development does not modify the existing extent of the variation to floor space ratio, considering the proposed development is redevelopment of the existing outbuilding footprint, and it is an existing non-compliance with the current FSR standard. Nevertheless, a Clause 4.6 written variation has been provided to justify the non-compliance (Appendix F).

4.1.4.(d) Heritage

The subject site is not a heritage item, or proximate to a heritage item, however it mapped as within a heritage conservation area (Figure 8), identified as 'Leichhardt Street/Stanley Street' Heritage Conservation Area. Of significant note, is that the unnamed laneway does not form part of the heritage conservation area.

Furthermore, the dwellings over the rear boundary are not within the conservation area. The proposed works occur exclusively at the rear of the site to the existing garage area, an area solely for garages or carports to Mackenzie and Coleridge Street properties. The proposed two storey



outbuilding is not deemed to compromise the heritage significance of the conservation area, as the property is not viewed from the primary street frontages of the conservation area.



Figure 8: Land Zone Map (Leichhardt LEP 2013, Map LZN_005)

A Heritage Impact Statement has been prepared by Graham Hall. The following has been extracted from the statement to summarise the findings and context in terms of heritage:

- *“There are no significant views to the east from the subject site. There will be obstruction to views towards any contributory element of the conservation area from the public domain.*
- *The proposed building uses traditional forms, timeless materials and simple detailing to provide a contemporary rendering of a traditional utilitarian outbuilding. It will be sympatric and subordinate to the terrace house and row.*
- *The proposal will enhance the streetscape and have a small positive impact on the heritage significance of the Leichhardt Street/Stanley Street Conservation Area.”*

4.1.4.(e) Development in areas subject to aircraft noise

Clause 6.8 of the Leichhardt LEP provides objectives and controls for land that is subject to aircraft noise. The site is located within the 25-30 ANEF. It is intended that any acoustic requirements can be a condition of consent, however it is important to acknowledge that the garage outbuilding is not a habitable structure, only contains a parking space and non-habitable amenities, and therefore should not be subjected to additional acoustic requirements, as these are not sensitive residential uses. An Acoustic Report has been submitted with the application.



4.2 Draft Relevant State, Regional and Local Environmental Planning Instruments

4.2.1 Draft Environment SEPP

The Explanation of Intended Effects for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. This consolidated SEPP seeks to simplify the planning rules for a number of waterways, water catchments, urban bushlands and Willandra Lakes World Heritage Property.

The explanation of intended effects as it relates to the Sydney Harbour Regional Environmental Plan, states that the relevant provisions as they apply to the subject site and the proposed development, discussed in **Part 4.1.3** of this Statement of Environmental Effects will be transferred to the incoming consolidated SEPP and will retain the relevant provisions.

Therefore, the applicable provisions have been discussed in **Part 4.1.3** of this SEE with the development considered appropriate in this regard. Hence the proposed development has considered the relevant Draft planning instrument.

4.2.2 Remediation of Land SEPP 2018

The NSW State Government is currently in the process of a broader review program in the aim of ensuring all State Environmental Planning Policies are relevant and up to date. The Draft State Environmental Planning Policy's Explanation of Intended Effects was on public exhibition between 31 January 2018 and 13 April 2018.

As such SEPP 55 will need to be updated to respond to changes in Federal and State legislation and policy, this is to reflect new land remediation practices.

The new SEPP aims to ensure improved management of remediation works through the alignment of the need for development consent with the level of complexity, scale and associated risks with the proposed works.

It is stated that the proposed changes will:

- reduce the risks associated with remediation projects
- encourage proponents to better consider and plan remediation work
- better protect the community from unnecessary risks, disturbance and inconvenience
- ensure there is consistent regulation of contaminated land and facilitate enforcement of long-term environmental management plans.

Notably, the proposed SEPP will continue to categorise remediation works into two categories being Category 1 and Category 2.

Clause 7 of the State Environmental Planning Policy No. 55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.



The material of Clause 7 will be introduced within the new SEPP along with the list of activities which may lead or have led to potential contamination which are currently contained within the 'Managing Land Contamination: Planning Guidelines.'

As part of the new SEPP, a provision will be introduced which allows the consent authority to exercise discretion to not require an investigation report if the authority knows the land is not contaminated or may otherwise be suitable for the use being proposed. The consent authority must have sufficient evidence and/or information in this regard about the land status in order to exercise such discretion.

As detailed in this Statement of Environmental Effects under **Part 4.1.2**, the subject site has a history of residential land use since prior to 1943. As such Council can be confident that the site is (in its current condition) remains suitable for the proposed development.

Therefore, based on the information of the Explanation of Intended Effect of the SEPP Remediation of Land 2018 it is considered that the proposal is consistent with the draft planning instrument.

4.2.3 Draft Inner West Local Environmental Plan 2020

The Draft Inner West LEP 2020 was on public exhibition from the 16th March until 15th April 2020. At its meeting on June 23, 2020, Council considered a post exhibition report and endorsed the planning proposal to facilitate the draft Inner West Local Environmental Plan 2020. The Council will submit the planning proposal to the Department of Planning, Industry and Environment for making.

The following provisions relating to the site are considered:

- The subject site remains zoned R1 General Residential, with dwelling houses permissible. The objectives of the zone remain the same and the proposed development is consistent with these objectives.
- Clause 4.C3 outlines landscaped area and site cover requirements for R1 General Residential identified in "Area 2" (former Leichhardt). Requirement is retained at 15% and 60% of the site area for soft landscaping and site cover respectively. As stated, the proposal satisfies the landscaping requirement, and though the existing site circumstance exceeds site coverage (and there are no additions to the extent of existing building footprints), a written variation has been provided to address Clause 4.6 of the current and draft LEPs.
- Clause 4.4(2B)(ii) retains an increased FSR provision to 0.70:1. As mentioned, as written variation under Clause 4.6 of the current and draft LEP has been submitted.

There are no significant modifications to the existing permissibility or numerical provisions of the LEP at the time of writing this Statement of Environmental Effects.



4.3 Development Control Plans

4.3.1 Leichhardt Development Control Plan 2013

It is acknowledged that the DCP has been updated to be consistent with the Inner West LEP 2020. No provisions from the existing DCP 2013 have been modified as a result of the update or draft environmental instruments.

4.3.1.(a) Laneways

The controls under Part C1.18 of Council’s DCP require buildings adjacent to a laneway to have a simple form and minimal façade detailing. The rear lane is approximately 6.1 metres wide. As the site fronts a *Medium Lane* (as referred to in *Table C11 Laneway hierarchy*, being between 5.1 and 8 metres in width), the development is required to be designed with a laneway envelope that has a maximum side wall height of 3.6 metres, a 45 degree building envelope taken from the top of the side wall, and a maximum roof height of 6 metres.

The proposed garage outbuilding has been designed with the following parameters:

- Maximum wall height: 2.924m ✓
- Building envelope: 45 degree pitch, symmetrical roof ✓
- Maximum roof height: 5.2m to top of roof ridge ✓

Therefore, the proposed garage outbuilding is within a bulk and form that is *less* than the maximum allowable. Additionally, the maximum building envelope has been illustrated on the plans to show that the proposed form sits within these design parameters, and therefore complies with the laneway envelope for development fronting a medium lane.

As per the DCP controls, the new building will be built to the laneway alignment, which is consistent with the built form of properties along the lane. The external walls will be constructed in high quality materials and finishes (including masonry and roof cladding) which are compatible with the fabric of the surrounding properties. The development will retain the existing car parking space on the site and will not increase laneway parking or remove any on street parking.

Additionally, following on from the two Pre-DAs, the proposed built form has been further reduced to hipped roof towards the western end of the garage outbuilding. This greatly assists in ensuring that the impact caused by overshadowing is reduced. This is illustrated in Section A (Drawing No DA400), and as extracted in Figure 9, below.

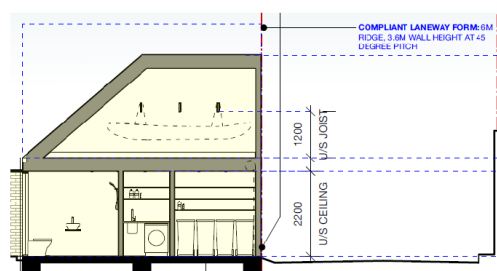


Figure 9: Section A- showing reduced bulk and scale of the proposed outbuilding with a gabled front and hipped rear roof form



4.3.1.(b) Desired Future Character

The subject site forms part of the Leichhardt Distinctive Neighbourhood and more specifically within the Piperston Distinctive Neighbourhood Sub Area, as shown on the following maps (Figures 10 and 11).

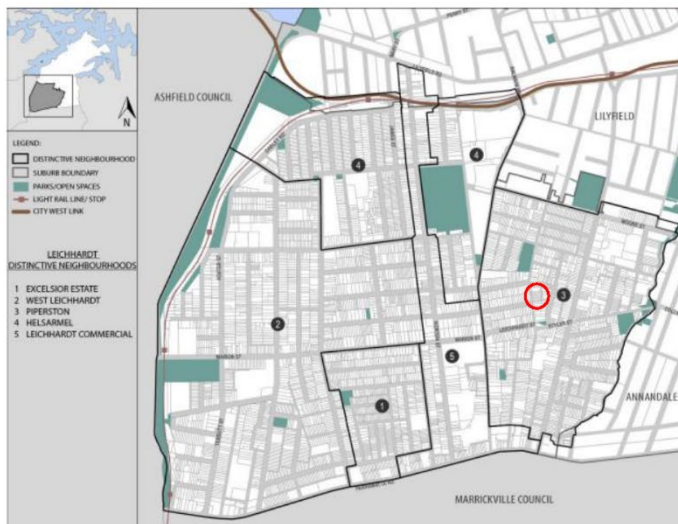


Figure 10 Leichhardt Distinctive Neighbourhood (Source: Leichhardt DCP)



Figure 11 Piperston Distinctive Neighbourhood Sub Area (Source: Leichhardt DCP)



The proposal is considered to align with the desired future character of the Piperston Distinctive Neighbourhood. The following comments are made with regard to the objectives of the desired future character of the distinctive neighbourhood:

- The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.
- The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.
- The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape. As previously mentioned, the unnamed laneway is a service lane utilised solely by dwellings with rear lane access and for waste collection. The laneway itself also does not form part of the heritage conservation area.
- There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.
- The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.
- The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.

As previously mentioned, there is a maximum 3.6 metre wall height control applying to the Piperston Distinctive Neighbourhood and the proposal meets this control. The wall height proposed along the rear lane is consistent with the height of the existing solid wall built along the rear boundary on the subject site and which extends along the unnamed service laneway.

4.3.1.(c) Solar Access

The site has an east-west orientation but does receive direct sunlight to the private open space, along the southern boundary. This is reflected in the solar access diagrams submitted with the development application (Drawing No. 600, 601, 602 and 603). The new outbuilding has been designed to sit within the footprint of the existing garage with a modified roof form that provides storage space within the roof cavity. Storage is within the gables roof form that fronts the laneway, and a hipped roof is to the west of the outbuilding, which is intended to minimise the extend of overshadowing to the adjoining southern property at 39 Mackenzie Street. The proposal will not compromise the solar access available to the adjoining northern properties.

The design of the overall modified building envelope has specifically considered the solar access to 39 Mackenzie Street, and this is the reason why the development application pursues a garage with a modest storage, rather than the previously considered first floor addition to the existing garage.



The design concept developed from the pre-development application submission, and now this development application submission has considered the location of the private open space 39 Mackenzie Street, and the orientation of both properties. Updated and detailed shadow plans have been prepared by Sago Design which demonstrate the existing and proposed overshadowing to the adjoining properties in plan (based on 3D modelling).

It is acknowledged in the first instance that:

- Overshadowing does not occur upon any part of the existing dwellings, and therefore the existing extent of solar access into living rooms and other habitable rooms is maintained.
- The proposed outbuilding itself is a non-habitable structure and does not require direct solar access.
- There are so solar collectors affected by the proposed development.
- The existing roof level is RL29.81 at its highest point, and the proposed gable is RL32.11, being an increase of 2.3m (for roof storage).
 - However, the gabled form fronting the unnamed laneway transitions into a gabled roof form to the west (Figure 9) for an approximate length of 3.0m, consequently reducing the bulk of the outbuilding and minimising the extent and potential for additional overshadowing.

Solar access in plan view (existing and proposed) show that at 9am, 10am, and 11am there is no increase in overshadowing to the private open space area for the subject site (41 Mackenzie Street) and no change to the adjoining northern or southern neighbour. The shadows created by the proposed outbuilding wall within the existing fence shadow, and upon the non-habitable garage.

Between 12pm and 3pm, the shadows shifts to over the neighbouring garages and towards the laneway.

Council's DCP requires that:

"Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice."

The required private open space area for residential dwellings is 16m², therefore the proposal needs to retain 3 hours of direct sunlight to over 8m² of private open spaces "POS". The proposal satisfies this requirement, particularly between 10am and 1pm, as demonstrated on the submitted plans and summarised in the following table:

	Solar access provided to POS of subject site (41 Mackenzie St.)	Solar access provided to POS of adjoining site at 39 Mackenzie St.
9am	7.6m ² (no change)	7.6m ² (no change)
10am	10.3m ² (no change)	11.6m ² (no change)
11am	13.5m ² (no change)	14.2m ² (no change)
12pm	14.4m ² (no change)	14.5m ² (no change)
1pm	10.3m ² (no change)	11.5m ² (no change)
2pm	5.8m ² (no change)	5.8m ² (no change)
3pm	3.4m ² (no change)	0m ² (no change)



4.4 Regulations

There are no prescribed matters which hinder the development.

4.5 Likely Impacts

Consideration must be made to the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

4.5.1 Impact on the Natural Environment

The development will not have an adverse impact on the natural environment, as the site has already been developed for residential purposes with an existing dwelling and outbuilding on site. The proposed works will seek to enhance the built form at the rear of the property and provide for a more orderly development for the residents, who require additional amenities and storage space.

Landscaping and private open space will remain as per the current site circumstance and existing extent of development.

4.5.2 Impact on the Built Environment

The built form of the proposed outbuilding is considered to be in keeping with the scale and desired future character prescribed for this area and will be compatible with the bulk and scale exhibited by the adjoining developments, particularly that of rear development to the dwellings of Coleridge Street which also share the eastern side of the laneway. The proposed works provide for the most orderly use of the site, maximising its development potential in an established residential area and utilising existing building footprints, while minimising any direct impacts on adjoining properties.

4.5.3 Social and Economic Impacts on the Locality

The proposed development will benefit the current residents of the dwelling by improving internal and external space. New works will be in keeping with the style and character of the locality and complement the existing built form. The residential use of the land will continue. The proposed works will assist in maximising the sites development potential without altering the existing dwelling or extent of development, in terms of overall footprint, site cover, landscaped area, outdoor spaces or habitable floor area currently on the site.

4.6 Suitability of the Site

The land is appropriately zoned to permit the development and the development meets the long-term objectives of the R1 General Residential Zone. The works will maximise the development potential of the site, whilst maintaining a form and scale that is sympathetic to the existing dwelling on the site and the surrounding neighbourhood character.



4.7 Submissions made in accordance with this Act or the Regulations

Not relevant, for the purposes of the preparation of this report.

4.8 The Public Interest

The public interest would be served by approval of this development, as it will provide for the efficient use of the land and revitalisation of the existing outbuilding structure for a garage, laundry, additional bathroom and storage on site. The proposed outbuilding is well-designed and sympathetic to the adjoining properties in terms of setbacks, bulk and scale. The development complements the distinctive neighbourhood and general character of the locality. Furthermore, enhanced residential accommodation is provided within a well-established residential area close to amenities, services and facilities.

