

INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0389
Address	111 Cecily Street LILYFIELD
Proposal	Alterations and additions to residential development
Date of Lodgement	23 May 2023
Applicant	Mr Ming CR Neo
Owner	Mr Ming CR Neo; Ms Wei KFJ Tan
Number of Submissions	Initial: Nil
Value of works	\$300,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	FSR, landscaped area and site coverage variation
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards – FSR
Attachment D	Section 4.6 Exception to Development Standards – Landscape Area & Site Coverage



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to residential development at 111 Cecily Street, Lilyfield. The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Variation to FSR, Site Coverage and Landscaped Area development standards

The non-compliances are acceptable on merit for the reasons outlined in this assessment report and therefore the application is recommended for approval.

2. Proposal

The proposal seeks approval for alterations and additions to an existing two storey dwelling, with the proposed works including:

- Internal and external demolition works at the ground and first floor to accommodate the proposed works;
- Replacement of external staircase within the front setback;
- Ground floor rear extension to accommodate a new ensuite;
- Reconfiguration of the ground floor garage to accommodate lift access to first floor;
- First floor side extension at the northern elevation to accommodate kitchen, pantry and powder room.
- First floor rear extension to accommodate new office with balcony;
- Roof extension over the terrace to provide covering between lift and internal space.
- External screening added to existing living area windows.

3. Site Description

The subject site is a corner allotment located on the western side of Cecily Street, with a secondary frontage to Lilyfield Road and rear lane access via Lasharie Street. The subject site is a single allotment and is generally rectilinear in shape with a total area of 179.12sqm. The primary street frontage to Cecily Street measures 3.9m whilst the secondary frontage to Lilyfield Road measures approximately 31m.

The site supports a two-storey dwelling with vehicular access from the rear, similar to that of immediately adjoining properties. The property is located within the Brennan's Estate Heritage Conservation Area. The property is identified as a flood prone lot.



Land Zoning map extract, subject site outlined in red

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
BC/2022/0158	Building Certificate – Alterations to carport	Approved, 7/03/2023

4(b) Application history

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

Date	Discussion / Letter / Additional Information
3/08/2023	Request for additional information sent to the applicant
17/08/2023	Applicant advised that amended plans will not be provided reducing the FSR proposed, justification for the variation has been addressed within the Clause 4.6 justification provided.

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*

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.

The application involves does not involve category 1 remediation under *SEPP (Resilience and Hazards) 2021*.

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

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

5(a)(iii) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3C – 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 5.10 – Heritage conservation
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R1 General Residential under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

“Dwelling House means a building containing only one dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 General Residential zone.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum: 0.8:1 or 143.36sqm	0.98:1 or 176.25sqm	22.9% or 32.89sqm	No
Landscaped Area Minimum: 15% or 26.88sqm	13.5% or 24.2sqm	9.9% or 2.68sqm	No
Site Coverage Maximum: 60% or 107.52sqm	65% or 117sqm	8.8% or 9.48sqm	No

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

- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio

Section 4.3C – Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the landscaping area development standard under Section 4.3C(3)(a)(i) (Landscaped Area) of the *IWLEP 2022* by 9.9% or 2.68sqm and 4.3C(3)(b) (Site Coverage) by 8.8% or 9.48sqm. 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 *IWLEP 2022* below. A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The existing dwelling provides for 22.65sqm (12.6%) of the site as landscaped area, representing an existing shortfall of 4.23sqm (15.7% of development standard). The proposed development seeks a landscaped area of 24.2sqm or 13.5% of the site area. Therefore, the proposed alterations and additions reduce the existing shortfall to the landscaped area development standard by 1.55sqm, representing a variation of 2.68sqm (9.97%) to the development standard.*
- *In terms of site coverage, the proposed alterations and additions result in a site coverage of 117sqm or 65.2% of the site area. A variation of 9.5sqm or 8.8% is proposed. It should be noted that the existing dwelling on the site results in a site coverage of 115.88sqm, representing an existing variation of 8.36sqm or 7.7%.*
- *Due to the narrow allotment width, the ability to accommodate landscaped areas on site is limited. Currently, the existing landscaped area on site is limited to the front setback area, which consists of small plantings surrounding a natural rock outcrop.*

- *The proposed alterations and additions sought will not result in a further reduction to the existing landscaped area. In fact, the proposed development will slightly increase the landscaped area on the site by 1.55m². This has been achieved through the relocation of the impervious path and steps within the front setback area.*
- *The proposal maintains the original residential use, with the proposed works enhancing and contributing to the character and identity of the neighbourhood, being the Nanny Goat Hill Distinctive neighbourhood*
- *The proposed alterations and additions will be mainly contained within the existing footprint of the dwelling.*
- *The variation sought to landscaped area and site coverage is primarily as a result of the small area and unusual shape of the existing lot.*
- *The use on the site will remain as a dwelling house and does not preclude other land uses in the zone.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential Zone in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *To provide for the housing needs of the community.*
The proposed alterations and additions will include an additional bedroom and additional living spaces, which will provide for the housing needs of the community.
- *To provide for a variety of housing types and densities.*
The proposed development will retain the existing dwelling use, with the proposed works ensuring a variety of housing types is provided within the area.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
The proposed works seek to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair.
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*
The proposal will retain the existing streetscape presentation to Cecily Street, Lilyfield Road and Lasharie Street with the works being sited to minimise impacts to these streetscapes. The proposal will maintain the character of built and natural features within the surrounding area.

It is considered the development is in the public interest because it is consistent with the objectives of the landscaped area development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
Whilst the proposal seeks to increase the site coverage to the property, the proposed landscaped area on site within the front garden is capable of supporting substantial tree planting and providing for the use and enjoyment of residents.
- *b) to maintain and encourage a landscaped corridor between adjoining properties,*

The proposed increase to site coverage does not hinder the maintenance of landscaped areas within the front and southern side setback and as such maintaining a landscaped corridor between properties.

- *c) to ensure that development promotes the desired character of the neighbourhood,*
The proposed development will promote the desired future character of the neighbourhood by retaining a similar visual presentation in the streetscape, which includes landscaping in the front garden. Variation to the landscaping and site coverage standard will not limit compatibility with the desired future character.
- *d) to encourage ecologically sustainable development,*
The proposal represents an ecologically sustainable development as it retains deep soil landscaped areas in similar locations to existing. In particular, the proposal retains landscaping within each setback.
- *e) to control site density,*
Whilst the proposal seeks to reduce the amount of soft permeable areas and increase the total site coverage, the proposal will appropriately control site density through retaining a similar footprint to the existing dwelling.
- *f) to provide for landscaped areas and private open space.*
The POS area is located above the garage at the rear and as such cannot be landscaped, despite this the proposal seeks to retain soft landscaping within the front and southern side setback of the subject site. Additionally, due to the location of the POS area the increase in site coverage will not impede on the functionality or amenity of this area.

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 *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the landscaped area development standard and it is recommended the Section 4.6 exception be granted.

Section 4.4 – Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Section 4.4 of the *IWLEP 2022* by 22.9% or 32.89sqm resulting in a FSR of 0.98:1 or 176.25sqm. 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 *IWLEP 2022* below. A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed site density as a result of the alterations and additions sought is considered reasonable given the context of the site and character of the streetscape. The additional gross floor area sought is required to meet the accessibility needs of the homeowner through the addition of a wheelchair accessible bathroom, home office space and minor extension to the width of living areas. The proposed increase to site density sought does not involve the addition of any new bedroom or living areas.*
- *The proposed alterations and additions will be mainly contained within the existing footprint of the dwelling, noting that the proposed first floor addition will align with the existing ground floor setback. Furthermore, the addition of the ensuite on the ground*

floor will mostly be located underneath the existing entry foyer, which is proposed to be converted into an office.

- *The proposal generally aligns with the desired future character of the area*
- *The proposed alterations and additions respond to the style and form of the existing dwelling, ensuring a seamless transition between the existing and proposed works sought. The proposed materials and finishes sought will match the existing dwelling and subsequently remain cohesive with the character of the streetscape.*
- *In terms of views and vistas, the proposed alterations and additions do not increase the existing height of the dwelling, thus will not impact view corridors towards the city skyline from properties along Ryan Street.*
- *There are other developments within vicinity of the subject site that have been approved with variations to the FSR standard.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential Zone in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *To provide for the housing needs of the community.*
The proposed alterations and additions will include an additional bedroom and additional living spaces, which will provide for the housing needs of the community.
- *To provide for a variety of housing types and densities.*
The proposed development will retain the existing dwelling use, with the proposed works ensuring a variety of housing types is provided within the area.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
The proposed works seek to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair.
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*
The proposal will retain the existing streetscape presentation to Cecily Street, Lilyfield Road and Lasharie Street with the works being sited to minimise impacts to these streetscapes. The proposal will maintain the character of built and natural features within the surrounding area.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *(a) to establish a maximum floor space ratio to enable appropriate development density,*
The proposed works seeks ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. These changes although resulting in a numerical breach to the standard, are unlikely to be visible from the public domain with the additions designed to be in harmony with the existing dwelling on-site which is considered to be of an acceptable bulk and scale and is of a density compatible with adjoining development.
- *(b) to ensure development density reflects its locality,*

There is a varying pattern of density within the surrounding locality, with properties within the surrounding visual catchment of Cecily Street presenting as two storeys to the street, with rear additions of varying sizes and styles. The proposed alterations and additions extend the existing front building line at the ground and first floor levels, while maintaining a development density that reflects the surrounding locality

- *(c) to provide an appropriate transition between development of different densities,*
The proposed alterations and additions will provide an appropriate transition between development of different densities in the surrounding area. The proposal will maintain a similar to existing external bulk, particularly when viewed from the public domain at each frontage.
- *(d) to minimise adverse impacts on local amenity,*
Adverse impacts on local amenity have generally been minimised, with no anticipated view, visual privacy, overshadowing or visual bulk impacts as a result of the proposal.
- *(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*
The proposed landscaped area on site within the front garden is capable of supporting tree planting and providing for the use and enjoyment of residents.

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 *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended the Section 4.6 exception be granted.

Section 5.10 – Heritage conservation

The subject property at 111 Cecily Street, Lilyfield, is a neutral dwelling located within the Brennan’s Estate Heritage Conservation Area (C63 in Schedule 5 of the Inner West LEP 2022).

The proposal seeks to include horizontal windows at the eastern elevation to the ensuite at the ground floor which is contrary to the design character provisions of the DCP.

