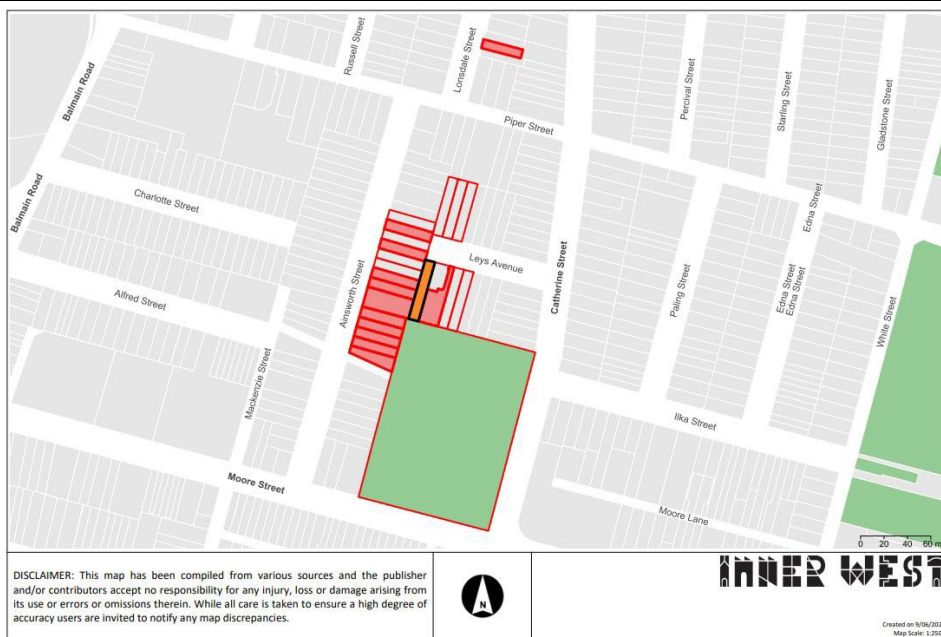




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/1078
Address	14 Leys Avenue LILYFIELD NSW 2040
Proposal	Alterations and additions to an existing dwelling, including lower ground and first floor extension, internal reconfiguration of space, swimming pool, detached studio, removal of tree, landscaping and associated works.
Date of Lodgement	2 November 2021
Applicant	Mr Adrian R Wilson
Owner	Mr Adrian R Wilson Ms Tiffany L Glover
Number of Submissions	Initial: 16
Value of works	\$750,267.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% Number of submissions
Main Issues	Landscaped Area Solar Access Distinctive Neighbourhood Building Location Zone Side Boundary Setbacks
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



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing dwelling, including ground and first floor extension, internal reconfiguration of space, swimming pool, detached studio, removal of tree, landscaping and associated works at 14 Leys Avenue Lilyfield.

The application was notified to surrounding properties and twenty (20) submissions were received in response to the initial notification, sixteen (16) of which were considered to meet the definition of a *unique submission* (NSW Department of Planning).

The main issues that have arisen from the application include:

- Variation to landscaped area
- Impact on Distinctive Neighbourhood
- New Building Location Zone
- Variation to side boundary setbacks/wall heights
- Solar access
- Privacy

An assessment of the application has found the proposal is reasonable development within its context and that potential amenity impacts do not arise out of a poor design, however, are attributed to surrounding properties being highly vulnerable to impacts from new development on the site, and that the design has taken reasonable steps to address these impacts. In the circumstances of this case, the proposal is considered to be satisfactory. The proposal is recommended for approval subject to conditions.

2. Proposal

Alterations and additions to existing dwelling at lower ground and ground floor, new pool, new detached studio, and tree removal, specifically;

- Partial demolition of existing dwelling to accommodate new lower ground extension with green roof over and ground floor extension with gable roof over.
- New skylights over lower ground floor and ground floor additions.
- Internal reconfiguration of room layout at lower ground floor level comprising open plan lounge room, dining room and kitchen, new rumpus room, laundry, and bathroom.
- New rear deck with outdoor barbeque and pizza oven and rainwater tank below.
- New articulated awning over proposed rear deck.
- Proposed swimming pool.
- Landscaping works.
- New studio with green roof and skylight over.
- New southern boundary fence.
- Extension to portion of western boundary fence height.
- New pedestrian access to War Memorial Park at rear of site.
- Removal of existing jacaranda tree within rear yard

3. Site Description

The subject site is located on the southern side of Leys Avenue, which is a cul-de-sac road. The site consists of one (1) allotment and is rectangular in shape with a total area of 360.5sqm and is legally described as Lot 14, Sec 2 in DP 5171.

The site has a frontage to Leys Avenue of 7.65 metres.

The site supports a single storey detached dwelling house and detached studio. To the west, the subject site adjoins the rear boundary of multiple properties that are oriented perpendicular to the subject site and front Ainsworth Street, these properties support single and two storey dwelling houses. To the east, the subject site shares a common boundary with No. 12 Leys Avenue, which supports a single storey detached dwelling house, and No. 12a Leys Avenue, which is a battle-axe block and supports existing two-storey multi-dwelling housing.

The subject site is located within the 20-25 ANEF Aircraft Noise Contour for Sydney Kingsford Smith Airport.



Map B: Zoning Context Map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
BA1914-55	Garage to eastern side of house at rear	Approved 9/3/1955
DA/200/81	Demolition of both dwellings at 12-14 Leys Avenue and construction of a residential flat building containing ten townhouses	Refused 15/9/1981
D/2002/658	Rear alterations and additions to the existing dwelling including side deck and rear balcony. Amended plans include the deletion of decks, reconfiguration of roof form, reduction in length of proposed addition and increased setback from the western boundary.	Approved – 09/07/2003
CDCP/2022/0076	Complying Development Certificate - Private Certifier – New in ground concrete swimming pool	Completed – 22/03/2022
CDCP/2022/0164	Complying Development Certificate - Private Certifier – Varied design of pool decking and paved area.	Completed – 02/06/2022

Surrounding properties**37 Ainsworth Street LILYFIELD**

Application	Proposal	Decision & Date
D/2003/89	Ground and first floor alterations and additions to the existing dwelling.	Approved – 02/07/2003
M/2004/2	Modification to development consent D/2003/89 for alterations and additions to provide a first floor bedroom and ensuite, together with a ground floor additions to provide additional living space. Modification includes enlarging rear ground floor windows, reduce rear balcony to 0.9m and install lattice privacy screen, alter first floor bathroom window from round window to dormer.	Approved – 18/03/2004
CDCP/2019/163	Alterations and additions to existing dwelling, construction of a pool and conversion of garage to cabana.	Received by Council – 18/10/2019

35 Ainsworth Street LILYFIELD

Application	Proposal	Decision & Date
D/2001/357	Alterations and additions to an existing dwelling including a first floor addition to accommodate new bedroom and ensuite.	Approved – 30/10/2001
M/2002/189	Modification of D/2001/357 which approved alterations and additions to existing dwelling including new first floor. Modification involves increasing the width of the juliet balcony at the rear of the first floor level.	Approved – 30/09/2002

31 Ainsworth Street LILYFIELD

Application	Proposal	Decision & Date
D/2009/73	Alterations and additions to existing dwelling including demolition of rear of existing, ground and first floor addition plus detached studio.	Approved – 11/08/2009
M/2009/256	Section 96 application to modify D/2009/73 which approved alterations and additions to existing dwelling including demolition of rear of existing, ground and first floor addition plus detached studio. Modification seeks to correct an error on the approved plans and development consent with respect to the ground floor eave height on the northern elevation.	Withdrawn – 01/03/2010
M/2009/268	Modification to amend design in accordance with Council conditions and amend incorrect RL to southern ground floor addition.	Approved – 13/07/2010
M/2010/228	Section 96 application to modify D/2009/73 which approved alterations and additions to existing dwelling including demolition of rear of existing, ground and first floor addition plus detached studio. Modifications comprise demolition and rebuilding of a section of the existing southern wall.	Approved – 25/01/2011

29 Ainsworth Street LILYFIELD

Application	Proposal	Decision & Date
D/2003/192	Alterations and additions to existing single storey dwelling including a new first floor.	Refused – 18/11/2003
D/2004/56	Additions and alterations to an existing dwelling including a new first floor.	Approved – 13/06/2004

27 Ainsworth Street LILYFIELD

Application	Proposal	Decision & Date
CDC/2015/39	Alterations and additions to the rear of existing dwelling. New inground pool at rear.	Approved – 31/03/2015

4(b) Application history

Not applicable.

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 to 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 as there is no indication of contamination.

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

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

5(a)(iii) *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.

The application seeks the removal of the following tree(s):

- 1 x *Jacaranda mimosifolia* (Jacaranda) located at the rear of the site

The application was referred to Council’s Tree Management Officer whose comments are summarised as follows:

Species	Location	Recommendation
<i>Jacaranda mimosifolia</i> (Jacaranda)	Located at rear of property.	Remove.

Suitable conditions have been provided based on the following:

Conditions are provided based on the following:

- The proposed studio at the rear is deleted.
- Any new rear boundary fence must be a lightweight structure (isolated posts/piers located clear of woody tree roots - no strip footings).
- There must be no level changes within the Structural Root Zone of any tree located in the park at the rear.

Overall, the proposal is considered acceptable with regard to the SEPP and Part C1.14 of the LDCP 2013 subject to the imposition of conditions, which have been included in the recommendation of this report.

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)(iv) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition
- Clause 4.3A – Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid Sulfate Soils
- Clause 6.2 – Earthworks
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise
-

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

The site is zoned R1 – General Residential under the *LLEP 2011*. The *LLEP 2013* defines the development as:

“dwelling house means a building containing only one dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 252.35sqm	0.61:1 or 220.3sqm	N/A	Yes
Landscape Area Minimum permissible: 20% or 72.1sqm	10.93% or 39.4sqm	-32.7sqm or 45.35%*	No
Site Coverage Maximum permissible: 60% or 216.3sqm	55.95% or 201.7sqm	N/A	Yes

It should be noted that the existing site plan (drawing No. 42.01A) identifies most of the existing rear yard as accommodating landscaped area. However, Council’s site visit, and images and survey information provided with the application has revealed that most of the rear yard is synthetic turf and, as such, in accordance with the definition of landscaped area under the Leichhardt LEP 2013, is not recognised as landscaped area. The definition for landscaped area reads as follows:

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

In this regard, Council has calculated the existing landscaped area on the site as 40.8sqm (11.32%). Notwithstanding, however, the proposal seeks to deviate further from the landscaped area development standard and the applicant has submitted a request for an exception to the landscaped area development standard pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan, which is assessed in detail below.

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(a) - Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the landscape area development standard under Clause 4.3A(3)(a) of the *Leichhardt Local Environment Plan 2013* by 41.47% (-29.9sqm).

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 LLEP 2013 below.

Clause 4.3A(3)(a) - Landscaped areas for residential accommodation in Zone R1

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

- *The construction of the clause [Clause 4.3A] means that if the Site Coverage Development Standard is achieved, there is sufficient capacity in the remaining Site area to provide for a suitable Landscaped Area. This means that by achieving the Site Coverage Development Standard, the Objects of the clause are achieved notwithstanding non-compliance with the Landscaped Area Development Standard.*
- *Because the Site Coverage Development Standard is achieved and because there are sufficient environmental planning grounds to support the proposed Landscaped Area, it is unnecessary to achieve compliance in relation to the Landscaped Area Development Standard because they are achieved anyway.*
- *The achievement of the Floor Space Ratio and Site Coverage Development Standards...demonstrates the proposal 'fits' within the envisaged scheme of the locality and is acceptable. A reduced building footprint that achieves numeric compliance with the Landscaped Area Development Standard would not display a measurable step toward a more suitable achievement of the Objects of the Development Standard.*
- *The physical characteristics of the Site contribute to both the natural environment and the social environment, but their contribution also acts as the Sites constraints that pervade the variation to the Development Standard.*

- *The topographic profile of the Site means that existing development is in place to manage the effect of development on the landform and to maintain the on-going function and use of the Site. This includes access paths and retaining walls and civil works at the east side boundary.*
- *To manage both the natural environment and the social environment, the proposed Development adopts a balanced approach...while still achieving the Object of the Development Standard.*
- *The proposed works are limited in scale and scope, concentrated at the rear of the existing building to be as least intrusive as possible to both the natural and social environment.*
- *The Development results in a positive outcome by preserving the existing natural groundline, but improves amenity from within and without.*
- *Internal and external living spaces provide increased proportion, and use built elements to improve visual and aural privacy from War Memorial Park.*
- *The Development also aligns with the current residential leasing market and expectations of contemporary living spaces in a self-sustaining, protectionist, post-pandemic world.*

It is accepted that the existing non-compliance with the landscape area can be reasonably justified due to existing site constraints, and an attempt reach compliance would require further demolition of the dwelling which is considered unreasonable.

However, it is considered that this submission does not adequately justify the proposals further departure from the landscaped area requirement as the application involves a reduction in landscaped area and seeks to introduce new paved surfaces within the rear yard, and the site is not so constrained by virtue of size or other considerations as to render a better landscaped area outcome unreasonable.

It is considered that the application could provide additional landscaping beyond what is existing, thus the written justification to reduce the landscaped area below the existing amount in this instance is not endorsed and it is recommended that a condition of development consent is imposed requiring the paved area and stepping stones located to the east of the proposed studio to be amended with grass/landscaped area.

Further, a condition is recommended to delete the proposed studio, to ensure the proposal is in accordance with the desired future character of the neighbourhood. (It is advised that there is currently a studio located in the rear yard, which appears on the aerial photo to have been constructed in late 2011. The studio does not appear to be Exempt, due to its proximity to the boundary, and there is no other approval registered for it).

Subject to recommended conditions as detailed above, the applicant's written rationale adequately demonstrates strict compliance with the landscaped area development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, but only on the basis that landscape provision is maintained/improved beyond what is currently offered.