It is considered that the development is conducive to Council's policies and does not result in any unreasonable impacts. Under the circumstances of the case, it is considered that the development is acceptable and should be supported.



5. CONCLUSION

The proposed development has made regard to surrounding land uses. It is considered that all reasonable measures to mitigate any adverse environmental effects have been taken into consideration, in relation to the proposal.

The proposed outbuilding is well-designed and sympathetic to the adjoining properties in terms of design, bulk, scale, and building alignment. The proposed works represent a built form on site that has minimal impact to adjoining properties in terms of privacy and solar access. The proposed development complements the site's context, along with the general character of the locality.

The proposal has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, and is found to be satisfactory. The proposal is permissible with the consent of Council.

The beneficial effects of the proposal include:

- A built form at the rear of the site that is considered to be a conservative proposal with regard to minimising the extent of additional gross floor area and site coverage, by redeveloping and existing outbuilding that is currently on the site.
- The development will have minimal impact on adjoining properties in terms of solar access and privacy.
- The site will be revitalised in a sympathetic manner with respect to the sites context. The site coverage, landscaped areas, private open spaces, and will not substantially change from what is existing.
- Proposed works will maximise the development potential of the subject site whilst also providing for the most orderly use.

The proposed development will have no significant impact on the air or water quality in the locality.

The proposed works do not result in any unreasonable impact to adjoining properties and are conducive to Council's policies and accordingly, it is sought that Council approve the application.



Appendix A
Leichhardt Local Environmental Plan 2013
Compliance Table



Appendix A Leichhardt Local Environmental Plan 2013 Compliance Table

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
Clause 2.6 Subdivision	<ul style="list-style-type: none"> Development consent required. 	N/A No subdivision proposed.
Clause 2.7 Demolition	<ul style="list-style-type: none"> Development consent required. 	Demolition of the existing garage, in part, is sought under this application.
Zoning	<ul style="list-style-type: none"> Zone R1 General Residential <p>2 Permitted without consent Home occupations</p> <p>3 Permitted with consent Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Hostels; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Shops; Take away food and drink premises; Any other development not specified in item 2 or 4</p> <p>4 Prohibited Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Funeral homes; Heavy industrial storage establishments; Helipads; High technology industries; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Light industries; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Restricted premises; Retail premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or</p>	Complies. The proposal seeks partial demolition of the existing garage and construction of a new outbuilding associated with the dwelling house. As dwelling house are permissible the proposal may be considered by Council.

41 MacKenzie Street, Leichhardt

29



CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
	resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies	
Clause 4.1 Minimum Subdivision Lot Size	<ul style="list-style-type: none"> 200m² 	N/A No subdivision is proposed.
Clause 4.3 Height of Buildings	<ul style="list-style-type: none"> No maximum building height is nominated for the site. 	N/A.
Clause 4.3A Landscaped areas for residential purposes	<p>Development consent must not be granted to development to which this clause applies unless:</p> <ul style="list-style-type: none"> {a} the development includes landscaped area that comprises at least: <ul style="list-style-type: none"> {i} where the lot size is equal to or less than 235 square metres—15% of the site area, or {ii} where the lot size is greater than 235 square metres—20% of the site area, and {b} the site coverage does not exceed 60% of the site area. 	Refer to Part 4.1.4(b) and Appendix E. Landscaped area complies. Clause 4.6 for site coverage is submitted to vary the 60% standard.
Clause 4.4 Floor Space Ratio	<ul style="list-style-type: none"> FSR = 0.6:1 	Refer to Part 4.1.4(c) and Appendix F. Existing FSR is over. Clause 4.6 has been submitted.
Clause 5.10 Heritage Conservation	<p>Objectives The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> {a} to conserve the environmental heritage of Leichhardt, {b} to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, {c} to conserve archaeological sites, {d} to conserve Aboriginal objects and Aboriginal places of heritage significance. 	Refer to Part 4.1.4(d). The subject site is located within a Heritage Conservation Area (HCA).
Clause 6.1 Acid Sulfate Soils	<ul style="list-style-type: none"> Class 5 	Complies. The site is not within 500m of Class 1, 2, 3 or 4 land that is below 5 AHD nor will the proposed works lower the water

41 MacKenzie Street, Leichhardt

30



CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
		table below 1 metre Australian Height Datum.
Clause 6.2 Earthworks	<ul style="list-style-type: none"> The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. 	N/A
Clause 6.3 Flood Planning	<ul style="list-style-type: none"> The subject site has not been identified as flood prone land. 	N/A. The site has not been identified as flood prone land.
Clause 6.4 Stormwater Management	<ul style="list-style-type: none"> The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. 	New works will be connected to existing system. Reference should be made to the submitted Stormwater Plans.
Clause 6.8 Development in areas subject to aircraft noise	<ul style="list-style-type: none"> The objective of this clause is to prevent certain noise sensitive developments from being located near the Sydney (Kingsford Smith) Airport and its flight paths, assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings, and to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport. 	Refer to Part 4.1.4(e) . The site is located within the 25-30 ANEF, however the development relates to a non-habitable outbuilding.

Appendix B
Leichhardt Development Control Plan
2013 Compliance Table



Appendix B Leichhardt Development Control Plan Compliance Table 2013

CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
Part C: Place		
Section 1 – General Provisions		
C1.2 Demolition		
Controls	C1 Council will not approve a development application for the demolition of: a. a Heritage Item; or b. a building in a Heritage Conservation Area that contributes positively to the conservation area; or c. a building that makes a positive contribution to the desired future character of the area Unless: i. the existing building is found to be structurally unsafe; and ii. cannot be reasonably repaired; and iii. the proposed replacement building is consistent with the development controls contained in Leichhardt Local Environmental Plan 2013 and this Development Control Plan; and iv. the quality of the proposed replacement building will be compatible with the Heritage Conservation Area or streetscape in terms of scale, materials, details, design style and impact on streetscape.	This application seeks the partial demolition of the existing garage at the rear of the site. The outbuilding faces the rear laneway and is ancillary to the principal dwelling, which will not be modified as part of the development application.
C1.7 Site Facilities		
General	C1 Rubbish storage and collection areas are to be shaded and be designed and located to have minimal impacts and visibility from the street. They shall not be located next to openings such as doors and windows to habitable rooms. They should be located to minimise the transfer of waste through residential dwellings. C2 Development shall be consistent with Part D Section 2 – Resource Recovery and Waste Management within this Development Control Plan. C3 Mailboxes of sufficient size and dimensions to accommodate large envelopes and newspapers are provided in a location that is readily visible from the street and allow for convenient and safe access. C4 Air-conditioning units are not visible from the street.	The proposal improves on waste management by providing a dedicated bin storage area that is screened within the site. The existing mailbox will remain. No change to any A/C unit.

41 MacKenzie Street, Leichhardt

33



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
Residential Development	C5 The minimum area of internal storage space for each dwelling is 6 cubic metres. Note: A smaller area may be considered by Council for smaller dwellings such as secondary dwellings, studios and one bedroom units. C6 A useable area of multipurpose storage space suitable for large goods, such as bicycles and the like is provided with minimal visibility from the street. C7 Single residential and semi-detached houses are to be provided with an uncovered area of sufficient size and dimensions to accommodate clothes drying. C8 External clothes drying areas should not be visible from the street. C9 Each dwelling is provided with laundry facilities.	No change proposed to the internal space of the existing dwelling. The new garage has been designed to provide for additional storage for the occupants of the. The garage will be able to accommodate sporting equipment within the roof space, via a hoisting system. The modified garage will also provide for an ancillary bathroom and laundry. The rear yard will still provide a clothes line.
C1.9 Safety by Design		
Controls	C1 All development applications must demonstrate an understanding of the potential crime risk of the proposed development and apply CPTED treatments (i.e. Territorial re-enforcement, surveillance, access control and space/activity management) that correspond with the proposed levels of risk associated with the development. Development shall demonstrate regard to the: a. surveillance of the site, and ensure: i. main building frontages shall be orientated towards the street; ii. "blind spots" are to be avoided; iii. ground floors of non-residential buildings, the non-residential component of mixed use developments, and the foyer areas of residential buildings, are designed to enable surveillance from the public domain to the inside of the building at night; iv. buildings are designed to provide surveillance of paths and laneways which are not located along a primary street frontage; v. entrances are visible to and from the street; vi. window and door openings that have frontage to the street or are adjacent to public open spaces use external window coverings made from non-solid, permeable materials; vii. security grilles and security doors are used, and materials permit casual surveillance;	Complies. The presentation of the main dwelling to Mackenzie Street will not change. The relationship of the site to the rear lane will not change in essence, as it will still be a garage roller door (existing door to be reused as part of the development) facing upon the laneway. Therefore, casual surveillance to the rear lane will essentially remain the same as it currently is.

41 MacKenzie Street, Leichhardt

34



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>viii. appropriate lighting is included within the design; ix. landscaping does not provide concealment opportunities, but maximises sight lines; and x. public facilities (e.g. automatic teller machines (ATM's), public telephones and bicycle racks) are located in high pedestrian traffic areas and incorporate security features in their design.</p> <p>b. legibility of the site, and ensure:</p> <p>i. spaces are designed with regard to man-made or natural landmarks; ii. signage and 'way finding' is legible, appropriately located, includes relevant directional information or assistance numbers, and utilises internationally recognised symbology where necessary; iii. building entries are clearly visible, unobstructed, and easily identifiable from the main street frontage, other public areas and other development; where practicable, lift lobbies, stairwells and hallways should be visible from the public domain; iv. dwelling units have individual main entries directly from a public space or communal area, and the entry is to include a clearly defined transitional space between public and private areas; v. street numbers are clearly displayed at the front of the development or on the front fence of the development; vi. internal numbers for multiple occupancy developments are clearly displayed on each individual dwelling; and vii. each building entry must clearly state the unit numbers accessed from that entry</p> <p>c. territoriality of the site, and ensure:</p> <p>i. boundaries of private and public spaces are clearly defined through measures such as permeable fencing, change in paving materials, public art, directional signage, good maintenance and landscaping, before formal measures such as do-not-enter signs, walls and security guards are considered.</p> <p>d. vandalism management of the site, and ensure:</p> <p>i. potential opportunities for crime are reduced by using sturdy materials and fittings in the design to minimise potential for undue maintenance without detracting from the amenity of the development; ii. systems for reporting and repair of safety risks or damaged and worn physical aspects of spaces and places are implemented; iii. graffiti vandalism is reduced through measures such as: o avoiding "blank canvasses" – utilising design aspects such as non-continuous fencing, rough render on walls, or mural or mosaic finishes;</p>	<p>As above.</p> <p>As above.</p> <p>As above.</p>

41 MacKenzie Street, Leichhardt

35



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>o utilising "green screens" – planting fast-growing, long lasting, and low maintenance vines and shrubs to limit access to vulnerable walls; o prompt clean-up of new graffiti; o use of protective coatings and "graffiti resistant" design materials; and o ensuring areas vulnerable to graffiti are well-lit to promote natural surveillance.</p> <p>e. reducing vulnerability of the site, and ensure:</p> <p>i. pathways are straight where practicable and blind corners avoided (including on stairs, in hallways or in other situations where movement can be predicted. If blind corners cannot be avoided in the development, then they are to be designed to the satisfaction of Council; and ii. external lighting is provided at the main pedestrian and bicycle entranceway to a building and all communal areas.</p> <p>C2 A Plan of Management (POM) detailing security arrangements must be submitted for the following development types:</p> <p>a. twenty-four hour operation of commercial or industrial premises; b. service stations or convenience stores; c. multi-dwelling housing (12 or more dwellings); d. mixed use development with 10 or more dwellings; e. tourist and visitor's accommodation and boarding houses capable of accommodating 12 or more residents; f. new or proposed upgrading of a commercial or retail development (including shopping centres and cinemas); g. new or proposed upgrading of an industrial or warehouse development; h. new or proposed upgrading of educational establishments; i. transport interchanges; j. recreation facilities or community facilities; k. licensed premises such as clubs, hotels, or small bars; l. hospitals; m. restricted premises and sex services premises including brothels; n. other uses that normally attract large numbers of people, such as a public place of worship, a place of assembly or a public building;</p>	<p>As above.</p> <p>N/A.</p>

41 MacKenzie Street, Leichhardt

36



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>o. premises which are either open late, or open early in the morning and where Council considers there may be potential for disturbance associated with the land use; and</p> <p>p. any other land use which in Council's opinion must demonstrate a suitable security arrangement.</p> <p>Note: Council may exercise discretion in respect to the requirement for a POM, where Council considers the development type is minor (and security risk is low) or when development is for alterations and/or additions to businesses which may already have a POM.</p>	
C1.11 Parking		
General Vehicle Parking Rates	<p>For a single dwelling a maximum of 2 spaces per dwelling are permissible, there is no minimum rate at which car parking must be provided.</p> <p>No visitor parking is required.</p>	<p>The new outbuilding will continue to provide one car space by way of a single garage accessed from the rear lane.</p> <p>Noted that as this is a maximum rate, parking spaces are included in GFA/FSR.</p>
C1.12 Landscaping		
Residential Controls	<p>C3 Trees that contribute to the character and quality of the area are retained and protected and additional trees compatible with the existing character are provided.</p> <p>C4 Provide for the retention of existing and/or planting of additional canopy trees.</p> <p>C5 A minimum of 85% of plantings for new residential areas are indigenous to the Leichhardt or Sydney area.</p> <p>C6 Natural rocky outcrops shall be preserved in their existing form and integrated into site landscaping.</p> <p>C7 Existing trees on the site and on adjoining sites are protected from root damage and substantial canopy pruning.</p> <p>C8 Structures are to be designed to accommodate existing and future root growth.</p> <p>C9 Semi-mature trees and vegetation that are capable of contributing to landscape amenity are provided in open space along boundaries adjacent to neighbouring open space.</p>	<p>Removal of trees is not proposed with this application.</p> <p>No modifications to the existing front or rear gardens are proposed as part of this development.</p> <p>No natural rocky outcrops exist on the site. Or in proximity to the proposed outbuilding.</p>

41 MacKenzie Street, Leichhardt

37



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C10 New dwellings, single or multi-unit, shall be planted with tree(s) capable of achieving a mature height and form appropriate to the setting of the site and the proposed development.</p> <p>Note: Council will assess the reasonableness of the mature height of trees in conjunction with the development proposal. Tree selection and landscape design should be undertaken with site characteristics and environmental outcomes in mind.</p> <p>C11 Landscaping does not include toxic plants.</p> <p>C12 Properties that exceed 300sqm shall have a minimum of two (2) trees. The trees will be capable of achieving a mature height and form appropriate for the setting and the development.</p> <p>Note: Council will assess the reasonableness of the mature height of the tree in conjunction with the development proposal.</p> <p>C13 Front gardens/setbacks are of soft landscaping with the exception of pathways.</p> <p>C14 Landscaping shall be provided between a swimming pool and the property boundary, where the landscape area is capable of contributing to the landscape amenity of the subject and adjoining properties.</p>	
Tree Removal (residential and non-residential development)	C26 An arborist report is to be submitted where the proposed development is within the Tree Protection Zone (TPZ - as defined in Australian Standard AS 4970 - 'Protection of trees on development sites') of a tree on an adjacent site.	N/A. No removal of trees is proposed.
C1.18 Laneways		
Controls	<p>C4 Buildings adjacent to a laneway have a simple form and minimal façade detailing.</p> <p>C5 Where fronting a Medium Lane, (refer to Table C11 Laneway hierarchy) development shall comply with a laneway envelope that has:</p> <ul style="list-style-type: none"> a. a maximum side wall height of 3.6m; b. a 45° building envelope taken from the top of the side wall; and c. a maximum roof height of 6sm (refer to Figure C14 Laneway envelope for development fronting a Narrow Lane). 	Refer to Part 4.3.1(a) of this SEE for comment.

