



 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2022/0442
<b>Address</b>	3 Fredbert Street LILYFIELD NSW 2040
<b>Proposal</b>	Alterations and additions to dwelling including new first floor, demolition of existing garage and studio and construction of two-bedroom secondary dwelling over double garage
<b>Date of Lodgement</b>	14 June 2022
<b>Applicant</b>	Damian O'Mahony & Associates Pty Ltd
<b>Owner</b>	Mr John W Vander Ploeg III Ms Won Y Jang
<b>Number of Submissions</b>	3
<b>Value of works</b>	\$1,311,915.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variations to non-discretionary development standards in Clauses 53(2)(a) and (b) of the <i>Housing SEPP 2021</i> .
<b>Main Issues</b>	Amenity impacts
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exceptions 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 at 3 Fredbert Street Lilyfield.

The application was notified to surrounding properties and 3 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Departure from non-discretionary development standards for Secondary Dwellings contained in State Environmental Planning Policy (Housing) 2021.
- Non-compliance with Building Location Zone control under Leichhardt Development Control Plan 2013.

The non-compliances are acceptable given the proposal would not result in significant adverse impacts on the amenity of neighbouring properties and therefore the application is recommended for approval.

## 2. Proposal

The Statement of Environmental Effects submitted with application describes the proposed development as involving the following:

### Primary Dwelling

- Demolition of the rear of the existing dwelling
- Alterations and additions to existing ground floor level to provide for:
  - new open plan living, dining and kitchen with butler's pantry/mud room
  - new bedroom 3
  - bathroom,
  - WC
  - Internal access stairs
- Construction of a new first floor level to provide for:
  - master bedroom with ensuite
  - parents retreat
  - study nook

### Rear Building

- Demolition of existing single garage and secondary dwelling
- Construction of a new building to provide for:
  - single garage for primary dwelling
  - single garage for secondary dwelling
  - bin store
  - studio entrance and internal access stairs
  - secondary dwelling with two bedrooms, bathroom and open plan living, dining and kitchen, and balcony

### External Works

- New main garden and inner courtyards between the front part of the existing dwelling and the proposed additions
- Rear deck for primary dwelling
- New driveway crossings
- Landscaping

### 3. Site Description

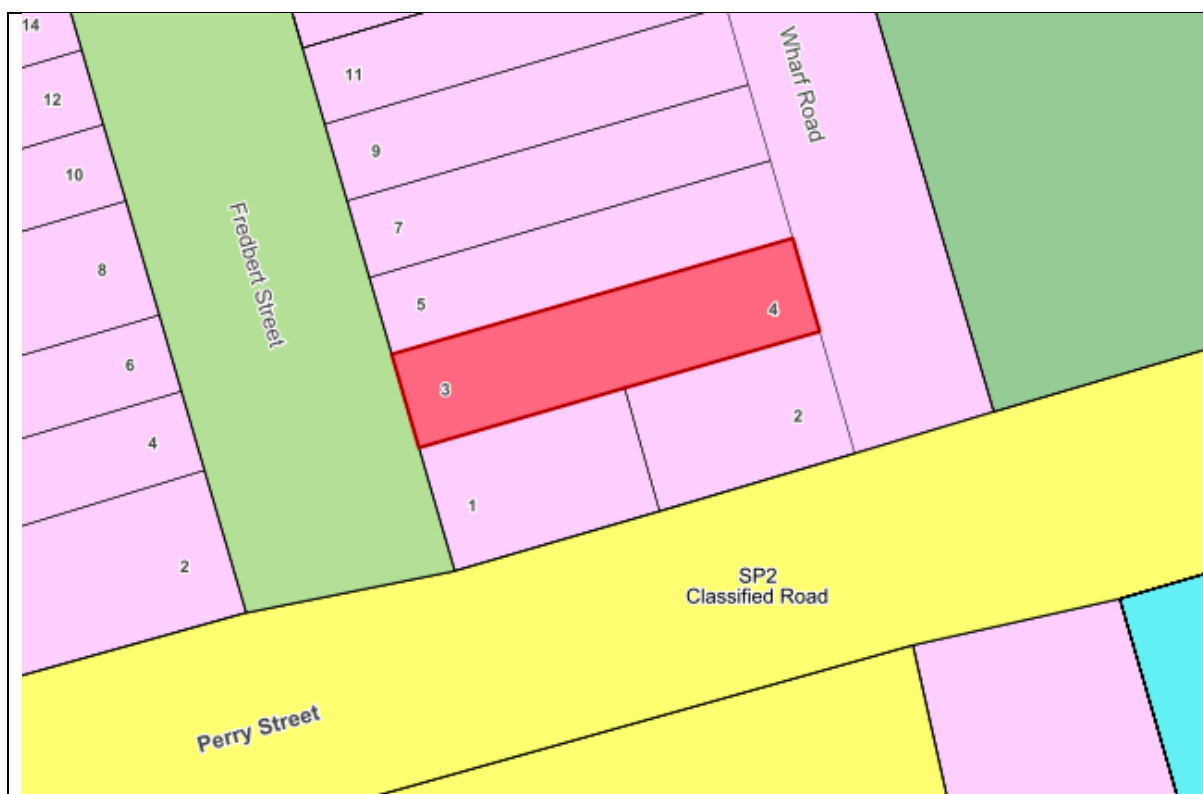
The subject site is located on the eastern side of Fredbert Street. The site consists of one allotment and is generally rectangular with a total area of 368.1sqm.

The site has a frontage to Fredbert Street of 9.145 metres and a secondary frontage of approximate 9.145 metres to Wharf Road.

The site supports a single storey detached dwelling house and a rear single storey building containing a studio and parking. The adjoining properties support single storey and two storey dwellings.

The property is located adjoining a Streetscape Landscape Item of Heritage, being the avenue planting within Fredbert Street. The property is located within the 20-25 ANEF aircraft noise contour for Sydney Kingsford Smith Airport.

No prescribed trees are located within the subject site. A mature Tibouchina tree is located in the Fredbert Street road reserve.



### 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**

<b>Application</b>	<b>Proposal</b>	<b>Decision &amp; Date</b>
TREE/2020/0022	Removal of Celtis australis (Hackberry)	Approved 7/4/2020
D/2010/469	Proposed change of use of the existing studio to a granny flat.	Approved 10/5/2011
M/2007/315	Section 96 modification of development consent D/2004/703 which approved demolition of existing rear garage and construction of a new studio and single garage to Wharf Road. Modification seeks to amend condition 17(1) for the soil testing of the land.	Approved 28/11/2007
M/2005/112	Modification to development consent D/2004/703 for demolition of existing garage and erection of a self-contained studio and garage. Modification seeks to delete condition 2(b) to reinstate kitchen and wall enclosures, bath and bathroom size.	Approved 22/6/2005
D/2004/703	Demolition of existing rear garage and construction of a new studio and single garage to Wharf Road.	Approved 23/11/2004

**Surrounding properties**

<b>Application</b>	<b>Proposal</b>	<b>Decision &amp; Date</b>
<i>1 Fredbert Street</i>		
DA/484/1994	Subdivision into 2 lots	Approved 28/2/1995
<i>5 Fredbert Street</i>		
BC/2011/68	Part-relates to works being dealt with under M2011/111. attic to rear garage and change of materials to the front fence.	Approved 25/8/2011
M/2011/111	Section 96 application to modify D/2009/548 which approved alterations and additions to existing dwelling. Modification entails increase garden plus front and side fence.	Approved 18/8/2011
M/2011/6	Section 96 application to modify D/2009/548 which approved alterations and additions to an existing dwelling and associated works, including new garage to the rear. Modifications seek the construction of a new internal storage area within the garage.	Approved 2/3/2011
D/2009/548	Alterations and additions to an existing dwelling and associated works, including new garage to the rear. This application relies on a SEPP No.1 objection to floor space ratio. Please Note: Amended Plans	Approved 8/6/2010

9 Fredbert Street		
D/2015/370	Alterations and addition to the existing garage to the rear of the site, to provide a first floor studio. Variation to the Floor Space Ratio development standard.	Approved 10/11/2015

#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
22/8/2022	Request for additional information issued
17/1/2023	Additional information submitted
24/1/2023	Request for additional information issued
14/4/2023	Additional information submitted
17/4/2023	Request for additional information issued
2/6/2023	Additional information submitted

### 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 (EPA 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 (Housing) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

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

##### Chapter 4 Remediation of land

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

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

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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

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

**5(a)(iii) State Environmental Planning Policy (Housing) 2021**

Chapter 3 Diverse housing, Part 1 Secondary dwellings

The proposal includes a *Secondary Dwelling* and as such, it is permissible subject to the consent authority being satisfied that the design is in accordance with the SEPP and that the development meets the relevant development standards under the SEPP. The following provides an assessment of the relevant sections and considerations:

Clause	Standard	Proposed
50 – Application of Part	<i>This part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.</i>	The site is zoned R1 General Density Residential under the LLEP 2013. Dwelling houses are permitted with consent on land zoned R1 under the LLEP 2013.
51 – No subdivision	<i>Development consent must not be granted for the subdivision of a lot.</i>	No subdivision is proposed.
52 (2)(a) – development may be carried out with consent	<i>No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land</i>	The proposed secondary dwelling is located within the detached rear building which is to front Wharf Road. The secondary dwelling comprises a ground level parking space with stair access to a living area on the upper level. No other dwellings are proposed on the site.
52 (2)(b) – development may be carried out with consent	<i>the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument</i>	The total gross floor area of the principal dwelling and secondary dwelling does not exceed the 0.7:1 maximum specified for the site under clause 4.4 of the Leichhardt LEP 2013.
52 (2)(c)(i) – development may be carried out with consent	<i>The total floor area of the secondary dwelling is— (i) no more than 60m<sup>2</sup></i>	The gross floor area of the secondary dwelling is 57.2sqm and satisfies the maximum 60sqm standard under the SEPP.
52 (2)(c)(ii) –	<i>If a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.</i>	The Leichhardt LEP 2013 does not allow for a greater floor area in this case.
53 (2)(a)	<i>For a detached secondary dwelling a minimum site area of 450m<sup>2</sup>.</i>	The site has an area of 368.1sqm, which is an 18.2% breach of the 450sqm minimum site area requirement.