It is recommended a design change condition be included in the consent requiring the horizontally proportioned window proposed to the ensuite in the east elevation to be amended to vertically proportioned windows to ensure the fenestration is sympathetic to the character in the HCA. This can include obscure glazing to the bottom half to maintain privacy.

5(b) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes

C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes, subject to conditions
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	N/A
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
Nanny Goat Hill Distinctive Neighbourhood, C2.2.4.2(a) Eastern Residential Sub Area	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No - acceptable
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	

Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	N/A
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	N/A
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design – side setback

Control C7 at Section C3.2 of the LDCP relates to side setback requirements and applies a sliding scale to setbacks, in conjunction with the relative wall heights. The proposed first floor works include an extension to the living areas and bathroom, towards the northern side boundary to 109 Cecily Street, Lilyfield. The proposal seeks a wall height of 5.4m to its northern boundary, as such the first floor is required to be setback 1.56m, however a nil side setback is proposed.

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

Merit test	Comment
Building typology	Acceptable. The form and scale of the proposal and its architectural style, materials and finishes will be complementary with, and will remain consistent with the desired future character of the area
Pattern of development	Acceptable. The new works are suitably located to remain consistent with the pattern of development within the HCA. The dwelling proposed has been designed with consideration of the existing levels of the dwelling and the adjoining property to the north.
Bulk and scale	Acceptable. The proposed development has been designed with consideration to the objectives of the desired future character in addition to the development standards of the IWLEP 2022. The overall bulk of the development is modest in scale and has been minimised so as to not result in unreasonable visual bulk impacts the adjoining dwelling to the side of the subject site respectively

Merit test	Comment
Amenity impacts	Acceptable. The proposal is considered to be satisfactory with respect to applicable solar access controls as well as the privacy controls of the DCP and will result in no loss of views.
Maintenance of adjoining properties	Acceptable. The proposed dwelling seeks a nil setback to its northern boundary at the first floor. The adjoining building to the north at 109 Cecily Street is approximately setback 1.1m to its respective southern boundary, given this the proposal is unlikely to impede on the ongoing maintenance of both properties.

Accordingly, the proposed extension to the side boundary at the first floor level is acceptable.

5(c) 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(d) 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(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. Nil submissions were received in response to the initial notification.

5(f) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage; and
- Development Engineering

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$3,000 would be required for the development under Leichhardt Section 94A Contributions Plan 2014. 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 *Inner West Local Environmental Plan 2022* and the Leichhardt Development Control Plan 2013.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the landscape area, site coverage and floor space ratio development 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/2023/0389 for alterations and additions to the dwelling at 111 Cecily Street, Lilyfield subject to the conditions listed in Attachment A for the following reasons.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA.02, Rev C	Existing/Demolition Ground Floor Plan	19/05/2023	Robert Parisi Architecture & Design
DA.02, Rev C	Existing/Demolition First Floor Plan	19/05/2023	Robert Parisi Architecture & Design
DA.04, Rev C	Site Plan	19/05/2023	Robert Parisi Architecture & Design
DA.05, Rev C	Ground Floor Plan	19/05/2023	Robert Parisi Architecture & Design
DA.06, Rev C	First Floor Plan	19/05/2023	Robert Parisi Architecture & Design
DA.07, Rev C	Sections	19/05/2023	Robert Parisi Architecture & Design
DA.08, Rev C	Elevations North & South	19/05/2023	Robert Parisi Architecture & Design
DA.09, Rev C	Elevations East & West	19/05/2023	Robert Parisi Architecture & Design
DA.11, Rev C	Ensuite Accessibility	19/05/2023	Robert Parisi Architecture & Design
DA.12, Rev C	Powder Room Accessibility	19/05/2023	Robert Parisi Architecture & Design
DA.17, Rev C	Window Schedule	19/05/2023	Robert Parisi Architecture & Design

DA.18, Rev C	Schedule of Materials & Finishes	19/05/2023	Robert Parisi Architecture & Design
A493908	BASIX Certificate	5/05/2023	House Energy Certified
101-102, Rev A	Stormwater Concept Plan	12/04/2023	Telford Civil

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. The horizontally proportioned window proposed in the east elevation to the ensuite must be amended to vertically proportioned windows.

FEES

3. Security Deposit - Custom

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

Security Deposit:	\$5,600.00
Inspection Fee:	\$350.00

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

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

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

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

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

4. 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.

5. 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 **\$3,000** 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_{payment} = is the contribution at time of payment
- C_{consent} = is the contribution at the time of consent, as shown above
- CPI_{consent} = 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_{payment} = 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 or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on 9592 5000 or council@innerwest.nsw.gov.au 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; 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

6. Boundary Alignment Levels

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

7. 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.

8. 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.

9. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**10. 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.

11. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining property at 109 Cecily Street, Lilyfield to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining

allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

13. 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

14. 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.

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

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

- a. The Stormwater Drainage Concept plan on Drawing No. 101 issue (A) prepared by TELFORD CIVIL and dated 12 April 2023, shall be amended to comply with the following:
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a

system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;

- g. 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;
- h. Access must be available to all downpipe connections, pipe junction under the floor slab is not permitted.
- i. An overland flowpath must be provided within the setback to the northern side boundary between the rear of the dwelling and the Cecily Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath.
- 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. No nuisance or concentration of flows to other properties;
- m. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- n. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- o. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- p. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- q. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- r. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- s. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- t. No impact to street tree(s);

16. Changes to Levels

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

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

17. 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.

18. Sydney Water – Tap In

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

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

19. 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.

20. 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

21. No Encroachments

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

22. Protect Sandstone Kerb

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

ON-GOING**23. 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.

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.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

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.

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.

Dial before you dig

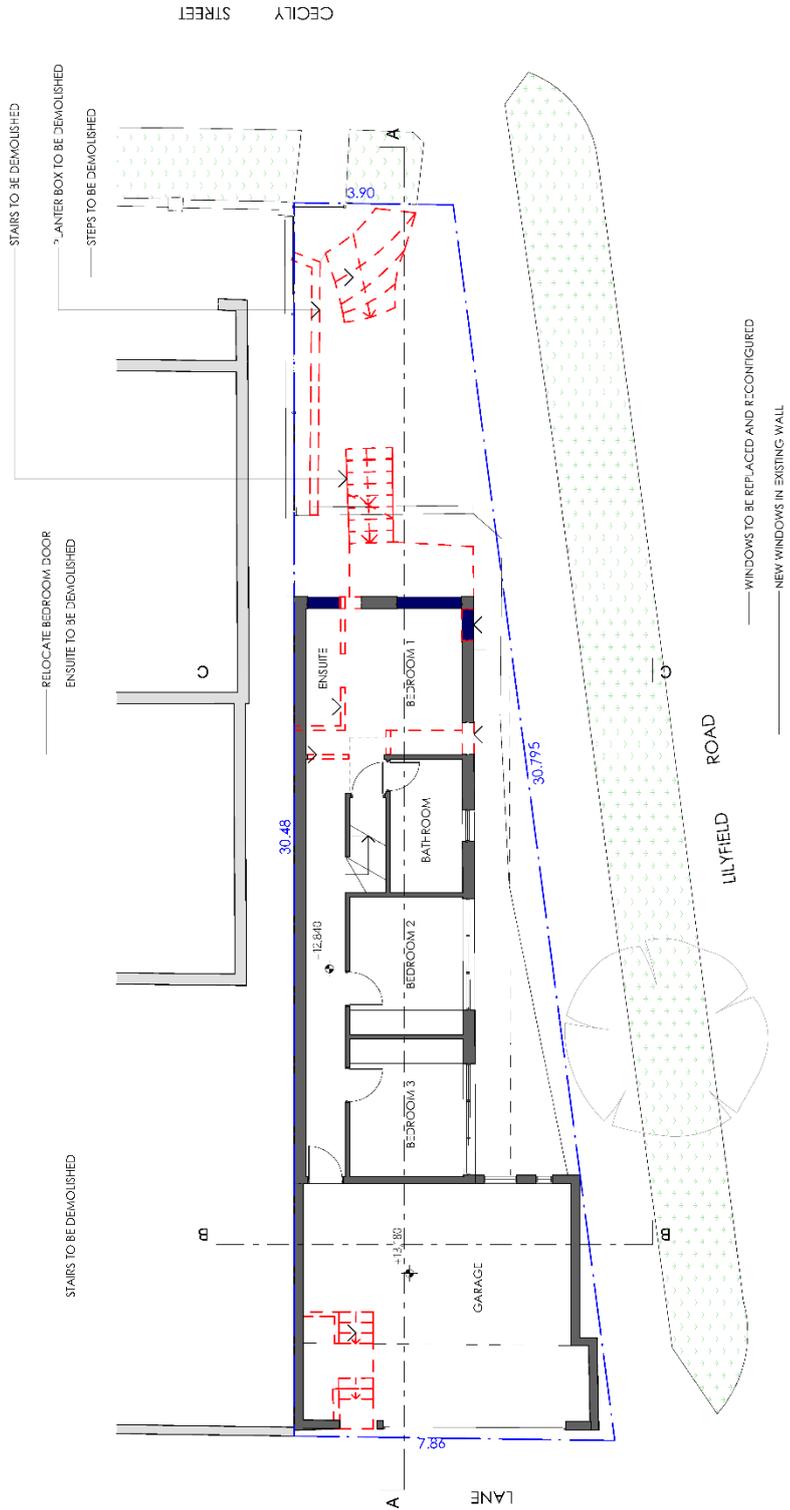
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au

Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development



EXISTING / DEMOLITION	GROUND FLOOR PLAN
DATE	7/05/2023
SCALE	1:100 @ A3
REV	C

NOTES

1. THIS PLAN IS FOR INFORMATION ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE APPROVAL OF THE LOCAL COUNCIL. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AUTHORITIES.