41 MacKenzie Street, Leichhardt

38



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C8 Development is not visible from the primary street frontage.</p> <p>C9 The bulk and scale of development does not significantly diminish the dominance of the primary building on the same lot.</p> <p>C10 Buildings are generally built to the laneway alignment.</p> <p>C12 External walls are constructed in high quality materials and finishes which are compatible with fabric of the surrounding neighbourhood.</p> <p>C13 Roof forms are either hipped roofs, gabled roofs pitched from the sides or skillion roofs located behind parapets where such development meets the laneway control envelope.</p> <p>C14 Roofs materials are corrugated iron, slate or terracotta tile.</p> <p>C15 Roof openings are flush to the roof.</p>	
Access and Parking	<p>C16 Development does not result in increased laneway parking or remove on street parking. Note: Swept path assessment is to be used to demonstrate that any on street parking has been retained and sufficient building offset has been provided to allow this manoeuvring.</p> <p>C17 Sufficient on-site parking and manoeuvring space is provided without compromising the prevailing character, building form and setback of the laneway.</p> <p>C18 The development is consistent with the provisions of Part C1.11 – Parking within this Development Control Plan</p>	<p>There will be no loss of on-street parking or laneway parking. The proposal will retain one on-site car space.</p> <p>No change from existing circumstance.</p> <p>Complies.</p>
Security	<p>C20 Entrances to dwellings are provided with overhead lighting within property boundaries.</p> <p>C21 Windows from habitable rooms directly overlook the lane to enhance casual surveillance opportunities.</p>	<p>Lighting will be internal to the garage outbuilding.</p> <p>The development will not alter surveillance to the lane.</p>

41 MacKenzie Street, Leichhardt

39



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C22 The development is consistent with the provisions of Part C1.9 – Safety by Design within this Development Control Plan</p>	<p>Refer to previous comments in relation to Part C1.9 – no substantial change from existing circumstance.</p>
Part C Place		
Section 2 – Urban Character		
C2.2.3.3 Piperston Distinctive Neighbourhood		
Desired Future Character	<p>C1 Maintain the character of the area by keeping development consistent in architectural style, building form and materials.</p> <p>C2 Promote land uses and urban design that enhances and contributes to the character and identity of the neighbourhood whilst protecting Heritage Items and Heritage Conservation Areas that combine to help create that character.</p> <p>C3 Maintain and enhance the predominant scale and character of dwellings in this precinct, consisting of mostly single storey Victorian and Federation-style dwellings, with more significant development in appropriate areas.</p> <p>C4 Encourage mixed use of commercial buildings to incorporate residential living above or where permissible, to the rear of the buildings.</p> <p>C5 Promote commercial businesses along Catherine and Styles Street suitable to residential areas, which have a low noise and vehicle impact.</p> <p>C6 Promote commercial businesses, which have higher vehicle and noise impact along Parramatta Road.</p> <p>C7 Retain the existing scale and traditional shopfront presentation of buildings along Catherine and Styles Streets.</p> <p>C8 Encourage appropriate signage consistent with the established signage type, mainly under awning, fascia, window signs and hamper signs.</p> <p>C9 Preserve the consistency of the subdivision pattern in this area.</p>	<p>Refer to Part 4.3.1.(b) of this SEE for comments. Complies.</p>

41 MacKenzie Street, Leichhardt

40



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C10 Maintain the predominant service and access character of the rear lanes in the Piperston Distinctive Neighbourhood.</p> <p>C11 Maintain existing views created by stepping with the contours along the east/west streets.</p> <p>C12 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.</p> <p>C13 Enhance and promote the viability and potential for neighbourhood and local provision shops on the corner of Catherine and Styles Streets and along Parramatta Road.</p> <p>C14 Building wall height is to be a maximum of 3.6m, unless an alternative maximum building wall height is prescribed within the relevant Sub Area.</p> <p>C15 Neighbourhood shops or buildings originally designed for non-residential use may have a maximum building wall height of 7.2m to incorporate a parapet.</p> <p>C16 With the exception of Whites Creek Lane, development of dwellings fronting onto laneways shall be discouraged.</p> <p>C17 Signs above awnings will not be supported.</p> <p>C18 Development is to be consistent with any relevant Sub Area objective(s) and condition(s).</p>	
Part C: Place		
Residential Provisions		
General Provisions		
C3.1 Residential general provisions	<p>C1 Residential development is not to have an adverse effect on:</p> <ul style="list-style-type: none"> a. the amenity, setting or cultural significance of the place, including the portion of the existing building to be retained; and b. the relationship of any Heritage Item or Heritage Conservation Area to its place, setting and cultural significance. 	<p>The existing dwelling will not be altered through this proposal. The proposed works will be located at the rear of the site and will not be visible from the principal frontage or Mackenzie Street streetscape.</p>
41 MacKenzie Street, Leichhardt		



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C2 Additions to an existing building are generally:</p> <ul style="list-style-type: none"> a. located to the rear or the side of the existing building when viewed from the principal street frontage; and b. subservient to the form of the existing building; and c. maintain the form, fenestration, roof forms and chimneys of the existing building when viewed from the principal street frontage; and d. of a design which is compatible with but does not compete with the architectural character of the existing building or the Building Typologies; and e. of a scale proportion (including proportion of doors and openings) and material which is compatible with the existing building. 	<p>The modified outbuilding to the rear of the site is compatible with the existing outbuilding footprint, and is of a design and scale that will not compete with the existing dwelling.</p> <p>It is noted that the unnamed laneway does not form part of the heritage conservation area. In terms of height the built form is similar to those of the outbuildings to the rear of dwellings facing Coleridge Street, which share this laneway.</p> <p>As illustrated on the plans, the proposed form sits below the parameters and controls guided by the DCP.</p>
C3.2 Site Layout and Building Design	<p>C1 The site shall have sufficient capacity to accommodate development, including buildings and structures, setbacks and separation distances, access, manoeuvring and parking (where required by this Development Control Plan) and landscaped open space, having regard to site characteristics such as:</p> <ul style="list-style-type: none"> a. existing extent of development; b. desired future character; c. site area, road frontage, width, and depth; d. heritage streetscape; e. significant natural landscape features including vegetation; f. slope; and g. flooding and drainage. 	<p>The proposed garage outbuilding will be built to the rear and two side boundaries. This is not dissimilar to development in the immediate locality, which positions outbuildings with little to no setback (refer to streetscape photographs in Part 2.1).</p> <p>Refer also to Part 4.3.1(a) and (b) of this SEE for further comment on</p>
41 MacKenzie Street, Leichhardt		



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	Note: Some historical types of development in Leichhardt such as inter-war period residential flat buildings were often designed and constructed to achieve or exceed currently allowable development limits. In such situations, the scope for further alterations and additions may not be possible, unless a significant improvement in residential amenity or streetscape character can be demonstrated.	the built form and desired future character.
Local character	C2 Development siting and design shall respect and enhance the natural landscape attributes that contribute to the character and distinct sense of place of the streetscape, neighbourhood and Leichhardt, including: a. prominence of ridgelines; b. landmarks; c. topography; d. views, vistas, and outlooks; e. waterways; and f. vegetation.	The development respects the topography of the site and the established setbacks of adjoining properties. The garage outbuilding will have a presentation to the rear lane that is consistent with nearby developments, and will not detract from future opportunities for development at adjoining sites. There is no impact on views, outlooks or vegetation.
Building Location Zone	C3 Building Location Zone (BLZ) is the part of the subject site where it can be reasonably expected that a building can be located. The BLZ is determined by having regard to only the main building on the adjacent properties. The location of front fences or intervening walls, ancillary sheds, garages, external laundries, toilets or other structures on the site is not relevant in determining the BLZ. In order to respect the pattern of development and amenity of neighbouring properties, the BLZ is determined on a floor by floor basis (refer to Figure C128: Building Location Zone). Where an adjoining development has a front or rear setback that is clearly uncharacteristic of the general pattern of development within the street, consideration will be given to that general pattern in determining whether to permit a variation to the BLZ that would otherwise be determined based on the adjoining buildings alone.	The location of the modified garage outbuilding is consistent with the existing garage on site. There is no change to the main dwelling in terms of rear additions or BLZ.
Side boundary setbacks	C7 Building setbacks shall comply with the numerical requirements set out in the side boundary setback graph (refer to Figure C129: Side Boundary Setbacks Graph). Note: The above setbacks must be applied to the different walls of the building depending on their individual height. Higher sections of walls should be further setback from boundaries than lower portions	The proposed building will be built to the northern and southern side boundaries, and to the rear boundary. This is not dissimilar to

41 MacKenzie Street, Leichhardt

43



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	of the same wall. For example the first floor of a dwelling should be setback further than the ground floor below C8 Council may allow walls higher than that required by the side boundary setback controls above, to be constructed to side boundaries where: a. the development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of this Development Control Plan; b. the pattern of development within the streetscape is not compromised; c. the bulk and scale of development is minimised by reduced floor to ceiling heights; d. the potential impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised; and e. reasonable access is retained for necessary maintenance of adjoining properties.	development of the same typology within in the immediate locality. Refer to Part 4.3.1(a) and (b) of this SEE for comment.
Landscaped open space	C9 Development shall: a. include soft landscape area in both the front and rear of the site where consistent with the BLZ controls; b. ensure that the area of soft landscaping is consolidated to support significant landscaping and tree planting; and c. include landscaped open space as part of private open space at the rear of the site. Landscaped areas are to be designed to incorporate privacy, solar access, protection from the wind and so that the amenity of adjoining properties as well as the streetscape is retained.	No modifications sought to existing landscaped area or private open spaces.
Building Height and the Building Envelope	C11 The building envelope of a building is determined by the wall height, width, depth and roof form and pitch of a building. Importantly, wall height is the key control over the building envelope, and roof form is one of the most important features that determine the overall appearance of residential buildings. C12 The roof pitch or plane is generally between 30° and 45°, depending on the characteristic style of the local area.	Refer to Parts 4.3.1(a) and (b) . The height and roof form of the garage outbuilding has been designed to respond to the laneway controls applying to the site, as discussed in this SEE, and as illustrated on the submitted plans.
C3.3 Elevation and Materials		
Controls	C1 Building façades are: a. divided into vertical bays consistent with the dimensions established by elements on adjoining development such as party walls and windows; and b. divided into horizontal bandings that clearly delineate each storey and align with elements on adjoining development such as eaves, balconies, verandahs and roofs.	There is no change to the presentation of the existing dwelling to Mackenzie Street.

41 MacKenzie Street, Leichhardt

44



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	C2 New upper level balustrades that run across and in front of party walls, disrupting the strong vertical rhythm and pattern of individual house elevations in terrace rows are not permitted.	N/A
	C3 Where alterations or additions are proposed, existing façade elements that are incompatible with the character of the building are to be removed.	N/A
	C4 Residential development in a Heritage Conservation Area is compatible with the Building Typologies contained in Appendix B – Building Typologies of this Development Control Plan, and includes defining elements such as: a. roof pitch and form; b. roof ridge line; c. gutter lines; d. verandah balustrades and floor under-beams; e. window patterns, proportions and details; and f. balconies.	The development relates to an outbuilding located to the rear of the dwelling, facing upon an unnamed laneway. The proposed outbuilding will not detract from the existing dwelling or principal Mackenzie Street streetscape.
	C7 New buildings shall be designed to provide a high level of architectural and visual presentation to all elevations, avoiding blank, unarticulated side and rear elevations.	The proposed garage outbuilding provides a structure that is not too dissimilar from other proximate outbuildings and garages.
	C9 Colour schemes are compatible with those prevailing in the street.	Refer to the schedule of finishes.
	C11 Materials and finishes are compatible with those prevailing in the streetscape and the period of construction of the dwelling.	Complies. Refer to the schedule of finishes.
C3.7 Environmental Performance		
Environmental Performance	O1 Development provides a high level of energy efficiency and occupant comfort by: a. maximising thermal mass; b. maximising winter sun access and mitigating direct summer sun access to main living rooms whilst maintaining a high level of daylight access; c. incorporating insulation; d. maximising natural ventilation;	A BASIX certificate has been prepared for the outbuilding. The certificate nominates water, energy, insulation and glazing requirements to promote a high

41 MacKenzie Street, Leichhardt

45



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	e. being constructed from ecologically sustainable materials that do not contribute to the degradation or loss of sensitive or endangered vegetation; and f. minimises mechanical air conditioning and heating where possible.	level of environmental performance.
C3.8 Private Open Space		
For Dwelling houses, semi attached and attached dwellings, dual occupancies	C1 Private open space should be: a. located at ground level consistent with the location of private open space on the surrounding properties and the siting controls within this Development Control Plan; b. has a minimum area of 16sqm and minimum dimension of 3m; Note: the front setback will not be accepted as private open space. c. is connected directly to the principal indoor living areas; and d. where ground level is not accessible due to the existing constraints of the site and/or existing development, above ground private open space will be considered.	The development will continue to provide private open space in the form of a raised deck at the rear of the site which is 20m ² in size (with a minimum 16m ² area with 3m width). This area will remain directly accessible from the indoor living area of the dwelling. Additionally, the rear garden, which exceeds 30m ² , can also be utilised for passive recreation.
C3.9 Solar Access		
Documentation	C1 All development applications that entail external additions or new building works are to include shadow diagrams and solar access analysis consistent with the Council's Specifications for Development Application Documentation.	Refer to the shadow diagrams prepared by Sago Design.
Alterations and additions	C11 Alterations and additions to residential property shall be designed to minimise overshadowing to the subject site and maximise direct sunlight, natural daylight and ventilation to the subject site. This should be achieved through: a. appropriate location of alterations and additions; and b. the provision of skilfully positioned, windows, openings, skylights, clerestory windows, glass roofs/walls, light wells and internal courtyards in the design.	Careful consideration has been given to the siting, height and form of the new outbuilding Refer to Part 4.3.1(c) of this SEE for comment.
Retaining solar access to neighbouring dwellings main living room glazing	C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice. C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice.	Refer to Part 4.3.1(c) of this SEE for comment.

41 MacKenzie Street, Leichhardt

46



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C14 Where the surrounding allotments side boundary is 45 degrees from true north and therefore the allotment is not orientated north/south or east/west, glazing serving main living room shall retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice.</p> <p>C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted</p>	
Retaining solar access to neighbouring dwellings private open space	<p>C16 Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9am and 3pm to 50% of the total area during the winter solstice.</p> <p>C17 Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice</p> <p>C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.</p> <p>C19 Where surrounding dwellings currently receive less than the required solar access to their private open space from 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.</p>	Refer to Part 4.3.1 (c) of this SEE for comment.
C3.10 Views Controls	<p>C1 New development should be designed to promote view sharing (i.e. minimise view loss to adjoining and adjacent properties and/or the public domain while still providing opportunities for views from the development itself).</p> <p>C2 Design solutions must respond graphically to the site analysis outcomes through the use of plans, elevations, photographs and photomontages to demonstrate how view sharing is to be achieved and illustrate the effect of development on views. In some cases, reasonable development may result in the loss of views, but new development must not significantly obstruct views.</p> <p>C3 Development shall be designed to promote view sharing via: a. appropriately addressing building height, bulk, and massing; b. including building setbacks and gaps between buildings; c. minimise lengthy solid forms;</p>	N/A. There will be no view loss as a result of the proposal.