Clause	Standard	Proposed
		See discussion under Section 4.6 of the Leichhardt LEP 2013.
53 (2)(b)	<i>The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.</i>	<p>The current development on the site includes provision of 1 on-site parking space.</p> <p>As the proposal includes provision of 2 on-site parking spaces, the development breaches the standard.</p> <p>See discussion under Section 4.6 of the Leichhardt LEP 2013.</p>

### 5(a)(iv) **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

#### 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)(v) **Local Environmental Plans**

#### *Leichhardt Local Environmental Plan 2013 (LLEP 2013)*

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

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.7 - Demolition
- Section 4.3A - Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor Space Ratio
- Section 4.5 - Calculation of floor space ratio and site area
- Section 4.6 - Exceptions to development standards
- Section 5.3 – Development near zone boundaries
- Section 5.4 - Controls relating to miscellaneous permissible uses
- Section 5.10 - Heritage Conservation
- Section 5.21 - Flood Planning
- Section 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management
- Section 6.8 - Development in areas subject to aircraft noise

#### Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *LLEP 2013*. The *LLEP 2013* defines the development as:

**‘dwelling house** means a building containing only one dwelling’.

**‘secondary dwelling** means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.’

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

#### Section 4 Principal Development Standards

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

<b>Standard</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 or 257.7sqm	0.7:1 or 256.4sqm	Yes
<b>Landscape Area</b> Minimum permissible: 20% or 73.6sqm	23.3% or 85.7sqm	Yes
<b>Site Coverage</b> Maximum permissible: 60% or 220.9sqm	58.9% or 216.7sqm	Yes
<b>Clause 5.4(9) - Controls relating to miscellaneous permissible uses</b>	<p>Clause 5.4(9) states that secondary dwellings are limited to a maximum floor area of 60sqm, or 30% of the total floor area of the principal dwelling, whichever is greater, excluding any area used for parking.</p> <p>The proposed secondary dwelling is 59.76sqm in area and is therefore acceptable with regard to this clause.</p>	Yes

#### Section 4.6 Exceptions to Development Standards

The proposal results in a breach of Clause 53(2)(a) – *non-discretionary development standards* of the SEPP (Housing). Section 4.15(3) of the Act applies to enable, in circumstances where the standard is not complied with, the application of a provision of an environmental planning instrument that allows flexibility in the application of development standards.

#### Minimum site area

The applicant seeks a variation to the non-discretionary development standard in clause 53(2)(a) relating to the minimum site area of 450sqm required for a detached secondary dwelling, by 18.2% (81.9sqm).

Section 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 Section 4.6 of the Leichhardt LEP 2013 below.

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



- *The proposed development will promote housing diversity and affordability by adding to the mix of residential accommodation options, resulting in positive social and economic impacts for the surrounding locality.*
- *The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land. In this regard, for the following reasons the proposal is considered to present an appropriate bulk and scale and add positively to the immediate vicinity:*
  - *The development complies with the FSR and height controls under the LLEP 2013.*
  - *The development achieves compliance with the objectives of Council's landscaping, solar access and privacy controls under the LDCP 2013.*
  - *The articulated pavilion style development has been prepared with consideration to minimise visual privacy in overshadowing impacts to the adjoining properties.*
  - *The development will present a compatible height and articulated form to Wharf Road which complements the existing surrounding detached development.*
- *Similarly, the proposed development will provide for a high level of amenity within a built form which is compatible with the character of the locality, which also promotes the orderly and economic use of the land.*
- *The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area.*
- *...the departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.*

There is no specific objective to the control provided within Clause 53 of the SEPP (Housing) 2021. Despite this, the applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the development is in the public interest because it is consistent with the relevant objectives of the R1 General Residential zone, in accordance with Section 4.6(4)(a)(ii) of the Leichhardt LEP 2013 for the following reasons:

- *To provide for the housing needs of the community.*  
Comment The proposed secondary dwelling will provide additional housing to serve the community.
- *To provide for a variety of housing types and densities.*  
Comment: The proposed secondary dwelling will contribute to the housing variety within the area.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*  
Comment: The proposal has been designed to ensure that it meets the day to day needs of the primary and secondary dwelling users of the site.
- *To improve opportunities to work from home.*  
Comment: The reduced minimum site area will not affect the ability of residents 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.*  
Comment: The proposal is considered satisfactory with respect to form, scale, landscaping and amenity of residents and of neighbouring properties.

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*  
Comment: The development provides satisfactory landscaped open space.
- *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.*  
Comment: No subdivision is proposed.
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*  
Comment: Despite the reduced site area, the development has been assessed as maintaining satisfactory levels of amenity, including that of neighbouring properties.

It is considered the development is in the public interest because it is consistent with the general objective contained in clause 53(1) of the *Housing SEPP* - non-discretionary development standard for secondary dwellings, in accordance with Section 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Comment: The proposal seeks to vary the minimum site area for a detached secondary dwelling of the SEPP (Housing) by 18.2% (81.9sqm). Varying this standard does not result in the consent authority requiring a more onerous standard to be met. The proposal does not offend the intent of the objective.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the Leichhardt LEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Section 53(2)(a) of the Housing SEPP and it is recommended the Section 4.6 exception be granted.

#### Car Parking

The proposed development also results in a breach of the clause 53(2)(b) – non-discretionary development standard - of the SEPP (Housing) relating to car parking provision.

Clause 53(2)(b) requires the number of parking spaces provided on the site to be the same as the number of parking spaces provided on the site immediately before the development is carried out. The proposal includes an increase in on-site parking by 1 space.

The applicant seeks a variation to this non-discretionary development standard.

Section 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 Section 4.6 of the applicable Leichhardt LEP 2013 below.

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

- The increase in the number of car parking spaces within the site, when the parking does not come at the expense of landscaped area or contribute to unreasonable or excessive bulk and scale does not present any adverse impacts or contravene the objective of the standard.
- The proposed development will promote housing diversity and affordability by adding to the mix of residential accommodation options, resulting in positive social and economic impacts for the surrounding locality.
- The proposed development will provide for increased parking opportunity within the site and continue to maintain the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land.
- Similarly, the proposed development will provide for a high level of amenity within a built form which is compatible with the character of the locality, which also promotes the orderly and economic use of the land.
- The proposed development to provide for an increased parking opportunity within the site is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area.

There is no specific objective to the control provided within Clause 53 of the SEPP (Housing) 2021. Despite this, the applicant's written rationale adequately demonstrates that compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the development is in the public interest because it is consistent with the relevant objectives of the R1 General Residential zone, in accordance with Section 4.6(4)(a)(ii) of the Leichhardt LEP 2013 for the following reasons:

- *To provide for the housing needs of the community.*  
Comment The additional parking space will benefit the functioning of the housing on the site.
- *To provide for a variety of housing types and densities.*  
Comment: The additional parking space and secondary dwelling will contribute to the housing variety within the area.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*  
Comment: The additional parking space will act to meet the day to day needs of the primary and secondary dwelling users of the site.
- *To improve opportunities to work from home.*  
Comment: The increased car parking will not affect the ability of residents 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.*  
Comment: The additional parking space would have no impact on the existing primary dwelling building and is appropriately incorporated in the façade presentation of the building containing the secondary dwelling facing Wharf Road.
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*  
Comment: The development provides adequate landscaped open space.

- *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.*

Comment: No subdivision is proposed.

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

Comment: The development has been assessed as maintaining satisfactory levels of amenity, including that of neighbouring properties.

It is considered the development is in the public interest because it is consistent with the objectives of the non-discretionary development standard for secondary dwellings under the *Housing SEPP*, in accordance with Section 4.6(4)(a)(ii) of the Leichhardt LEP 2013 for the following reasons:

- *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Comment: The proposal seeks to vary the number of parking spaces on the subject site SEPP (Housing) by an additional car space. Varying this standard does not result in the consent authority requiring a more onerous standard to be met. The proposal does not offend the intent of the objective.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the Leichhardt LEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Section 53(2)(b) of the Housing SEPP and it is recommended the Section 4.6 exception be granted.

#### Section 5.10 - Heritage Conservation

The site is adjoining a Heritage Item being the street trees within the road reserve of Fredbert Street. The proposed development will not be highly visible in the Fredbert Street streetscape and would have no adverse impact on this Item.

#### Section 6.4 - Stormwater management

Council's Development Engineer has reviewed the proposal and advised that the proposal is satisfactory subject to standard conditions. However, the requirement for provision of on-site detention has been challenged by the applicant. Consequently, further advice was sought from the Development Engineer regarding this matter. In response, it was advised that:

- On-Site Detention (OSD) of stormwater is required as the works are not considered to be minor. Therefore, OSD is required to be provided irrespective of any increase of hard paved area being less than 40sqm.
- 3 Fredbert Street is located south of a catchment with vast green fields and a Council stormwater drainage system at the intersection of Wharf Road, Perry Street and Balmain Road. A condition requiring consideration of upstream external catchments is deemed to be valid on this occasion.

Consequently, suitable conditions are included in the recommendation to this effect.

## 5(c) Draft Environmental Planning Instruments

*Inner West Local Environmental Plan 2022*

The Inner West Local Environmental Plan 2022 (IWLEP 2022) was gazetted on 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject application was made before the commencement of this Plan, the application is to be determined as if the IWLEP 2022 had not commenced.

Section 4.15(1)(a)(i) of the EPA Act 1979 requires consideration of any Environmental Planning Instrument (EPI), and Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 14 June 2022, on this date, the IWLEP 2022 was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

Notwithstanding this, the amended provisions of the draft EPI do not alter the outcome of the assessment of the subject application.

## 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.

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
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	Yes
C1.7 Site Facilities	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes – See discussion
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.4.3 – Leichhardt Park distinctive neighbourhood	Yes – See discussion
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – See discussion
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes

C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – See discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes – See discussion
C3.12 Acoustic Privacy	Yes – See discussion
<b>Part D: Energy</b>	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
<b>Part E: Water</b>	
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2 Water Management	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes

The following provides discussion of the relevant issues:

#### C1.14 Tree Management

Councils Urban Forest Officer has reviewed the proposal and advised that there are no prescribed trees within the site that will be affected by the proposal.

A review of the submitted Landscape Plan notes two (2) new trees proposed within the side and rear courtyards. The proposed species are considered acceptable and will achieve the minimum height requirements of six (6) metres.