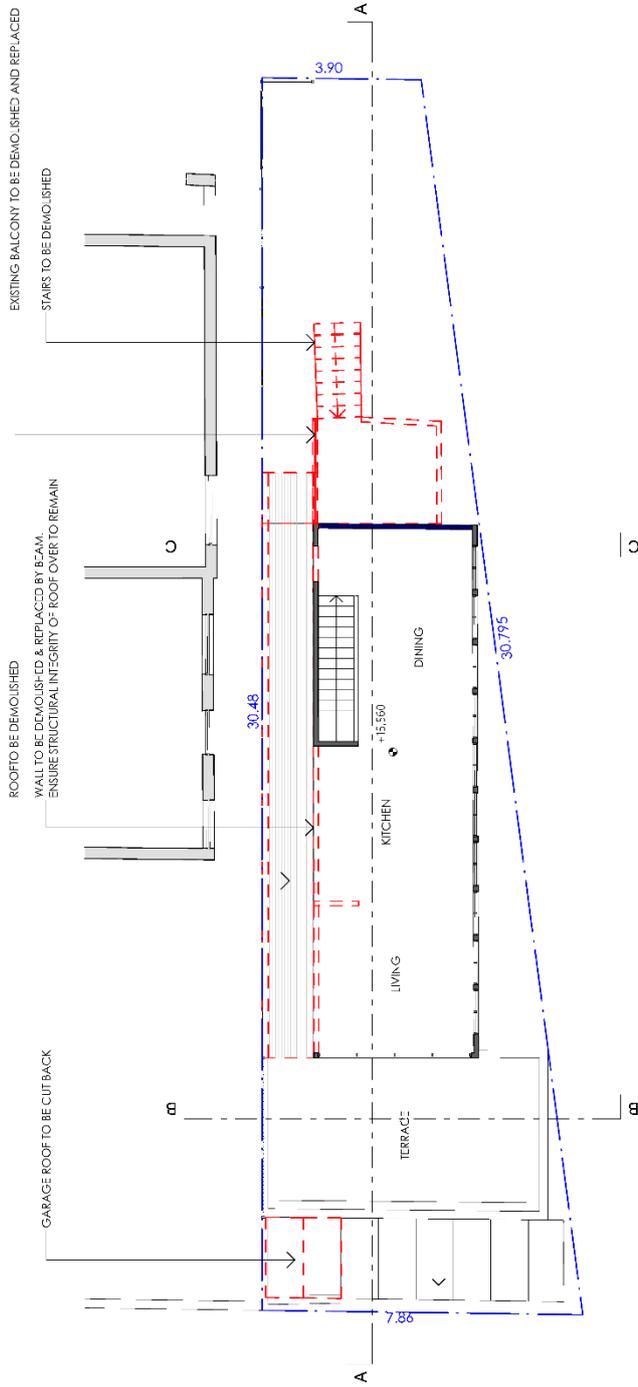
2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AUTHORITIES.

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NOBS	DATE	REV
1	12/02/23	A
2	18/02/23	B
3	27/02/23	C

PROPOSAL:
ALTERATIONS AND ADDITIONS
111 Cecily St Lilyfield NSW 2040
 CUL-11
 Raymond Neo

robertparisi@architecture | design
 robertparisi@architecture.com.au | 02 9591 8225
 Document Set ID: 381833555
 Version: 1, Version Date: 12/09/2023



Existing / Demolition First Floor Plan	
DATE	19/05/2023
APPROVED	RP
SCALE	1:100
DRAWING	DA.03
REV	C

NOTES:
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 4. THIS DRAWING IS VALID FOR THE PROJECT ONLY AND IS NOT VALID FOR ANY OTHER PROJECT.
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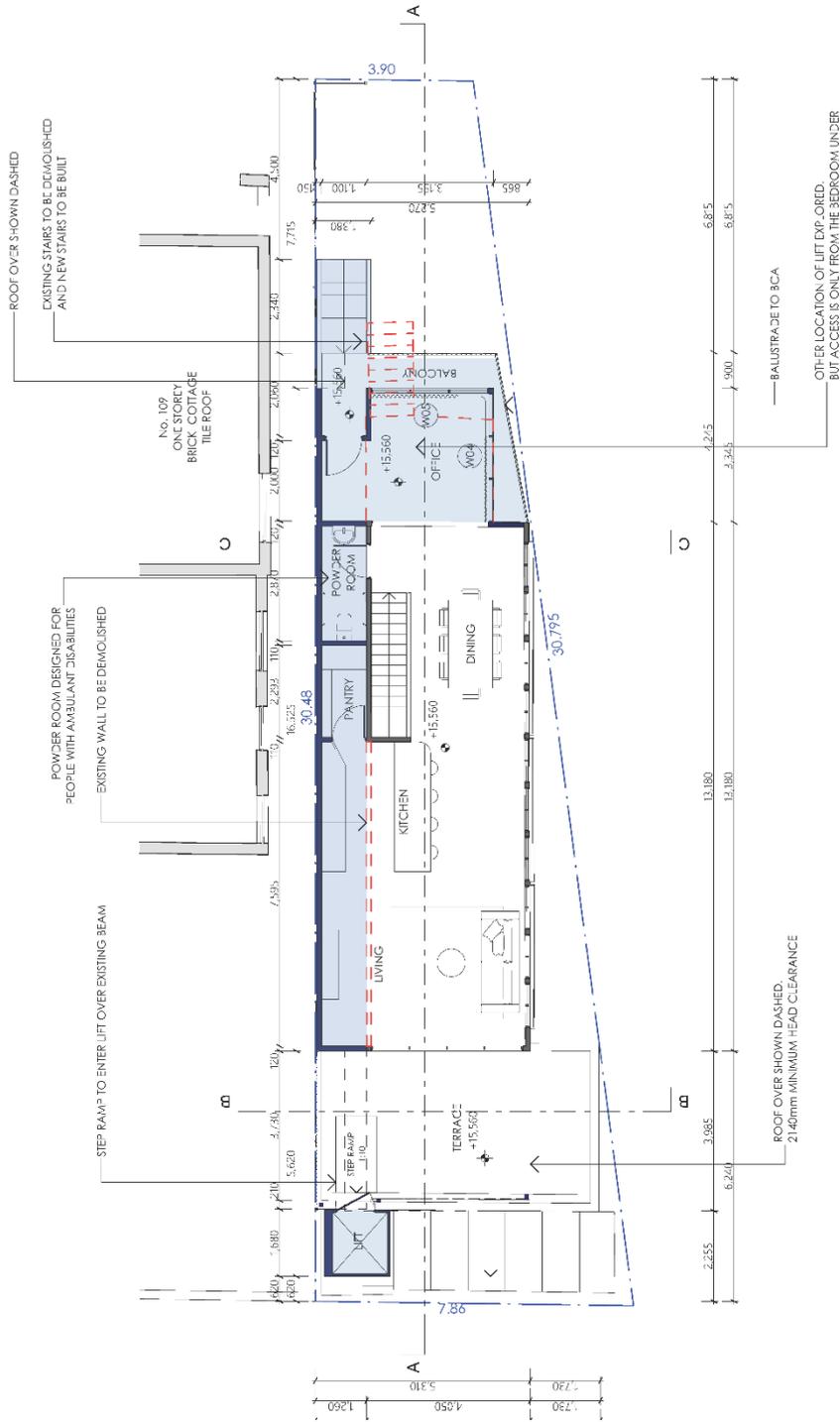


REV	DATE	NOIS
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B	19/05/2023	REPLACE ROOF OVER GARAGE
A	19/05/2023	REPLACE ROOF OVER GARAGE

PROJ. NO.
 ALTERATIONS AND ADDITIONS
 111 Cecily St Lilyfield NSW 2040
CLIENT
 Raymond Neo

ROBERT PARRIS ARCHITECTURE | design
 1/100-110/111 Cecily St Lilyfield NSW 2040
 T: 02 9550 1522
 F: 02 9550 1522
 E: info@rparchitects.com.au
 W: www.rparchitects.com.au

Document Set ID: 38063385
 Version: 1, Version Date: 12/09/2023



First Floor Plan			
DATE	19/05/2023	REV	C
DRAWING	DAJ.06	DRAWING	REV
SCALE	1:100	SCALE	1:100
BY	A. PROVED	BY	A. PROVED
CHKD	RP	CHKD	RP

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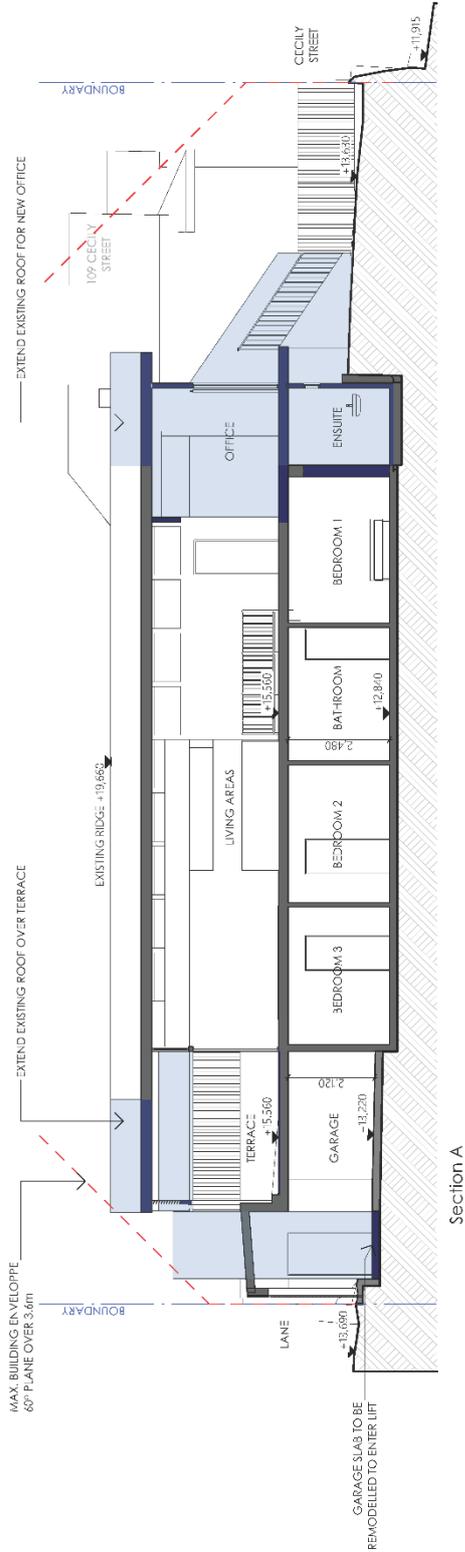
REV	DATE	NOIS
C	19/05/2023	ISSUE FOR PERMIT APPLICATION
B	08/03/23	ISSUE FOR PERMIT APPLICATION
A	27/05/2022	ISSUE FOR PERMIT APPLICATION