Subject to recommended conditions, it is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance

with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

The site is zoned R1 (General Residential) pursuant to the *Leichhardt Local Environmental Plan 2013*. The objectives of the R1 Zone are:

- *“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, as conditioned, is consistent with the above objectives in that:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposal is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposed development, as conditioned, will result in increased landscaped area.
- The increased landscaped area, as conditioned, will provide suitable areas for the use and enjoyment of existing and future residents.
- A shortfall in the required landscaped area will not create additional unreasonable environmental amenity impacts for the subject site or adjoining properties. An increase in landscaped area would not create additional benefit for the subject site (beyond that conditioned), adjoining properties or the locality.

Subject to recommended conditions, it is considered the development is in the public interest because it is consistent with the objectives of the Landscaped Area development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

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.

The proposal, as conditioned, is consistent with the development standard objectives in that:

- The proposal, as conditioned, results in an increase in Landscaped Area compared to what is existing and provides Landscaped Area that is suitable for substantial tree planting and improved on-site amenity outcomes.
- The proposed development, as conditioned, is an acceptable response to the desired future character of the neighbourhood.
- The non-compliance does not result in any undue adverse amenity impacts to surrounding properties.
- The proposal complies with the Floor Space Ratio and Site Coverage development standards, providing a suitable balance between landscaped area / open space and the built form.
- The proposal, as conditioned, maximises permeable surfaces for the retention and absorption of surface drainage water.
- The proposal complies with the site coverage standard and, as conditioned, minimises impervious surfaces that obstruct the underground flow of water.

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 landscaped area development standard and it is recommended the Clause 4.6 exception be granted.

5(b) Draft Environmental Planning Instruments

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

Draft Environmental Planning Instruments	Compliance
Draft State Environmental Planning Policy (Environment) 2018	Yes
Draft State Environmental Planning Policy (Remediation of Land) 2018	Yes
Draft State Environmental Planning Policy (Environment) 2017	Yes

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 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 Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes, subject to conditions
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	N/A
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 – Existing
C1.12 Landscaping	Acceptable – see discussion below
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Acceptable – see discussion below
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	N/A
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	Yes – see discussion below
Part C: Place – Section 2 Urban Character	
C2.2.4.1 Catherine Street Distinctive Neighbourhood, C2.2.4.1(c) War Memorial Park Sub Area	No – see discussion below
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes, subject to conditions
C3.2 Site Layout and Building Design	No – see discussion below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – See discussion below
C3.10 Views	Yes – See discussion below
C3.11 Visual Privacy	Yes – See discussion below
C3.12 Acoustic Privacy	Yes – See discussion below
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	N/A
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	N/A
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes, subject to conditions
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes, subject to conditions

E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.12 Landscaping & C1.14 Tree Management

The proposal is satisfactory having regard to the relevant provisions of Part C1.12 and Part C1.14 as follows:

- The proposal assists in managing the urban landscape by removing a tree located in an inappropriate location; and,
- The provision of a replacement tree planting assists in maximising the healthy tree canopy within the Local Government Area (LGA).
- The application was referred to Council's Urban Forest team. No objections were raised, subject to the provision of replacement tree planting. For Tree Assessment Officer's comments refer to Section 6 of this report.

In consideration of the above, the proposal is considered to satisfy the relevant objectives of Parts C1.12 and C1.14 of the LDCP 2013.

C1.21 Green Roofs and Green Living Walls

In accordance with the objectives and controls of this Part, a maintenance report will be required to be submitted to the PCA. The maintenance report is required to be prepared by a registered landscape architect or suitably qualified person, outlining the care and maintenance strategy in accordance with the Inner West Councils Green Roof, Walls and Facades Technical Guidelines for the first two (2) years of the green roof. Subject to a condition as recommended to ensure the ongoing maintenance of the green roof, the proposal will be satisfactory.

C2.2.4.1 Catherine Street Distinctive Neighbourhood, C2.2.4.1(c) War Memorial Park Sub Area

The subject site is located within the Catherine Street Distinctive Neighbourhood and the War Memorial Park Sub Area, and therefore, Parts C2.2.4.1 and C2.2.4.1(c) of the LDCP 2013 apply to the proposal. These parts outline specific controls regarding the desired future character (DFC) of the neighbourhood.

A review of relevant building approvals for the subject site has found no building approvals exist for the existing studio located within the rear yard of the property. Notwithstanding, the subject DA does not seek retrospective approval for any existing unauthorised development, as this is a separate matter to the DA. As such, a condition of consent is recommended to ensure that any unlawfully erected structures are not formalised under the DA.

However, it should be noted, the scope of works proposed under the current DA includes the erection of a new studio. The DFC provisions of Part C2.2.4.1(c) of the LDCP 2013 include the following statement:

It is important to ensure that the public open space and green space is not encroached upon by future development. A number of privately owned properties have common boundaries with War Memorial Park and there is a predominant rear setback from the common boundary, between 10m and 12m. Except for a unit development on a battle-axe style block, the properties adjoining the park are consistently developed with single detached cottages. The gardens of the cottages provide a privately landscaped fringe, which provides a good transition to the park, with the dwellings set well back from the park boundary. This setback avoids a hard-edged enclosure of this important area of public open space.

As the park is not a street or another private allotment, there may be a tendency to propose development closer to its common boundary and 'borrow' amenity from it. However, this lessens the aesthetic quality of the park and therefore diminishes its public value. Based upon existing setbacks and allowing some latitude for rear extensions to dwellings, an appropriate minimum setback from the War Memorial Park would be 10m. This would act together with the Building Location Zone (BLZ) control to prevent development from encroaching on the fringe of the public open space.

In consideration of the statement above, Control C1 under Part C2.2.4.1(c) of the LDCP 2013 applies to the proposal, which reads as follows:

- *C1 – The minimum building setback of 10m from the Park shall apply. This is measured from the common boundary of a site with the War Memorial Park to the nearest external wall of a building (excluding decking and pergolas).*

The proposal introduces a new swimming pool and studio within the 10m setback from War Memorial Park. The 10m setback control inhibits the provision of buildings and not structures from being located with the 10m setback from the park. In this regard, a condition of consent is recommended to delete the proposed studio to ensure consistency with the desired future character of the area.

In consideration of the above, the proposal, as conditioned, will continue to preserve and enhance the aesthetic and environmental significance of the vegetation corridor made up of War Memorial Park.

C3.2 Site Layout and Building Design

Building Location Zone (BLZ)

The BLZ is determined by having regard to only the main building on the adjacent properties. The aerial image below shows the subject site (in blue) within its surrounding context. The arrangement of immediately adjoining properties does not enable the permitted BLZ on the subject site to be determined having regard to the adjacent properties.

Where an adjoining development has a front or rear setback that is clearly uncharacteristic of the general pattern of development within the street, the Leichhardt DCP 2013 requires that consideration is 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 image below shows that the properties located at Nos. 2, 4, 6, 8 and 10 Leys Avenue have a site layout that most resembles the subject site at No. 14 Leys Avenue.

Image 1 below demonstrates the following:

- Known existing lower ground floor level = Orange
- Existing ground floor level = Yellow
- Existing first floor level = Blue
- Proposed lower ground floor level = Green
- Proposed ground floor level = Red



Figure 1: Existing and proposed BLZ

In consideration of the above, a strict application of the BLZ is not appropriate in this case because of the subdivision pattern of the western and the eastern adjoining lots. The proposal seeks to establish a new lower ground floor level and ground floor level, which extends beyond the established BLZ within the street and will result in variations to the BLZ at each level respectively.

In accordance with the requirements under Control C6 of Part C3.2 of Leichhardt DCP 2013, a variation or establishment of a new BLZ may be permitted where the proposal demonstrates:

- amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;*

Comment: Acceptable. The proposal has been designed to ensure adequate amenity is retained for surrounding properties. The proposal results in acceptable visual privacy impacts and will not result in adverse view loss impacts to surrounding properties. Consideration has been given to the overshadowing impacts associated with the proposed siting of the rear additions. In the circumstances of this case, it is considered

that neighbouring properties are highly vulnerable to overshadowing due to the pattern of subdivision and topography. For discussion of the proposal's acceptability in terms of solar access, refer to discussion under Part C3.9 below.

- b. *the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;*

Comment: The proposed development complements the scale of the existing dwelling within the streetscape, as the extent of new works are located at the rear of the existing dwelling and will not be dominant visual element when viewed from the public domain.

- c. *the proposal is compatible in terms of size, dimensions, privacy and solar access of private open space, outdoor recreation and landscaping;*

Comment: The proposal includes adequate areas of private open space and is satisfactory on solar access grounds – for solar access assessment, see assessment later in this report. Despite the proposal resulting in a shortfall of landscaped area, it is noted that most of the rear yard is currently synthetic turf, the proposal, subject to recommended conditions to increase landscaped area, will not reduce the amount of landscaped area onsite.

- d. *Retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and*

Comment: Subject to recommended conditions to ensure the proposal results in no further loss of landscaped area, the proposal will maintain opportunities for new significant vegetation.

- e. *The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.*

Comment: It is acknowledged that proposed alterations and additions at the rear of the dwelling will be perceptible from neighbouring properties private open space, by virtue of the topography of the site and the existing pattern of subdivision. Notwithstanding, the proposal is designed with moderate floor-to-ceiling heights and has articulated the proposed ground floor additions with a greater side setback at the ground floor level to minimise perceived bulk and scale impacts when viewed from adjoining private open space. In this regard, the proposal is considered to be acceptable in terms of visual bulk and scale.

In summary, the proposed establishment of the lower ground and ground floor BLZ is considered to be acceptable as it will meet the BLZ tests outlined above.

Side Setbacks

The following is a compliance table assessed against the side setback control graph prescribed in Part C3.2 of the LDGP2013 relating to the proposed dwelling-house addition at lower ground and ground floor levels, as well as the proposed studio:

Dwelling House				
Side Elevation	Wall Height Proposed (m)	Proposed Side Setback (m)	Required Side Setback (m)	Complies (Y/N)
Lower Ground Floor				
East	3.21	1.03	0.24	Yes
West	4.04 – 3.25	0.15	0.72 – 0.26	No
Ground Floor				
East	5.13	1.02 – 1.03	1.35	No
West	5.08 – 5.13	0.93 – 0.94	1.32 – 1.35	No

Studio				
Side Elevation	Wall Height Proposed (m)	Proposed Side Setback (m)	Required Side Setback (m)	Complies (Y/N)
East	3.28	3.67	0.28	Yes
West	3.34	Nil	0.31	No

As assessed in the table above, the proposed development does not comply with the side wall height/side setback controls in various locations. Notwithstanding, in accordance with C8 of this Part, 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;*

Comment: The proposed works are sited towards the rear of the existing dwelling form and will have minimal and acceptable visibility from Leys Avenue. The proposal is therefore considered to be an acceptable response to the Building Typology Statements contained with the LDCP2013.

- b. *the pattern of development within the streetscape is not compromised;*

Comment: Dwelling houses on lots similar in width and depth to the subject site are characterised by reduced building setbacks by virtue of their narrow width. It is considered that the proposed wall heights and setbacks of the dwelling house will not be out of character with the pattern of development in the surrounding area. However, the proposed detached studio is inconsistent with Council’s Distinctive Neighbourhood controls and is recommended to be deleted via a condition of consent.

- c. *the bulk and scale of development is minimised by reduced floor to ceiling heights;*

Comment: The proposed development employs modest floor to ceiling heights (2.7m at the lower ground floor level and pitching from 2.2m at the ground floor level). In this regard, the proposed floor-to-ceiling heights are not excessive and will not result in unreasonable visual impacts dwellings adjoining the subject site.

- d. *the potential impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised; and*

Comment: For reasons discussed above and below, the proposal is considered to be satisfactory in this regard.

- e. *reasonable access is retained for necessary maintenance of adjoining properties.*

Comment: The proposal raises no issues in this regard.

Based on the above, the proposed variation to the Side Boundary Setbacks Graph is considered acceptable in this instance.

Having regard to the above, the proposed development is considered to satisfy the relevant controls and objectives in relation to building siting, scale and form under Part C3.2 of the LDCP 2013.

C3.9 Solar Access

The Leichhardt DCP 2013 sets objectives for development to minimise overshadowing and the reduction of solar access and therefore protect the amenity of the neighbouring properties.

The following properties are impacted by the proposal in terms of solar access:

- 27 Ainsworth Street, Lilyfield (No. 27) – located to the west of the subject site and consists of a one part two storey dwelling house; and,
- 12a Leys Ave, Lilyfield (No. 1-4/12a) – located to the south east of the subject site and comprises existing residential accommodation in the form of multi-dwelling housing.

The applicant's shadow diagrams have been assessed and are generally accurate in the depiction of the additional shadows cast by the proposed development.

It is noted that the submitted shadow diagrams have not shown the existing impact of overshadowing cast by existing structures (i.e. boundary fencing and structures along Ainsworth street). It is also noted that the survey information, from which the shadow diagrams are based, has only shown the extent of the cantilevered first floor addition at No. 27. Notwithstanding, this has not prevented Council from undertaking an assessment of the overshadowing impact on affected properties, which is carried out in detail below.

All Development

Control C4 requires that the private open space of the subject site receives a minimum of 3 hours of direct sunlight to 50% of the required private open space between 9:00am and 3:00pm in mid-winter. The minimum POS for the site is 16sqm, which translates to 8sqm (50%) of direct sunlight required to be retained. The proposal is considered to satisfy this provision as 8sqm of direct sunlight will be retained between 11:00am and 3:00pm.

Alterations and Additions

Alterations and additions to existing dwelling house must be designed to ensure overshadowing to the subject site is minimised in accordance with Control C11, which reads as follows:

- 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.*

Overshadowing of the subject site is exacerbated due to the slope of the site from the Leys Avenue frontage down to the rear boundary, a fall of approximately 3.58m. It is noted that the proposal complies with the statutory development standards for FSR and Site Coverage. The location of the proposed alterations and additions is considered acceptable, despite resulting in technical breaches to the building location zone and side boundary setback controls, given the proposal has been designed to respond to the topography of the site, locates the proposed additions at the lower ground and ground floor levels, and employs reasonable floor-to-ceiling heights at the lower ground and ground floor levels to minimise overshadowing.