A mature *Tibouchina* spp. (*Tibouchina*) has been identified outside the site on Council land. The tree was noted in fair health and condition. The plans indicate this tree will be retained. Therefore, to ensure the street tree is not damaged during the work, a condition is included in the recommendation requiring a Tree Protection Plan to be submitted prior to the issuing of the Construction Certificate.

#### C2.2.4.3 – Leichhardt Park distinctive neighbourhood

The proposed additions to the main dwelling are generally in accordance with the controls. However, the proposed rear two storey secondary dwelling garage building would result in a technical breach of the 3.6m building envelope control to the Wharf Road frontage. The breach varies between 1.2m-1.9m with the greater breach associated with proposed two gable end sections facing Wharf Road. It is considered that the proposed envelope of this building is generally consistent with the two storey bulk of 2 Wharf Road and steps down to development on Wharf Road to the north of the site.

#### C3.2 Site Layout and Building Design

The proposed additions to the main dwelling satisfy the side setback controls. The proposed rear secondary dwelling/garage building results in a minor breach to the southern side boundary setback control of 0.2m. As noted elsewhere, the impact of this breach is also considered to be minor.

The proposed additions to the main dwelling breach the ground level rear building location zone control by 1.5m which is measured against the development at 5 Fredbert Street.

The proposed additions to the main dwelling breach the upper level rear building location zone control by 2m. In this regard, it is noted that developments at the rear of properties located further to the north of the site such as 9 Fredbert Street have a similar upper rear setback to that of the current proposal.

The amended plans provide for a 0.819m reduction in rearward extent of the ground level and a 1.325m reduction in rearward extent of the upper level of the proposed additions to the main dwelling. It is considered that in the circumstances of the case, the breach of the rear building location zone control could be supported given these reductions, in conjunction with a reduction in overall height of the additions of 0.555m, act to significantly reduce the visual bulk of the development and potential amenity impacts to neighbouring properties.

### C3.9 Solar Access

The amended plans the subject of this report have reduced the height and rearward extent of the rear dwelling additions. This has resulted in a significant reduction in proposed shadow impacts.

The adjoining properties are oriented east-west and therefore require 2 hours of solar access at the winter solstice to the main living room. In this regard, 5 Fredbert Street is located to the north of the subject site and is not impacted by the development at the assessment times.

The amended plans maintain solar access in excess of the 2 hours required to the northern side windows of 1 Fredbert Street. Compliant solar access is maintained to the 2 rear north facing windows in 2 Wharf Road that currently receive solar access.

Being oriented east-west, the private open space of the adjoining southern properties requires 2½ hours of solar access at the winter solstice. In this regard, the private open space of both 1 Fredbert Street and 2 Wharf Road which receives less than 50% solar access between 10am-2pm is subject to an increase in shadows by the proposal. Solar access for 2½ hours to these spaces is not achieved although the impact is considered minor between 11am-12noon.

The proposed rear secondary dwelling/garage building utilises low internal side wall pitching points of 2.1m. However, this results in a minor breach to the southern side boundary setback control of 0.2m. Despite this, the two rear north-facing ground floor windows located in 2 Wharf Road that currently enjoy solar access will retain more than two hours of solar access at mid-winter.

However, it is noted that in this instance that any two storey buildings erected on the site complying with side setback controls would result in similar impacts. As noted above, the proposal satisfies the side setback controls but breaches the upper level rear building location zone control. Despite the breach, some solar access is still available to the southern adjoining properties private open space. The difficulty in maintaining compliant solar access to the private open space of the two adjoining southern dwellings is compounded by these properties being of a dissimilar size and orientation to the subject site and the properties to the north of the subject site which extend from Fredbert Street to Wharf Road.

It is considered that in the circumstances of the case, the breach of the solar access control with respect to the rear private open space could be supported given the amended plans provide for a significant reduction in overall height of the proposed works and in consideration of the compliance of the additions to the principal dwelling with the side setback control to the southern side boundary.

### C3.11 Visual Privacy & C3.12 Acoustic Privacy

The amended plans the subject of this report have resulted in a reduced rearward extent of the additions to the main dwelling and changes to windows such that the proposal would not result in significant visual or acoustic privacy impacts to neighbouring properties. The ground floor of the addition is served by openings set back from the side boundaries with boundary fencing providing adequate screening to protect privacy of the subject site and neighbouring properties. The majority of openings in the upper level serve low intensity rooms with windows to a 'Parents Retreat' facing either the existing dwelling roof or the rear secondary dwelling with a narrow vertical window W1.04 facing the northern side of 5 Fredbert Street. It is considered that privacy impacts of this window could be eliminated with the use of fixed obscure glazing. A condition to this effect is included in the recommendation.

The windows in the southern elevation of the additions at upper level are specified on the amended plans as having obscure glazing. This would significantly limit privacy impacts to 1 Fredbert Street and 2 Wharf Road.

The upper level openings to the secondary dwelling face either Wharf Road or the main dwelling. The windows facing the main dwelling have 1.6m sill heights and are fitted with external timber slat screens. The central stairwell window has obscure glazing with a vertical timber screen. Given the window sill heights, screens and separation distance to neighbouring properties, it is considered that minimal privacy impacts will result from the proposed secondary dwelling.

It is noted that the amended plans do not provide for any upper level balcony to the main dwelling rear additions. A recessed balcony is proposed to the upper level of the secondary dwelling garage building measuring 1.2m x 2.7m. As this balcony is both recessed in the building and faces east toward Wharf Road and Callan Park beyond, no significant visual or acoustic privacy impacts would be expected from this space.

#### 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. Three (3) submissions were received in response to the initial notification.

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

- Overshadowing of 1 Fredbert Street and 5 Fredbert Street.
- Loss of privacy to 1 Fredbert Street and 5 Fredbert Street.
- Subdivision of the site.
- The increase in visual bulk from the development.
- Privacy implications from the new balcony.



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

Issue: Traffic

Comment: The residential nature of the proposed use is commensurate with regard to likely traffic movements both for the existing residential uses of the site and the neighbourhood generally

Issue: Precedent

Comment: The subject development has been assessed as being generally consistent with relevant planning controls and the existing character of the area. The proposed development is permissible with consent.

#### 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.

- Development Engineer
- Urban Forest

## 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 levy of \$13,119.15 would be required for the development under the *Inner West - Local Infrastructure Contributions Plan 2023*. 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 the *Leichhardt Local Environmental Plan 2013* and the Leichhardt Development Control Plan 2013. The proposal also generally complies with the aims, objectives and design parameters contained in the *Inner West Local Environmental Plan 2022*.

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 written requests pursuant to section 4.6 of the Leichhardt LEP 2013 to breaches of clauses 53(2)(a) and 53(2)(b) of the State Environmental Planning Policy (Housing (2021)). After considering the requests, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standards 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/2022/0442 for alterations and additions to dwelling including new first floor, demolition of existing garage and studio and construction of two-bedroom secondary dwelling over double garage at 3 Fredbert Street 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
0214.6-6	Demolition Plan - Ground	16/5/2022	DOM Design
0214.6-7	Demolition Plan - Roof	14/5/2022	DOM Design
0214.12/A-3-1	Proposed Ground Plan	31/3/2023	DOM Design
0214.13/A-3-1	Proposed First Plan	31/3/2023	DOM Design
0214.14/A-3-1	Proposed Roof Plan	31/3/2023	DOM Design
0214.15/A-3-1	Proposed Section A	31/3/2023	DOM Design
0214.16/A-3-1	Proposed Section B	31/3/2023	DOM Design
0214.17/A-3-1	Proposed Elevation 1	31/3/2023	DOM Design
0214.18/A-3-1	Proposed Elevation 2	31/3/2023	DOM Design
0214.19/A-3-1	Proposed Elevation 3	31/3/2023	DOM Design
0214.20/A-3-1	Proposed Elevation 4	31/3/2023	DOM Design
0214.21/A-3-1	Proposed Elevation 5	31/3/2023	DOM Design
0214.22/A-3-1	Proposed Elevation 6	31/3/2023	DOM Design
0214.23/A-3-1	Proposed Elevation 7	31/3/2023	DOM Design
0214.24/A-3-1	Proposed Elevation 8	31/3/2023	DOM Design
0214.27/A	Proposed Materials & Finishes	14/5/2022	DOM Design
0214.32/A	Proposed Landscape Plan	14/5/2022	DOM Design
SW01/B	Stormwater Plan - Ground	4/4/2023	HYVE Designs
SW02/B	Stormwater Plan - Upper Level Floor	4/4/2023	HYVE Designs
SW03/B	Stormwater Details	4/4/2023	HYVE Designs
SE01/B	Sediment & Erosion Plan	4/4/2023	HYVE Designs
SE02/B	Sediment & Erosion Details	4/4/2023	HYVE Designs
A448407_02	BASIX Certificate	24/1/2023	Ecological Design Pty Ltd

As amended by the conditions of consent.

#### FEES

##### 2. Security Deposit - Custom

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

Security Deposit:	Min \$2,254.00
Inspection Fee:	\$241.50

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

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

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

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

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

**3. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

**4. Section 7.12 Development Contribution Payments**

In accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), a monetary contribution of \$13,119.15 shall be paid to Council for the purposes of the provision, extension or augmentation of local infrastructure identified in the Plan.

At the time of payment, the monetary contribution payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$$

Where:

C<sub>payment</sub> = is the contribution at time of payment

C<sub>consent</sub> = is the contribution at the time of consent, as shown above

CPI<sub>consent</sub> = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being [insert CPI value] for the [insert latest quarter and year].

CPI<sub>payment</sub> = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition. The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both

subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

**It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.**

Council's Plan may be viewed at [www.innerwest.nsw.gov.au](http://www.innerwest.nsw.gov.au) or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on [insert email address and phone number] to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment can be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to [www.innerwest.nsw.gov.au/invoice](http://www.innerwest.nsw.gov.au/invoice); please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

**GENERAL CONDITIONS**

**5. 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.

**6. Tree Protection**

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Tree No.	Botanical/Common Name	Location
1	<i>Tibouchina spp.</i> (Tibouchina)	Street tree - outside 3 Fredbert street

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

#### **7. Project Arborist**

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

#### **8. Privacy**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Window W1.04 being amended in the following manner:

- a. Fixed and obscure glazing to a minimum level of 1.6 metres above the floor level.