PROJECT:
 ALTERATIONS AND ADDITIONS
 111 Cecily St Lilyfield NSW 2040

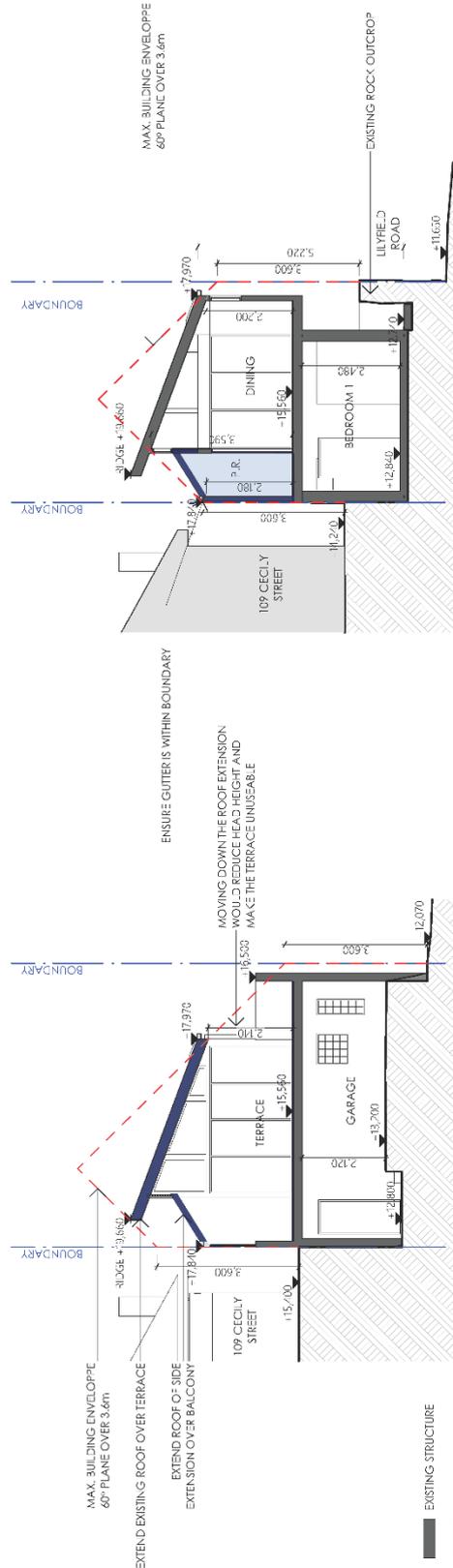
CLIENT:
 Raymond Neo

ROBERT PARI ARCHITECTURE | design
 111 Cecily St Lilyfield NSW 2040
 Phone: (02) 9551 1234 | Email: info@robertpari.com.au | www.robertpari.com.au

Document Set ID: 38063385
 Version: 1, Version Date: 12/09/2023



Section A



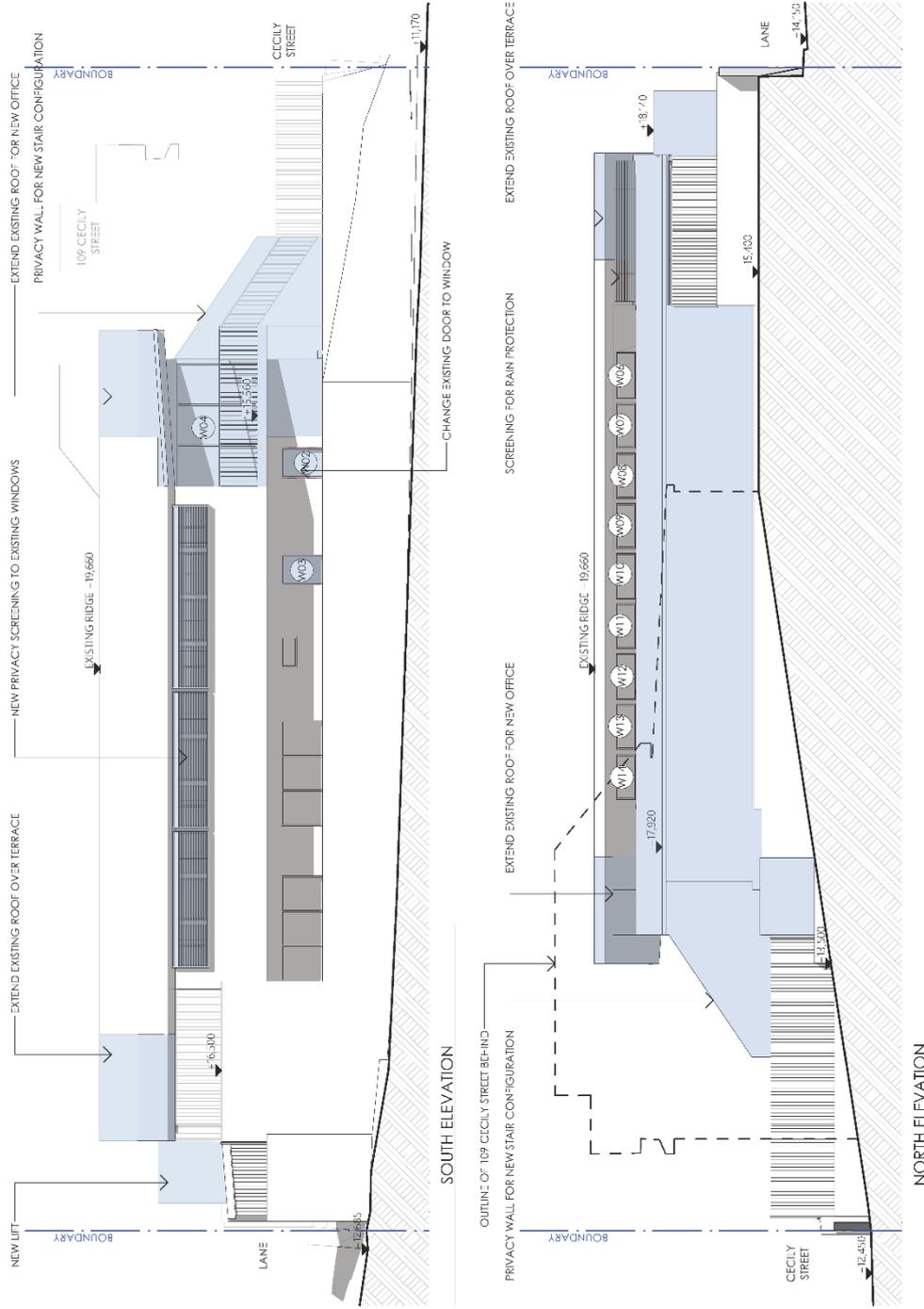
Section C

Section B

- EXISTING STRUCTURE
- PROPOSED STRUCTURE
- NEW ADDITIONS

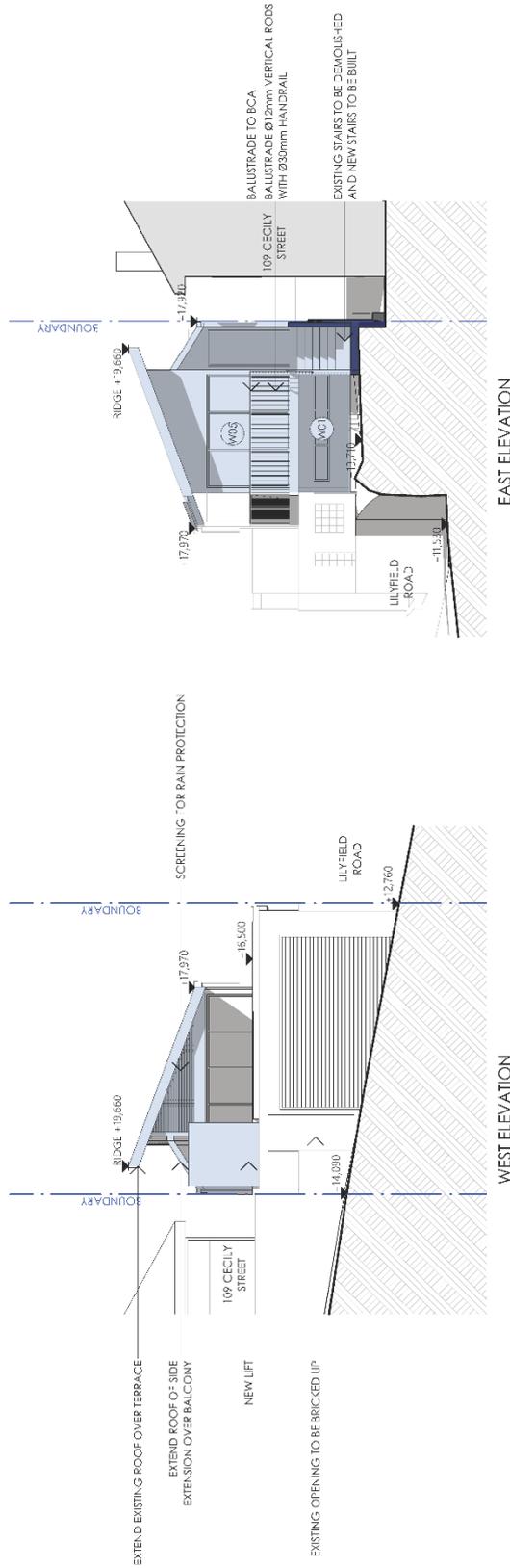
PROJECT ALTERATIONS AND ADDITIONS 111 Cecily St Lilyfield NSW 2040 CLIENT Raymond Neo		REVISIONS <table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>NOTES</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>19/09/2023</td> <td>ISSUE FOR PERMIT APPLICATION</td> </tr> <tr> <td>B</td> <td>19/09/2023</td> <td>ISSUE FOR PERMIT APPLICATION</td> </tr> <tr> <td>C</td> <td>19/09/2023</td> <td>ISSUE FOR PERMIT APPLICATION</td> </tr> </tbody> </table>		REV	DATE	NOTES	A	19/09/2023	ISSUE FOR PERMIT APPLICATION	B	19/09/2023	ISSUE FOR PERMIT APPLICATION	C	19/09/2023	ISSUE FOR PERMIT APPLICATION
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B	19/09/2023	ISSUE FOR PERMIT APPLICATION													
C	19/09/2023	ISSUE FOR PERMIT APPLICATION													
DESIGNER robertparisiarchitects design		SECTIONS DRAWING DA.07													
PROJECT NO. 38063385 PROJECT ADDRESS 111 Cecily St Lilyfield NSW 2040		DATE 19/09/2023													