41 MacKenzie Street, Leichhardt

47



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>d. minimise floor to ceiling heights and use raked ceilings in hipped / gabled roof forms where appropriate, especially in upper floors; e. splay corners; and f. use open materials for balustrades, balconies, desks, fences, car ports and the like.</p>	
C3.11 Visual Privacy Controls	<p>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. Measures for screening or obscuring will include one or more of the following: a. offsetting of opposing windows so that they do not directly face one another; b. offset windows from directly facing adjoining balconies and private open space of adjoining dwellings; c. screening of opposing windows, balconies and private open space with fixed louvered screens, window hoods, shutters; d. reduced window areas, subject to compliance with the Building Code of Australia; e. windowsills at or above 1.6m above the finished floor level; f. use of fixed, obscure glass, subject to adequate ventilation complying with the Building Code of Australia; g. consistent orientation of buildings; h. using floor level in design to minimise direct views; and i. erection of screens and fencing to limit sightlines including dividing fences, privacy screens, projecting blade screens.</p> <p>C2 Sill heights and screening devices should be provided to a minimum of 1.6m above finished floor level. Screening devices should have reasonable density (i.e. 75%) and have no individual opening more than 30mm wide, and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials.</p> <p>C3 Where fixed louvered screens are used, the screen structure must be securely fixed. The louvers may tilt open from a closed position to an angle of 45 degrees in either a downward or upward position, depending on the sightlines that are to be restricted.</p> <p>C5 The provision of landscaping may be used to complement other screening methods but cannot be solely relied upon as a privacy measure.</p>	<p>Following from the first Pre-DA the upper level has been deleted.</p> <p>The proposed garage outbuilding only has one rear-inward-facing door, and one window, both on the ground floor.</p> <p>Both areas of glazing face upon the open space of the subject site, with no direct sightlines to any adjoining property as a result of existing fencing.</p> <p>There will be no impact to visual privacy as a result of the proposed development.</p>

41 MacKenzie Street, Leichhardt

48



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C6 Screening is not required to ground floor windows where any sight lines are obscured by a 1.8m dividing fence. Such sightlines shall be measured from a height of 1.6m above the finished floor level.</p> <p>C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms)</p> <p>C8 Glazing to proposed bathrooms must be designed to ensure that they provide privacy to the subject bathroom, through the provision of obscure glazing or screening.</p>	
For Dwelling houses, attached dwellings and semi-attached dwellings	<p>C9 Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.</p> <p>C10 Living areas are to be provided at ground floor level to minimise opportunities for overlooking of surrounding residential properties.</p>	<p>Following from the first Pre-DA the upper level has been deleted.</p> <p>The modified garage outbuilding does not include any habitable areas.</p>
C3.12 Acoustic Privacy		
Controls	<p>C2 Buildings that are exposed to high levels of external noise are designed and constructed in accordance with AS3671 – Acoustics – Road Traffic Noise Intrusion, AS2107 – Recommended Design Sound Levels and Reverberation Times for Building Interiors, and AS 2021-2000 – Acoustics- Aircraft noise intrusion – Building siting and construction.</p> <p>C3 Noise generating areas that are not contained within buildings, such as private outdoor open space, parking and service equipment, are located and oriented away from bedroom windows on adjoining sites.</p> <p>C4 Where for a new dwelling in locations that are exposed to high levels of external noise, including aircraft noise from Sydney Airport and road noise from main roads such as Parramatta Road, City West Link and Victoria Road, an acoustic report that demonstrates compliance with these objectives and controls prepared by a suitably qualified and experienced professional and is to be submitted as part of a development application. Note: Clause 6.8 of Leichhardt Local Environmental Plan 2013 addresses development in areas subject to aircraft noise.</p>	<p>The site is located within the 25-30 ANEF contours. The modified garage outbuilding does not include any habitable areas.</p>

41 MacKenzie Street, Leichhardt

49



CHAPTER/ PLANNING GUIDELINE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE COMMENTS
	<p>C6 Electrical, mechanical or hydraulic plant achieves a maximum noise level of 5dBA above background sound levels at the boundary of the site.</p> <p>C8 Private open space is encouraged to be located away from bedrooms on adjoining properties to ensure minimal acoustic impacts.</p>	

41 MacKenzie Street, Leichhardt

50

Appendix C Pre-DA Minutes 1



Sago Design
 131 Catherine Street
 LEICHHARDT NSW 2040

2 March 2021

Dear Sir/Madam

PRE-DEVELOPMENT APPLICATION ADVICE
SITE: 41 Mackenzie Street LEICHHARDT NSW 2040
REFERENCE: PDA/2020/0502

I refer to your Pre-Development Application (PDA) with respect to the above site and our meeting on 14 January 2021 10:00AM, held at the Leichhardt Service Centre.

The following table is a summary of the meeting:

Attendees (Applicant)	Sago Design – Amy & Lachlan – Architects Darren – Gat Associates
Attendees (Council)	Anna Walker – Senior Planner Katerina Lianos – Development Assessment Planner
Proposal	Rear garage and studio over.
Key planning controls	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Leichhardt Local Environmental Plan 2013 (LLEP 2013) • Leichhardt Development Control Plan 2013 (LDCP 2013) • Draft Inner West Local Environment Plan 2020 (Draft IWLEP 2020)

Inner West Council
 innerwest.nsw.gov.au
 02 9392 5000

council@innerwest.nsw.gov.au
 PO Box 14, Petersham NSW 2049

Permissibility & Key constraints	<ul style="list-style-type: none"> • Zoning: R1 – General Residential • Heritage Conservation Area • ANEF Contour (25-30) • External Referrals: Ausgrid
Key issues	<ul style="list-style-type: none"> • Impact on Heritage Conservation Area / Streetscape • Non-compliance with Floor Space Ratio • Neighbouring Amenity Impacts (Visual bulk, solar access, privacy, views) • Bulk and Scale, Envelope – Laneway controls

The following ‘issues based advice’ and information is provided to assist in the preparation of a Development Application. As a result of the issues raised during our meeting, you may benefit from submitting a supplementary PreDA, prior to lodging your Development Application with the Council.

‘Issues based’ planning assessment

State Environmental Planning Policy (Infrastructure) 2007

In accordance with Clause 45 of SEPP Infrastructure the proposed works would be required to be referred to Ausgrid for comment given the location of an existing power pole in the rear lane.

Heritage & Design

The application was referred to Council’s heritage advisor who has provided the following comments:

The subject property at 41 McKenzie Street, Leichhardt, is a contributory dwelling located within the Leichhardt Street / Stanley Street Heritage Conservation Area (C11 in Schedule 5 of the Leichhardt LEP 2013).

Clause 5.10: Heritage Conservation from the Leichhardt LEP 2013 and *Parts C1.4: Heritage conservation areas and heritage items, C1.18: Laneways* and *C.2.2.3.3: Piperston Distinctive Neighbourhood* from the Leichhardt DCP 2013 applies to the proposal.

There are no 2 storey structures within the laneway. It is important that the proposal complies with the relevant controls of the DCP and sets a good example for future development within the laneway.

The roof form of the proposed garage and studio is an asymmetrical gable roof form. C4 of Part C1.18 of the DCP requires that buildings adjacent to laneways have a simple form and minimal façade detailing. The garage and studio building and its gable roof form are to be redesigned so it complies with C6 of Part C1.18 of the DCP; have a maximum side wall height of 3.6m on both the northern and southern facades with a 45° roof pitch and a maximum roof height of 6m. The gable roof form is to be symmetrical in its presentation to the laneway. If additional height is required, skillion dormers in the roof planes may be considered if they are designed in accordance with the following:

- i. be formed with a lesser roof pitch than the main roof, sloping in the same direction ("butterfly" dormer forms are not permitted);
- ii. contain windows of vertical proportions either single, a pair or a group of three;
- iii. not exceed 2,200mm in width and not be a dominant element in the roof form;
- iv. not exceed 1,200mm in height;
- v. be located at least 300mm below the ridge line measured on the slope of the roof;
- vi. be set at least 500mm away from the edge of the roof;
- vii. have windows, front lining boards, fascias and barge boards of painted timber;
- viii. have side walls (cheeks) as weatherboards or shingles or fibre cement sheet with battens over joints and edges; and
- ix. have eaves extending past the vertical face of windows and cheeks.

The openable skylight proposed above the office is acceptable providing it sits flush with the roof sheeting to comply with C15 of Part C1.18 of the DCP.

Openings visible from the public domain, e.g. in the rear (laneway) elevation, must be vertically proportioned, employing traditional design (timber sash) and materials (timber frame). Dominancy must be given to masonry/solid elements rather than glazed areas. Blank unarticulated walls should also be avoided if visible from the public domain. The solid timber louvers are to be deleted from the rear elevation so that the detail of the windows is visible from the laneway.

Shale Grey is proposed for the roofing. This is to be replaced with a pre-coloured traditional corrugated steel for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby". The Material Palette is to be amended accordingly.

The proposal is generally acceptable from a heritage perspective as it will not detract from the heritage significance of the Leichhardt Street / Stanley Street Heritage Conservation Area providing the design changes below are 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.

Please note that regardless of the above heritage advice, the proposed additional floor space for the first floor studio cannot be supported given that the site already exceeds the permissible FSR and the proposal would add additional bulk and scale to the site.

Neighbouring Amenity Impact (Overshadowing, Privacy, Visual Bulk, View Loss)

The protection of residential amenity is a sensitive issue for many development applications. As a result it is highly encouraged that you make your neighbours aware of your proposal as soon as possible to understand and respond to any concerns they may have, as any DA will likely be notified to them.

Solar Access and Overshadowing

Your attention is drawn to C3.9 – Solar Access of the Leichhardt Development Control Plan 2013. This section of the DCP sets objectives for development to minimise overshadowing and the reduction of solar access and therefore the amenity of the neighbouring properties.

The site is considered to have an east west orientation therefore the following controls apply:

C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.

C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.

C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

Solar access and overshadowing diagrams have been submitted as part of the Pre DA application and would indicate that there is additional overshadowing of the private open space of 39 Mackenzie between 10am and 12 pm. Given that the adjoining dwelling at No.39 does not currently receive sufficient solar access additional overshadowing is not supported.

You will need to submit shadow diagrams that indicate the effect in plan view of existing and proposed overshadowing for **21 June at hourly intervals between 9:00am and 3:00pm** with any development application. Shadow diagrams for **21 March/September** may also be of assistance.

Shadow diagrams must distinguish the extent of shadows cast by existing and proposed buildings, including fences and buildings on adjoining land and areas of private open space of those buildings where relevant. They must correctly show the following:

- Position of existing and proposed buildings on the site including boundary fencing but excluding shadows cast by trees.
- Position of buildings, fences and all site boundaries on adjoining land.
- If new shadows will fall upon any wall of a neighbouring property, elevation or vertical shadow diagrams are required.
- Existing and proposed shadows cast at winter solstice (21 June) upon the site, adjoining land and buildings on adjoining land (show altitude and azimuth angles). These are required for 9am, 12noon and 3pm at minimum however adequate information to demonstrate compliance with the relevant controls must be submitted.

- Where the proposal does not comply with the applicable overshadowing controls additional hourly shadow diagrams at the winter solstice and equinoxes (21 September/March) are required.
- Note: The positioning and levels of windows and openings on the walls neighbouring buildings must be identified from the submitted survey plan.
- The entire area that is/will be cast in shadow must be identified.
- Site boundaries of each affected property must be shown, not just portions of the sites.
- the true north point (not magnetic north).
- details on the use of the rooms that have windows or skylights that are impacted on by the development;

Bulk and Scale, Envelope

Given the small size of the rear yards of the dwellings fronting Mackenzie Street it is considered that the proposed first floor studio above the garage would be overbearing to the rear yards of the adjoining properties. The proposed first floor studio above the garage would set an undesirable precedent for similar developments to occur for this section of Mackenzie Street. The existing dwellings on this side of Mackenzie Street have single storey parking structures at the rear fronting the lane which should be retained as is in this instance.

The subject site is considered to have already reached its development potential and no further increase in FSR would be supported.

Privacy

Your attention is drawn to the objective and controls of C3.11 – Visual Privacy of the Leichhardt Development Control Plan 2013. It would appear that the proposed windows to the home office / studio level would overlook the private open space of adjoining dwellings and properties to the rear which front Coleridge Street which is not supported.

View Loss

Your attention is drawn to C3.19 – Views within the Leichhardt Development Control Plan 2013. Please consider whether there would be view loss to any surrounding properties as a result of your proposal.

Laneway Controls

Your attention is drawn to C1.18 – Laneways of the Leichhardt Development Control Plan 2013. The unnamed rear laneway is regarded as a medium width lane in accordance with the controls. The relevant controls under C6 are a maximum side wall height of 3.6m, a 45° building envelope taken from the top of the side wall and a maximum roof height of 6m. The proposed irregular asymmetrical roof form shape does not comply with the laneway controls building envelope and is considered overbearing to adjoining neighbours as well as out of character in the conservation area.

Additionally, the site already exceeds the permissible FSR and additional FSR created by a first floor studio would not be supported.

Parking

The application was referred to Council's engineer who has advised as follows:

The submission lacks detail and as such a comprehensive review of the proposal could not be undertaken. The following general advice is based on the information provided.

The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:

- a. The garage and carport slab or driveway must rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- b. A minimum of 2200 mm 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 both sides of the access and parking shall be provided at natural scale of 1:25, demonstrating compliance with the above

requirements. The long section shall begin from the centre line of the adjacent road to a minimum of 3 metres into the property;

- d. The parking spaces 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 for a single garage, and clear internal dimensions 6000 mm x 5400 mm (length x width) and door opening width of 5300 mm for a double garage. 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. Plans of the proposed access and adjacent road, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with the AS/NZS 2890.1:2004. The plan must include 900mm wing of layback on each side of the crossings at the kerb line.

It does not appear that sufficient space is available for pedestrian access to the garage from the laneway. Dimensions of the garage and pedestrian access must be shown on the plans.

Stormwater

The application was referred to Council's engineer who has advised as follows:

The submission lacks detail and as such a comprehensive review of the proposal could not be undertaken. The following general advice is based on the information provided.

1. Documentation addressing all relevant requirements of Part E: WATER of Council's DCP 2013 must be submitted with the development application.
2. Managing Stormwater within the site and compliance with the relevant controls of Section E1.1.3 and E1.2.2 of the DCP must be addressed;
 - C1 – The site layout must be designed to minimise disruption or disturbance of land surfaces or natural drainage patterns.
 - C2 – C3 – Boundary fences must be of lightweight or partially open construction.

- C4 – The site drainage system must include a pipe system for frequent rainfall events combined with an overland flow path to convey larger flows that are generated during storms.
- C7 – A suitable step must be provided between the external finished surface levels and adjacent finished floor levels.
3. Water Disposal in accordance with Section E1.2.5 (C1 and C4(a)). Stormwater runoff from all roof and paved areas must be drained by gravity to the kerb and gutter.
4. A Stormwater Drainage Concept Plan (SDCP), prepared by a qualified Civil Engineer must be provided with the development application. The design must comply with the requirements of Council's DCP 2013 and make provision for the following:
- a) All drainage pipes must be designed at a minimum grade of 1%, pipe diameter and invert level, pits surface and invert level, finished surface ground levels and finished floor levels must be shown on the drainage plans;
 - b) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
 - c) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets;
 - d) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100 mm;
 - e) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

Key Numerical compliance (Development Standards)

Calculations could not be made of the below development standards as the plans do not provide dimensions.

Numerical Control	Proposal	Non-compliance	Compliance
Floor Space Ratio Maximum permissible:	0.7:1 or 120.4sqm	unknown	No
Landscaped Area	15% or 25.8sqm	unknown	unknown
Site Coverage	60% or 103.2sqm	unknown	unknown

Any breach of the above development standards would require a clause 4.6 Exception Request even if the non-compliance is existing. Please note that further exceedance of FSR for a first floor above the garage would not be supported. The subject site is considered to have already reached its development potential and no further increase in FSR would be supported as it would undermine the Floor Space Ratio development standard for this area.