#### **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. Works Outside the Property Boundary**

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

### **PRIOR TO ANY DEMOLITION**

#### **12. 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.

#### **13. 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.

#### **14. 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.

#### **15. 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**

#### **16. 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.

#### **17. 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;
- 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. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;

- i. An overland flow path must be provided within the setback to the northern side boundary between the rear of the dwelling and the Fredburt Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flow path;
- j. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- k. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- l. 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;
- m. No nuisance or concentration of flows to other properties;
- n. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- o. 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;
- p. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- q. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- r. 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;
- s. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- t. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- u. No impact to street tree(s).

#### **18. Amended Architectural Plans to Reflect Requirements of this Condition**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the following recommendations:

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



- e. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- f. A plan of the proposed access and adjacent laneway, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- g. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;
- h. Encroachment of the bin storage area into the parking space is not permitted.
- i. The proposed pedestrian doors to the garages must open outwards;
- j. The external form and height of the approved structures must not be altered from the approved plans. and

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

**19. Tree Protection Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a detailed site-specific Tree Protection Plan (TPP) prepared by a AQF5 Consultant Arborist. The TPP is to be prepared in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

The trees identified below are to be retained and protected throughout the development:

Tree No.	Botanical/Common Name	Location
1	<i>Tibouchina spp.</i> (Tibouchina)	Street tree - outside 3 Fredbert street

The tree protection measures contained in the TPP must be shown clearly on the Construction Certificate drawings, including the Construction Management Plan.

The Certifying Authority must ensure the construction plans and specifications submitted fully satisfy the tree protection requirements identified in the TPP.

A Project Arborist is to be appointed prior to any works commencing to monitor tree protection for the duration of works in accordance with the requirements identified in the TPP.

All tree protection measures as detailed in the approved Tree Protection Plan must be installed and certified in writing as fit for purpose by the Project Arborist.

**20. 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.

**21. 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*

**22. Acoustic Report – Aircraft Noise**

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

**DURING DEMOLITION AND CONSTRUCTION**

**23. Inspections by Project Arborist**

The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at the following times or phases of work:

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
<p><i>Tibouchina spp.</i> (Tibouchina), Street tree - outside 3 Fredbert street</p>	<p>Prior to commencement of works</p>	<ul style="list-style-type: none"> <li>• Inspection and sign off installation of tree protection measures.</li> </ul>
	<p>During Works</p>	<ul style="list-style-type: none"> <li>• Supervise all site preparation and demolition works within the TPZ;</li> <li>• Supervise all works inside or above the TPZ;</li> <li>• Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ;</li> </ul>

		<ul style="list-style-type: none"> <li>• Supervise all tree work.</li> </ul>
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Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

**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. Public Domain Works**

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

- a. Light/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

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

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. Light Duty Vehicle Crossing**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that a light duty concrete vehicle crossing(s), in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" have been constructed at the vehicular access locations.

**32. Redundant Vehicle Crossing**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.

**33. Parking Signoff – Minor Developments**

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

**34. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of two (2), 75 litre size tree/s, which will attain a minimum mature height of six (6) metres, must be planted in a more suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The trees are to

conform to AS2303—*Tree stock for landscape*. Trees listed as exempt species from Council's Tree Management Controls, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

#### **35. Project Arborist Certification**

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

#### **36. Aircraft Noise –Alterations and Additions**

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

### **ON-GOING**

#### **37. Operation and Management Plan**

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

#### **38. Tree Establishment**

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

#### **39. Bin Storage**

All bins are to be stored within the site.

### **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.

#### **Public Domain and Vehicular Crossings**

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

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

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

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

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

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 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.

**Permits from Council under Other Acts**

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

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

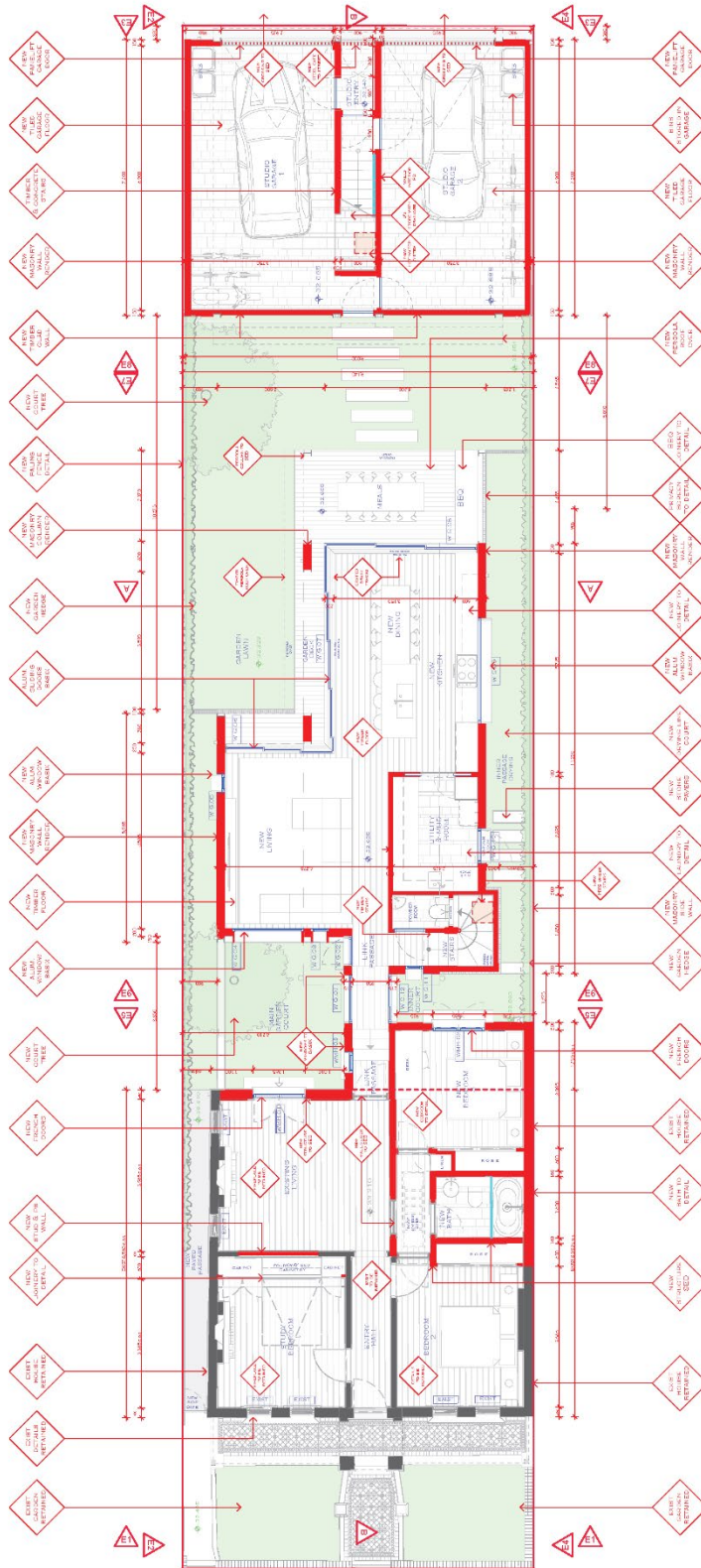
#### Street Numbering

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to [Street Numbering Application](#)