Document Set ID: 38063385
Version: 1, Version Date: 12/09/2023



NEW ADDITIONS

PROJECT ALTERATIONS AND ADDITIONS 111 Cecily St Lilyfield NSW 2040 CLIENT Raymond Neo		NOTES: THIS DRAWING IS THE PROPERTY OF ROBERT PARISI ARCHITECTURE. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF ROBERT PARISI ARCHITECTURE IS STRICTLY PROHIBITED.		Elevations North & South DRAWING YG SCALE 1:100 DATE 19/05/2023 REV C	
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NEW ADDITIONS

<p>PROJECT: ALTERATIONS AND ADDITIONS 111 Cecily St Lilyfield NSW 2040 CLIENT: Raymond Neo</p>		<p>DATE: 19/05/2023 DRAWING: REV C</p>	
<p>DESIGNER: robertparisiarchitect:ure design PROJECT MANAGER: robert.parisi@parisiarchitect.com.au ph: 601 8911 5225</p>		<p>DATE: 19/05/2023 DRAWING: REV C</p>	
<p>PROJECT: ALTERATIONS AND ADDITIONS 111 Cecily St Lilyfield NSW 2040 CLIENT: Raymond Neo</p>		<p>DATE: 19/05/2023 DRAWING: REV C</p>	
<p>DESIGNER: robertparisiarchitect:ure design PROJECT MANAGER: robert.parisi@parisiarchitect.com.au ph: 601 8911 5225</p>		<p>DATE: 19/05/2023 DRAWING: REV C</p>	

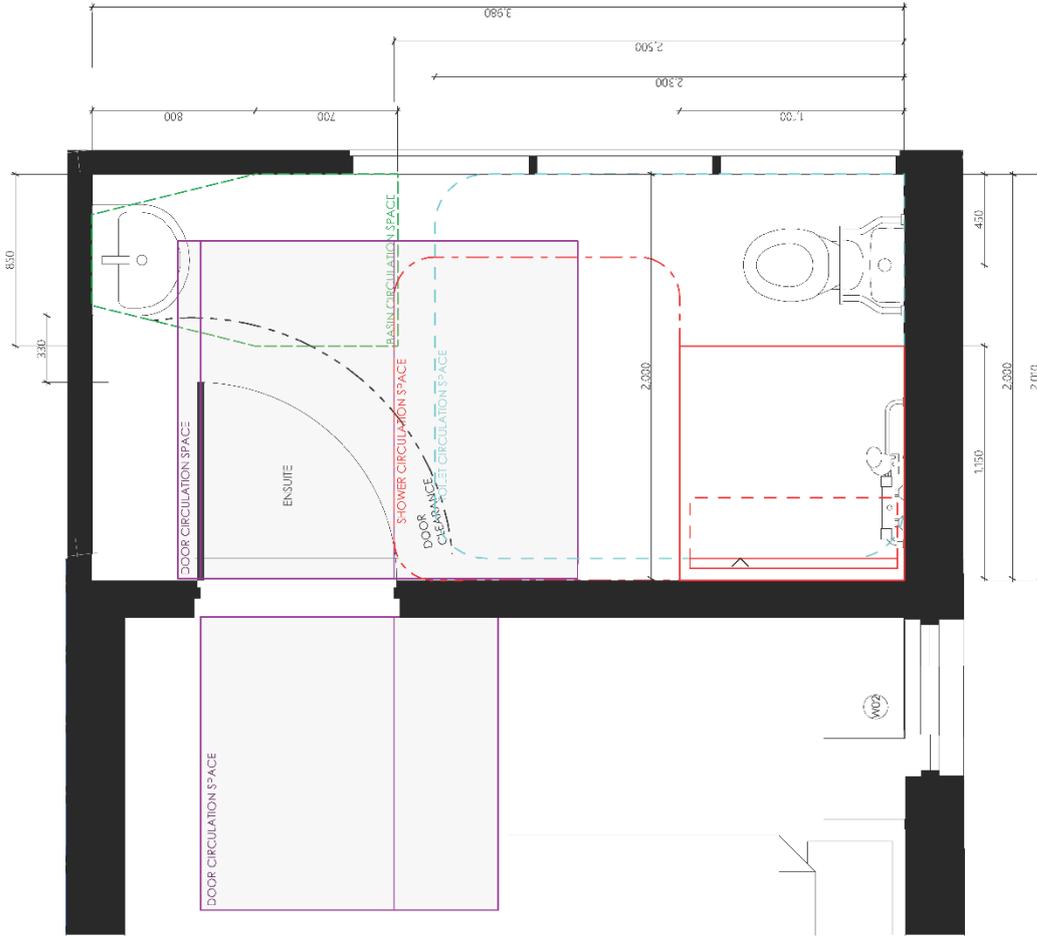
NOTE:
 THE ARCHITECT HAS PREPARED THESE PLANS IN ACCORDANCE WITH THE BUILDING ACT 2016 AND THE BUILDING REGULATIONS 2016. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE PROPOSED WORK AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE BUILDING ACT 2016 AND THE BUILDING REGULATIONS 2016. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE PROPOSED WORK AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE BUILDING ACT 2016 AND THE BUILDING REGULATIONS 2016. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE PROPOSED WORK AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE BUILDING ACT 2016 AND THE BUILDING REGULATIONS 2016.

REV	DATE	NOIS
C	19/05/2023	ISSUE FOR PERMIT APPLICATION
B	08/03/23	ISSUE FOR DEVELOPMENT APPLICATION
A	27/05/2022	ISSUE FOR PERMIT

Elevations East & West

DATE: 19/05/2023
 DRAWING: REV C

NOTE
 CIRCULATION SPACES TO AS 1428.1:2021.
 FURTHER DETAILING REQUIRED TO SHOW FULL
 COMPLIANCE WITH AS 1428.1:2021



SHOWER SEAT IN FOLDED POSITION

DATE	19/05/2023
DRAWING	DA.11
REV	C
SCALE	3/4
PROJECT	8/ A3
DRAWING	DA.11
REV	C

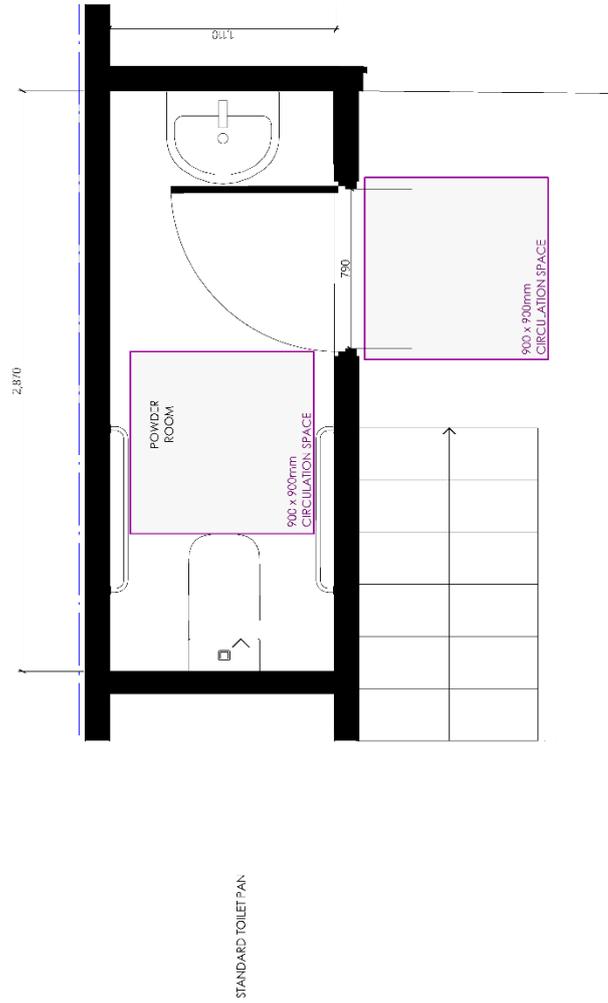
NOTE:
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REV	DATE	NOIS
C	19/05/2023	ISSUE FOR PERMIT APPLICATION
B	08/03/23	ISSUE FOR CONSTRUCTION
A	27/05/2022	ISSUE FOR PERMIT

PROJEN
 ALTERATIONS AND ADDITIONS
 111 Cecily St Lilyfield NSW 2040
 CLIENT
 Raymond Neo

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NOTE
 POWDER ROOM DESIGNED AS SANITARY COMPARTMENT FOR PEOPLE WITH
 AMBULANT DISABILITIES, TO AS 1428.1:2021 SECTION 13.
 FURTHER DETAILING REQUIRED TO SHOW FULL COMPLIANCE WITH AS 1428.1:2021



PROJECT	ALTERATIONS AND ADDITIONS
CLIENT	111 Cecily St Lilyfield NSW 2040
DATE	19/09/2023
SCALE	1:20
REV	A3
DRAWING	DA.12
REV	C

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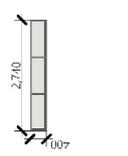
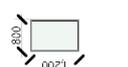
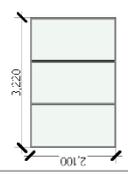
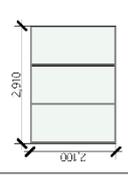
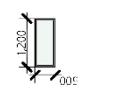
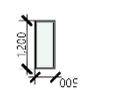
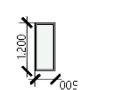
PROJECT	ALTERATIONS AND ADDITIONS
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DATE	19/09/2023
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REV	A3
DRAWING	DA.12
REV	C

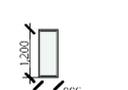
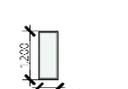
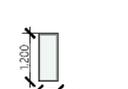
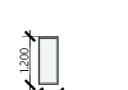
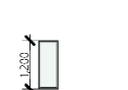
PROJECT	ALTERATIONS AND ADDITIONS
CLIENT	111 Cecily St Lilyfield NSW 2040
DATE	19/09/2023
SCALE	1:20
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REV	C

PROJECT	ALTERATIONS AND ADDITIONS
CLIENT	111 Cecily St Lilyfield NSW 2040
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DRAWING	DA.12
REV	C