Note: Any breach of a development standard under the LEP of more than 10% must be reported to the Inner West Local Planning Panel (IWLPP) for determination. This process can delay your application and will require further assessment by the IWLPP members.

Development in areas subject to Aircraft Noise

The property is located within the 25-30, Australian Noise Exposure Forecast (2033) Contour (ANEF). Council is required to take into consideration the guidelines provided in Australian Standard AS2021 - 2000 - Acoustics - Aircraft noise intrusion - Building Siting and Construction (AS2021 - 2000) regarding noise reduction for residential purposes where the ANEF exceeds 20. Under the provisions of the Local Environmental Plan, Council must be satisfied that the development will meet the interior noise levels specified in Australian Standard AS2021-2000.

The development would need to be noise attenuated in accordance with Australian Standard AS2021-2000 - Acoustics - Aircraft Noise Intrusion-Building Siting and Construction. This matter is required to be addressed with any Development Application lodged for the proposal. It would be advisable to engage a suitably

qualified Acoustic Consultant to carry out an assessment of the proposal and prepare an Acoustic Report based on the requirements of AS2021-2000 which should accompany any Development Application lodged for the proposal. This may also assist you with ensuring your design is within budget as often requirements to address aircraft noise can increase the cost of construction.

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.

Contributions Plans

An approved Development Application will be subject to the provision of Development Contributions in accordance with the Leichhardt Developer Contributions Plans and Sections 7.11 or 7.12 of the Environmental Planning and Assessment Act 1979, respectively. The proposal submitted with this PDA would be subject to Section 7.12.

Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020

The Section 7.12 Levy is based on the estimated cost of the proposed development at the time the application is lodged. The Levy is based on the estimated cost of building and construction works as follows:

- 0.5% for development costing more than \$100,001 and up to \$200,000
- 1.0% for development costing more than \$200,000

Any contribution will be imposed on a development consent issued.

National Construction Code (NCC)

An assessment of the proposal against the provisions of the NCC has not been carried out. It is advised you seek independent advice regarding the development's compliance with the NCC.

Documentation

For your information, document requirements for the lodgement of a Development Application are listed at the end of the Development Application form. Further detail is available in the DA Document Requirements which can be viewed through the following links:

[Development Application form](#)
[DA Document Requirements](#)

In addition to the matters listed, you will be required to provide the following specific requirements:

Once you have reviewed the advice and developed your plans, you may wish to obtain further advice from the advisory section.

Conclusion

Council has undertaken an assessment of your proposal and it is considered that in principle, a first floor addition over the parking space cannot be contemplated on the site. The asymmetrical design of the proposed first floor is not appropriate in the heritage conservation area. Additionally, the subject site is considered to have already reached its development potential and no further increase in FSR would be supported as it would undermine the Floor Space Ratio development standard for this area.

The following key issues have been identified:

- Non-compliant with maximum FSR prescribed under Clause 4.4 of the LLEP 2013;
- Heritage impacts which do not satisfy Clause 5.10 of the LLEP 2013;
- Proposed first floor studio does not comply with C1.18 – Laneways of the LDCP 2013;
- Solar access does not comply with C3.9 of LDCP 2013;

- Privacy impacts in relation to C3.11 – Visual Privacy of LDCP 2013;

In this regard, it is unlikely an application of this nature would be supported.

It is considered that providing a wall to the existing parking space to make it an enclosed garage could be supported if you wanted to pursue this option as it would not add additional bulk to the site.

Next Steps

After considering this advice, Council recommends that you seek further PDA advice prior to lodgement of a Development Application if you wish to pursue any further works other than enclosing the existing parking space into a garage and retention of the existing skillion roof. If you wish to pursue further advice on amended plans for this proposal, the applicable fee in this circumstance is \$211.45 (50% of the original PDA fee) for each set of amended plans as a 'supplementary PDA'. An additional fee of \$153.90 is required for any future meetings held. A supplementary PDA has the benefit of the same assessment officer (where possible) and that officer having an understanding of the site and objectives.

While the pre-lodgement meeting and these minutes attempt to identify significant issues during the initial phases of design, please note that the assessment provided in these minutes does not have the benefit of a full planning assessment and should not be considered exhaustive. This is largely due to the proposal not being notified to surrounding neighbours who may raise issues and the extent of information provided with the application. It is recommended that you discuss your proposal with your neighbours to identify any concerns they may have. In endeavouring to address any concerns raised by your neighbours and within this advice and submitting a supplementary PDA, Council can complete a more detailed assessment.

We hope that this advice assists you. If you have any further enquiries, please contact **Anna Walker** on **02 9392 5778** or **anna.walker@innerwest.nsw.gov.au**.



Adele Cowie
Team Leader Assessments

DISCLAIMER

The aim of pre development application consultation is to provide a service to people who wish to obtain the views of Council staff about the various aspects of a preliminary proposal, prior to lodging a DA. The advice can then be addressed or at least known, prior to lodging a DA. This has the following benefits:

- Allowing a more informed decision about whether to proceed with a DA; and
- Allowing matters and issues to be addressed especially issues of concern, prior to lodging a DA. This could then save time and money once the DA is lodged.

All efforts are made to identify issues of relevance and likely concern with the preliminary proposal. However, the comments and views in this letter are based only on the plans and information submitted for preliminary assessment and discussion at the PDA consultation. You are advised that:

- The views expressed may vary once detailed plans and information are submitted and formally assessed in the development application process, or as a result of issues contained in submissions by interested parties;
- Given the complexity of issues often involved and the limited time for full assessment, no guarantee is given that every issue of relevance will be identified;
- Amending one aspect of the proposal could result in changes which would create a different set of impacts from the original plans and therefore require further assessment and advice;
- This PreDA advice does not bind Council officers, the elected Council members, or other bodies beyond Council in any manner.

Appendix D Pre-DA Minutes 2



Sago Design
131 Catherine Street
LEICHHARDT NSW 2040

21 June 2021

Dear Sir/Madam

**“FOLLOW UP”
PRE-DEVELOPMENT APPLICATION ADVICE
SITE: 41 Mackenzie Street LEICHHARDT NSW 2040
REFERENCE: PDA/2021/0164**

I refer to your Pre-Development Application (PDA) with respect to the above site and we have reviewed the issues raised as part of your previous proposal - **PDA/2020/0502** and the amended design.

The following table is a summary of the meeting:

Attendees (Applicant)	Amy Sullivan, Lachlan Delaney, Elise McHugh and Stephen Cannane
Attendees (Council)	Chirag Bhavan and Iain Watt
Proposal	ENCLOSURE OF REAR GARAGE WITH NEW ROOF STRUCTURE, LAUNDRY & MUD ROOM.
Key planning controls	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Leichhardt Local Environmental Plan 2013 (LLEP 2013) • Leichhardt Development Control Plan 2013 (LDCP 2013) • Draft Inner West Local Environment Plan 2020 (Draft IWLEP 2020)

Inner West Council
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PO Box 14, Petersham NSW 2049

Permissibility & Key constraints	<ul style="list-style-type: none"> • Zoning: R1 General Residential • Heritage Conservation Area • ANEF Contour (25-30) • External Referrals: Ausgrid
Key issues	<ul style="list-style-type: none"> • Impact on Heritage Item/Conservation Area • Neighbouring Amenity Impacts (Visual bulk, solar access, privacy, views) • Stormwater • Parking • Non-compliance with Development Standards

The following ‘issues based advice’ and information is provided to assist in the preparation of a Development Application. As a result of the issues raised during our meeting, you may benefit from submitting a supplementary PreDA, prior to lodging your Development Application with the Council.

For ease of reference the headings of the issues raised in PDA/2020/0502 are included below in italics with comments provided in response to the plans and information lodged in PDA/2021/0164.

‘Issues based’ planning assessment

1. State Environmental Planning Policy (Infrastructure) 2007

PDA/2020/0502

The following comments were raised in response to the above mentioned application and remain relevant to the proposal:

In accordance with Clause 45 of SEPP Infrastructure the proposed works would be required to be referred to Ausgrid for comment given the location of an existing power pole in the rear lane.

2. Heritage & Design

A key element of your particular site is that it is identified as is a contributory dwelling located within the Leichhardt Street / Stanley Street Heritage Conservation Area (C11 in Schedule 5 of the Leichhardt LEP 2013). Assessment of the proposal against the requirements of Clause 5:10 of the LEP found:

The proposal includes demolition of the existing garage and construction of a new garage with laundry and mud room and storage in the roof space.

Pre-DA advice was sought for the proposed rear garage and studio over at 41 Mackenzie Street, Leichhardt (PDA/2020/0502). The application was referred to council's heritage specialist who supported the proposal, subject to the amendments below. Additional commentary is provided in respect to the drawings submitted with the DA.

1. *It is recommended that the design be amended to incorporate the following design changes:*
 - a. *The garage and studio building and its gable roof form are to be redesigned so it has a maximum side wall height of 3.6m on both the northern and southern facades with a 45° roof pitch and a maximum roof height of 6m. The gable roof form is to be symmetrical in its presentation to the laneway.*

Comment: Amended.

- b. *Openings visible from the public domain, e.g. in the rear (laneway) elevation, must be vertically proportioned, employing traditional design (timber sash) and materials (timber frame).*

Comment: Amended.

- c. *The solid timber louvers are to be deleted from the rear elevation so that the detail of the windows is visible from the laneway.*

Comment: Timber louvres have been retained as the opening is a ventilation hatch to the roof space within the gable roof form, which is acceptable.

2. *The Shale Grey proposed for the roofing is to be replaced with a pre-coloured traditional corrugated steel for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby". The Material Palette is to be amended accordingly.*

Comment: Shale Grey is proposed which is acceptable.

3. *If skillion dormers are proposed, they are to be designed in accordance with the following:*
- i. *be formed with a lesser roof pitch than the main roof, sloping in the same direction ("butterfly" dormer forms are not permitted);*
 - ii. *contain windows of vertical proportions either single, a pair or a group of three;*
 - iii. *not exceed 2,200mm in width and not be a dominant element in the roof form;*
 - iv. *not exceed 1,200mm in height;*
 - v. *be located at least 300mm below the ridge line measured on the slope of the roof;*
 - vi. *be set at least 500mm away from the edge of the roof;*
 - vii. *have windows, front lining boards, fascias and barge boards of painted timber;*
 - *have side walls (cheeks) as weatherboards or shingles or fibre cement sheet with battens over joints and edges; and*
 - ix. *have eaves extending past the vertical face of windows and cheeks.*

Comment: No dormers proposed.

The revised design, colours and materials are acceptable as they will result in a structure that is complementary to the character of the Leichhardt Street / Stanley Street Heritage Conservation Area and in particular comply with the controls in C1.18 of the DCP.

In light of the discussion above, and as discussed at the meeting, the proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of the Leichhardt Street / Stanley Street Heritage Conservation Area and is generally 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.

3. Neighbouring Amenity Impact (Privacy, Visual Bulk, View Loss)

PDA/2020/0502

The following comments were raised in response to the above mentioned application and remain relevant to the proposal:

The protection of residential amenity is a sensitive issue for many development applications. As a result it is highly encouraged that you make your neighbours aware of your proposal as soon as possible to understand and respond to any concerns they may have, as any DA will likely be notified to them.

View Loss

Your attention is drawn to C3.19 - Views within the Leichhardt Development Control Plan 2013. Please consider whether there would be view loss to any surrounding properties as a result of your proposal.

4. Solar Access and Overshadowing

Solar access and overshadowing diagrams have not been submitted as part of the Pre DA application and thus no assessment of solar access and overshadowing could be conducted.

The Development Control plan sets objectives for development to minimise overshadowing and the reduction of solar access and therefore the amenity of the neighbouring properties. As such any proposed development will need to demonstrate compliance with the following:

- C12 - Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.
- C15 - Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.
- C18 - Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.
- C19 - Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

PDA/2020/0502

The following comments were raised in response to the above mentioned application: *Solar access and overshadowing diagrams have been submitted as part of the PDA application and would indicate that there is additional overshadowing of the private open space of 39 Mackenzie between 10am and 12 pm. Given that the adjoining dwelling at No.39 does not currently receive sufficient solar access additional overshadowing is not supported.*

PDA/2021/0164

Solar access and overshadowing diagrams have not been submitted as part of the PDA application and thus no assessment of solar access and overshadowing could be conducted.

As discussed at the meeting, given the pitched roof being pursued, it is likely that additional shadows will be cast onto the private open space of No. 39 Mackenzie Street. As noted from the previous PDA, it does appear that this adjoining property currently receives the requisite solar access and, in this regard, no further overshadowing is permitted.

It is recommended that you work backwards, to ensure compliance with Council's solar access controls as it is unlikely that a variation would be supported on the site. Further design changes may be required to achieve compliance with these controls such as reduced pitching points, reducing the pitch of the roof and potentially pursuit of a flat roof.

Note:

- Fence shadows are to be included as existing shadows unless a new fence is being proposed as part of the application.
- The additional impact i.e., additional shadows cast by the proposal should be clearly shown and differentiated in plan from existing shadows cast.
- The entire site boundaries and built form of neighbouring properties affected is to be shown
- '50% of the total area (adjacent to living room)' is calculated taking into account the entire area of private open space of a neighbouring property i.e., if the adjoining rear yard is 50sqm, solar access to 25sqm is to be retained. Similarly, if the adjoining property does not currently receive solar access to 25sqm of their private open space, for example, no further overshadowing is permitted.

You will need to submit shadow diagrams that indicate the effect in plan view of existing and proposed overshadowing for **21 June at hourly intervals between 9:00am and 3:00pm**.

Shadow diagrams must distinguish the extent of shadows cast by existing and proposed buildings, including fences and buildings on adjoining land and areas of private open space of those buildings where relevant. They must correctly show the following:

- Position of existing and proposed buildings on the site including boundary fencing but excluding shadows cast by trees.
- Position of buildings, fences and all site boundaries on adjoining land.
- If new shadows will fall upon any wall of a neighbouring property, elevation or vertical shadow diagrams are required.
- Existing and proposed shadows cast at winter solstice (21 June) upon the site, adjoining land and buildings on adjoining land (show altitude and azimuth angles). These are required for 9am, 12noon and 3pm at minimum however adequate information to demonstrate compliance with the relevant controls must be submitted.
- Where the proposal does not comply with the applicable overshadowing controls additional hourly shadow diagrams at the winter solstice and equinoxes (21 September/March) are required.
- Note: The positioning and levels of windows and openings on the walls neighbouring buildings must be identified from the submitted survey plan.
- The entire area that is/will be cast in shadow must be identified.
- Site boundaries of each affected property must be shown, not just portions of the sites.
- the true north point (not magnetic north).
- details on the use of the rooms that have windows or skylights that are impacted on by the development.