Attachment B – Plans of proposed development

DA DRAWINGS - AMENDED - ISSUE A-3-1

PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA



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PROPOSED GROUND PLAN

DA

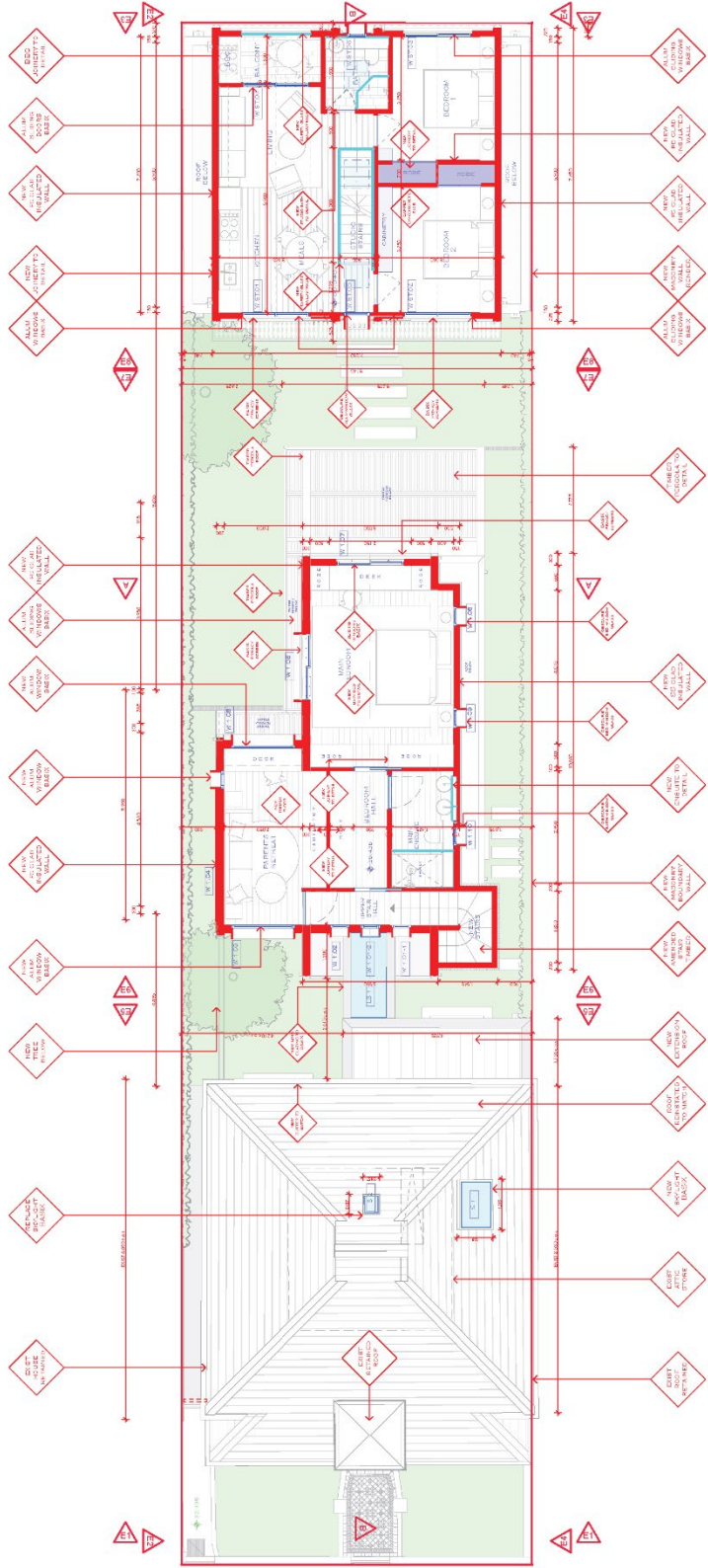
O 2 1 4 DA PROPOSED GROUND PLAN ° 1:100

<b>Project</b> Alterations & Additions to Existing Residence		14/02/2023 22/07/2023 17/10/2023		DA PROPOSED GROUND PLAN ° 0214.12	
<b>Owners</b> Chloe and John Vander Ploeg		No. Arrangements Date		DA PROPOSED GROUND PLAN ° A-3-1 As Noted 31/3/2023	
<b>Location</b> Lot 3, Dp 3883 3 Fredbert Street, Lilyfield, NSW 2040		No. Arrangements Date		DA PROPOSED GROUND PLAN ° 0214.12 DA DEVELOPMENT APPLICATION 0214	

Document Set ID: 37765515  
Version: 1, Version Date: 08/06/2023

PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA

DA DRAWINGS - AMENDED - ISSUE A-3-1



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PROPOSED GROUND PLAN

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O 2 1 4 DA PROPOSED FIRST PLAN ° 1:100 DEVELOPMENT APPLICATION DRAWINGS - MARCH 2023

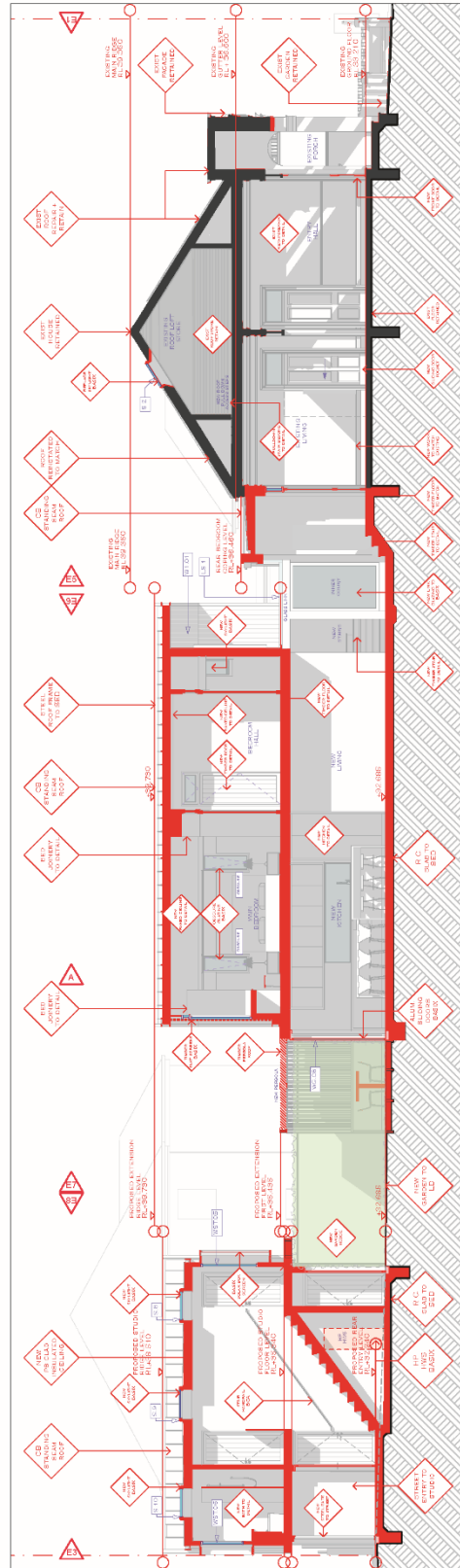
<b>Project</b> Alterations & Additions to Existing Residence	DA 2023 DA 2023 DA 2023 DA 2023	DA PROPOSED FIRST PLAN ° 0214.13	<b>DOM</b> D. PALAN, D. PALAN & SONS 1/111 BROADWAY LILYFIELD NSW 2040 WWW.DOMNSW.COM.AU
<b>Owners</b> Chloe and John Vander Ploeg	DA 2023 DA 2023 DA 2023 DA 2023	Issue A-3-1	DA DA
<b>Location</b> Lot 3 DP 3883 3 Fredbert Street, Lilyfield, NSW 2040	DA 2023 DA 2023 DA 2023 DA 2023	Scale As Noted	DEVELOPMENT APPLICATION 0 2 1 4
Document Set ID: 37783515 Version: 1, Version Date: 06/06/2023	DA 2023 DA 2023 DA 2023 DA 2023	Date 37/3/2023	DATE OF ISSUE: 06/06/2023 DATE OF EXPIRY: 06/06/2023





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PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA



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SECTION B - A 3

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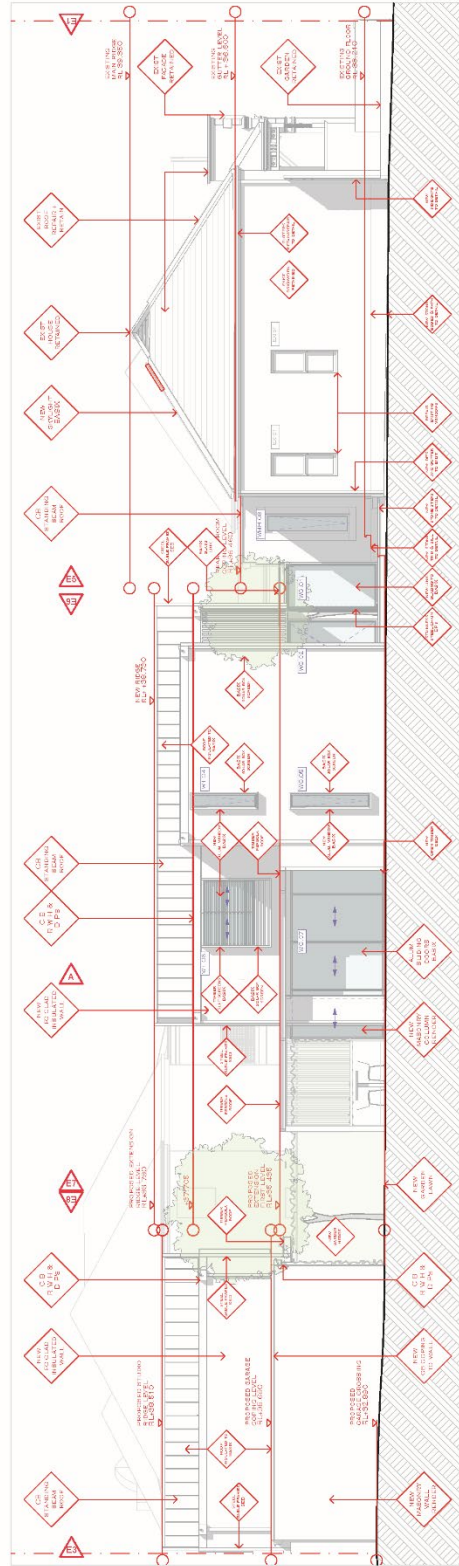
DEVELOPMENT APPLICATION DRAWINGS - MARCH 2023

<b>Project</b> Alterations & Additions to Existing Residence		14/07/2022 22/09/2022 17/12/2022 21/12/2023	
<b>Owners</b> Chloe and John Vender Phoebe		THIS DRAWING IS THE PROPERTY OF DOM DEVELOPMENT APPLICATION DRAWINGS. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF DOM DEVELOPMENT APPLICATION DRAWINGS.	
<b>Location</b> Lot 3 DP 3883 3 Fredbert Street, Lilyfield, NSW 2040		SCALE: 1:100 1 2 3 4 5 6 0 1 2 3 4 5 6 DOM DEVELOPMENT APPLICATION DRAWINGS	
NS: APPROVED: Date:		DA PROPOSED SECTION B ° Issue: A-3-1 Scale: As Noted Date: 31/3/2023	
DA PROPOSED SECTION B ° 0214.16 DA DEVELOPMENT APPLICATION 0 2 1 4		DOM DEVELOPMENT APPLICATION DRAWINGS 14/07/2022 22/09/2022 17/12/2022 21/12/2023	



DA DRAWINGS - AMENDED - ISSUE A-3-1

PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA



ELEVATION DA-E 2-A3 (FINAL)

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<b>DOM</b>	
0214.18	DA
A-3-1	As Noted
0214	0214
DEVELOPMENT APPLICATION	

DA PROPOSED ELEVATION 2 °	0214.18
Issue	A-3-1
Scale	As Noted
Date	31/3/2023



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DA 1	DA Submission - Change for Items A	18/07/2022
DA 2	DA Submission - Change for Elements A-2	28/07/2022
DA 3	DA Submission - Change for Element A-2 (Rev 2)	17/12/2022
DA 3.1	DA Submission - Amended Change for A-3.1	21/02/2023