As the subject site is oriented north-south and fronts Leys Avenue to the north, the proposed additions have been designed to provide living areas facing the rear of the site. Consequently, proposed living areas are rear (south) facing, thereby precluding direct solar access. It is considered that this is a function of the circumstances of the site and is considered satisfactory in the circumstances of this case.

Neighbouring living room glazing

No. 27 is an east/west facing allotment, therefore the following solar access provisions 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.*

No. 12a is a north/south facing allotment, therefore the following solar access provisions apply:

- 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.*

Where surrounding properties do not currently receive the requisite amount of solar access to main living room glazing, the following control applies:

- 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.*

The shadow diagrams indicate new shadows will not fall on the east facing main living room glazing of No. 27. The proposal therefore satisfies these requirements.

No. 12a is a battle axe lot, which is located rearward the built form at No. 14 Leys Avenue. The lot currently consists of an existing multi dwelling housing development comprised of 4 dwellings. The only dwellings that have a north facing main living room windows are Nos.

1/12a and 4/12a. These windows will continue to receive solar access for three hours during the winter solstice between 9:00am and 12:00pm, and therefore satisfies the requirements of this part. It is noted that No. 3/12a has one west facing window servicing the main living room, however, the proposal does not cast shadows long enough to impact this window identified on the survey plan.

Neighbouring private open space (POS)

In terms of maintaining solar access to existing housing, an assessment has been made against the control for both east-west orientated sites and north-south orientated sites due to the orientation of the subject site and the neighbouring properties.

Nos. 2/12a and 3/12a Leys Ave have south facing POS, therefore the following solar access provision applies:

- *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.*

No. 1/12a has a north facing courtyard, which adjoins the main living room and functions as the main entry for the dwelling, and No. 4/12a Leys Avenue has a north facing POS, therefore the following solar access provision applies:

- *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.*

No. 27 is an east/west facing allotment, therefore the following solar access provision applies:

- *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.*

Where surrounding properties do not currently receive the requisite amount of solar access to POS, the following control applies:

- *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.*

The submitted shadow diagrams indicate that the rear POS of No. 27 is affected by the proposal in terms of overshadowing in the AM between 9:00am and 10:00am, with the most significant overshadowing occurring at 9:00am and reducing throughout the morning at the winter solstice (worst case scenario). This area retains all other existing solar access at the solstice, and quantitatively, exceeds the minimum requirement under the DCP.

The proposed development will also result in additional shadows cast to No. 1/12a Ley Avenue north facing courtyard at 3:00pm but not before. Other than this, there are no additional overshadowing impacts at the winter solstice.

When assessing the impact of the proposed development on the solar access of neighbours, the following must be considered:

- a. *the reasonableness of the development overall, in terms of compliance with other standards and controls concerned with the control of building bulk and having regard to the general form of surrounding development;*

Comment: The proposed development would not result in a development that exceeds what could be considered the reasonable development expectations of the site. It is noted, the proposed development complies with the site coverage and FSR development standards. Despite the proposal's departure from the landscaped area development standard, overshadowing is not considered to be a result of this variation. Council has also considered it is unreasonable to limit the subject site to a single storey at the rear given the context of development within the area, which is characterised by rear additions that are predominately two storey in scale. As such, overshadowing is not considered to be a result of poor design, but arises as a result of the subject site and surrounding properties being naturally vulnerable to overshadowing impacts.

It is therefore considered that the proposal is satisfactory having regard to the constraints of the site and the development is considered to be contextually supportable.

- b. *Site orientation.*

Comment: The subject site is located in a low/medium density area, where surrounding lots are generally rectangular in shape and have comparatively consistent widths (generally greater than 6m in width). The subject site has a north/south orientation. However, immediately adjoining properties do not share the same lot characteristics. To the west, sites along Ainsworth Street are oriented perpendicular to the subject site (east/west). To the east, the subject site shares a common side boundary with two lots known as No. 12 and 12a Leys Avenue. No. 12a is a battle-axe lot, which currently comprises of an existing multi dwelling housing development; the dwellings on this lot vary in their respective orientation (comprising of north and south facing dwellings). It should also be noted, the land falls approximately 3.58m from the front to the rear of the subject site.

In consideration of the above, retaining existing solar access to adjoining properties is difficult by virtue of site layout, site orientation and properties located downhill of the proposed development.

- c. *The relative levels at which the dwellings are constructed;*

Comment: The proposal has not sought excessive floor-to-ceiling heights and has utilised low pitching points at the ground floor responding to the conditions of the subject site. The proposed additions are constructed generally at existing ground / grade levels and are considered to be acceptable.

- d. *the degree of skill employed in the design to minimise impact; and*

Comment: The proposed architectural solution maintains a split-level dwelling design that responds the topography of the site and locates the proposed additions at the lower ground and ground floor levels, which is considered to be a reasonable outcome for the site. It is considered that the proposal has been articulated and designed to mitigate overshadowing impacts to surrounding properties where possible, while ensuring the proposal is within the development constraints of the site.

- e. *whether reasonably available alternative design solutions would produce a superior result.*

Comment: Given the existing and surrounding site constraints, this being the site orientation and topography of the land, it is considered that, without sterilising development on the subject site at the ground floor level, an alternative design solution would not produce a superior result.

Given the above, the proposed development is reasonable having regard to the objectives and controls relating to solar access and overshadowing as contained in Part C3.9 of the LDCP 2013 and the resultant impacts are not unreasonable under the circumstances.

C3.10 Views

Submissions have been raised over concerns of loss of a vista to views, specifically “*visible leafy outlook...and view of sky...*”. The LDCP 2013 states that a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Sydney Tower). The objectives and controls do not have consideration of views to neighbourhood features such as view of the sky, trees or parks and as such Council does not ordinarily consider this aspect under the LDCP 2013.

In any event, the bulk, scale and location of the development will not result in any significant view loss implications having regard to the objectives and controls of Part C3.10 of the LDCP 2013.

C3.11 Visual Privacy

Part C3.11 of the LDCP 2013 contains objectives and controls relating to visual privacy.

Windows

The proposed development seeks to accommodate windows in the following locations:

- 1 x window on eastern elevation of proposed studio
- 1 x window on western elevation at first floor level to master bedroom
- 1 x window on southern elevation to living room
- 2 x windows on southern elevation at first and ground floor to bedroom and living room

The following controls are applicable in the assessment of the application:

- 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. *window sills 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.*
- *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).*

The proposal seeks to accommodate one new window on the western elevation. The window is not located within 9 metres of windows on adjacent properties and therefore this window is not required to be screened or obscured. The window however, is proposed with a low sill level, which will provide a direct line into the adjoining neighbours rear yard for a person seated at the proposed desk area. It is considered that this window should be screened with fixed louvered screens to prevent direct sight lines into adjoining properties private open space, this will be reinforced by a condition of consent included in the recommendation.

The proposal includes a new fixed window, identified as window W3 on the southern elevation, the window serves a stairwell. It is not considered that any adverse visual privacy impact will arise from this window and, as such, no privacy mitigation measures are required.

The window, identified as W2 on the ground floor level, is elevated due to the topography of the site. This window serves a bedroom and provides access to an elevated ground floor balcony. Due to this window servicing a low trafficable room (bedroom) and given no neighbouring windows are located within a distance of 9m and 45 degrees, privacy mitigation measures are not required in this instance.

Window W4 located on the southern elevation serves the main living room within the dwelling. The proposed window is suitably screened by boundary fencing.

The new window proposed to the eastern elevation of the proposed studio is not considered to result in adverse visual privacy impacts, due to sightlines being screened by existing boundary fencing. Notwithstanding, due to the studios impact on the distinctive neighbourhood, a condition of consent is recommended to delete the studio.

Pool

The proposal seeks to alter levels within the rear yard to construct a raised swimming pool. The swimming pool and surrounding coping will be constructed at RL 22.48 to match the level of the proposed deck. To mitigate visual privacy impacts to neighbouring properties, particularly No. 27 Ainsworth Street, the application involves an extension in height to the western boundary fence by 0.584m, from RL 23.73 to RL 24.314. The fence height, as measured from No. 14 Leys side, will be 1.834m. A condition of consent is recommended to ensure the raised extent of the boundary fence is no higher than RL 24.28, which will restrict the fence to 1.8m in height measured from 14 Leys Avenue. As amended, Council raises no concerns with respect to the altered fence height for the following reasons:

- Subject to recommended conditions, the altered fence height will effectively be a continuation of the existing fence height that extends along the rear boundary of No. 27 Ainsworth Street.

- The overshadowing impact of the raised fence height has been reflected on the shadow diagrams. Despite not being coloured to show the additional shadow, Council has undertaken a solar access assessment and has concluded that additional overshadowing to the impacted property is reasonable in the circumstances of this case.
- Existing dense hedges are located along the western side of the pool. The survey identifies the top of hedge to be RL 25.39. Based on this information, the proposed fence height will be lower than the existing hedges.
- As conditioned the fence will measure approximately 2.42m in height at No. 27 Ainsworth Streets' rear boundary, which is not considered to be excessive given the large private open space area of No. 27 Ainsworth Street.

Deck

The proposed rear deck will be located at RL 22.48. Existing boundary fencing is adequate to screen any sightlines.

Balcony

The proposal seeks to introduce a balcony at the ground floor level (off the master bedroom – being ground floor from Leys Avenue level). Due to the topography of the site, the proposed balcony will be elevated. The proposed balcony measures 0.8m x 3.5m (depth x length), which exceeds the maximum balcony length prescribed under C9 of this part (i.e. 1.2m in depth x 2m in length). Council may permit larger balconies where it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties. It is considered the provision of a larger balcony at this level is acceptable in the instance for the following reasons:

- The proposal includes privacy screening to the sides of the balcony, which limits the availability of sightlines.
- The balcony is only 0.8m in depth and due to the limited size is not capable of being utilised as an entertainment area.
- The balcony services a bedroom, which is not a principal living area within the dwelling.

Green Roof

It is noted that some of the submissions received have expressed concerns regarding the visual privacy impact from the proposed green roof over the lower ground floor level and studio. The impact of visual privacy arising from these areas is considered to be unfounded, given the areas are for a green roof only, with limited accessibility for maintenance purposes. Having vegetation on the roof is not considered to result in privacy or other adverse impacts as it is not a trafficable space. Suitable conditions of consent are recommended to ensure any access to the green roof is to be for maintenance purposes only. Notwithstanding the above, Council has recommended for the proposed studio to be deleted via condition, which will consequently delete the green roof over the studio.

Having regard to the above and subject to recommended conditions, the proposed development is supportable in terms of visual privacy as the proposal has been designed to achieve the objectives of Part C3.11 of the LDCP 2013.

C3.12 Acoustic Privacy

A number of concerns have been raised by submitters to the proposal in relation to acoustic privacy impacts arising from the proposed works to the dwelling, including the provision of the pool within the rear yard. The proposal maintains a residential use in a residential zone. In this regard, any acoustic impacts are anticipated to be in accordance with other residential uses in the residential zone, and are not expected to be any different, for example, from the swimming pool located at the rear of 27 Ainsworth St. Standard conditions are recommended to control noise and operating hours of pool equipment, which will be imposed on any consent granted.

In consideration of the above, the proposed development, subject to recommended conditions, will not result in adverse acoustic privacy impacts and will be in accordance with the objectives of Part C3.12 of the LDCP 2013.

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.

Twenty (20) submissions were received in response to the initial notification. Of the 20 submissions submitted, sixteen (16) submissions were “unique”.

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

- Landscape area breach – see Section 5(a)(iii)
- Impact of proposal on trees in War Memorial Park – see Section 5(d)
- Removal of existing tree – see Section 5(d)
- Form of development out of character with the area – see Section 5(d)
- Proposal contrary to Distinctive Neighbourhood and Sub Area – see Section 5(d)
- Bulk and scale impact – see Section 5(d)
- Building Location Zone – see Section 5(d)
- Side boundary setbacks – see Section 5(d)
- Overshadowing – see Section 5(d)
- Visual privacy impacts – see Section 5(d)
- View loss – see Section 5(d)
- Acoustic privacy (pool) – see Section 5(d)

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

Issue: Errors and accuracy of the information contained within the statement of environmental effects.

Comment: Noted, however, notwithstanding any errors contained within this document, Council's conclusions have been reached independently and an assessment of this application has found that the proposal is generally acceptable and complies with the LLEP 2013 and LDCP 2013.

Issue: Breaches of Council's Planning Controls...evidence a proposed development which is of excessive Height, Bulk and Scale.

Comment: It is acknowledged that the proposal does not comply with the landscaped area development standard, see discussion under Section 5(a)(iii). The proposal complies with the FSR and site coverage development standards. While the proposal does result in non-compliances with provisions of the LDCP 2013, as identified throughout this report, this does not of itself prevent the grant of consent. Council's merit-based assessment of the application has found that the proposal is consistent with the objectives of the DCP and can be supported on merit.

Issue: Breach of Landscaped Area Standard under LEP 2013 and unsatisfactory Clause 4.6 Request.

Comment: Council's assessment of the application has identified that any increase in non-compliance with the landscape area development is not warranted. However, Council accepts the existing non-compliance present on the site. A revised Clause 4.6 request that has been provided in response to the proposed breach, see Section 5(a)(iii) of this report.

Issue: Breach of Site Coverage Development Standard

Comment: The proposal complies with the site coverage requirement.

Issue: The previous approval does not support the current proposed development.

Comment: Council has assessed the application against Council's current planning policy and current environmental planning instruments. In the circumstances of this case, Council has found the proposed development supportable.

Issue: Overdevelopment of the site.

Comment: The proposal complies with the FSR and site coverage development standard. The proposed development is considered acceptable within the context of the subject site and surrounding properties.

Issue: Height of rear fence deviates from the classic village feel.

Comment: Agreed, the proposed height of the rear fence is considered excessive in height. Suitable conditions of consent are recommended to ensure the rear boundary fence is no higher than 1.8m.