5. Stormwater/Flooding

Documentation addressing all relevant requirements of Part E: WATER of Council's DCP 2013 must be submitted with the development application, including the following:

- a) Managing Stormwater within the site and compliance with the relevant controls of Section E1.1.3 and E1.2.2 of the DCP must be addressed;

- C1 – The site layout must be designed to minimise disruption or disturbance of land surfaces or natural drainage patterns;
 - C4 – The site drainage system must include a pipe system for frequent rainfall events;
 - C7 – A suitable step must be provided between the external finished surface levels and adjacent finished floor levels.
- b) Water Disposal in accordance with Section E1.2.5 (C1 and C4(a)). Stormwater runoff from all roof and paved areas must be drained by gravity to the kerb and gutter of a public road.
- c) A Stormwater Drainage Concept Plan (SDCP), prepared by a qualified Civil Engineer must be provided with the development application. The design must comply with the requirements of Council's DCP 2013 and make provision for the following:
- i. All drainage pipes must be designed at a minimum grade of 1 %, pipe diameter and invert level, pits surface and invert level, finished surface ground levels and finished floor levels must be shown on the drainage plans;
 - ii. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
 - iii. An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets;
 - iv. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100 mm;
 - v. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

6. Access and Parking

Plans must be prepared by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities complies with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level 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 garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004. The width of the rear lane and dimensions of the garage must be shown on the plan. The width of the door opening must comply with Section C1.11.5 of Council's DCP, PART C: PLACE.
- e) Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- f) A plan of the proposed access and adjacent Road, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- g) The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;

7. Development in areas subject to Aircraft Noise

PDA/2020/0502

The following comments were raised in response to the above mentioned application and remain relevant to the proposal:

The property is located within the 25-30 Australian Noise Exposure Forecast (2033) Contour (ANEF). Council is required to take into consideration the guidelines provided in Australian Standard AS2021 - 2000 - Acoustics - Aircraft noise intrusion - Building

Siting and Construction (AS2021 - 2000) regarding noise reduction for residential purposes where the ANEF exceeds 20. Under the provisions of the Local Environmental Plan, Council must be satisfied that the development will meet the interior noise levels specified in Australian Standard AS2021-2000.

The development would need to be noise attenuated in accordance with Australian Standard AS2021-2000 - Acoustics - Aircraft Noise Intrusion-Building Siting and Construction. This matter is required to be addressed with any Development Application lodged for the proposal. It would be advisable to engage a suitably qualified Acoustic Consultant to carry out an assessment of the proposal and prepare an Acoustic Report based on the requirements of AS2021-2000 which should accompany any Development Application lodged for the proposal. This may also assist you with ensuring your design is within budget as often requirements to address aircraft noise can increase the cost of construction.

8. Key Numerical compliance (Development Standards)

The following table indicates the outcome of the calculation of your proposal prepared by Council. If these differ from your calculations it is recommended you discuss the possible reasons with the assessment officer.

Numerical Control	Proposal	Non-compliance	Compliance
Floor Space Ratio (0.7:1)	0.9:1 or 154.50sqm	28.09% or 33.88sqm	No
Landscaped Area (15%)	21.55% or 37.13sqm	N/A	Yes
Site Coverage (60%)	67.73% or 116.70sqm	12.88% or 13.32sqm	No

As discussed at the meeting, any future DA will be assessed under the current suite of development controls (LLEP2103 and LDGP2013). Irrespective of any previous approvals and/or any existing variations on the site, the proposal will result in an additional gross floor area (GFA) and an FSR variation greater than 10% which will require the application to be reported to the Inner West Local Planning Panel (IWLPP) for determination. This process can delay your application and will require further assessment by the IWLPP members.

As discussed at the meeting, a robust Clause 4.6 Exception Request is required with any future DA addressing the proposed FSR and Site Coverage breaches. To assist in the preparation of this document, it is recommended that you focus on the merits of the proposal within the context of the site rather than relying on previous approvals on the subject site and/or adjoining sites. You are advised that Council and the IWLLP are under no obligation to accept a Clause 4.6 Exception Request unless it is well justified.

Note:

- Stairs on all levels are to be included as GFA and are to be included as part of your calculation of FSR
- The previous consent is irrelevant for the calculation of GFA for the proposed development

9. 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.

10. Contributions Plans

An approved Development Application will be subject to the provision of Development Contributions in accordance with the Leichhardt Developer Contributions Plans and Sections 7.11 or 7.12 of the Environmental Planning and Assessment Act 1979, respectively. The proposal submitted with this PDA would be subject to Section 7.12.

Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020

The Section 7.12 Levy is based on the estimated cost of the proposed development at the time the application is lodged. The Levy is based on the estimated cost of building and construction works as follows:

- 0.5% for development costing more than \$100,001 and up to \$200,000

- 1.0% for development costing more than \$200,000

Any contribution will be imposed on a development consent issued.

11. National Construction Code (NCC)

An assessment of the proposal against the provisions of the NCC has not been carried out. It is advised you seek independent advice regarding the development's compliance with the NCC.

12. Documentation

For your information, document requirements for the lodgement of a Development Application are listed at the end of the Development Application form. Further detail is available in the DA Document Requirements which can be viewed through the following links:

[Development Application form](#)
[DA Document Requirements](#)

Once you have reviewed the advice and developed your plans, you may wish to obtain further advice from the advisory section.

Conclusion

Council has undertaken an assessment of your proposal and it is considered that in principle, a new garage structure can be contemplated on the site. However, the design and location of the addition needs to be reviewed and further analysis undertaken to address the proposed impacts on neighbouring amenity.

The following key issues have been identified:

- Impact on Heritage Item/Conservation Area
- Neighbouring Amenity Impacts (Visual bulk, solar access, privacy, views)
- Stormwater
- Parking
- Non-compliance with Development Standards

It is recommended that the design changes discussed in the body of this advice letter be incorporated into an amended proposal in order to address the issues above.

Next Steps

If you wish to pursue further advice on amended plans for this proposal, the applicable fee in this circumstance is 50% of the original PDA fee for each set of amended plans as a 'supplementary PDA'. An additional fee is required for any future meetings held. A supplementary PDA has the benefit of the same assessment officer (where possible) and that officer having an understanding of the site and objectives. Council's Development Advisory Services team are dedicated to working with you to find potential solutions and provide advice that can assist you in progressing your proposed development.

While the pre-lodgement meeting and these minutes attempt to identify significant issues during the initial phases of design, please note that the assessment provided in these minutes does not have the benefit of a full planning assessment and should not be considered exhaustive. This is largely due to the proposal not being notified to surrounding neighbours who may raise issues and the extent of information provided with the application. It is recommended that you discuss your proposal with your neighbours to identify any concerns they may have. In endeavouring to address any concerns raised by your neighbours and within this advice and submitting a supplementary PDA, Council can complete a more detailed assessment.

We hope that this advice assists you. If you have any further enquiries, please contact Chirag Bhavan on 02 9392 5529 or chirag.bhavan@innerwest.nsw.gov.au



Adele Cowie
Team Leader - Assessments

DISCLAIMER

The aim of pre development application consultation is to provide a service to people who wish to obtain the views of Council staff about the various aspects of a preliminary proposal, prior to lodging a DA. The advice can then be addressed or at least known, prior to lodging a DA. This has the following benefits:

- Allowing a more informed decision about whether to proceed with a DA; and
- Allowing matters and issues to be addressed especially issues of concern, prior to lodging a DA. This could then save time and money once the DA is lodged.

All efforts are made to identify issues of relevance and likely concern with the preliminary proposal. However, the comments and views in this letter are based only on the plans and information submitted for preliminary assessment and discussion at the PDA consultation. You are advised that:

- The views expressed may vary once detailed plans and information are submitted and formally assessed in the development application process, or as a result of issues contained in submissions by interested parties;
- Given the complexity of issues often involved and the limited time for full assessment, no guarantee is given that every issue of relevance will be identified;
- Amending one aspect of the proposal could result in changes which would create a different set of impacts from the original plans and therefore require further assessment and advice;
- This PreDA advice does not bind Council officers, the elected Council members, or other bodies beyond Council in any manner.

Appendix E Clause 4.6 for Site Coverage

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD
CLAUSE 4.3A LANDSCAPED AREAS FOR RESIDENTIAL ACCOMODATION IN
ZONE R1
LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This submission seeks a variation to Clause 4.3A of the Leichhardt Local Environmental Plan 2013, which relates to site coverage for residential accommodation in Zone R1.

This submission has been prepared with regards to a development application seeking alterations and additions to the existing garage outbuilding.

As detailed in this written request for a variation to 4.3A of the Leichhardt Local Environmental Plan 2013, a numerical variation is sought to subclause 4.3A(3)(b) for the maximum site coverage. It is discussed that the proposal meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

2. Site Background

The subject site is commonly known as 41 MacKenzie Street, Leichhardt, and is legally known as Lot 4 in Deposited Plan 108425. The site is located on the eastern side of MacKenzie Street; has rear access to an unnamed laneway; and is on a block bounded to the north by Fowler Street and to the south by another laneway. Refer to Figure 1 Site Location Map for the context of the site within its immediate locality.

The site is generally rectangular, but is irregular in shape with a 4.61m frontage to Mackenzie Street and 4.565m rear lane frontage. The northern side boundary measures 37.29m, while the southern measures 36.665m. The overall site is 172m².

Currently located on the subject site is a two storey with attic rendered brick terrace with a part tile, part metal roof. A partially enclosed garage abuts the rear laneway with a garage door and separate pedestrian doorway.



FIGURE 1: AERIAL SITE CONTEXT (SOURCE: SIX MAPS)

4.6 – Site Coverage

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential garage outbuilding is permissible in the zone.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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 a 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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General 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:*

4.6 – Site Coverage

- (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 all 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 use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7; and

4.6 – Site Coverage

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which this variation relates is the Leichhardt Local Environmental Plan 2013.

The development standard to which this variation relates is to **Clause 4.3A Landscaped areas for residential accommodation in Zone R1**, which reads as follows:

- (1) *The objectives of this clause are as follows—*
 - (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.*
- (2) *This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.*
- (3) **Development consent must not be granted to development to which this clause applies unless—**
 - (a) *the development includes landscaped area that comprises at least—*
 - (i) *where the lot size is equal to or less than 235 square metres—15% of the site area, or*
 - (ii) *where the lot size is greater than 235 square metres—20% of the site area, and*
 - (b) the site coverage does not exceed 60% of the site area.**
- (4) *For the purposes of subclause (3)—*
 - (a) *the site area is to be calculated under clause 4.5 (3), and*
 - (b) *any area that—*
 - (i) *has a length or a width of less than 1 metre, or*
 - (ii) *is greater than 500mm above ground level (existing),*

is not to be included in calculating the proportion of landscaped area, and

 - (c) *any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if—*
 - (i) *it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or*
 - (ii) *the finished floor level is 500mm or less above ground level (existing).*

4. Extent of Non-Compliance

The proposed development complies with the minimum landscaped area requirement of 15% under subclause (3)(a).

However, under subclause (3)(b), the site coverage proposed as part of the development application remains the same as the existing site circumstance at 117.4m², being 68.26% of the site. The maximum permissible site cover based on 60% of the site area (172.0m²) would be 103.20m². Therefore, a non-compliance of 14.20m², or 13.76% will continue to result from the extent of works on the subject site.

A written justification is required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49]

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
Second (applicable)	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that 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.</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.</i>

In respect of the site coverage development standard, the second method is principally invoked. Nevertheless, it will be discussed in this written variation to the standard that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard, as per the first method outlined in the table above.

The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying purpose and objectives of the clause is unnecessary and unreasonable for the purposes of the development, as the existing non-compliance is fully retained. There is no additional footprint or site coverage proposed, as it is redevelopment of an existing outbuilding. Compliance would derogate from the existing amenities and enjoyment experienced by current and future residents, as well as depreciate the site circumstance and context by removing existing off-street parking or usable private open space.

Compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives supporting Clause 4.3A for landscaped area and site coverage are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

It is acknowledged that the *Draft Inner West Local Environmental Plan 2020*, which has completed public exhibition at the time of preparing this variation, has maintained the objectives of this standard, however revised the objectives of the R1 General Residential zone, and these objectives have been considered as well.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3A.

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

(a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,

The proposed development provides adequate landscaped area suitable for tree planting and the amenity of future occupants. This is demonstrated through the compliance with Clause 4.3A(3)(a)(i) minimum landscaped area control of 15% of the site area.

...(b) to maintain and encourage a landscaped corridor between adjoining properties,

As per the first objective, the proposal meets the minimum landscaping requirement and contributes to the landscape corridor of Mackenzie Street. See Figure 1, where landscaping is central to each allotment.

...(c) to ensure that development promotes the desired future character of the neighbourhood,

The subject site is notably within the Piperston Distinctive Neighbourhood. The proposal is considered to align with the desired future character of the Piperston Distinctive Neighbourhood. The following comments are made with regard to the objectives of the desired future character of the distinctive neighbourhood:

- The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.

- The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.
- The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape. As previously mentioned, the unnamed laneway is a service lane utilised solely by dwellings with rear lane access and for waste collection. The laneway itself also does not form part of the heritage conservation area.
- There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.
- The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.
- The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.

...(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,

Civil stormwater drawings by an engineer have been submitted with the development application, demonstrating that adequate stormwater drainage can be achieved. Existing drainage patterns will not be significantly affected by the enclosure and modified roof form.

...(e) to control site density,

The proposed development continues to provide for the existing dwelling, and the outbuilding footprint is not modified. Consequently, the site density is not significantly modified by the proposal, which only seeks to formally enclose the existing footprint of an existing structure, with additional roof space.

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

As stated previously, the proposed development incorporates adequate space for landscaping, demonstrated through the compliance with Clause 4.3A(3)(a)(i) for the minimum landscaped area control of 15% of the site area. Furthermore, the proposed development includes approximately 20m² of private open space in the form of a raised deck (which contributes to the existing non-compliance), with over 30m² of landscaped area within the rear setback, which is significantly more than the minimum 16m² requirement specified in part C3.8 of the Leichhardt DCP 2013. Thus, despite the variation to the site coverage control, the proposed building envelope will still allow for adequate landscaped area and private open space.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

6. Are there Sufficient Environmental Planning Grounds?

A contravention of Clause 4.3A of LEP 2013 is justified as there are sufficient environmental planning grounds to do so. The assessment above demonstrates there are no adverse environmental impacts that specifically as a result of the proposed development for the general renovation of an existing outbuilding with no increase to the footprint and site coverage of the existing site.

The proposal does not affect the primary Mackenzie Street streetscape characteristics or relevant objectives of both the numerical standards, and the residential zone. The proposal therefore will not result in any unreasonable amenity or environmental impacts. As such the proposal provides a respectful response to the general character of the locality.

It is worth noting that the amenity of the site and surrounds, existing view corridors and solar access patterns will not be impacted by breach in Council's site coverage standard. The continued variation in site coverage still allows for adequate landscaping and private open space on the subject site.

The proposal will provide ongoing and existing residential amenity and increase the availability of residential storage and off-street parking within a defined residential area. Further, the development does not detract from the future desired character of the locality and does not compromise neighbouring residential amenity.

In this case, strict compliance with the development standard for site coverage in the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable as the development is an existing numerical non-compliance that is appropriate scale for the site; promotes ongoing residential uses and; does not cause a detriment to the site's existing environmental context.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under **Part 5** and **Part 6** of this written request.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Each objective is addressed individually below, to demonstrate consistency.

Zone R1 General Residential

(1) Objectives of zone:

- *To provide for the housing needs of the community.*

The proposed alterations and additions to the outbuilding will enhance the provision of housing amenities on the site. The proposed development caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking.

- *To provide for a variety of housing types and densities.*

The proposed development relates to the modification of a detached garage outbuilding that caters for the housing needs of the community by improving upon existing development, for

ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking. The density of development is not modified in terms of site coverage, and the modified roof and height of the outbuilding results in notably minor environmental impact.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development seeks to retain the existing residential use. No other land uses are proposed.

- *To improve opportunities to work from home.*

The original intention of the development was to provide a space to work from home in the form of a two-storey studio outbuilding, however this was contradicted during Pre-DA discussions, and consequently the current proposal remains in a single storey garage form, with roof storage.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposed garage outbuilding has been designed in a manner to be compatible with the character, style, orientation and pattern of surrounding buildings and streetscape.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

As previously stated, the proposed development incorporates adequate landscaped area that will provide for ongoing amenity experienced by current and future occupants of the site.

- *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.*

No subdivision proposed.