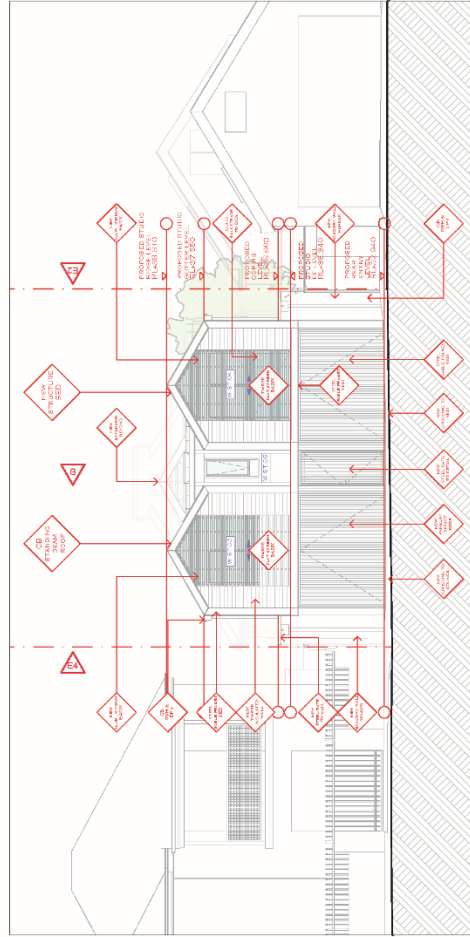
<b>Project</b>	Alterations & Additions to Existing Residence
<b>Owners</b>	Chloe and John Vander Ploeg
<b>Location</b>	Lot 3, DP 51883 3 Fredbert Street, Lilyfield, NSW 2040

Document Set ID: 37783516  
Version: 1, Version Date: 08/09/2023



PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA

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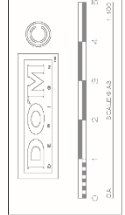


DA ELEVATION DA-E3 (A3) 1:100

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<b>DOM</b> D O M D E V E L O P M E N T A U T H O R I T Y	
0214.19	DA PROPOSED ELEVATION 3 °
DA	Issue
0214	Scale
0214	Date

A-3-1	As Noted
31/3/2023	



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DA-E3	DA Submission - Drawings for Issue A	14/07/2022
DA-E2	DA Submission - Drawings for Issue A-2	22/07/2022
DA-E1	DA Submission - Drawings for Council AS (Final)	17/12/2021
DA-E0	DA Submission - Amended Drawing 24-11	15/12/2021
DA	As Noted	Date

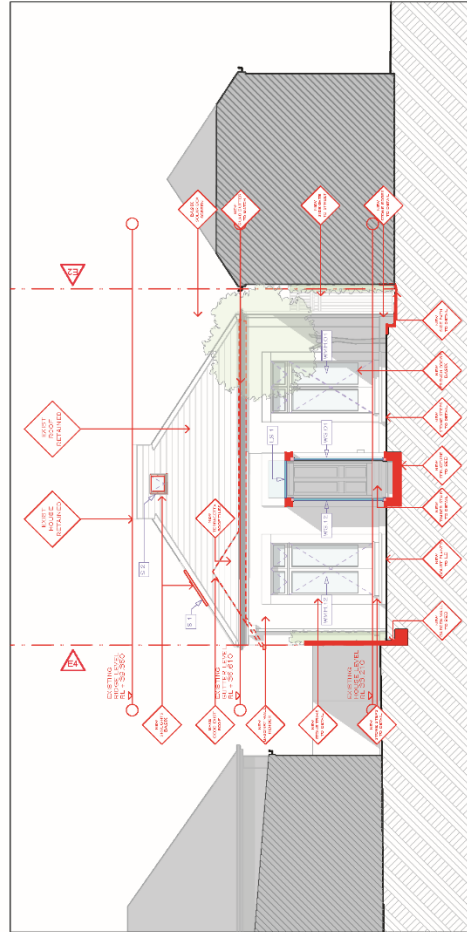
<b>Project</b>	Alterations & Additions to Existing Residence
<b>Owners</b>	Clive and John Vender Floag
<b>Location</b>	Lot 3 DP 3883 3 Fredbert Street, Lilyfield, NSW 2040

Document Set ID: 37713315  
Version: 1, Version Date: 06/06/2023



PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA

DA DRAWINGS - AMENDED - ISSUE A-3-1



DA ELEVATION DA-E 5 1:100

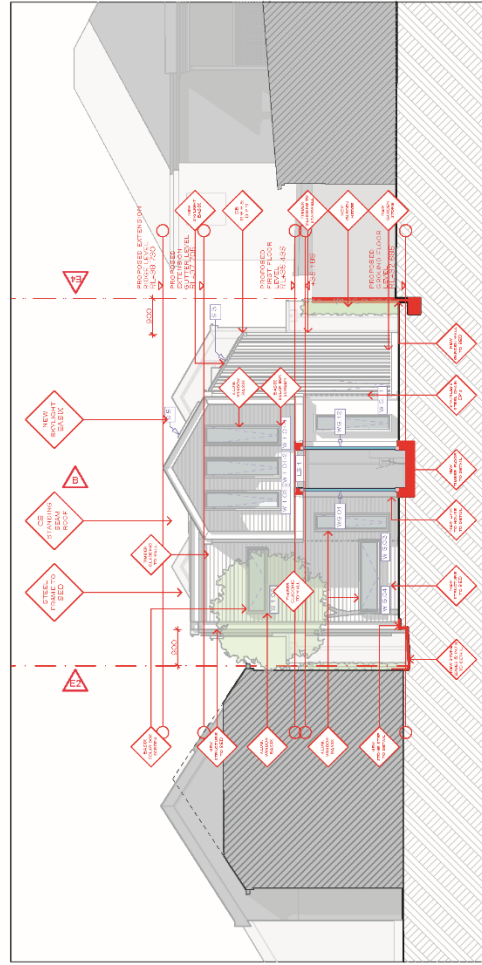
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<b>Project</b> Alterations & Additions to Existing Residence	14/6/2022 12/9/2022 12/9/2022 12/9/2022	<b>DA PROPOSED ELEVATION 5 °</b> ISSUE A-3-1	<b>0214.21</b>
<b>Owners</b> Chloe and John Vander Ploeg	The drawings in this document are the property of DOM Pty Ltd. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of DOM Pty Ltd.	Scale As Noted	DA DEVELOPMENT APPLICATION
<b>Location</b> Lot 3 DP 3883 3 Fredbert Street, Lilyfield, NSW 2040	DATE: 2023-03-06 08:06:2023 SCALE: 1:100	Date 31/3/2023	0 2 4

Document Set ID: 37783515  
Version: 1, Version Date: 08/06/2023

DA DRAWINGS - AMENDED - ISSUE A-3-1

PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA



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0 2 1 4 DA PROPOSED ELEVATION 6 ° 1:100 DEVELOPMENT APPLICATION DRAWINGS - MARCH 2023

<b>Project</b> Alterations & Additions to Existing Residence	14/6/2022 15/9/2022 18/11/2022 18/11/2022	<b>DA PROPOSED ELEVATION 6 °</b> 0214.22
<b>Owners</b> Chloe and John Vander Ploeg		<b>Issue</b> A-3-1
<b>Location</b> Lot 3 Dp 3883 3 Fredbert Street, Lilyfield, NSW 2040		<b>Scale</b> As Noted
Document Set ID: 37782615 Version: 1, Version Date: 06/06/2023		<b>Date</b> 31/3/2023
		<b>Development Application</b> 0 2 1 4

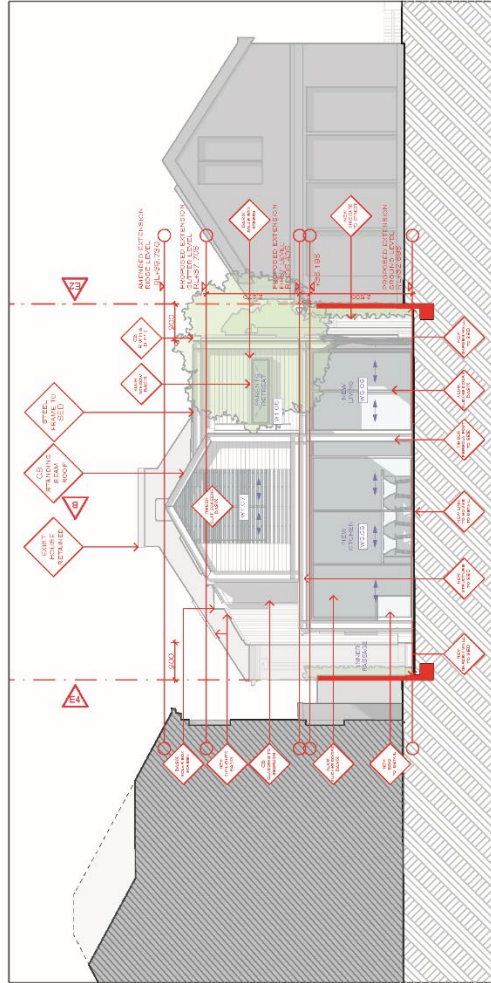
DOM DEVELOPMENT CONSULTANTS  
10/150 WILSON AVENUE, SYDNEY NSW 1588  
TEL: 02 9550 1234  
WWW.DOMCONSULTANTS.COM.AU

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DA DRAWINGS - AMENDED - ISSUE A-3-1