Issue: We wish to...have it noted that we did not receive notification of this application.

Comment: Noted. The application has been notified in accordance with Council's Community Engagement Framework. Council's records indicate the property has been captured in the notification list.

Issue: Survival rate of mature trees within War Memorial Park.

Comment: The application does not seek to remove existing trees from within War Memorial Park. The application has been referred to Council's tree officer who has raised no concerns with respect to the proposal and impact on trees within the park, subject to recommended conditions.

Issue: The current proposal seeks to enhance an existing studio already on the Park perimeter, which raises related questions. Was the present structure constructed with Council approval?

Comment: This consent does not seek to formalise any unauthorised works. A condition of consent is recommended to ensure that the existing studio is not formalised under this DA.

Issue: What will the proposed studio/rooftop garden's shading impact be on the Park's present vegetation to the south, and on any future re-vegetation of this currently neglected corner?

Comment: For reasons previously discussed, a condition of consent is recommended to delete the proposed studio. In this regard, no new shadows will be cast on the park. Notwithstanding, Council's Tree Assessment Officer has not raised any objections to the proposal.

Issue: The proposed double instead of single-gate access to the Park also seems curious.

Comment: A condition of consent is recommended to ensure that the park is accessed through a single width pedestrian gate, which will be consistent with surrounding properties.

Issue: Shade diagrams capture a moment in time and do not capture seasonal factors and their impacts on neighbours.

Comment: The shadow diagrams have been provided to demonstrate the impact of the proposal at the winter solstice (worst case scenario) in accordance with Council's requirements. Council's assessment of the application has found that the proposed development will not result in unreasonable overshadowing impacts to surrounding properties at winter solstice.

Issue: Will this development have an Arborist Project Manager throughout the construction and if so will they work to the Arborist Report presented as part of this DA? Who would they be accountable to for decisions relating to the trees?

Comment: Suitable conditions of consent have been included in the recommendation. The Project Arborist, as required by any consent granted, is responsible to oversee and manage sensitive excavation or construction activities where the survival of trees and other plants is required. Any works to trees not authorised by any consent granted must obtain a separate approval.

Issue: Trees 3, 4 and 5 on the Arborist's report are identified as in danger of damage during construction. What is the risk of their removal and who would decide?

Comment: Trees not authorised for removal must be retained and protected in accordance with any consent granted, subject to conditions recommended by Council's Tree Assessment Officer. A Project Arborist will be responsible to ensure no trees protected by a consent are adversely impacted.

Issue: The removal of hedges on both lengths of the property and the proposed construction will mean that neighbours on the boundaries will have a significant reduction in green visuals and effectively be walled in.

Comment: The hedges are not protected by Council's DCP and can be removed without Council approval. The application provides sufficient room for new landscaping to be accommodated for along the western side boundary.

Issue: Visual privacy resulting from tree loss.

Comment: Trees/landscaping maybe be used as a supplementary screening method to prevent overlooking. However, Council does not consider that landscaping can be solely relied upon to prevent overlooking. In this regard, overlooking because of the removal of landscaping/trees is not a relevant planning consideration in the assessment of this application.

Issue: The scale of the planned build is excessive & will impact an already severe issue with flooding in & around the park, with an ever increasing issue with water run-off, affecting numerous other properties along Ainsworth St.

Comment: The application has been referred to Council's Development Engineer, who has recommended suitable conditions of consent to control stormwater drainage in accordance with the LDCP 2013.

Issue: It also [the proposal] creates a precedent for any other unsuitable applications in the area.

Comment: An approval of this proposal does not create a precedent for the locality. Each development application is considered on its own merits and facts and circumstances.

Issue: Concerns about how construction will take place, as the only access to the property is through the back gate and trees will need to be removed.

Comment: Not a relevant matter of consideration under this application. Separate approval from Council is required to gain temporary access to a park for non-recreational purposes such as access through a park to adjacent properties for works or deliveries.

Issue: Park will be used as a staging area for construction and can only assume that damage to our property and the park may occur as a result.

Comment: As per standard operating procedures, any Development Application approval does not authorise the park/Council land to be utilised as a staging area for development. A dilapidation report will be required to document the condition of adjoining structures in the vicinity to ensure no adverse impacts as a result of the proposed works and will be imposed as a condition of consent.

Issue: Leys Avenue will become a parking lot for tradies/building material deliveries for months/years.

Comment: The issue does not raise a relevant planning consideration.

Issue: Impact of building works on sewer pipe located with the rear yard and running along the edge of the park.

Comment: Tap-in approval from Sydney Water is required and will be conditioned on any consent granted.

Issue: Impact of construction noise.

Comment: In principle, 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.

Issue: There have been workers using a chain saw already on the property and as yet no specific council admission of tree removal.

Comment: An assessment of this application is based on the scope of works proposed under this application. If unauthorised works to trees have been undertaken this matter needs to be reported to Council's Ranger Services team.

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.

- Urban Forest: The *Jacaranda mimosifolia* (Jacaranda) located at the rear of the site is nominated for removal in the Arboricultural Impact Assessment report prepared by Hugh the Arborist and dated 4/10/2021. This tree is supported for removal, due to its poor form that has resulted in most of the canopy overhanging the adjacent site, on the condition that a suitable replacement tree is planted in a suitable location.
- Development Engineer: No objection to the proposed development subject to recommended conditions.

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$7,502.67 would be required for the development under Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining 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 4.6 to vary Clause 4.3A 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/2021/1078 for alterations and additions to an existing dwelling, including lower ground and ground floor extension, internal reconfiguration of space, swimming pool, detached studio, removal of tree, landscaping and associated works at 14 Leys Avenue, Lilyfield 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
Drawing No. 42.04A	Proposed Site & Landscape Plan	12/10/2021	Winshore Building
Drawing No. 42.05 A	Proposed Lower Ground Floor Plan	12/10/2021	Winshore Building
Drawing No. 42.06A	Proposed Floor Plan	12/10/2021	Winshore Building
Drawing No. 42.07A	Proposed Roof Plan	12/10/2021	Winshore Building
Drawing No. 42.08A	East & West Elevation	12/10/2021	Winshore Building
Drawing No. 42.09A	South Elevation	12/10/2021	Winshore Building

Drawing No. 42.10A	Section Elevation AA & BB	12/10/2021	Winshore Building
Drawing No. 42.11A	Section Elevation CC & DD	12/10/2021	Winshore Building
Drawing No. 42.15A	Window Schedule	12/10/2021	Winshore Building
Drawing No. 42.16AB	Skylight Schedule	19/12/2018	Winshore Building
Supporting Documentation			
A436024	BASIX Certificate	15/10/2021	Winshore Building Pty Ltd
-	Arboricultural Impact Assessment	4/10/2021	Hugh the Arborist

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. The area identified as "paving" on Drawing No. 42.07A and located east of the proposed studio is to be amended to delete the proposed stepping stones and must grassed and/or landscaped area.
- b. The proposed studio located within the rear yard is to be deleted.
- c. The extent of the western side boundary fence proposed to be raised in height shall be no higher than RL 24.28.

- d. The proposed boundary fence located on the southern common boundary is to be amended so that the fence is no higher than 1.8m, the existing southern boundary fence may also be retained.
- e. The proposed pedestrian access to War Memorial Park shall be reduced to be a single width access that opens inwards to the site, the existing pedestrian access may also be retained.

FEES

3. 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.

4. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note: Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$7,502.67

*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

5. 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

6. 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.

7. Balcony

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating the erection of a privacy screen on the eastern and western sides of the ground floor balcony having a minimum block out density of 75% and a height of 1.6 metres above the finished floor level of the balcony.

8. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

9. 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.

10. 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.

11. 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.

12. Works Outside the Property Boundary

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

13. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Window W5 being amended in the following manner:

- a. Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level;
Note: The louvers are to individual opening more than 30mm wide and a total area of opening that is less than 30% of the surface area of the screen and made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position.

PRIOR TO ANY DEMOLITION**14. 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.

15. 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.

16. 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.

17. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE

18. 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.

19. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. 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/directly to Council's piped drainage system via the OSD/OSR tanks as necessary; Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may be drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design

- of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer;
- b. 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;
 - c. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
 - d. 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;
 - e. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
 - f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
 - g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
 - h. Where a combined OSD/OSR is proposed, only the roof water is permitted to be connected to the storage tank. The overflow from the OSD/OSR must be connected under gravity to Leys Avenue. A discharge control device is not required;
 - i. Details of the 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided;
 - j. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
 - k. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
 - l. No nuisance or concentration of flows to other properties;
 - m. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
 - n. 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;

- o. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- p. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- q. 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;
- r. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- s. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- t. Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system; <For pools>
- u. No impact to street tree(s).

20. Changes to Levels

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

- a. A 150 mm step up must be provided between the finished surface level of the external area and the finished floor level of the internal room.

21. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

22. 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

23. Green Roofs, Walls and Facades Report

Prior to the issue of Constriction Certificate, the Certifying Authority is to be provided with a report prepared by a registered landscape architect or suitably qualified person demonstrating that the proposed landscape plan and details of any green roofs, wall and facades are consistent with [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#) including but not limited to using species selected from the suggested species list, water proofing and drainage.

DURING DEMOLITION AND CONSTRUCTION**24. 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.

25. 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**26. 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.

27. 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.

28. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

29. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

30. Verification and Maintenance of Green Roofs, Walls and Facades Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence demonstrating that the works have been carried out in accordance with the Green Roofs, Walls and Facades Report that was submitted at Construction Certificate Stage and a maintenance plan that is consistent with the [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#).

ON-GOING**31. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

32. Green Roofs, Walls and Facades Establishment

The plantings within the Green Roofs, Walls and Facades as part of this consent are to be maintained in a healthy and vigorous condition for 12 Months from the issue of an Occupation Certificate. If any of the planting are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).

33. Non-trafficable Green Roof

Any green roofs shall not be used as outdoor open space. Physical access to the green roof shall only be permitted for scheduled maintenance and repairs as required to maintain the green roof in good working order.

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:

- 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 veranda over the footpath;
- h. Partial or full road closure; and
- i. 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 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;

- f. Development Application for demolition if demolition is not approved by this consent;
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

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.

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:

- 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.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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.

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

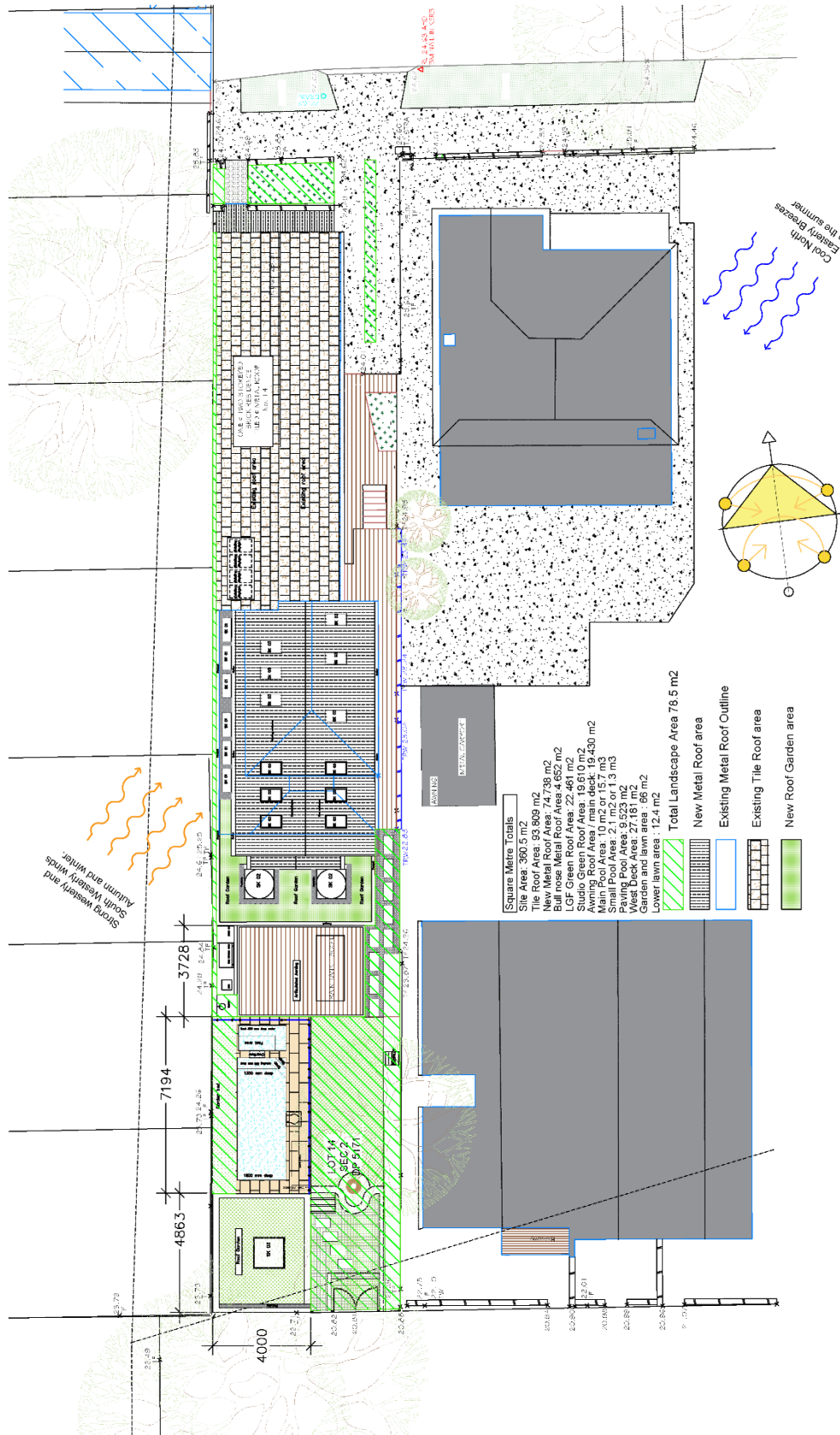
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