Document Set ID: 38063385
 Version: 1, Version Date: 12/09/2023

Window No.	W01	W02	W03	W04	W05	W06	W07	W08
Location	ENSUITE	BEDROOM 1	BEDROOM 1	OFFICE	OFFICE	LIVING AREA	LIVING AREAS	LIVING AREAS
Storey	GROUND FLOOR	GROUND FLOOR	GROUND FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR
Frame Type	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM
Glazing Type	FROSTED	CLEAR	CLEAR	CLEAR	CLEAR	CLEAR	CLEAR	CLEAR
Window Type	LOUVRE	LOUVRE	LOUVRE	SLIDING DOORS	SLIDING DOORS	LOUVRE	LOUVRE	LOUVRE
Width	2.740	800	800	3.220	2.910	1.200	1.200	1.200
Height	400	1.200	1.200	2.100	2.100	500	500	500
Sill	1.700	900	900	0	0	3.050	3.050	3.050
Screen	-	-	-	-	-	-	-	-
Shading	EAVE 900mm	EAVE 850mm	EAVE 850mm	EAVE 650mm	EAVE 750mm	EAVE 600mm	EAVE 600mm	EAVE 600mm
Orientation (BASIX)	EAST	SOUTH	SOUTH	SOUTH	EAST	NORTH	NORTH	NORTH
Elevation								

Window No.	W09	W10	W11	W12	W13	W14
Location	LIVING AREAS	LIVING AREAS	LIVING AREAS	LIVING AREAS	LIVING AREAS	LIVING AREAS
Storey	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR	FIRST FLOOR
Frame Type	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM	ALUMINIUM
Glazing Type	CLEAR	CLEAR	CLEAR	CLEAR	CLEAR	CLEAR
Window Type	LOUVRE	LOUVRE	LOUVRE	LOUVRE	LOUVRE	LOUVRE
Width	1.200	1.200	1.200	1.200	1.200	1.200
Height	500	500	500	500	500	500
Sill	3.050	3.050	3.050	3.050	3.050	3.050
Screen	-	-	-	-	-	-
Shading	EAVE 600mm	EAVE 600mm	EAVE 600mm	EAVE 600mm	EAVE 600mm	EAVE 600mm
Orientation (BASIX)	NORTH	NORTH	NORTH	NORTH	NORTH	NORTH
Elevation						

Window Schedule	Window Schedule
DATE	19/05/2023
SCALE	3: A3
DRAWING	DA.17
REV	C

NOTE:
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 The architect is not responsible for the window or for the performance of the window in any way.

REV	DATE	NOIS
A	22/05/2023	NOIS
B	22/05/2023	NOIS
C	19/05/2023	NOIS

ALTERATIONS AND ADDITIONS
111 Cecily St Lilyfield NSW 2040
 CLIENT
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Attachment C- Section 4.6 Exception to Development Standards - FSR



CLAUSE 4.6 VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO OF THE INNER WEST LOCAL ENVIRONMENTAL PLAN 2022

111 CECILY STREET, LILYFIELD

1. Introduction

This submission seeks a variation to Clause 4.4 of the Inner West Local Environmental Plan 2022 (IWLEP22), which relates to the floor space ratio development standard.

This submission has been prepared in relation to a development application for the alterations and additions to the existing dwelling house at No. 111 Cecily Street, Lilyfield. The purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair.

As detailed in this written request for a variation to the floor space ratio control being a development standard under IWLEP22, the proposed development meets the requirements prescribed under Clause 4.6 of IWLEP22.

2. Site Background

The subject site is located on the western side of Cecily Street and adjoins a rear lane. The site is legally defined as Lot 2 in Deposited Plan 878947 and is commonly referred to as No.111 Cecily Street, Lilyfield.

The site is irregular in shape and provides for a primary frontage of 3.9m to Cecily Street. The site also has a secondary frontage to Lilyfield Road measuring 30.795m and a rear lane frontage measuring 7.86m. The northern side boundary of the site measures 30.48m. Overall, the site provides for an area of 179.2m².

Located on the subject site at present is a two (2) storey dwelling with vehicular access provided off the rear laneway. Reference should be made to Figure 1 – Site Location Map.



Figure 1: Aerial view of site. Source: <https://maps.six.nsw.gov.au/>

Development in the area is typically characterised by a mix of single and double storey dwellings with the occasional pair of semi-detached dwellings. Overall, the site is located within an established residential area. Development in the immediate area consists of a mix of older and contemporary housing stock.

As the site is bounded by roads on three sides, the site only adjoins a single property to the north. The adjoining site to the north at No.109 Cecily Street contains a single storey detached dwelling. Despite being single storey in form, the adjoining dwelling has a ridge height which is higher than the two storey built form on the subject site, due to the slope of the land. The subject site is separated from contemporary two storey dwellings to the west by a rear laneway.

Located approximately 300m east of the subject site is Easton Park which offers a wide expanse of public green open space within walking distance of the subject site. This space is appropriate in accommodating a diverse array of active and passive recreational opportunities.

The site is well serviced by public transport with a bus stop on Catherine Street and Lilyfield Light Rail Station located approximately 550m to the west of the site. These transit stops provide connections to Leichhardt, Five Dock, Dulwich Hill and the City which link to a more expansive public transport network.

The subject site is located in the R1 General Residential Land Use Zone and is located within the Brennan's Estate Heritage Conservation Area.



Figure 2: Zoning Map (Source: NSW Legislation, IWLEP22, map 008.)

3. Clause 4.6

This submission is made under clause 4.6 of the IWLEP22 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Planning Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**

- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5*
 - (ca) clause 6.27(4),*
 - (cb) clause 6.28,*
 - (cc) clause 6.29,*
 - (cd) clause 6.31"*

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

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

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

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

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five No 1)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (Four2Five No 2)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (Four2Five No 3)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which these variations relate to is the MLEP11.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

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

- (a) to establish the maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and public domain.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as “Area 1” on the Key Sites Map is 1:1.

(2B) The maximum floor space ratio for development for the purposes of residential accommodation is as follows –

(a) on land shown edged black or pink on the Floor Space Ratio Map is not to exceed—

(i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or

(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or

(iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or

(iv) in the case of development on a lot with an area of 450 square metres or more—0.6:1, or

(b) on land shown edged red or green on the Floor Space Ratio Map is not to exceed—

(i) in the case of development on a lot with an area of less than 150 square metres—1.0:1, or

(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or

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

(2C) The maximum floor space ratio for development for a purpose of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land identified as “F” on the Floor Space Ratio Map is specified in the Table to this subclause.

Site area	Maximum floor space ratio
≤ 150 square metres	1.1:1
> 150 ≤ 200 square metres	1:1
> 200 ≤ 250 square metres	0.9:1
> 250 ≤ 300 square metres	0.8:1
> 300 ≤ 350 square metres	0.7:1
> 350 square metres	0.6:1

(2D) The maximum floor space ratio for development for the purposes of residential flat buildings on land shown edged red on the Floor Space Ratio is 0.25:1.

(2C) In calculating the floor space ratio in relation to land dedicated to the Council for the purposes of a proposed road on the Land Reservation Acquisition Map, land marked “Local Road (SP2)” must be included in the site area.”

As demonstrated in Figure 3, the subject site is prescribed to a maximum FSR of 0.5:1. However under Clause 4.4 (2B)(a), the land is edged pink. Based on the site area of 179.2m² the land is ultimately subject to a maximum FSR of 0.8:1, representing a maximum gross floor area of 143.36m².

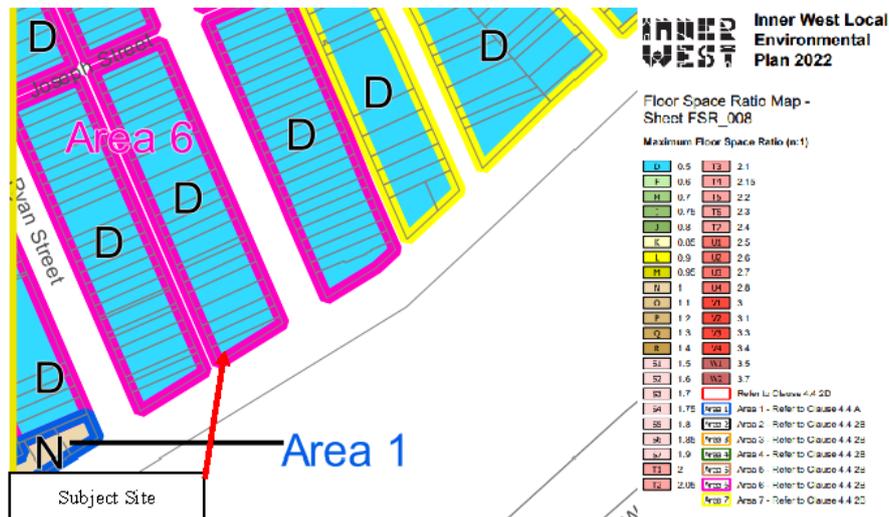


Figure 2: Floor Space Ratio Map (Source: NSW Inner West LEP22)

The proposed development seeks a gross floor area of 176.25m² (0.98:1). A variation of 32.89m² or 22.9% is proposed.

Nevertheless, a written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the IWLEP22.

4. Extent of Non-Compliance

As noted above, Clause 4.4 of the IWLEP22 states the subject site has a maximum FSR of 0.8:1. Based on the site area of 179.2m², the maximum permissible gross floor area is 143.36m².

The proposed development seeks a gross floor area of 176.25m² (0.98:1), resulting in a variation of 32.89m² or 22.9%.

The variation sought is primarily as a result of the small allotment size. The additional gross floor area sought is required to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. It is considered unreasonable to strictly enforce the floor space ratio for such small allotments under circumstances where no significant adverse implications to adjoining properties or the public domain will occur.

A degree of flexibility is considered reasonable in this instance.

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

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

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

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

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

First	<i>The most commonly invoked way is to establish that compliance with development standards is unreasonable or unnecessary because the objective the development standard are achieved notwithstanding non-compliance v the standard.</i> <i>The rationale is that development standards are not ends in themselves means of achieving ends. The ends are environmental or planning objective the proposed development proffers an alternative means of achieving objective, strict compliance with the standard would be unnecessary unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is relevant to the development with the consequence that compliance unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would defeated or thwarted if compliance was required with the consequence t compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtu abandoned or destroyed by the Council’s own actions in granting conse departing from the standard and hence compliance with the standard unnecessary and unreasonable. (not applicable)</i>
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreason or inappropriate” so that “a development standard appropriate for that zon was also unreasonable or unnecessary as it applied to that land” and t “compliance with the standard in that case would also be unreasonable unnecessary. (not applicable)</i>

In respect of the floor space ratio development standard, the first method is invoked.