PROPOSED ALTERATIONS & ADDITIONS  
3 FREDBERT STREET LILYFIELD NSW 2040 AUSTRALIA



DA ELEVATION DA-E 7 1:100

0 2 1 4 DA PROPOSED ELEVATION 7 ° 1:100 DEVELOPMENT APPLICATION DRAWINGS - MARCH 2023

<b>Project</b> Alterations & Additions to Existing Residence	DA 1 DA Submittal - Drawings for Issue A 18/9/2022	<b>DA PROPOSED ELEVATION 7 °</b> 0214.23
<b>Owners</b> Chloe and Joim Vander Ploeg	DA 2 DA Submittal - Drawings for Development A-2 22/9/2022	<b>DA</b> Development Application
<b>Location</b> Lot 3 DP 3883 3 Fredbert Street, Lilyfield, NSW 2040	DA 3 DA Submittal - Drawings for Council A3 (Prelim) 17/1/2023	<b>0 2 1 4</b>
	DA 3.1 DA Submittal - Amended Drawings A-3.1 17/3/2023	
	DA 3.2 DA Submittal - Amended Drawings A-3.2 17/3/2023	
	DA 3.3 DA Submittal - Amended Drawings A-3.3 17/3/2023	
	DA 3.4 DA Submittal - Amended Drawings A-3.4 17/3/2023	
	DA 3.5 DA Submittal - Amended Drawings A-3.5 17/3/2023	
	DA 3.6 DA Submittal - Amended Drawings A-3.6 17/3/2023	
	DA 3.7 DA Submittal - Amended Drawings A-3.7 17/3/2023	
	DA 3.8 DA Submittal - Amended Drawings A-3.8 17/3/2023	
	DA 3.9 DA Submittal - Amended Drawings A-3.9 17/3/2023	
	DA 3.10 DA Submittal - Amended Drawings A-3.10 17/3/2023	
	DA 3.11 DA Submittal - Amended Drawings A-3.11 17/3/2023	
	DA 3.12 DA Submittal - Amended Drawings A-3.12 17/3/2023	
	DA 3.13 DA Submittal - Amended Drawings A-3.13 17/3/2023	
	DA 3.14 DA Submittal - Amended Drawings A-3.14 17/3/2023	
	DA 3.15 DA Submittal - Amended Drawings A-3.15 17/3/2023	
	DA 3.16 DA Submittal - Amended Drawings A-3.16 17/3/2023	
	DA 3.17 DA Submittal - Amended Drawings A-3.17 17/3/2023	
	DA 3.18 DA Submittal - Amended Drawings A-3.18 17/3/2023	
	DA 3.19 DA Submittal - Amended Drawings A-3.19 17/3/2023	
	DA 3.20 DA Submittal - Amended Drawings A-3.20 17/3/2023	
	DA 3.21 DA Submittal - Amended Drawings A-3.21 17/3/2023	
	DA 3.22 DA Submittal - Amended Drawings A-3.22 17/3/2023	
	DA 3.23 DA Submittal - Amended Drawings A-3.23 17/3/2023	
	DA 3.24 DA Submittal - Amended Drawings A-3.24 17/3/2023	
	DA 3.25 DA Submittal - Amended Drawings A-3.25 17/3/2023	
	DA 3.26 DA Submittal - Amended Drawings A-3.26 17/3/2023	
	DA 3.27 DA Submittal - Amended Drawings A-3.27 17/3/2023	
	DA 3.28 DA Submittal - Amended Drawings A-3.28 17/3/2023	
	DA 3.29 DA Submittal - Amended Drawings A-3.29 17/3/2023	
	DA 3.30 DA Submittal - Amended Drawings A-3.30 17/3/2023	
	DA 3.31 DA Submittal - Amended Drawings A-3.31 17/3/2023	
	DA 3.32 DA Submittal - Amended Drawings A-3.32 17/3/2023	
	DA 3.33 DA Submittal - Amended Drawings A-3.33 17/3/2023	
	DA 3.34 DA Submittal - Amended Drawings A-3.34 17/3/2023	
	DA 3.35 DA Submittal - Amended Drawings A-3.35 17/3/2023	
	DA 3.36 DA Submittal - Amended Drawings A-3.36 17/3/2023	
	DA 3.37 DA Submittal - Amended Drawings A-3.37 17/3/2023	
	DA 3.38 DA Submittal - Amended Drawings A-3.38 17/3/2023	
	DA 3.39 DA Submittal - Amended Drawings A-3.39 17/3/2023	
	DA 3.40 DA Submittal - Amended Drawings A-3.40 17/3/2023	
	DA 3.41 DA Submittal - Amended Drawings A-3.41 17/3/2023	
	DA 3.42 DA Submittal - Amended Drawings A-3.42 17/3/2023	
	DA 3.43 DA Submittal - Amended Drawings A-3.43 17/3/2023	
	DA 3.44 DA Submittal - Amended Drawings A-3.44 17/3/2023	
	DA 3.45 DA Submittal - Amended Drawings A-3.45 17/3/2023	
	DA 3.46 DA Submittal - Amended Drawings A-3.46 17/3/2023	
	DA 3.47 DA Submittal - Amended Drawings A-3.47 17/3/2023	
	DA 3.48 DA Submittal - Amended Drawings A-3.48 17/3/2023	
	DA 3.49 DA Submittal - Amended Drawings A-3.49 17/3/2023	
	DA 3.50 DA Submittal - Amended Drawings A-3.50 17/3/2023	
	DA 3.51 DA Submittal - Amended Drawings A-3.51 17/3/2023	
	DA 3.52 DA Submittal - Amended Drawings A-3.52 17/3/2023	
	DA 3.53 DA Submittal - Amended Drawings A-3.53 17/3/2023	
	DA 3.54 DA Submittal - Amended Drawings A-3.54 17/3/2023	
	DA 3.55 DA Submittal - Amended Drawings A-3.55 17/3/2023	
	DA 3.56 DA Submittal - Amended Drawings A-3.56 17/3/2023	
	DA 3.57 DA Submittal - Amended Drawings A-3.57 17/3/2023	
	DA 3.58 DA Submittal - Amended Drawings A-3.58 17/3/2023	
	DA 3.59 DA Submittal - Amended Drawings A-3.59 17/3/2023	
	DA 3.60 DA Submittal - Amended Drawings A-3.60 17/3/2023	
	DA 3.61 DA Submittal - Amended Drawings A-3.61 17/3/2023	
	DA 3.62 DA Submittal - Amended Drawings A-3.62 17/3/2023	
	DA 3.63 DA Submittal - Amended Drawings A-3.63 17/3/2023	
	DA 3.64 DA Submittal - Amended Drawings A-3.64 17/3/2023	
	DA 3.65 DA Submittal - Amended Drawings A-3.65 17/3/2023	
	DA 3.66 DA Submittal - Amended Drawings A-3.66 17/3/2023	
	DA 3.67 DA Submittal - Amended Drawings A-3.67 17/3/2023	
	DA 3.68 DA Submittal - Amended Drawings A-3.68 17/3/2023	
	DA 3.69 DA Submittal - Amended Drawings A-3.69 17/3/2023	
	DA 3.70 DA Submittal - Amended Drawings A-3.70 17/3/2023	
	DA 3.71 DA Submittal - Amended Drawings A-3.71 17/3/2023	
	DA 3.72 DA Submittal - Amended Drawings A-3.72 17/3/2023	
	DA 3.73 DA Submittal - Amended Drawings A-3.73 17/3/2023	
	DA 3.74 DA Submittal - Amended Drawings A-3.74 17/3/2023	
	DA 3.75 DA Submittal - Amended Drawings A-3.75 17/3/2023	
	DA 3.76 DA Submittal - Amended Drawings A-3.76 17/3/2023	
	DA 3.77 DA Submittal - Amended Drawings A-3.77 17/3/2023	
	DA 3.78 DA Submittal - Amended Drawings A-3.78 17/3/2023	
	DA 3.79 DA Submittal - Amended Drawings A-3.79 17/3/2023	
	DA 3.80 DA Submittal - Amended Drawings A-3.80 17/3/2023	
	DA 3.81 DA Submittal - Amended Drawings A-3.81 17/3/2023	
	DA 3.82 DA Submittal - Amended Drawings A-3.82 17/3/2023	
	DA 3.83 DA Submittal - Amended Drawings A-3.83 17/3/2023	
	DA 3.84 DA Submittal - Amended Drawings A-3.84 17/3/2023	
	DA 3.85 DA Submittal - Amended Drawings A-3.85 17/3/2023	
	DA 3.86 DA Submittal - Amended Drawings A-3.86 17/3/2023	
	DA 3.87 DA Submittal - Amended Drawings A-3.87 17/3/2023	
	DA 3.88 DA Submittal - Amended Drawings A-3.88 17/3/2023	
	DA 3.89 DA Submittal - Amended Drawings A-3.89 17/3/2023	
	DA 3.90 DA Submittal - Amended Drawings A-3.90 17/3/2023	
	DA 3.91 DA Submittal - Amended Drawings A-3.91 17/3/2023	
	DA 3.92 DA Submittal - Amended Drawings A-3.92 17/3/2023	
	DA 3.93 DA Submittal - Amended Drawings A-3.93 17/3/2023	
	DA 3.94 DA Submittal - Amended Drawings A-3.94 17/3/2023	
	DA 3.95 DA Submittal - Amended Drawings A-3.95 17/3/2023	
	DA 3.96 DA Submittal - Amended Drawings A-3.96 17/3/2023	
	DA 3.97 DA Submittal - Amended Drawings A-3.97 17/3/2023	
	DA 3.98 DA Submittal - Amended Drawings A-3.98 17/3/2023	
	DA 3.99 DA Submittal - Amended Drawings A-3.99 17/3/2023	
	DA 4.00 DA Submittal - Amended Drawings A-4.00 17/3/2023	

Document Set ID: 37785315  
Version: 1, Version Date: 06/06/2023









## Attachment C- Section 4.6 Exception to Development Standards

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### **CLAUSE 4.6 – MINIMUM SITE AREA**

### **(CLAUSE 53(2)(a) – STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**

**(Prepared May 2023)**

Vaughan Milligan Development Consulting Pty Ltd

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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

3 FREDBERT STREET, LILYFIELD

VARIATION OF A NON-DISCRETIONARY DEVELOPMENT STANDARD REGARDING THE MINIMUM SITE AREA REQUIREMENT FOR A DETACHED SECONDARY DWELLING AS DETAILED IN CLAUSE 53(2)(a) OF THE STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

FOR PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING AND THE CONSTRUCTION OF A NEW GARAGE AND SECONDARY DWELLING

**For:** For proposed alterations and additions to the existing dwelling and the construction of a new garage and secondary dwelling  
**At:** 3 Fredbert Street, Lilyfield  
**Owner:** Mr John Vander Ploeg  
**Applicant:** Mr John Vander Ploeg  
C/- DOM Design

**1.0 Introduction**

This written request under clause 4.6 of Leichhardt Local Environmental Plan 2013 (LLEP 2013) which is the Local Environmental Plan which applied to the land at the time of lodgement of a Development Application seeking consent for additions and alterations to an existing dwelling and the construction of a new garage and secondary dwelling at 3 Fredbert Street, Lilyfield.

The written request is made pursuant to Clause 4.6 LLEP 2013 and requests a variation to the non-discretionary development standard relating to the minimum site area for the construction of a detached secondary dwelling, as detailed under Clause 53(2)(a) of State Environmental Planning Policy (Housing) 2021 (the Housing SEPP).