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

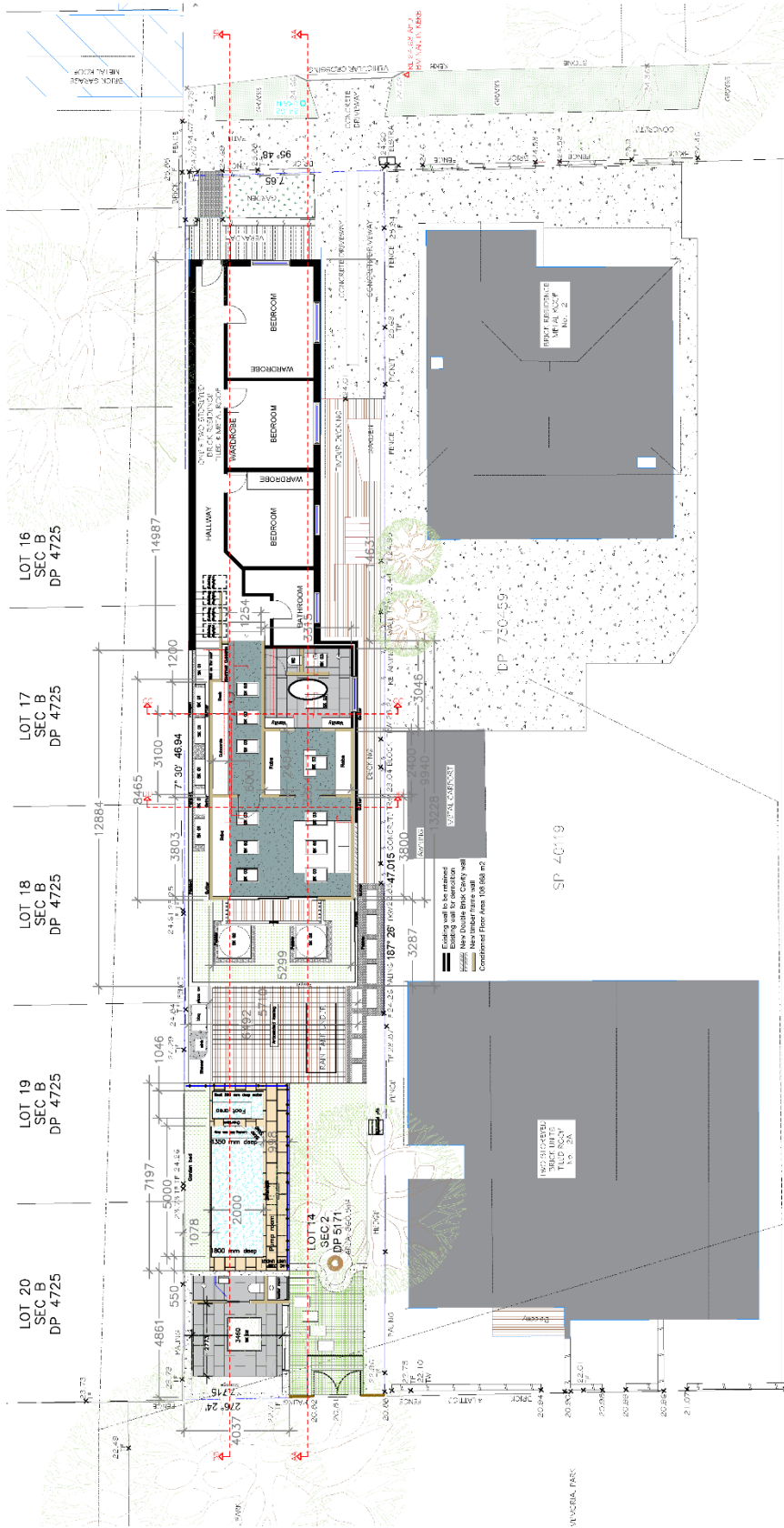


	Project: 14 Lays Ave Lilyfield NSW 2040	Date: 12/10/2021
	Drawing: Proposed Site & Landscape Plan	Drawing No: 42.04A
Client: Adrian Wilson & Tiffany Clever		Scale: 1:100

NOTE:
All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the Building Consultant, relevant Australian Standards and Authorities and it to be corrected with.

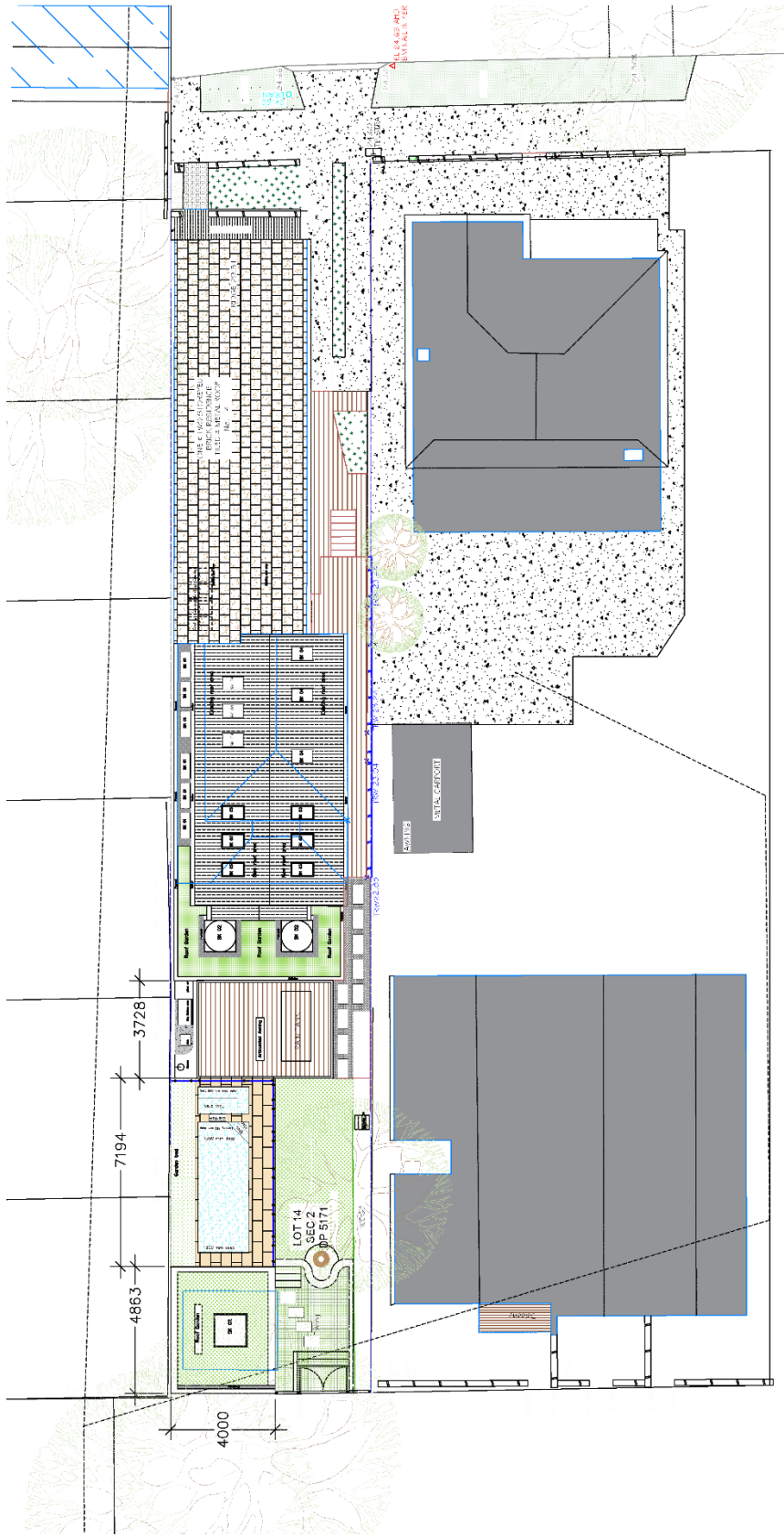


Document Ref: BLD-34430158
Version: 1, Version Date: 10/06/2022



	<p>NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the relevant authority. All drawings are prepared in accordance with the Australian Standards and Authorities are to be complied with.</p>	<p>Issue / Amendments DA Issue</p>		<p>Project: 14 Lays Ave. Lyfield NSW 2040</p>	<p>Date: 12/10/2021</p>
				<p>Drawing: Proposed Floor Plan</p>	<p>Drawing No: 42.06A</p>
<p>Client: Adrian Wilson & Tiffany Oliver</p>				<p>Scale: 1:100</p>	

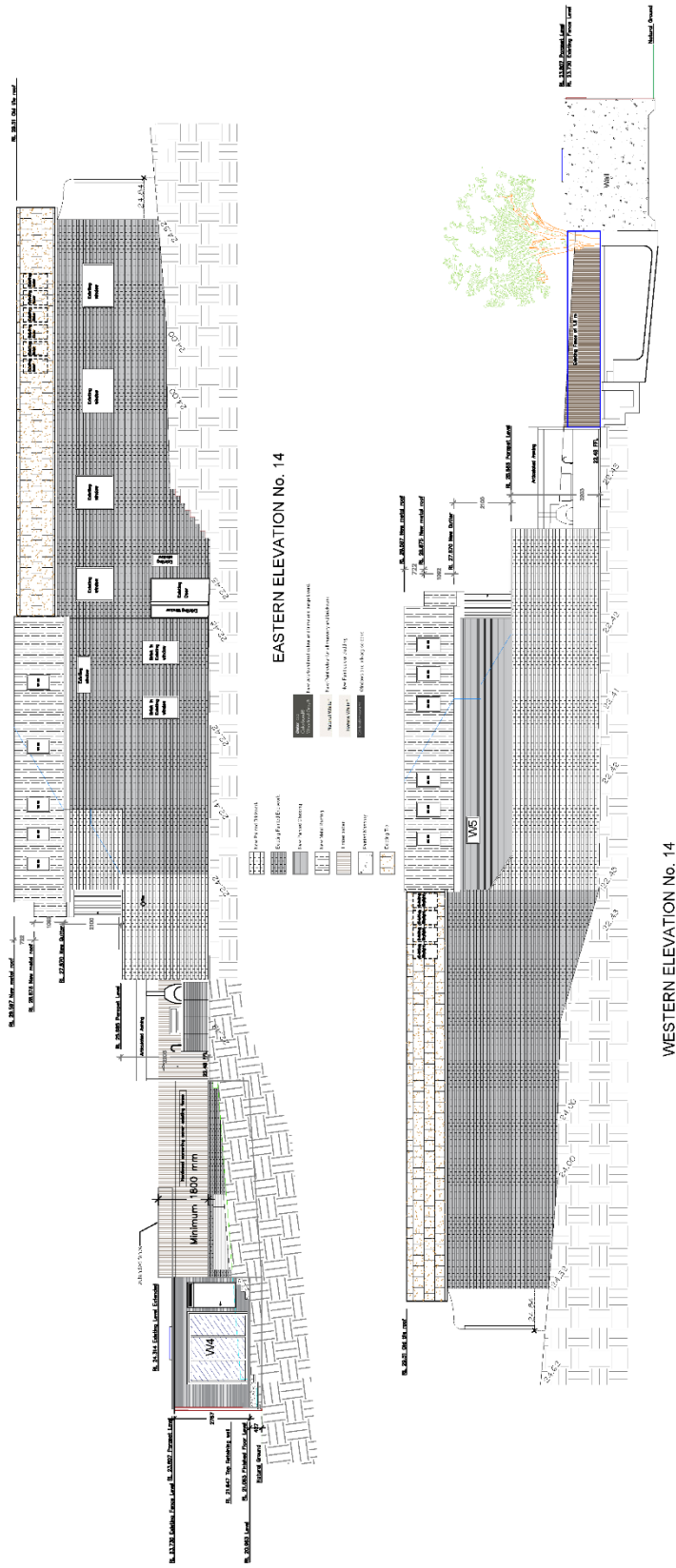
Document Ref ID: 348330158
Version: 1, Version Date: 10/05/2022



-  New Metal Roof area
-  Existing Metal Roof Outline
-  Existing Tile Roof area
-  New Roof Garden area