The objectives supporting the maximum floor space ratio identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would

demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

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

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

- (a) to establish the maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

Objective

- (a) to establish the maximum floor space ratio to enable appropriate development density,*

Comment

The proposed site density as a result of the alterations and additions sought is considered reasonable given the context of the site and character of the streetscape. The additional gross floor area sought is required to meet the accessibility needs of the homeowner through the addition of a wheelchair accessible bathroom, home office space and minor extension to the width of living areas. The proposed increase to site density sought does not involve the addition of any new bedroom or living areas.

The proposed alterations and additions will be mainly contained within the existing footprint of the dwelling, noting that the proposed first floor addition will align with the existing ground floor setback. Furthermore, the addition of the ensuite on the ground floor will mostly be located underneath the existing entry foyer, which is proposed to be converted into an office.

The variation sought to floor space ratio (FSR) is primarily as a result of the small allotment size, which exacerbates even the slightest of variations to FSR. As illustrated in the discussion of the other objectives below, the proposed FSR is appropriate for the existing and desired density of development.

Additionally, it should be noted that the carparking spaces within the garage contribute to FSR calculations as the minimum parking requirement for the site is 0 under the Leichhardt DCP. If these car spaces were excluded from FSR calculations, the proposal would comply with the 0.8:1 FSR standard.

Objective

- (b) to ensure development density reflects its locality,*

Comment

The subject site is located in the Nanny Goat Hill Distinctive Neighbourhood and Eastern Residential Sub Area. As has been detailed within the Statement of Environmental Effects, the proposal generally aligns with the desired future character of the area. The proposal maintains

the original residential use, with the proposed works enhancing and contributing to the character and identity of the neighbourhood. The proposed alterations and additions complement the existing architectural style and form of the dwelling, with the proposed works aligning with the existing ridge height and generally retaining the current eastern, western and southern boundary setbacks of the built form.

The proposed alterations and additions respond to the style and form of the existing dwelling, ensuring a seamless transition between the existing and proposed works sought. The proposed materials and finishes sought will match the existing dwelling and subsequently remain cohesive with the character of the streetscape.

It is considered that the proposed development satisfies the desired future character of the locality.

Moreover, the following table displays the approved gross floor area of the neighbouring properties in vicinity of the subject site and identifies the variation to FSR was approved by Council.

Address	DA No.	Approval date	FSR (GFA)	Variation
101-103 Cecily Street	D/2017/163	11/07/2017	0.64:1 (243.04m ²)	29.17%
107 Cecily Street	D/2014/121	03/07/2014	0.59:1 (129m ²)	18%
128 Cecily Street	DAREV/2017/25	03/01/2018	0.65:1 (317m ²)	7.7%
84 Ryan Street	DA/2015/718	05/07/2016	0.74:1 (137m ²)	47%
92 Ryan Street	DAREV/2017/17	25/08/2017	0.77:1 (173.36m ²)	54%

The analysis above illustrates that Council have approved developments in vicinity of the subject site with a similar gross floor area to the proposed development, specifically Nos. 101-103 & 128 Cecily Road and No.92 Ryan Street.

Objective

(c) to provide an appropriate transition between development of different densities

Comments

The subject site is bounded by properties with the same zoning and FSR standard which apply to the proposed development. No different land use zones or FSR standards are located in vicinity of the subject site.

Objective

(d) to minimise adverse impacts on local amenity,

Comment

The proposed alterations and additions have been carefully articulated and designed to minimise impacts on local amenity.

As the subject site does not adjoin any properties to the east, west or south, any additional overshadowing generated by the proposed alterations and additions will fall on the street. This

has been demonstrated through the shadow diagrams prepared by robertparisi architecture + design. The proposed variation to the FSR standard sought does not result in any solar access reduction to adjoining properties, thus maintaining the status quo.

In terms of views and vistas, the proposed alterations and additions do not increase the existing height of the dwelling, thus will not impact view corridors towards the city skyline from properties along Ryan Street. This has been demonstrated in Figure 4 below.



Figure 4: Existing view from No.94 Ryan Street (property directly west of subject site).

Source: Realestate.com <https://www.realestate.com.au/property/94-ryan-st-lilyfield-nsw-2040>

In terms of privacy, while the proposed development seeks to extend the dwelling to the northern side boundary, no adverse privacy impacts will occur to the adjoining property. The only windows proposed on the northern elevation are highlight windows designed to maximise direct solar access into the dwelling without providing overlooking opportunities into the neighbouring property.

Lastly, regarding the public domain, the proposed variation to FSR sought will incur no impact to the public domain noting that the proposal seeks to generally retain the existing presentation of the dwelling to Cecily Street, Lilyfield Road and the rear laneway. The proposed alterations and additions will largely occur within the existing footprint of the dwelling.

Objective

(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

Comments

Due to the narrow allotment width, the ability to accommodate landscaped areas on site is limited. Currently, the existing landscaped area on site is limited to the front setback area and

consists of small plantings surrounding a natural rock outcrop. The existing site constraints, specifically the natural rock outcrop and narrow allotment width, do not allow for mature tree growth. The proposed development does not require the removal or pruning of any trees. The variation sought to the FSR standard has no bearing on the existing tree planting capabilities of the site.

In view of the above, it is submitted that the proposal is consistent with the objectives of Clause 4.4 of the IWLEP22.

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

6. Are There Sufficient Environmental Planning Grounds?

The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The key environmental grounds are:

- The proposed alterations and additions are largely contained within the existing footprint of the dwelling.
- The non-compliance to FSR is primarily attributed to the small allotment size, which exacerbates even the slightest of variations to FSR.
- The proposed alterations and additions are required to meet the accessibility needs of the home owner.
- The carparking spaces within the garage contribute to FSR calculations as the minimum parking requirement for the site is 0 under the Leichhardt DCP. If these car spaces were excluded from FSR calculations, the proposal would comply with the 0.8:1 FSR standard.
- There are other developments within vicinity of the subject site that have been approved with variations to the FSR standard.

The variation to FSR is in the order of 32.89m², being an exceedance of the standard by 22.9%.

The proposal addresses the site constraints, streetscape, and relevant objectives of both the standard and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

The extent of variation sought to FSR is primarily as a result of the small area and unusual shape of the existing lot. The site is bounded by Cecily Street to the east, Lilyfield Road to the south and a rear lane to the west with only a narrow 3.9m primary street frontage. As a result, any reasonably sized built form on the site would occupy the majority of the available site area.

The proposed alterations and additions will be mainly contained within the existing footprint of the dwelling, noting that the proposed first floor addition will align with the existing ground floor setback. Furthermore, the addition of the ensuite on the ground floor will mostly be located underneath the existing entry foyer, which is proposed to be converted into an office.

It is important to reiterate that the purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. The alterations and additions sought have been guided by the recommendations made in the Occupational Therapy Support Letter prepared by Attendant Support Australia. The proposed variation to FSR allows for the addition of a

wheelchair accessible bathroom and office space which will provide work-from-home opportunities for the home owner.

Additionally, the carparking spaces within the garage contribute to FSR calculations as the minimum parking requirement for the site is 0 under the Leichhardt DCP. If these car spaces were excluded from FSR calculations, the proposal would comply with the 0.8:1 FSR standard. Nevertheless, even if the proposal did not accommodate any car parking spaces, the bulk of the dwelling at the rear of the site will remain unchanged. The existing car parking space provides a large flat surface that will enable wheelchair access into the site despite the steep gradient of the rear laneway. Thus, the existing carparking spaces are sought to be retained as they not only allow for on-site parking, but also provide the added benefit of improved wheelchair access into the property.

The breach in floor space ratio is a reasonable variation in the context of the case considering the proposed gross floor area is similar to the approved gross floor area of other dwellings located along Cecily Street and Ryan Street.

In this case, strict compliance with floor space ratio development standard of the IWLEP22 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The building contextually has regard to its surrounding properties and provides an extent of amenity and density anticipated by the development controls to the site.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:

R1 General Residential zone

Objectives of zone

- *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 provide residential development that maintains the character of built and natural features in the surrounding areas.*

In response to the above the following is provided:

- The proposed development will retain the residential use of the site through the retention of the existing dwelling.

- The proposal seeks alterations and additions to improve accessibility to and within the dwelling.
- The use on the site will remain as a dwelling house and does not preclude other land uses in the zone.
- The proposed built form responds to the character of the area and respects the existing orientation and scale of developments within the vicinity of the site. The existing rock outcrop within the front setback area will be retained.

The proposed variation to the floor space ratio does not impact on the capacity of the development to meet the above objectives.

In view of the above, it is submitted that the proposed development is consistent with the objectives of the zone.

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

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The variation to FSR has not resulted in a diminished outcome for the development or creation of unacceptable environmental impacts to adjacent and surrounding properties. The variation has not created a form and scale of development that is out of character with Cecily Street.

The development is generally consistent with the planning controls as detailed within the accompanying Statement of Environmental Effects and aligns with the objectives of the standard.

It is important to reiterate that the proposed development is sought to cater for the accessibility needs of the home owner. This has been achieved without generating any adverse impacts to the amenity of neighbouring properties or the character of the streetscape.

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

The departure from the floor space ratio control within the IWLEP22 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the IWLEP22 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;

- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The development submitted aligns with the existing and future character envisioned for the locality.

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

10. General

Clause 4.6 also states that:

- “(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5*
 - (ca) clause 6.27(4),*
 - (cb) clause 6.28,*
 - (cc) clause 6.29,*
 - (cd) clause 6.31”*

This variation does not relate to the subdivision of land in a land use zone nominated above. The variation sought is thus not contrary to subclause (6).

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

The development proposed is not complying development.

A BASIX certificate has been submitted under separate cover.

Clauses 5.4, 5.5, 6.27(4), 6.28, 6.29 and 6.31 of the IWLEP22 do not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with the maximum floor space ratio standard as prescribed by Clause 4.4 of the IWLEP22. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the IWLEP22 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary and that the use of Clause 4.6 of the IWLEP22 to vary this development control is appropriate in the context of the case.

The purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. Strict compliance with the FSR control will result in a dwelling that does not respond to the current liveability needs of the home owner.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions regarding the proposed development, please do not hesitate to contact me.

Kind regards,
Roberto Bianco
GAT & Associates
Plan 4484

Attachment D- Section 4.6 Exception to Development Standards – Landscaped Area & Site Coverage



CLAUSE 4.6 VARIATION TO CLAUSE 4.3C – LANDSCAPED AREAS FOR RESIDENTIAL ACCOMMODATION IN ZONE R1 OF THE INNER WEST LOCAL ENVIRONMENTAL PLAN 2022

111 CECILY STREET, LILYFIELD

1. Introduction

This submission seeks a variation to Clause 4.3C of the Inner West Local Environmental Plan 2022, which relates to landscaped areas for residential accommodation in Zone R1.