Clause 53 (2)(a) of the Housing SEPP prescribes a minimum site area of 450m<sup>2</sup> for development for the purpose of a detached secondary dwelling, and notes:

**53 Non-discretionary development standards—the Act, s 4.15**

(1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

(2) *The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—*

*(a) for a detached secondary dwelling—a minimum site area of 450m<sup>2</sup>,*

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3 Fredbert Street, Lilyfield

2

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*(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The subject site has an area of 368.1m<sup>2</sup> by survey, as noted within the Survey Plan prepared by Rygate & Company Pty Ltd, Reference No 79612, dated 10 May 2021, provided with the Development Application submission.

In this regard, it is requested Council support a variation with respect to compliance with the minimum site area as described in clause 53(2)(a) of the Housing SEPP.

## 2.0 Background

Clause 53(2)(a) of the Housing SEPP prescribes a minimum site area of 450m<sup>2</sup> for development for the purpose of a detached secondary dwelling, and notes:

### 53 Non-discretionary development standards—the Act, s 4.15

*(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

*(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—*

*(a) for a detached secondary dwelling—a minimum site area of 450m<sup>2</sup>,*

*(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The works which are the subject of this application propose the construction of a new detached secondary dwelling and with the site having an area of 368.1m<sup>2</sup>, the site area does not comply with the non-discretionary development standard of 450m<sup>2</sup>.

The existing site area will present a variation to the non-discretionary development standard of 81.9m<sup>2</sup> or 18.2%.

### Is clause 53(2)(a) of the Housing SEPP a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 53(2)(a) relates to the minimum site area for the carrying out of development for the purposes of a detached secondary dwelling of 450m<sup>2</sup> and therefore Clause 53(2)(a) is a development standard.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

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The controls of Clause 53(2)(a) of the Housing SEPP are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

### 3.0 Purpose of Clause 4.6

LLEP 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

### 4.0 Objectives of Clause 4.6

Clause 4.6(1) of LLEP 2013 provides:

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

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3 Fredbert Street, Lilyfield

4

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The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions. Clause 4.6(2) of the LEP provides:

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

Clause 53(2)(a) of the Housing SEPP and the relevant non-discretionary development standard in relation to the minimum site area for development for the purposes of a detached secondary dwelling is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of LLEP 2013 provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum site area for the carrying out of development for a detached secondary dwelling, pursuant to Clause 53(2)(a) of the Housing SEPP which prescribes a non-discretionary development standard of a minimum site area of 450m<sup>2</sup>.

Clause 4.6(4) of LLEP 2013 provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction

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(cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest *because* it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of LLEP 2013 provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 53(2)(a) of the Housing SEPP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for additions and alterations to the existing dwelling, together with the construction of a new detached secondary

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dwelling and garage, which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *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.*

#### 5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the non-discretionary development standard requiring a minimum site area of 450m<sup>2</sup> for the purposes of a detached secondary dwelling as detailed within Clause 53(2)(a) of the Housing SEPP.
- 5.2 Clause 53(2)(a) of the Housing SEPP specifies a minimum site area of 450m<sup>2</sup> for carrying out development for the purposes of a secondary dwelling.
- 5.3 The works which are the subject of this application propose the construction of a new detached secondary dwelling and with the site having an area of 368.1m<sup>2</sup>, the site area does not comply with the non-discretionary development standard of 450m<sup>2</sup>.

The existing site area will present a variation to the non-discretionary development standard of 81.9m<sup>2</sup> or 18.2%.

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## 6.0 Relevant Caselaw

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

*The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

*A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*



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The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 53(2)(a) of the Housing SEPP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
1. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 53(2)(a) of the Housing SEPP and the objectives for development in the R1 General Residential Zone?
2. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
3. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes the non-discretionary development standards within clause 53(2)(a) of the Housing SEPP?

#### **7.0. Request for Variation**

##### **7.1 Is clause 53(2)(a) of the Housing SEPP a development standard?**

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 53(2)(a) relates to the minimum site area for the carrying out of development for the purposes of a detached secondary dwelling of 450 m<sup>2</sup> and therefore Clause 53(2)(a) is a development standard.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 53(2)(a) of the Housing SEPP are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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## 7.2 Is compliance with clause 53(2)(a) unreasonable or unnecessary?

This request relies upon the 1st & 4<sup>th</sup> ways identified by Preston CJ in *Wehbe*.

The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

The object of the non-discretionary development standard within Clause 53 of the Housing SEPP is detailed in Clause 53(1) which notes:

### **53 Non-discretionary development standards—the Act, s 4.15**

*(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Clause 53(2)(a) notes a minimum site area of 450m<sup>2</sup> for the carrying out of development for the purposes of detached secondary dwelling.

For the reasons outlined within this written request, the proposal will achieve the objectives of the R1 General Residential zone and accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

The 4<sup>th</sup> way in *Wehbe* is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.

Whilst it is not suggested that Council has virtually abandoned or destroyed the development standard through recent decisions in relation to similar proposals which did not comply with the non-discretionary standard relating to site area, Council has supported variations on merit where the development achieves the objectives of both the SEPP Housing & Council's LEP controls.

Of note are recent decisions for new detached secondary dwelling development which similarly did not meet the minimum site area control, in the following instances:

- DA/2022/1146 - 86A Hay Street, Leichhardt (27.6% variation)
- DA/2022/0842 – 64 Hercules Street, Dulwich Hill (10.01% variation)
- DA/2022/0187 – 7 Hillcrest Street, Tempe (5.7% variation)

The subject proposal presents a variation to the control of 18.2%.

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**7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In the circumstances of this matter, there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will promote housing diversity and affordability by adding to the mix of residential accommodation options, resulting in positive social and economic impacts for the surrounding locality (cl1.3(b)).
- The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).

In this regard, for the following reasons the proposal is considered to present an appropriate bulk and scale and add positively to the immediate vicinity:

- The development complies with the FSR and height controls under the LLEP 2013
- The development achieves compliance with the objectives of Council’s landscaping, solar access and privacy controls under the LDCP 2013.
- The articulated pavilion style development has been prepared with consideration to minimise visual privacy in overshadowing impacts to the adjoining properties.
- The development will present a compatible height and articulated form to Wharf Road which complements the existing surrounding detached development.

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3 Fredbert Street, Lilyfield

11

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- Similarly, the proposed development will provide for a high level of amenity within a built form which is compatible with the character of the locality, which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area (cl 1.3(g)).
- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of additions and alterations to the existing dwelling and the inclusion of a detached secondary dwelling that provides sufficient floor area for future occupants and manages the bulk and scale of the development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum site area standard.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

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

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

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**7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 53(2)(a) of the Housing SEPP 4.3 and the objectives of the R1 General Residential Zone of LLEP 2013?**

Section 7.2 of this written request suggests the first test in *Wehbe* is made good by the development.

Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that “*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*”.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the non-discretionary standard in relation to the minimum site area of the purposes of a detached secondary dwelling under 53(2)(a) of the Housing SEPP, the proposed additions and alterations to the existing dwelling and the inclusion of a new detached secondary dwelling will be consistent with the individual Objectives of the R1 General Residential Zone under LLEP 2013, as follows:

- *To provide for housing needs of the community*

Comment: The proposed secondary dwelling will provide for additional housing opportunity in the locality, which will serve the housing needs of local community.

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

The proposed secondary dwelling will add to the variety of housing types in the immediate area and will provide for increased housing opportunity for the future occupants.

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

The proposed secondary dwelling will enhance the existing residential accommodation within the site and does not propose any other alternate land use.

- *To improve opportunities to work from home*

The inclusion of the proposed secondary dwelling will not preclude the opportunity for residents to work from home. The residential nature of the proposed secondary dwelling will allow for flexibility for the occupants with their work arrangements.

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3 Fredbert Street, Lilyfield

13

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

The proposed development has been sensitively designed in response to the architectural style of the existing dwelling and with regard to the amenity of neighbouring properties. The proposed development will not be antipathetic to the visual significance of the area and is of a scale that is consistent and compatible with surrounding dwellings.

The site will continue to maintain an appropriate area of landscaping with good solar access and orientation to enhance the amenity for the occupants of both the primary dwelling and the secondary dwelling.

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

Comment: The site will continue to provide for landscaped open space for the use and enjoyment of the existing and future residents

- *To ensure that subdivision creates lots of regular shapes that are complimentary to and compatible with the character, style, orientation and pattern of the surrounding area*

This objective is not relevant to the proposal as the developed and will not provide for any separate subdivision of the land.

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

The proposed development has been designed to maintain appropriate levels of acoustic, privacy and solar access amenity for amenity for both the subject and neighbouring properties. The development will not adversely affect the amenity of the existing and future residents and given the low density nature of the proposal with the dwelling integrated and built form which is compatible with the surrounding locality, will not present any unreasonable or adverse impacts to the neighbourhood.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum site area control, whilst maintaining consistency with the zone objectives.

#### **7.5 Has the Council obtained the concurrence of the Secretary?**

The Council can assume the concurrence of the Director – General with regards to this clause 4.6 variation.

#### **7.6 Has the Council considered the matters in clause 4.6(5) of LLEP 2013?**

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions alterations to the existing dwelling and the introduction of a new secondary dwelling for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

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3 Fredbert Street, Lilyfield

14

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As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

#### **8.0 Conclusion**

This development proposes a departure from the non-discretionary development standard under Clause 53 of the Housing SEPP, which prescribes a minimum site area of 450m<sup>2</sup> for development for the purposes of a detached secondary dwelling.

In this instance, the existing site area of 368.1m<sup>2</sup> presents a departure from the non-discretionary development standard of 81.9m<sup>2</sup> or 18.2%.


This request for variation of the non-discretionary development standard relating to a minimum site area as detailed under Clause 53(2)(a) of the Housing SEPP, adequately demonstrates that the objectives of the standard will be met.

As demonstrated within the architectural design prepared by DOM Design, the existing site appropriately supports the proposed additions and alterations to the existing dwelling and the inclusion of the new detached secondary dwelling and results in a development which is complementary to the surrounding locality.

The proposed development is considered to promote the orderly and efficient use of the land in accordance with the objectives of the Act.

The circumstances of this matter, the non-compliance with the minimum site area is unreasonable and unnecessary in this instance.

In summary, the proposal satisfies all of the requirements of clause 4.6 of LLEP 2013 and the exception to the non-discretionary development standard under Clause 53(2)(a) of the Housing SEPP is reasonable and appropriate in the circumstances of the case.



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