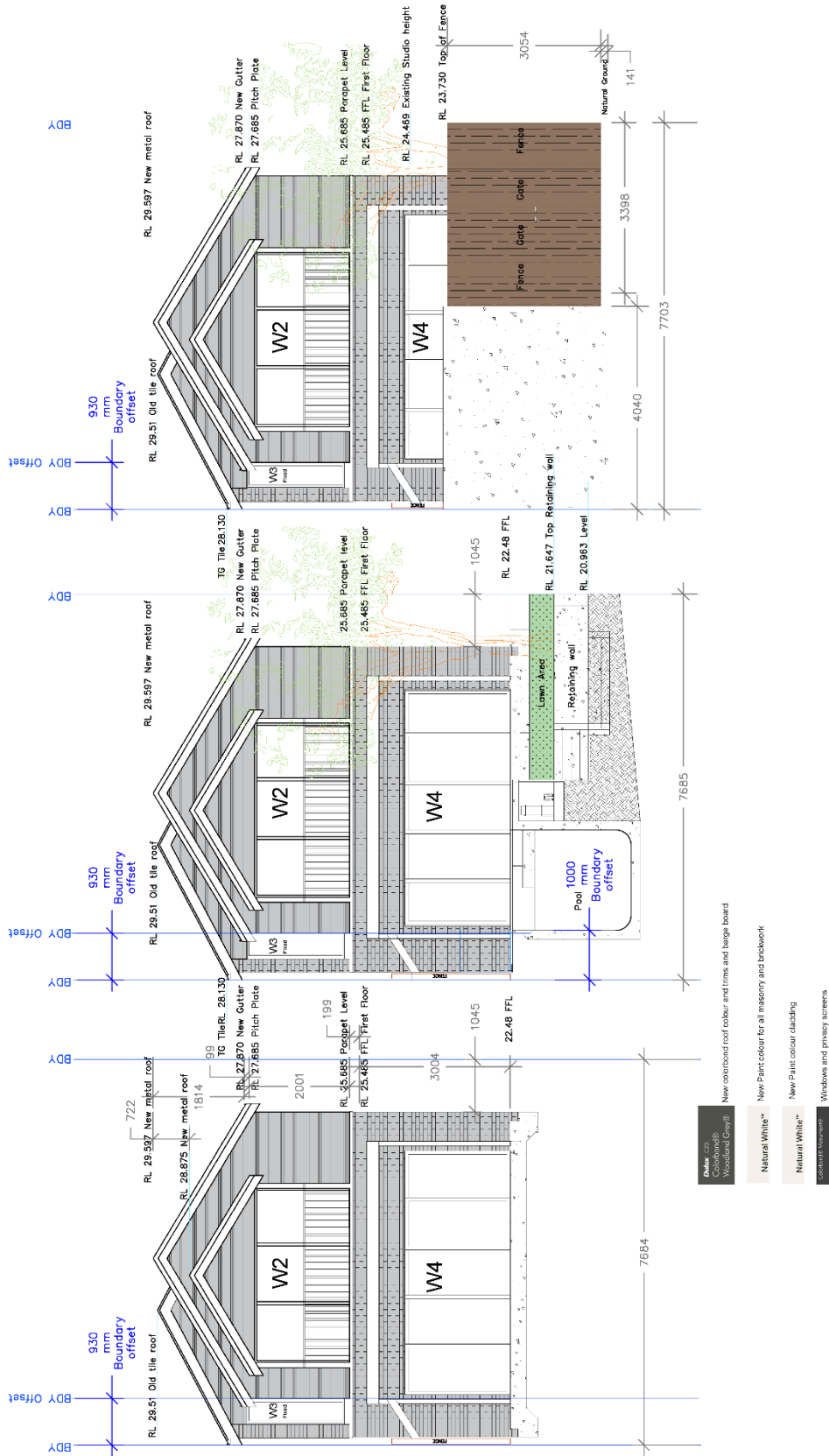
	<p>NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the relevant authority. All work to be completed in accordance with the relevant Australian Standards and Authorities are to be complied with.</p>	<p>Issues / Amendments DA Issue</p>		Project: 14 Lays Ave. Lyfield NSW 2040	Date: 12/10/2021
				Drawing: Proposed Roof Plan	Drawing No: 42.07A
Client: Adrian Wilson & Tiffany Oliver				Scale: 1:100	

Document Ref: 34838158
Version: 1, Version Date: 10/05/2022

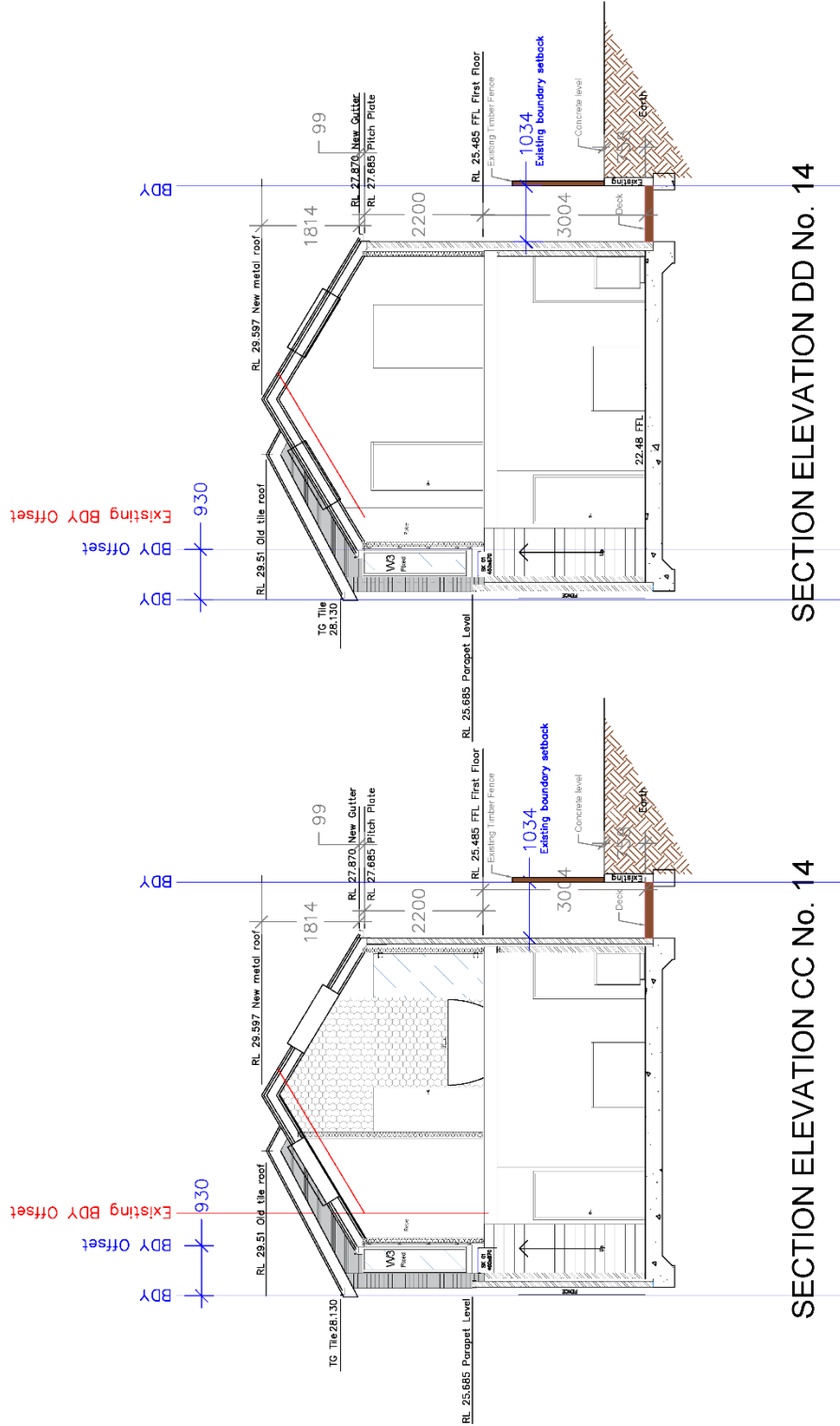


	<p>NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the relevant authority. All drawings are Australian Standards and Multiples are to be completed.</p>	<p>Issues / Amendments DA Issue</p>		<p>Project: 14 Lays Ave. Lyfield NSW 2040</p>	<p>Date: 12/10/2021</p>
				<p>Drawing: East & West Elevation</p>	<p>Drawing No: 42.08A</p>
<p>Client: Adrian Wilson & Tiffany Oliver</p>				<p>Scale: 1:100</p>	

Document Ref: 344330158
Version: 1, Version Date: 10/05/2022





	Project: 14 Lays Ave. Lyfield NSW 2040 Drawing: South Elevation	Date: 12/10/2021 Drawing No: 42.00A
	Client: Adrian Wilson & Tiffany Oliver Scale: 1:100	
Issues / Amendments DA Issue	NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the consulting engineer. Australia, remain Australian Standards and Multiplicities are to be complied with.	
	Document Ref ID: 34839158 Version: 1, Version Date: 10/05/2022	

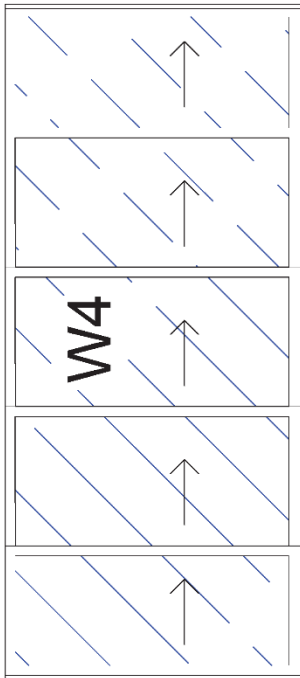
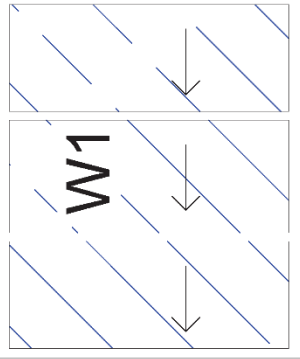
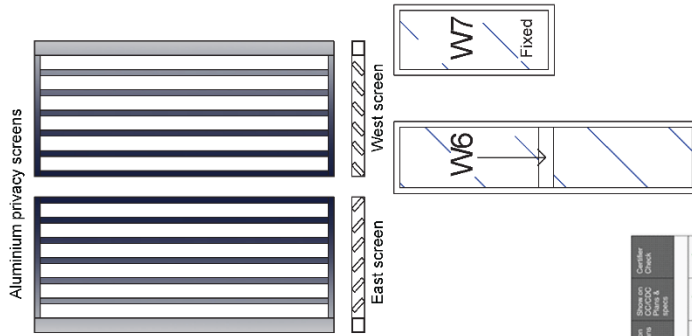


SECTION ELEVATION DD No. 14

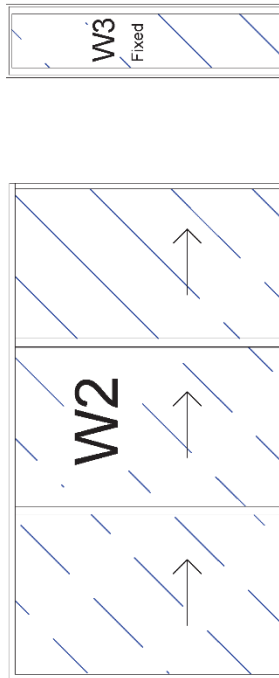
SECTION ELEVATION CC No. 14

	<p>NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the consulting engineer. Australia, relevant Australian Standards and Multiplicities to be complied with.</p>	<p>Issues / Amendments DA Issue</p>		<p>Project: 14 Lays Ave. Lilyfield NSW 2040</p>	<p>Date: 12/10/2021</p>
				<p>Drawing Section: Elevation CC & DD</p>	<p>Drawing No: 42.11A</p>
<p>Client: Adrian Wilson & Tiffany Oliver</p>				<p>Scale: 1:100</p>	

Document Ref ID: 34839158
Version: 1. Version Date: 10/05/2022



All Viewed from the outside.



Glazing requirements

The applicant must submit the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Highest overshadowing specifications must be satisfied for each window and glazed door.

The following requirements must also be satisfied in relation to each window and glazed door:

- Windows with adjustable shading may have adjustable blades or removable shade cloth (not less than 80% shading ratio). Adjustable blades must be fabricated in accordance with National Fire Protection Association (NFPA) conditions.
- Windows with adjustable shading may have adjustable blades or removable shade cloth (not less than 80% shading ratio). Adjustable blades must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-value and SHGC must be calculated in accordance with National Fire Protection Association (NFPA) conditions.
- Any alternative systems, with complying U-value and SHGC, may be submitted. The description is provided for information only. Alternative systems, with complying U-value and SHGC, may be submitted.

For projections described in metres, the leading edge of each beam, parapet, overhang, balcony or awning must be no more than 500 mm from the building face. For projections described in metres, the leading edge of each beam, parapet, overhang, balcony or awning must be no more than 500 mm from the building face.

Parapets with top surfaces not at or above finished ground level must have a shading coefficient of less than 0.35.

Parapets with lead balustrade must have balustrade panels to be window or glazed door above which they are situated, unless the parapet side shades a perpendicular window. The spacing between balustrade panels must not be more than 100 mm.

Overhanging buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.

Windows and glazed doors glazing requirements

Window/door no.	Orientation	Glazing glass type	Height (m)	Shading device	U-value (W/m ² K)	SHGC (0.75)	Frame and glass type	Shading device	U-value (W/m ² K)	SHGC (0.75)	DA View	Over-Shadowing	Other
W1	E	4.4/0.8	0	0	none	none	standard aluminium, single clear (SP)	none	none	none	DA View	Over-Shadowing	Other

Glazing requirements

Window/door no.

Orientation

Glazing glass type

Height (m)

Shading device

U-value (W/m²K)

SHGC (0.75)

Frame and glass type

Shading device

U-value (W/m²K)

SHGC (0.75)

DA View

Over-Shadowing

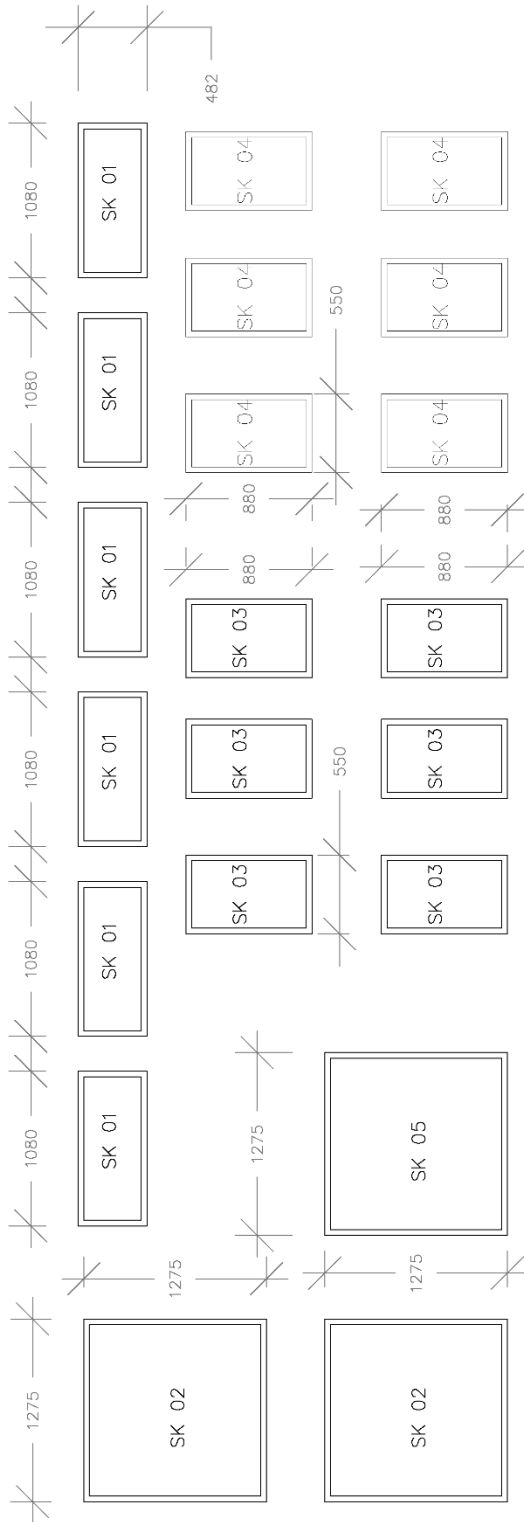
Other

Winshore BUILDING

NOTE: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to the relevant authority. All drawings are Australian Standards and Multiplicities are to be completed.