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development maintains adequate landscaping and private open space on the site. The proposed development is otherwise generally compliant with the Leichhardt LEP 2013 and Leichhardt DCP 2013 controls and thus will protect the existing amenity of adjoining developments.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3A, as well as the objectives of the R1 General Residential Zone, and overall does not result in any negative environmental outcome by maintaining the present circumstances of existing development on the site: the proposed development does not detract from the existing pattern and rhythm of development within Mackenzie Street.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a development that is in keeping with the existing character of the locality and nature of the R1 General Residential zone.

The proposal provides for the orderly and economic development of the site. Given the site's context and extent of existing development, it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

The built form, height and scale of the development are considered to be consistent with the character of the R1 General Residential zoning applying to the site, while also respecting the adjoining and opposite properties, as well as the wider neighbourhood and local context.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5, 6 and 7 of this written request. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the LLEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied (Clause 4.3A(3)(b) maximum site coverage) as well as the objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with Council's Development Control Plan.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(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*

4.6 – Site Coverage

- (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.
- (c) **Note.** When this Plan was made it did not include all 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."

Comment:

This variation does not relate to the subdivision of land in the listed zones under subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was prepared as part of the development application.

The development is not affected by Clause 5.4.

9. Conclusion

The proposal does not strictly comply with the maximum site coverage control as prescribed by Clause 4.3A of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum site cover control of 60% is not necessary for the circumstance of the site, and that a better outcome is achieved for this development by allowing flexibility in the application.

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Plan 4011

Appendix F Clause 4.6 for Floor Space Ratio

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD
CLAUSE 4.4 FLOOR SPACE RATIO
LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This submission seeks a variation to Clause 4.4 of the Leichhardt Local Environmental Plan 2013, which relates to the Floor Space Ratio (gross floor area) control for development.

This submission has been prepared with regards to a development application seeking alterations and additions to the existing garage outbuilding.

As detailed within this written request for a variation to floor space ratio, being a development standard under the Leichhardt LEP 2013, the proposed development meets the requirements prescribed under Clause 4.6 of the Leichhardt LEP 2013.

2. Site Background

The subject site is commonly known as 41 MacKenzie Street, Leichhardt, and is legally known as Lot 4 in Deposited Plan 108425. The site is located on the eastern side of MacKenzie Street; has rear access to an unnamed laneway; and is on a block bounded to the north by Fowler Street and to the south by another laneway. Refer to Figure 1 Site Location Map for the context of the site within its immediate locality.

The site is generally rectangular, but is irregular in shape with a 4.61m frontage to Mackenzie Street and 4.565m rear lane frontage. The northern side boundary measures 37.29m, while the southern measures 36.665m. The overall site is 172m².

Currently located on the subject site is a two storey with attic rendered brick terrace with a part tile, part metal roof. A partially enclosed garage abuts the rear laneway with a garage door and separate pedestrian doorway.



FIGURE 1: AERIAL SITE CONTEXT (SOURCE: SIX MAPS)

4.6 – Floor Space Ratio

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential garage outbuilding is permissible in the zone.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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 a 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 Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General 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:*

4.6 – Floor Space Ratio

- (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 use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;

- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which this variation relates is the Leichhardt LEP 2013.

The development standard to which this variation relates is to **Clause 4.4 Floor space ratio**, which reads as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that residential accommodation—*
- (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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*
- (2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*
- (2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation—*
- (a) *on land shown edged black or pink on the [Floor Space Ratio Map](#) is not to exceed—*
- (i) *in the case of development on a lot with an area of less than 150 square metres—0.9:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or*
 - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.6:1, or*
- (b) *on land shown edged red or green on the [Floor Space Ratio Map](#) is not to exceed—*
- (i) *in the case of development on a lot with an area of less than 150 square metres—1.0:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or*
 - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.7:1, or*
- (c) *on land shown edged brown on the [Floor Space Ratio Map](#) is not to exceed—*
- (i) *in the case of development on a lot with an area of less than 150 square metres—0.8:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or*

- (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or
- (iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or
- (d) on land shown edged yellow on the *Floor Space Ratio Map* is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

The subject site is identified on the Floor Space Ratio Map (005) as being within Area 2. Refer to the map in Figure 2 below.

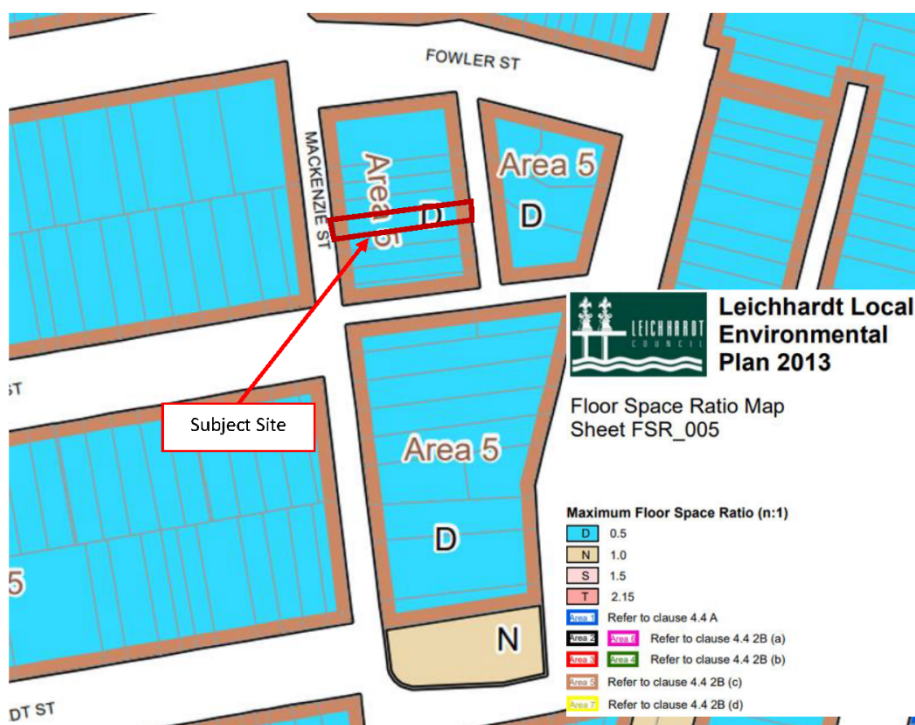


FIGURE 2: FLOOR SPACE RATIO MAP (LEICHHARDT LEP 2013, MAP FSR_005)

The subject site area is 172m² and therefore in accordance with Clause 4.4 (2B)(c)(ii), the maximum permitted FSR is 0.7:1.

A maximum gross floor area (GFA) permitted would therefore be 120.4m². The proposed GFA is 150.70m² (0.88:1), which is a 25% variation from the standard.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

4. Extent of Non-Compliance

As noted above, in accordance with Clause 4.4 of the Leichhardt Local Environmental Plan 2013 a maximum FSR of 0.70:1 is prescribed to the subject site.

A maximum GFA of 120.40m² is permitted, with a total proposed GFA of 150.70m² being sought for an FSR of 0.88:1. A variation of 30.30m² is proposed beyond the standard, being a variation of 25%.

In determining the extent of the non-compliance, it is worth acknowledging the proposed development relates to alterations and additions to an existing semi-open garage outbuilding. There are no changes to the footprint of the outbuilding, and the envelope is marginally modified to include non-habitable roof space for the purpose of storage; and the internal layout modified to incorporate residential amenities such as a bathroom and laundry.

Since approval of the existing outbuilding, the approach to the calculation of gross floor area has been revised, particularly in the case of the Leichhardt GFA it now includes all enclosed car parking for dwelling houses as the DCP has a minimum car parking requirement of 0 car spaces and the gross floor area definition excludes only "car parking to meet the requirements of the consent authority." Consequently, any parking exceeds the requirements which retroactively has resulted in an "existing" variation.

The application before Council only seeks to wholly enclose and renovate an existing garage outbuilding, which is ancillary to the dwelling, and facing upon an unnamed laneway.

Whilst a variation is sought, the proposed works have no negative impacts to surrounding properties and the broader locality, while improving the amenity of the dwelling and ancillary, as will be detailed within this written justification.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below table:

4.6 – Floor Space Ratio

First (applicable)	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
Second (applicable)	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that 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.</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</i>

In respect of the floor space ratio standard, the first and second methods are equally invoked.

The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying purpose and objectives of the clause is unnecessary and unreasonable for the purposes of the development, as the pre-existing non-compliance is fully retained. There is no additional footprint or habitable floor space proposed, as it is redevelopment of an existing outbuilding. Compliance would derogate from the existing amenities and enjoyment experienced by current and future residents, as well as depreciate the site circumstance and context by removing existing off-street parking.

Compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives supporting the floor space ratio standard identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

*(1) The objectives of this clause are as follows—
(a) to ensure that residential accommodation—
(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*

The subject site is notably within the Piperston Distinctive Neighbourhood. The proposal is considered to align with the desired future character of the Piperston Distinctive Neighbourhood. The following comments are made with regard to the compatibility of the proposal with the objectives of the desired future character for the distinctive neighbourhood:

- The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.
- The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.
- The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape. As previously mentioned, the unnamed laneway is a service lane utilised solely by dwellings with rear lane access and for waste collection. The laneway itself also does not form part of the heritage conservation area.
- There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.
- The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.
- The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.

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

Aside from the FSR standard, the best measures of an appropriate balance of landscaped areas and built form are compliance with the landscaped area and site coverage development standards. In this case, the development is compliant with the 15%. While the proposal does not comply with the site coverage standard, as outlined within the Clause 4.6 written variation to that standard, attached separately, it is a similar circumstance in that the non-compliance is a result of the existing site context and extent of existing development on the site.

Further to the above, the proposed works are modest and do not modify the footprint of built structures.

In view of the above, a suitable balance between landscaped areas and built form is achieved regardless of the technical non-compliance with the FSR standard.

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

The controls under Part C1.18 of Council’s DCP require buildings adjacent to a laneway to have a simple form and minimal façade detailing. The rear lane is approximately 6.1 metres wide. As the site fronts a *Medium Lane*, the development is required to be designed with a laneway envelope that has a maximum side wall height of 3.6 metres, a 45 degree building envelope taken from the top of the side wall, and a maximum roof height of 6 metres.

The proposed garage outbuilding has been designed with the following parameters:

- Maximum wall height: 2.924m ✓
- Building envelope: 45 degree pitch, symmetrical roof ✓
- Maximum roof height: 5.2m to top of roof ridge ✓

Therefore, the proposed garage outbuilding is within a bulk and form that is *less* than the maximum allowable. Additionally, the maximum building envelope has been illustrated on the plans to show that the proposed form sits within these design parameters, and therefore complies with the laneway envelope for development fronting a medium lane.

As per the DCP controls, the new building will be built to the laneway alignment, which is consistent with the built form of properties along the lane. The external walls will be constructed in high quality materials and finishes (including masonry and roof cladding) which are compatible with the fabric of the surrounding properties. The development will retain the existing car parking space on the site and will not increase laneway parking or remove any on street parking.

Additionally, following on from the two Pre-DAs prior to lodgement of the formal DA, the proposed built form has been further reduced to hipped roof towards the western end of the garage outbuilding. This greatly assists in ensuring that the impact caused by overshadowing is reduced. This is illustrated in Section A (Drawing No DA400), and as extracted in Figure 3, below.

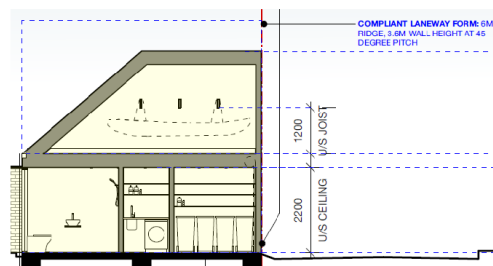


FIGURE 3: SECTION A- SHOWING REDUCED BULK AND SCALE OF THE PROPOSED OUTBUILDING WITH A GABLED FRONT AND HIPPED REAR ROOF FORM

...(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.*

The proposed development is alterations and additions to an ancillary outbuilding detached from an existing dwelling house and as such this objective is not relevant to this application.

Considering the above, the proposed development aligns with the objectives of Clause 4.4. Further, it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

6. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory. Moreover, the additional floor area does not create additional environmental impacts, including but not limited loss of solar access to neighbouring properties, visual or acoustic privacy, loss of landscaped area, any additional site cover or reduced amenity to the site and adjoining neighbours.

The site has an east-west orientation but does receive direct sunlight to the private open space, along the southern boundary. This is reflected in the solar access diagrams submitted with the development application (Drawing No. 600, 601, 602 and 603). The new outbuilding has been designed to sit within the footprint of the existing garage with a modified roof form that provides storage space within the roof cavity. Storage is within the gables roof form that fronts the laneway, and a hipped roof is to the west of the outbuilding, which is intended to minimise the extend of overshadowing to the adjoining southern property at 39 Mackenzie Street. The proposal will not compromise the solar access available to the adjoining northern properties.

The design of the overall modified building envelope has specifically considered the solar access to 39 Mackenzie Street, and this is the reason why the development application pursues a garage with a modest storage, rather than the previously considered first floor addition to the existing garage.

Additionally, the proposed works will enhance ongoing residential amenity of the site by providing additional storage space for a growing family via the garage storage area and additional laundry and bathroom amenities. The variation has not impacted upon the integration of the dwelling and ancillary structures with the desired future character of the area.

It is submitted that a positive planning outcome will result through improved amenity to the existing dwelling without compromising those of the surrounding properties. Generally, and inclusive of the variation, the proposal is considered to provide an appropriate bulk, scale, alignment, and architectural features which positively contribute to the locality. The additional floor space has not jeopardised this outcome.

In this case, strict compliance with the development standard within the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

4.6 – Floor Space Ratio

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under **Parts 4, 5 and 6** of this written variation.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

Contextually the building has regard to surrounding properties and is considered to provide a positive outcome of improving the amenity of the dwelling and ancillary structures without compromising those of the neighbouring properties or the public domain.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Each objective is addressed individually to demonstrate the objectives have been met.

Zone R1 General Residential

(1) Objectives of zone:

- *To provide for the housing needs of the community.*

The proposed alterations and additions to the outbuilding will enhance the provision of housing amenities on the site. The proposed development caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking.

- *To provide for a variety of housing types and densities.*

The proposed development relates to the modification of a detached garage outbuilding that caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking. The density of development is not modified in terms of site cover or habitable floor space, and the enclosure of the existing structure with modified roof and height of the outbuilding results in notably minor environmental impact.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development seeks to retain the existing residential use. No other land uses are proposed.

- *To improve opportunities to work from home.*

The original intention of the development was to provide a space to work from home in the form of a two-storey studio outbuilding, however this was contradicted during Pre-DA discussions, and consequently the current proposal remains in a single storey garage form, with roof storage.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposed garage outbuilding has been designed in a manner to be compatible with the character, style, orientation and pattern of surrounding buildings and streetscape.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

As previously stated, the proposed development incorporates adequate landscaped area that will provide for ongoing amenity experienced by current and future occupants of the site.

- *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.*

No subdivision proposed.

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development maintains adequate landscaping and private open space on the site. The proposed development is otherwise generally compliant with the Leichhardt LEP 2013 and Leichhardt DCP 2013 controls and thus will protect the existing amenity of adjoining developments.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The proposal provides improvements to the amenity of the existing dwelling and garage outbuilding without comprising the amenity of the surrounding development or the public domain. The limited to no consequence of the variation to the standard ensures that the standard and its objectives are not eroded but preserved.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio control within the Leichhardt LEP 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in **Parts 5, 6 and 7** of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the character of the locality, predominantly being dwelling house with rear two storey ancillary structures.

4.6 – Floor Space Ratio

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(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 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.”*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate is submitted with this application.

Clause 5.4 does not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with the maximum floor space ratio prescribed for the subject site as detailed in Clause 4.4 of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the standard does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development standard is appropriate.