Issue / Amendments
DA 1844C

Project: 14 Lays Ave. Lilyfield NSW 2040
Drawing: Window Schedule
Date: 12/10/2021
Drawing No: 42.15 A
Scale: 1:20
Client: Adrian Wilson & Tiffany Oliver




Skylights glazing requirements

Skylight number	Area of glazing (inc. frame) (m ²)	Shading device	Frame and glass type
S1	1.44	no shading	timber, low-E interstitial glazing (timber external, for U-value ≥ 2.5 SHGC: 0.450)
S2	1.44	no shading	timber, low-E interstitial glazing (timber external, for U-value ≥ 2.5 SHGC: 0.450)

Planning, Industry & Environment
Building Sustainability Index: www.busi.nsw.gov.au


Glazing requirements

Skylight number	Area of glazing (inc. frame) (m ²)	Shading device	Frame and glass type
S3	1.44	no shading	U-value ≥ 2.5 SHGC: 0.450 timber, low-E interstitial glazing (timber external, for U-value ≥ 2.5 SHGC: 0.450)
S4	1.44	no shading	U-value ≥ 2.5 SHGC: 0.450 timber, low-E interstitial glazing (timber external, for U-value ≥ 2.5 SHGC: 0.450)
S5	1.44	no shading	U-value ≥ 2.5 SHGC: 0.450 timber, low-E interstitial glazing (timber external, for U-value ≥ 2.5 SHGC: 0.450)



Winshore
BUILDING

Issue / Amendments
DA Issue



Note: All plans to be read in conjunction with other consultant's drawings. Do not scale off drawings. Verify dimensions on site before work commences. Any discrepancies are to be reported immediately to Building Code of Australia, relevant Australian Standards and Authorities are to be complied with.

Project: 14 Leys St Lilyfield NSW 2040
Drawing: Skylight Schedule
Client: Adrian & Tiffany Glover

Date: 19/12/2018
Drawing No: 42_16 AB
Scale: 1:20

Attachment C- Clause 4.6 Exception to Development Standards

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Leichhardt Local Environmental Plan 2013

**Clause 4.6 Exceptions To
Development Standards**

Landscaped Area

14 Leys Avenue
LILYFIELD NSW 2040

June 2022

Norrskan Kolektiv Design, Draft, Plan. hello@norrskenko.com.au
norrskenko.com.au 204 / 166 Glebe Point Road, Glebe NSW 2037

Document Set ID: 36495603
Version: 1, Version Date: 24/06/2022



Norrskén Ko.

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GLEBE NSW 2037

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Date	Version	Editor / Author	Notes
28-10-2021	1.0	Alexander Chiknaikin	Issue For Development Application
24-06-2022	2.0	Alexander Chiknaikin	Issue For Development Application



Norrskén Ko.

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1.0 Preamble

This document has been prepared to serve as a written request seeking to vary a Development Standard under the provisions of Clause 4.6 of the Leichhardt Local Environmental Plan 2013, in relation to an application for development. The application for development relates to the use of land; the erection of a building; the carrying out of a work; and the demolition of a building or work (Development) on land at Lot 14, Section 2, DP5171 known as 14 Leys Avenue, LILYFIELD (Site). The Development Standard seeking to be varied is Clause 4.3A(3)(a)(ii) relating to Landscaped Area.

Clause 4.6(5) of the Leichhardt Local Environmental Plan 2013 and Planning Circular PS 20-002 dated May 5, 2020 empowers Inner West Council as the Consent Authority, to receive delegated authority and provide the concurrence of the Secretary of the Department Of Planning And Environment to the proposed variation. Before the Consent Authority may enliven its facultative power, Clause 4.6 of the Leichhardt Local Environmental Plan 2013 sets out pre-requisites to be satisfied, in addition to relevant case law determined by the Land And Environment Court and the Supreme Court.

This document has been prepared supplemental to the Statement Of Environmental Effects, and against the Architectural Plans prepared by Winshore Building dated October 15, 2021; both submitted with this Application for development.

2.0 Proposed Works

The Application is made for alterations and additions to an existing dwelling, including Ground and First Floor extension, internal reconfiguration of space, Swimming Pool, detached Studio, removal of tree, landscaping and associated works (the Development). The existing Lower Ground and Ground Floor levels shall be extended to the rear, in a similar fashion to previous improvements made to the Site. The Application proposes the reconfiguration of the rear yard, to include a Swimming Pool and detached Studio. No works are proposed to the front of the dwelling, visible from the primary street front.

3.0 Clause 4.6 Variations

In evaluating an application for development, the Consent Authority is to take into consideration the relevant matters of the Development the subject of the Application, against the provisions of any Environmental Planning Instrument made under Part 3 of the Act. One Environmental Planning Instrument that applies to the land, relative to the Development the subject of the Application, is the Leichhardt Local Environmental Plan 2013 (LLEP2013).

The LLEP2013 is made in the form of the Standard Instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006, and contains optional and additional provisions relating to development. One of the optional and additional provisions of the LLEP2013 are Development Standards, that are fixed standards relating to particular aspects of a development.

The Standard Instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006 also contain a compulsory provision at Clause 4.6(2) that empowers the Consent Authority to grant development consent for a development even though that development would contravene a Development Standard imposed by the LLEP2013. The permissive power at Clause 4.6(2) may be enlivened if the Consent Authority forms its own opinion of satisfaction that the pre-requisites are demonstrated. The pre-requisites are provided at Clause 4.6(3)(a)-(b); Clause 4.6(4)(a)-(b) and Clause 4.6(5) of the LLEP2013.

4.0 Development Standard To Be Varied

4.1. Definition Of A Development Standard

A Development Standard is defined at Section 1.4 of the Environmental Planning And Assessment Act 1979 as:

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Table 1 — Environmental Planning and Assessment Act 1979; Section 1.4 Definitions

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

4.2. Development Standard To Be Varied

The Development Standard that is sought to be varied by this written request is Clause 4.3A(3)(a)(ii) Landscaped Area of the LLEP2013, that fixes the minimum Landscaped Area for development at the Site.

Clause 4.3A(3)(a)(ii) is a numerical Development Standard that fixes a standard in respect of an aspect of development, and is therefore capable of being varied.

Clause 4.3A(3)(a)(ii) in full states:

Table 2 — Leichhardt Local Environmental Plan 2013; Clause 4.3A(3) Landscaped Areas For Residential Accommodation In Zone R1

- (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

Landscaped Area is defined as:

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Table 3 — Leichhardt Local Environmental Plan 2013; Clause 4.3A(4) Landscaped Areas For Residential Accommodation In Zone R1

- (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

Table 4 — Leichhardt Local Environmental Plan 2013; Dictionary

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

Clause 4.3A(3)(a)(ii) fixes the minimum Landscaped Area as 20.0% (72.10m²) for the Site.

4.3. Development Standard Calculation

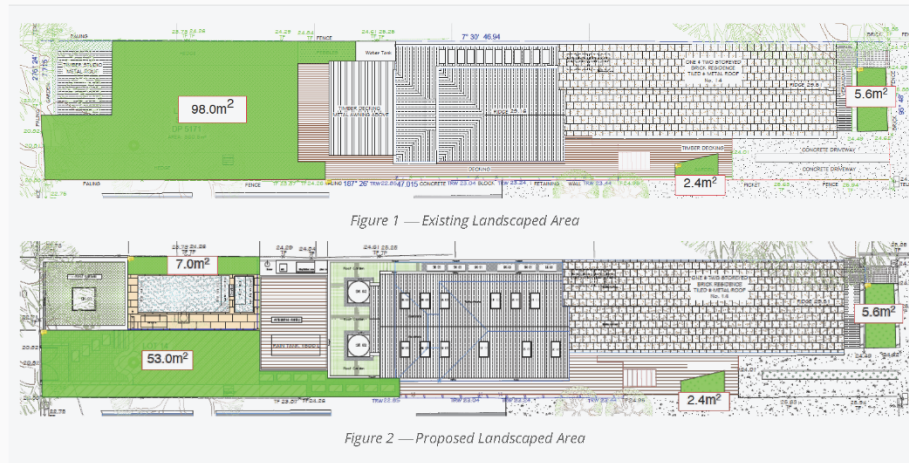
The Landscaped Area calculations of the Development are:

Table 5 — Landscaped Area Calculation

	Proportion
Minimum	20.0% (72.10m ²)
Existing	29.4% (106.0m ²)
Proposed	10.93% (39.40m ²)
Variation To Minimum	-45.35% (-32.70m ²)
Variation To Existing	-62.83% (-66.60m ²)

A visual representation of the Landscaped Area is made as follows:

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5.0 Nature Of The Variation

The Application relates to a Ground and First Floor extension to the rear of an existing dwelling, a new detached Studio and a Swimming Pool at the rear yard. The concentration of most of the Landscaped Area at the property occurs at the rear yard, with little spread through the rest of the Site. As the works occur predominantly at the rear of the Site, Landscaped Area is disproportionately impacted. The Development results in a change to the Landscaped Area from 29.4% (106.0m²) to 10.93% (39.40m²).

An assessment carried out in the Statement Of Environmental Effects submitted with this Application, finds the Development to be acceptable, particularly as the Development satisfies the Floor Space Ratio and Site Coverage Development Standards. Both the Floor Space Ratio and Site Coverage Development Standards are quantitative development controls used to manage building bulk and scale; thereby indicating the extent of the Development is acceptable. The existing nature and physical constraints of the Site are found to result in a deficient Landscaped Area, that will be discussed through this document, as well as the subsequent capacity of the Development to achieve the Objects of the land Zone and the Objects of the Development Standard itself.

6.0 Matters For Consideration

6.1. Clause 4.6(3)(a): Compliance With The Development Standard Is Unreasonable Or Unnecessary In The Circumstances Of The Case

The question of whether compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case has been tested in the Land And Environment Court. The most recent and seminal matter to deal with this question is that of *Wehbe v Pittwater Council* [2007] NSWLEC 827, presided over by the Honourable Justice Preston SC.

The matter related to an application for the demolition of existing structures and the subdivision of land from one lot to two lots. The matter relied on a variation to the minimum allotment size and sought leave to rely on an objection under the provision of the State Environmental Planning Policy No.1 — Development Standards. Among other points, the question put to the Court was

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ways of establishing that compliance is unreasonable or necessary in the circumstances of the case, and whether the objection is well founded.

At [42] of the judgement, the Honourable Justice Preston SC found that the most commonly invoked way of establishing whether compliance with a Development Standard is unreasonable or unnecessary is by determining that the objects of the Development Standard are achieved notwithstanding non-compliance with the Development Standard. The judgement continues at [43] by stating that a Development Standard is not an end in themselves, but a means of achieving the ends. The ends are environmental or planning objectives, and compliance with a Development Standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved.

If the proposed development proffers an alternative means of achieving the objective, strict compliance with the Development Standard would be unnecessary (as it is achieved anyway) and unreasonable (as no purpose would be served). The judgement proceeds to set out an additional four ways to establish that compliance with a Development Standard is unreasonable or unnecessary. These are provided at [45] - [49] of the judgement as:

Table 6 — Wehbe v Pittwater Council [2007] NSWLEC 827 [42] — [52]

1. Compliance with the Development Standard is unreasonable or unnecessary because the Objectives of the Development Standard are achieved notwithstanding non-compliance with the Standards (at [43]);
2. The underlying Objective or purpose is not relevant to the Development with the consequence that compliance is unnecessary (at [45]);
3. The underlying Objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (at [46]);
4. The Development Standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the Standard and hence compliance with the Standard is unnecessary and unreasonable (at [47]); and
5. "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" (at [48]).

Turning to consider the Application for development at hand and the departure to the Landscaped Area Development Standard, the judgement of the Honourable Justice Preston SC is relied upon. In the first instance, the Application relies on the Honourable Justice Preston SC's finding's that the Development Standard is a means of achieving the Objects of the Development Standard, and are not the end in themselves. This becomes pertinent by the construction of Clause 4.3A of the LLEP2013 and the inclusion of the Site Coverage Development Standard, that occurs within the same subclause as the Landscaped Area Development Standard.

The construction of the clause means that if the Site Coverage Development Standard is achieved, there is sufficient capacity in the remaining Site area to provide for a suitable Landscaped Area. This means that by achieving the Site Coverage Development Standard, the Objects of the clause are achieved notwithstanding non-compliance with the Landscaped Area Development Standard.

In the matter at hand, the Landscaped Area Development Standard is not achieved because there are sufficient environmental planning grounds acting as a barrier to compliance, which is discussed further in this document. Because the Site Coverage Development Standard is achieved and because there are sufficient environmental planning grounds to support the proposed Landscaped Area, it is unnecessary to achieve compliance in relation to the Landscaped Area Development Standard because they are achieved anyway.

It is further unreasonable to achieve the Landscaped Area Development Standard because no purpose would be served. The departure from the Development Standard is modest, and the Assessing Officer appointed to the assessment of the Application by the Consent Authority receives delegated authority from the Minister for Planning and Public Spaces to determine the Application. This indicates the minor extent of the variation when considered in the framework of Local Planning Panels.