4.6 – Floor Space Ratio

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

Krystal Narbey
GAT & Associates
Plan 4011

Attachment F – Clause 4.6 Exception to Development Standards (FSR)

1

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD
CLAUSE 4.4 FLOOR SPACE RATIO
LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This submission seeks a variation to Clause 4.4 of the Leichhardt Local Environmental Plan 2013, which relates to the Floor Space Ratio (gross floor area) control for development.

This submission has been prepared with regards to a development application seeking alterations and additions to the existing garage outbuilding.

As detailed within this written request for a variation to floor space ratio, being a development standard under the Leichhardt LEP 2013, the proposed development meets the requirements prescribed under Clause 4.6 of the Leichhardt LEP 2013.

2. Site Background

The subject site is commonly known as 41 MacKenzie Street, Leichhardt, and is legally known as Lot 4 in Deposited Plan 108425. The site is located on the eastern side of MacKenzie Street; has rear access to an unnamed laneway; and is on a block bounded to the north by Fowler Street and to the south by another laneway. Refer to Figure 1 Site Location Map for the context of the site within its immediate locality.

The site is generally rectangular, but is irregular in shape with a 4.61m frontage to Mackenzie Street and 4.565m rear lane frontage. The northern side boundary measures 37.29m, while the southern measures 36.665m. The overall site is 172m².

Currently located on the subject site is a two storey with attic rendered brick terrace with a part tile, part metal roof. A partially enclosed garage abuts the rear laneway with a garage door and separate pedestrian doorway.



FIGURE 1: AERIAL SITE CONTEXT (SOURCE: SIX MAPS)

4.6 – Floor Space Ratio

The subject site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposed alterations and additions to the existing residential garage outbuilding is permissible in the zone.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“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 a 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 Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General 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:*

4.6 – Floor Space Ratio

- (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 use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;

- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which this variation relates is the Leichhardt LEP 2013.

The development standard to which this variation relates is to **Clause 4.4 Floor space ratio**, which reads as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that residential accommodation—*
- (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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*
- (2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*
- (2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation—*
- (a) *on land shown edged black or pink on the [Floor Space Ratio Map](#) is not to exceed—*
 - (i) *in the case of development on a lot with an area of less than 150 square metres—0.9:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or*
 - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.6:1, or*
 - (b) *on land shown edged red or green on the [Floor Space Ratio Map](#) is not to exceed—*
 - (i) *in the case of development on a lot with an area of less than 150 square metres—1.0:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or*
 - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.7:1, or*
 - (c) *on land shown edged brown on the [Floor Space Ratio Map](#) is not to exceed—*
 - (i) *in the case of development on a lot with an area of less than 150 square metres—0.8:1, or*
 - (ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or*

- (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or
- (iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or
- (d) on land shown edged yellow on the *Floor Space Ratio Map* is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

The subject site is identified on the Floor Space Ratio Map (005) as being within Area 2. Refer to the map in Figure 2 below.

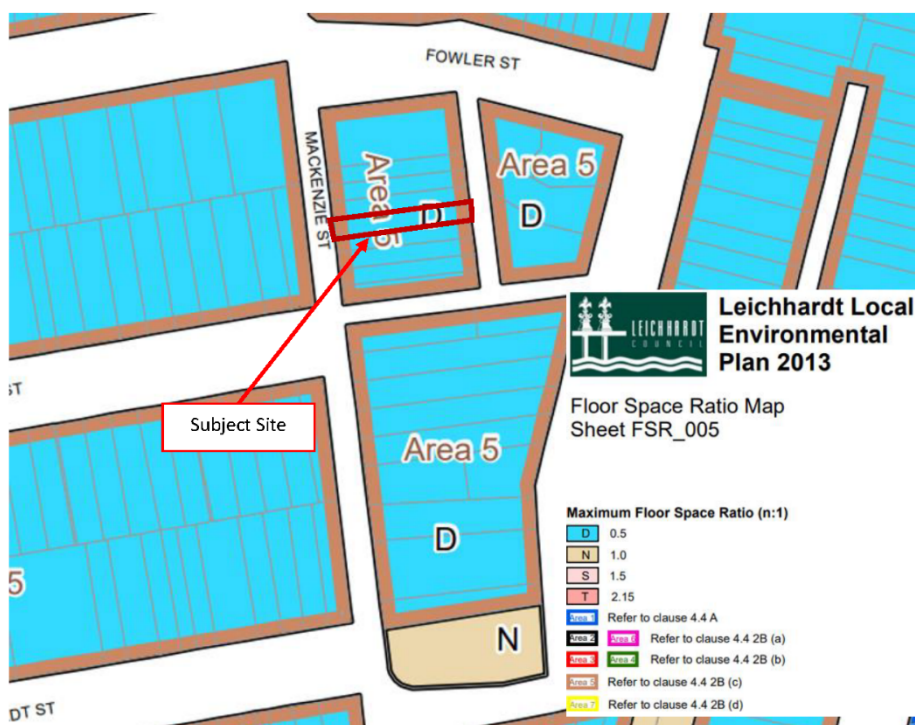


FIGURE 2: FLOOR SPACE RATIO MAP (LEICHHARDT LEP 2013, MAP FSR_005)

The subject site area is 172m² and therefore in accordance with Clause 4.4 (2B)(c)(ii), the maximum permitted FSR is 0.7:1.

A maximum gross floor area (GFA) permitted would therefore be 120.4m². The proposed GFA is 150.70m² (0.88:1), which is a 25% variation from the standard.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

4.6 – Floor Space Ratio

4. Extent of Non-Compliance

As noted above, in accordance with Clause 4.4 of the Leichhardt Local Environmental Plan 2013 a maximum FSR of 0.70:1 is prescribed to the subject site.

A maximum GFA of 120.40m² is permitted, with a total proposed GFA of 150.70m² being sought for an FSR of 0.88:1. A variation of 30.30m² is proposed beyond the standard, being a variation of 25%.

In determining the extent of the non-compliance, it is worth acknowledging the proposed development relates to alterations and additions to an existing semi-open garage outbuilding. There are no changes to the footprint of the outbuilding, and the envelope is marginally modified to include non-habitable roof space for the purpose of storage; and the internal layout modified to incorporate residential amenities such as a bathroom and laundry.

Since approval of the existing outbuilding, the approach to the calculation of gross floor area has been revised, particularly in the case of the Leichhardt GFA it now includes all enclosed car parking for dwelling houses as the DCP has a minimum car parking requirement of 0 car spaces and the gross floor area definition excludes only "car parking to meet the requirements of the consent authority." Consequently, any parking exceeds the requirements which retroactively has resulted in an "existing" variation.

The application before Council only seeks to wholly enclose and renovate an existing garage outbuilding, which is ancillary to the dwelling, and facing upon an unnamed laneway.

Whilst a variation is sought, the proposed works have no negative impacts to surrounding properties and the broader locality, while improving the amenity of the dwelling and ancillary, as will be detailed within this written justification.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below table:

4.6 – Floor Space Ratio

First (applicable)	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
Second (applicable)	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that 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.</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</i>

In respect of the floor space ratio standard, the first and second methods are equally invoked.

The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying purpose and objectives of the clause is unnecessary and unreasonable for the purposes of the development, as the pre-existing non-compliance is fully retained. There is no additional footprint or habitable floor space proposed, as it is redevelopment of an existing outbuilding. Compliance would derogate from the existing amenities and enjoyment experienced by current and future residents, as well as depreciate the site circumstance and context by removing existing off-street parking.

Compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives supporting the floor space ratio standard identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

*(1) The objectives of this clause are as follows—
(a) to ensure that residential accommodation—
(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*

The subject site is notably within the Piperston Distinctive Neighbourhood. The proposal is considered to align with the desired future character of the Piperston Distinctive Neighbourhood. The following comments are made with regard to the compatibility of the proposal with the objectives of the desired future character for the distinctive neighbourhood:

- The development design complements the character of the area and maintains the predominant scale (one storeys) within the locality. The proposed gable roof form fronting the unnamed laneway is complementary to gabled-ended pitch roofs forms that are to the rear of dwellings, often as dormers, as seen from within the laneway.
- The proposal retains the residential use of the site, and does not alter the subdivision pattern. In utilising the existing outbuilding footprint, the overall land use and identity of the neighbourhood is retained.
- The modified garage outbuilding will not detract from the existing dwelling, and is not visible from the principal Mackenzie Street streetscape. As previously mentioned, the unnamed laneway is a service lane utilised solely by dwellings with rear lane access and for waste collection. The laneway itself also does not form part of the heritage conservation area.
- There are no impacts to views, or privacy. The subject site has a negligible slope, and it is noted the garage outbuilding will remain on the low side of the site.
- The maximum wall height of 3.6 metres allowed within the distinctive neighbourhood is not exceeded, and the overall built form meets the laneway envelope requirements.
- The proposal will still provide for an outbuilding to present to the rear lane and will retain existing on-site car parking.

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

Aside from the FSR standard, the best measures of an appropriate balance of landscaped areas and built form are compliance with the landscaped area and site coverage development standards. In this case, the development is compliant with the 15%. While the proposal does not comply with the site coverage standard, as outlined within the Clause 4.6 written variation to that standard, attached separately, it is a similar circumstance in that the non-compliance is a result of the existing site context and extent of existing development on the site.

Further to the above, the proposed works are modest and do not modify the footprint of built structures.

In view of the above, a suitable balance between landscaped areas and built form is achieved regardless of the technical non-compliance with the FSR standard.

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

The controls under Part C1.18 of Council’s DCP require buildings adjacent to a laneway to have a simple form and minimal façade detailing. The rear lane is approximately 6.1 metres wide. As the site fronts a *Medium Lane*, the development is required to be designed with a laneway envelope that has a maximum side wall height of 3.6 metres, a 45 degree building envelope taken from the top of the side wall, and a maximum roof height of 6 metres.

The proposed garage outbuilding has been designed with the following parameters:

- Maximum wall height: 2.924m ✓
- Building envelope: 45 degree pitch, symmetrical roof ✓
- Maximum roof height: 5.2m to top of roof ridge ✓

Therefore, the proposed garage outbuilding is within a bulk and form that is *less* than the maximum allowable. Additionally, the maximum building envelope has been illustrated on the plans to show that the proposed form sits within these design parameters, and therefore complies with the laneway envelope for development fronting a medium lane.

As per the DCP controls, the new building will be built to the laneway alignment, which is consistent with the built form of properties along the lane. The external walls will be constructed in high quality materials and finishes (including masonry and roof cladding) which are compatible with the fabric of the surrounding properties. The development will retain the existing car parking space on the site and will not increase laneway parking or remove any on street parking.

Additionally, following on from the two Pre-DAs prior to lodgement of the formal DA, the proposed built form has been further reduced to hipped roof towards the western end of the garage outbuilding. This greatly assists in ensuring that the impact caused by overshadowing is reduced. This is illustrated in Section A (Drawing No DA400), and as extracted in Figure 3, below.

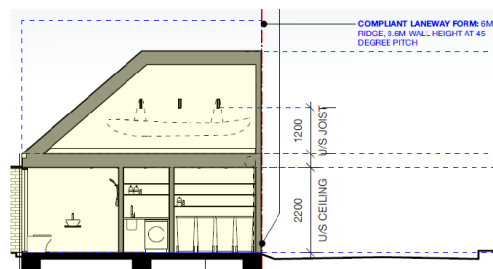


FIGURE 3: SECTION A- SHOWING REDUCED BULK AND SCALE OF THE PROPOSED OUTBUILDING WITH A GABLED FRONT AND HIPPED REAR ROOF FORM

...(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.*

The proposed development is alterations and additions to an ancillary outbuilding detached from an existing dwelling house and as such this objective is not relevant to this application.

Considering the above, the proposed development aligns with the objectives of Clause 4.4. Further, it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

6. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory. Moreover, the additional floor area does not create additional environmental impacts, including but not limited loss of solar access to neighbouring properties, visual or acoustic privacy, loss of landscaped area, any additional site cover or reduced amenity to the site and adjoining neighbours.

The site has an east-west orientation but does receive direct sunlight to the private open space, along the southern boundary. This is reflected in the solar access diagrams submitted with the development application (Drawing No. 600, 601, 602 and 603). The new outbuilding has been designed to sit within the footprint of the existing garage with a modified roof form that provides storage space within the roof cavity. Storage is within the gables roof form that fronts the laneway, and a hipped roof is to the west of the outbuilding, which is intended to minimise the extend of overshadowing to the adjoining southern property at 39 Mackenzie Street. The proposal will not compromise the solar access available to the adjoining northern properties.

The design of the overall modified building envelope has specifically considered the solar access to 39 Mackenzie Street, and this is the reason why the development application pursues a garage with a modest storage, rather than the previously considered first floor addition to the existing garage.

Additionally, the proposed works will enhance ongoing residential amenity of the site by providing additional storage space for a growing family via the garage storage area and additional laundry and bathroom amenities. The variation has not impacted upon the integration of the dwelling and ancillary structures with the desired future character of the area.

It is submitted that a positive planning outcome will result through improved amenity to the existing dwelling without compromising those of the surrounding properties. Generally, and inclusive of the variation, the proposal is considered to provide an appropriate bulk, scale, alignment, and architectural features which positively contribute to the locality. The additional floor space has not jeopardised this outcome.

In this case, strict compliance with the development standard within the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

4.6 – Floor Space Ratio

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under **Parts 4, 5 and 6** of this written variation.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

Contextually the building has regard to surrounding properties and is considered to provide a positive outcome of improving the amenity of the dwelling and ancillary structures without compromising those of the neighbouring properties or the public domain.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Each objective is addressed individually to demonstrate the objectives have been met.

Zone R1 General Residential

(1) Objectives of zone:

- *To provide for the housing needs of the community.*

The proposed alterations and additions to the outbuilding will enhance the provision of housing amenities on the site. The proposed development caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking.

- *To provide for a variety of housing types and densities.*

The proposed development relates to the modification of a detached garage outbuilding that caters for the housing needs of the community by improving upon existing development, for ongoing residential uses (e.g. storage, laundry and amenities) and off-street parking. The density of development is not modified in terms of site cover or habitable floor space, and the enclosure of the existing structure with modified roof and height of the outbuilding results in notably minor environmental impact.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development seeks to retain the existing residential use. No other land uses are proposed.

- *To improve opportunities to work from home.*

The original intention of the development was to provide a space to work from home in the form of a two-storey studio outbuilding, however this was contradicted during Pre-DA discussions, and consequently the current proposal remains in a single storey garage form, with roof storage.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposed garage outbuilding has been designed in a manner to be compatible with the character, style, orientation and pattern of surrounding buildings and streetscape.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

As previously stated, the proposed development incorporates adequate landscaped area that will provide for ongoing amenity experienced by current and future occupants of the site.

- *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.*

No subdivision proposed.

- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development maintains adequate landscaping and private open space on the site. The proposed development is otherwise generally compliant with the Leichhardt LEP 2013 and Leichhardt DCP 2013 controls and thus will protect the existing amenity of adjoining developments.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The proposal provides improvements to the amenity of the existing dwelling and garage outbuilding without comprising the amenity of the surrounding development or the public domain. The limited to no consequence of the variation to the standard ensures that the standard and its objectives are not eroded but preserved.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio control within the Leichhardt LEP 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in **Parts 5, 6 and 7** of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the character of the locality, predominantly being dwelling house with rear two storey ancillary structures.

4.6 – Floor Space Ratio

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(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 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.”*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate is submitted with this application.

Clause 5.4 does not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with the maximum floor space ratio prescribed for the subject site as detailed in Clause 4.4 of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the standard does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development standard is appropriate.

4.6 – Floor Space Ratio

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

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