The achievement of the Floor Space Ratio and Site Coverage Development Standards, that control the scale and extent of buildings, demonstrates the proposal 'fits' within the envisaged scheme of the locality and is acceptable. A reduced building



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footprint that achieves numeric compliance with the Landscaped Area Development Standard would not display a measurable step toward a more suitable achievement of the Objects of the Development Standard.

6.2. Clause 4.6(3)(b): There Are Sufficient Environmental Planning Grounds To Justify Contravening The Development Standard

In approaching Clause 4.6(3)(b), the Land And Environment Court has been asked to determine what constitutes environmental planning grounds. The most pertinent matter to deal with this question is that of Initial Action Pty. Ltd. v Woollahra Municipal Council [2018] NSWLEC 118, again, presided over by the Honourable Justice Preston SC.

The matter related to an application for the development of a residential flat building that sought leave to rely on a variation to the Building Height Development Standard. The appeal was made under Section 56A of the Land And Environment Court Act 1979 that is limited to questions of law. Commissioner Smithson, who heard the original appeal (Initial Action Pty. Ltd. v Woollahra Municipal Council [2017] NSWLEC 1734) misinterpreted and misapplied Clause 4.6 and the Honourable Justice Preston SC was tasked with determining the correct approach to dealing with a written request under Clause 4.6.

At [23] the Honourable Justice Preston SC turns to consider Clause 4.6(3)(b) and the phrase “environmental planning grounds”. Between [23] and [24], the Honourable Justice Preston SC states that the adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning And Assessment Act 1979, including the Objects at Section 1.3 of the Act. The environmental planning grounds relied on in the written request under Clause 4.6 must be ‘sufficient’, and justify contravening the development standard, not simply promoting the benefits of carrying out the development as a whole.

The Objects at Section 1.3 of the Act are:

Table 7 — Environmental Planning and Assessment Act 1979; Section 1.3 Objects Of Act

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

In seeking to demonstrate the Objects of the Act are fulfilled, the Application for development proposes to vary the Landscaped Area Development Standard, notwithstanding achieving the Objects of the Development Standard, because there are sufficient environmental planning grounds. The Application proposes the Development in its current state to preserve the natural environment and to preserve the social environment. The physical characteristics of the Site contribute to both the natural

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environment and the social environment, but their contribution also acts as the Sites constraints that pervade the variation to the Development Standard.

In the first instance, the natural environment of the Site is contributory to the locality. In particular, the topographic profile of the Site declines from the primary street front at the north side boundary to the rear at the south side boundary that adjoins War Memorial Park. The topographic profile of the Site means that existing development is in place to manage the effect of development on the landform and to maintain the on-going function and use of the Site. This includes access paths and retaining walls and civil works at the east side boundary.

These existing building elements are necessary to the function of the Site and the preservation of the natural environment, but do not contribute to Floor Space Ratio, Site Coverage or Landscaped Area. Instead, relative to this proposal, they are a barrier to achieving a satisfactory proportion of Landscaped Area to the Site, even when the Floor Space Ratio and Site Coverage Development Standards are achieved. The activation of these spaces, and conversion into spaces not reliant on access paths and retaining walls, may unlock available Landscaped Area, but would result in a detrimental impact to the existing natural environment and destabilisation to the local ecology and habitat, as well as having an undesirable impact to the social environment.

In the second instance, the social environment is an important contributory element to the locality. The social environment may be categorised as the orderly and economic use of land, the provision of affordable housing, good design and amenity of development. This may further be supported by Local Provisions such as the Desired Future Character and the contribution of development to the streetscape.

The upkeep of this social environment makes a significant contribution to the form factor of the Development, and whilst an alternative Architectural design may be proposed that achieves the Landscaped Area Development Standard, it would result in an uneconomic use, or unaffordable housing, or poor design or poor amenity. Alternative Architectural designs that would increase the availability of Landscaped Area while simultaneously achieving the Floor Space Ratio and Site Coverage Development Standards could result in a taller or bulkier building with uncharacteristic form and massing. This in turn would result in a deficient application of the Local Provisions including residential amenity and the Desired Future Character, negatively impacting the local character and streetscape.

To manage both the natural environment and the social environment, the proposed Development adopts a balanced approach, that results in a modest departure to the Landscaped Area Development Standard while still achieving the Object of the Development Standard.

The proposed works are limited in scale and scope, concentrated at the rear of the existing building to be as least intrusive as possible to both the natural and social environment. The Development results in a positive outcome by preserving the existing natural groundline, but improves amenity from within and without. Internal and external living spaces provide increased proportion, and use built elements to improve visual and aural privacy from War Memorial Park. The Development also aligns with the current residential leasing market and expectations of contemporary living spaces in a self-sustaining, protectionist, post-pandemic world.

The simplest test that may be applied to the Development, that concludes whether the Architectural design and solution in overcoming environmental planning matters is acceptable, is the ability of the Development to achieve the other applicable Development Standards. The two applicable quantitative Development Standards of Floor Space Ratio and Site Coverage that are used to manage building bulk and scale, are both upheld through the Development. As discussed in relation to Clause 4.6(3)(a), the achievement of the Site Coverage Development Standard in particular, ensures the Objects of the Landscaped Area Development Standard are achieved, but it is the impact of existing environmental planning grounds that precludes this.

6.3. Clause 4.6(4)(a)(ii): The Development Is Consistent With The Objectives Of The Particular Development Standard In Which The Development Is Proposed To Be Carried Out

The Application seeks to vary the Development Standard at Clause 4.3A(3)(a)(ii) of the LLEP2013. The Objects of the Development Standard are:

Table 8 — Leichhardt Local Environmental Plan 2013; Clause 4.3A(1) Landscaped Areas For Residential Accommodation In Zone R1 Objects

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

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- (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.

The Application responds to the Objects of Clause 4.3A(3)(a)(ii) as follows:

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

Section 1, Part C1.12 of the LDCP2013 provides that a Site greater than three hundred square metres in area shall have a minimum of two trees capable of achieving a mature height and form appropriate to the setting of the Site and proposed Development. The greatest proportion of proposed Landscaped Area is provided in a contiguous arrangement at the rear yard, that is adept of supporting two trees capable of achieving a mature height and form appropriate to the setting of the Site and the Development.

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

The nature of the Site means the primary location of Landscaped Area - at the rear yard - provides a contiguous network of local Landscaped Area and biodiversity corridors. Most notably through the adjoining 27 Ainsworth Street and pockets of mature vegetation at War Memorial Park. Although the pattern of development at the south side of Leys Avenue is broken by 12A Leys Avenue, the location of Landscaped Area is consistent with other properties at the south side of Leys Avenue.

At the west and east side boundaries, the Site is unable to achieve a landscaped corridor between properties, due to the existing building and topography of the Site. The built structures to accommodate for the topography at the east side boundary, are required to facilitate environmental planning outcomes, and this object conflicts with the higher aim of ensuring environmental planning outcomes.

Notwithstanding, the Development therefore continues to achieve a consistent and contributory development pattern that facilitates a landscaped corridor where possible.

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

The Site is within the Catherine Street Distinctive Neighbourhood as defined at Section 2, Part C2.2.4.1 of the LDCP2013, and is also within the War Memorial Park Sub Area as defined at Section 2, Part C2.2.4.1(c) of the LDCP2013.

The existing dwelling is a part one, part two storey dwelling that presents as a single storey building from the primary street front, and as a two storey building from War Memorial Park. The proposed scheme maintains the existing form and massing of the building, relying on previous modern improvements made to the rear of the building. Viewed from the primary street front, no noticeable change is made to the existing form, scale or massing of the building. The building continues as a one storey 'cottage' that is consistent with the Desired Future Character, and continues to make a positive contribution to the Leys Avenue streetscape character.

- (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.**

The existing drainage pattern of the Site is largely upheld, by continuing to provide for an overland flow path at the east side boundary. The continued allowance of surface water runoff to drain through pervious timber decking maintains ecologically sustainable development at the Site. The timber decking at the east side boundary is also required to combat the topography of the Site, reducing the ability of further Landscaped Area.

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This is seen as a more beneficial outcome than re—levelling land to remove the decking and retaining wall structures to increase landscaped areas that would not provide a more beneficial outcome.

- (e) **to control site density.**
Site density is measured by number of dwellings on a Site. The existing Site contains one single dwelling house, and at completion, the Site will still contain one single dwelling house. In this way, the dwelling density of the Site is not increased.
- (f) **to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.**
The footprint of the building is limited and well managed, as evident by the Development upholding other related Development Standards such as Floor Space Ratio and Site Coverage. Under the circumstance of the case, it is unreasonable that Development Standards such as Floor Space Ratio and Site Coverage be further reduced to ensure the Landscaped Area Development Standard is upheld. This short-coming points to the inability of the LLEP2013 to provide a responsive Landscaped Area suitable to the constraints of the Site, and is too blunt a tool to be upheld relative to the extent of variation proposed. In this way, the proposed footprint of the building ensures adequate provision, under the requirements of the LLEP2013, is made for Landscaped Areas and Private Open Space.

6.4. Clause 4.6(4)(a)(ii): The Development Is Consistent With The Objectives For Development Within The Zone In Which The Development Is Proposed To Be Carried Out

The Site is within the R1 — General Residential Zone. The Objects of the R1 — General Residential Zone are:

Table 9 — Leichhardt Local Environmental Plan 2013; Land Use Table; Zone R1 General Residential

- | | |
|---|--|
| 1 | <p>Objectives of zone</p> <ul style="list-style-type: none"> • 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 Application responds to the Objects of the R1 — General Residential Zone as follows:

To provide for the housing needs of the community.

The Application is for a development that is consistent with that 'Permitted with Consent' in the R1 — General Residential Zone. The Application is therefore satisfied that the proposed use has been deemed a satisfactory means of providing for the housing needs of the community in the R1 — General Residential Zone.

To provide for a variety of housing types and densities.

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The Application is for a development that is consistent with that 'Permitted with Consent' in the R1 — General Residential zone. The Application is therefore satisfied it fulfils a required housing type and density.

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

The Development does not reasonably impact on the other land uses that provide facilities or services to meet the day to day needs of residents. Conversely, the Development improves amenity to the Site and locality, thereby providing appeal to the dwelling and the locality, thereby improving economic contributions to facilities or services that meet the day to day needs of residents.

To improve opportunities to work from home.

The Development does not alter the function and inherent capacity of the dwelling to accommodate work from home opportunities. In contrast, the Development proposes a detached Studio that improves amenity and balances working and living in the same place. This configuration improves mental health and physical stimulation, strengthening the capability of occupants 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.

The compatibility of a development is its capability of existing together in harmony with other buildings, without necessarily having the same density, scale, or appearance. Measured against the prevailing character of development on Leys Avenue and Ainsworth Street, and in consideration of the Desired Future Character of the Catherine Street Distinctive Neighbourhood and the War Memorial Sub Area, the proposed Development is found to be compatible. The works predominantly relate to the rear of the existing building, that has previously been subject to improvements, and have little material impact on the presentation of the dwelling to the primary street front. The works in relation to War Memorial Park also uphold the Desired Future Character, and is compatible with development on surrounding properties, by adopting a similar style, orientation and pattern of surrounding buildings, works and landscaped areas.

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

The existing configuration of the Landscaped Area at the rear yard, burdened by dense perimeter plantings that remove a substantial proportion of useable Landscaped Area, is reconstructed to improve usability and enjoyment. The re-made Landscaped Area is more wholly integrated with elements of primary internal and external living and Private Open Space, as well as the work from home opportunities afforded by the Studio, to form a more integrated and cohesive Landscape Design. The newly activated space enormously improves usability and enjoyment of the Landscaped Area, with on-going appeal for future residents looking for a protectionist environment.

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.

The Application and Development do not relate to subdivision, and this Object is disposed of.

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

An assessment of the relevant parts of Section 4.15 of the Act is carried out in the Statement Of Environmental Effects submitted with the Application. The Statement Of Environmental Effects finds the Development to adequately ensure improved amenity of existing and future residents by providing sufficient light and ventilation, visual and aural privacy to a level expected of the Site and locality, and on-going solar access to areas of Private Open Space.

6.5. Clause 4.6(4)(b) And Clause 4.6(5): The Concurrence Of The Secretary Has Been Obtained

The second pre-condition at Clause 4.6(4)(b) and Clause 4.6(5) of the LLEP2013 that must be satisfied, is whether the Planning Secretary has provided concurrence and who is empowered to act as the Consent Authority.

By means of Section 55 of the Environmental Planning And Assessment Regulation 2021, the Planning Secretary has provided written notice, attached to the Planning System Circular known as PS 20-002 issued on May 5, 2020, that, inter alia, a delegate of Council may assume the Planning Secretary's concurrence if a development does not contravene a numerical Development Standard by more than 10%.

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This Application for development contravenes a numerical Development Standard by more than 10%, and the Application is to be deferred to the local planning panel who is empowered to act as the Consent Authority.

7.0 Conclusion

The Development demonstrates its ability to satisfy the several relevant means of identifying whether compliance with the Development Standard is unreasonable or unnecessary in the circumstance of the case. This includes demonstrating that the Objectives of the Development Standard are achieved notwithstanding non-compliance with the Development Standard; that the underlying Objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; and that the Development Standard has been virtually abandoned or destroyed by the Council's own actions in granting consents that have departed from the Development Standard.

In addition to the Application demonstrating the compliance with the Development Standard is unreasonable or unnecessary in the circumstance of the case, the Application further demonstrates that, as required at Clause 4.6(4)(a)(ii), the Development is consistent with the Objectives of the Development Standard, and the Objectives for the R1 — General Residential Zone in which the Development is proposed to be carried out. As a result, the Application must therefore be found to be in the public interest.

Finally, the outcome of upholding the Objectives of the Development Standard would be conformity with the primary planning control, that is the R1 — General Residential Zone, at the cost of non-compliance with the secondary control, that is the numerical Clause 4.3A(3)(a)(ii) Development Standard. Notwithstanding achieving the numerical Development Standard, the Objectives of the Development Standard are achieved, and would, nevertheless, result in fulfillment of the Objectives of the R1 — General Residential Zone. The Objection is therefore well founded.