This submission has been prepared in relation to a development application for the alterations and additions to the existing dwelling house at No. 111 Cecily Street, Lilyfield. The purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair.

As detailed in this written request for a variation to Clause 4.3C, being a development standard under the Inner West Local Environmental Plan 2022, the development meets the requirements prescribed under Clause 4.6 of the Inner West Local Environmental Plan (LEP) 2022.

2. Site Background

The subject site is located on the western side of Cecily Street and adjoins a rear lane. The site is legally defined as Lot 2 in Deposited Plan 878947 and is commonly referred to as No.111 Cecily Street, Lilyfield.

The site is irregular in shape and provides for a primary frontage of 3.9m to Cecily Street. The site also has a secondary frontage to Lilyfield Road measuring 30.795m and a rear lane frontage measuring 7.86m. The northern side boundary of the site measures 30.48m. Overall, the site provides for an area of 179.2m².

Located on the subject site at present is a two (2) storey dwelling with vehicular access provided off the rear laneway. Reference should be made to Figure 1 – Site Location Map.



Figure 1: Aerial view of site. Source: <https://maps.six.nsw.gov.au/>



Development in the area is typically characterised by a mix of single and double storey dwellings with the occasional pair of semi-detached dwellings. Overall, the site is located within an established residential area. Development in the immediate area consists of a mix of older and contemporary housing stock.

As the site is bounded by roads on three sides, the site only adjoins a single property to the north. The adjoining site to the north at No.109 Cecily Street contains a single storey detached dwelling. Despite being single storey in form, the adjoining dwelling has a ridge height which is higher than the two storey built form on the subject site, due to the slope of the land. The subject site is separated from contemporary two storey dwellings to the west by a rear laneway.

Located approximately 300m east of the subject site is Easton Park which offers a wide expanse of public green open space within walking distance of the subject site. This space is appropriate in accommodating a diverse array of active and passive recreational opportunities.

The site is well serviced by public transport with a bus stop on Catherine Street and Lilyfield Light Rail Station located approximately 550m to the west of the site. These transit stops provide connections to Leichhardt, Five Dock, Dulwich Hill and the City which link to a more expansive public transport network.

The subject site is located in the R1 General Residential Land Use Zone and is located within the Brennan’s Estate Heritage Conservation Area.

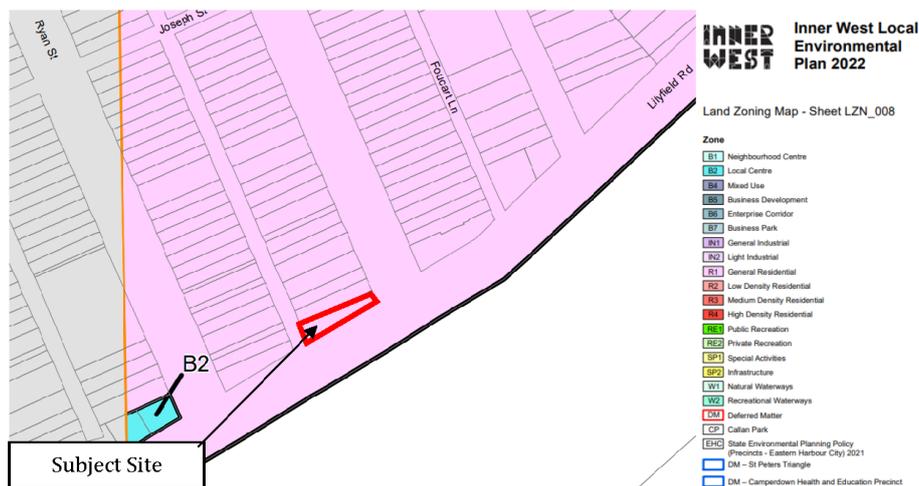


Figure 2: Zoning Map (Source: NSW Legislation, IWLEP22, map 008.)



3. Clause 4.6

This submission is made under Clause 4.6 of the Inner West LEP 2022 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Planning Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**



- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.8,
 - (ca) clauses 6.27(4),
 - (cb) clause 6.28,
 - (cc) clause 6.29,
 - (cd) clause 6.31."

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

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

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



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

The Environmental Planning Instrument to which this variation relates is the Inner West LEP 2022.

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

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
 - (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
 - (c) *to ensure that development promotes the desired future character of the neighbourhood,*
 - (d) *to encourage ecologically sustainable development,*
 - (e) *to control site density,*
 - (f) *to provide for landscaped areas and private open space.*
- (2) *This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential and identified as “Area 1” on the Key Sites Map.*
- (3) *Development consent must not be granted to development to which this clause applies unless—*
 - (a) *the development includes landscaped area that comprises at least—*
 - (i) *where the lot size is equal to or less than 235 square metres—15% of the site area, or*
 - (ii) *otherwise—20% of the site area, and*
 - (b) *the site coverage does not exceed 60% of the site area.*
- (4) *For the purposes of subclause (3)—*
 - (a) *the site area is to be calculated under clause 4.5, and*
 - (b) *the following areas must not be included as landscaped areas -*
 - (i) *a landscaped area with a length or width of less than 1m,*
 - (ii) *a landscaped area located more than 500mm above ground level (existing), and*
 - (c) *a deck, balcony or similar structure, whether enclosed or unenclosed, is not to be included in calculating the site coverage if—*
 - (i) *the underside of the deck, balcony or structure is at least 2.4m above ground level (existing), and the area below the structure is able to be landscaped or used for recreational purposes, or*
 - (ii) *the finished floor level is 500mm or less above ground level (existing).*

Based on a site area of 179.2m², and as the site is located within the R1 General Residential land zone and Area 1 on the Key Sites Map, the site is permitted a minimum landscaped area of 15% of the site (26.88m²) and maximum site coverage of 60% (107.52m²).

The proposed landscape area is 24.2m², or 13.5% of the site area.

Further, the proposed site coverage is 117m², or 65.2% of the site area.

A written justification is therefore required for the proposed variation to the development standard in accordance with Clause 4.6 of the Inner West LEP 2022.

4. Extent of Non-Compliance

As noted above, Clause 4.3C of the Inner West LEP 2022 prescribes a minimum landscaped area of 15% and site coverage of 60% of the site area.



The existing dwelling provides for 22.65m² (12.6%) of the site as landscaped area, representing an existing shortfall of 4.23m² (15.7% of development standard). The proposed development seeks a landscaped area of 24.2m² or 13.5% of the site area. Therefore, the proposed alterations and additions reduce the existing shortfall to the landscaped area development standard by 1.55m², representing a variation of 2.68m² (9.97%) to the development standard.

In terms of site coverage, the proposed alterations and additions result in a site coverage of 117m² or 65.2% of the site area. A variation of 9.5m² or 8.8% is proposed. It should be noted that the existing dwelling on the site results in a site coverage of 115.88m², representing an existing variation of 8.36m² or 7.7%.

It is our submission that the breach to both the landscaped area and site coverage aspects of the development standard will not unreasonably impact the amenity of the development, adjoining properties or the character of the area. Compliance with the development standard is unreasonable in this instance.

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

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

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

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

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

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (not applicable).</i>



Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>
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In respect of the landscaping and site coverage standard, the first method is invoked.

The objectives supporting the landscaped areas for residential accommodation in Zone R1 standard identified in Clause 4.3C are discussed below. Consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

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

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

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

Due to the narrow allotment width, the ability to accommodate landscaped areas on site is limited. Currently, the existing landscaped area on site is limited to the front setback area, which consists of small plantings surrounding a natural rock outcrop.

The proposed alterations and additions sought will not result in a further reduction to the existing landscaped area. In fact, the proposed development will slightly increase the landscaped area on the site by 1.55m². This has been achieved through the relocation of the impervious path and steps within the front setback area.

Overall, the proposed development will slightly improve upon the existing landscape area, thereby maintaining the status quo of landscaping on the site.

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

The subject site only adjoins one (1) property to the north (No.109 Cecily Street). The existing ground floor of the dwelling provides a nil boundary setback to the northern side boundary. Thus, no landscape corridor exists or is capable of existing between the site and the adjoining property. Figure 3 below illustrates the existing building separation provided between Nos. 109 and 111 Cecily Street.



Figure 3: Existing building separation between Nos. 109 and 111 Cecily Street.

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

The subject site is located in the Nanny Goat Hill Distinctive Neighbourhood and Eastern Residential Sub Area. As has been detailed within the Statement of Environmental Effects, the proposal generally aligns with the desired future character of the area. The proposal maintains the original residential use, with the proposed works enhancing and contributing to the character and identity of the neighbourhood. The proposed alterations and additions complement the existing architectural style and form of the dwelling, with the proposed works aligning with the existing ridge height and generally retaining the current eastern, western and southern boundary setbacks of the built form.

The proposed alterations and additions will be mainly contained within the existing footprint of the dwelling, noting that the proposed first floor addition will align with the existing ground floor setback. Furthermore, the addition of the ensuite on the ground floor will mostly be located underneath the existing entry foyer, which is proposed to be converted into an office. Hence, the proposed alterations and additions will not significantly alter the existing character of the site in terms of site coverage and landscaped area.



The proposed alterations and additions respond to the style and form of the existing dwelling, ensuring a seamless transition between the existing and proposed works sought. The proposed materials and finishes sought will match the existing dwelling and subsequently remain cohesive with the character of the streetscape.

It is considered that the proposed development satisfies the desired future character of the locality.

...(d) to encourage ecologically sustainable development,

A BASIX certificate has been prepared by House Energy Certified and submitted under separate cover. The certificate confirms that the proposed development will meet the NSW government's requirements for sustainability.

...(e) to control site density,

The proposed site density as a result of the alterations and additions sought is considered reasonable given the context of the site and character of the streetscape.

The variation sought to the landscaped area and site coverage standard is primarily as a result of the unusual allotment shape and minimum allotment width. The site is bounded by Cecily Street to the east, Lilyfield Road to the south and a rear lane to the west with only a narrow 3.9m primary street frontage. As a result, any reasonably sized built form on the site would occupy the majority of the available site area. The increase sought to the building footprint does not result in any loss to landscape area, with the proposed alterations and additions to occur on existing impervious areas.

Considering the proposal seeks to increase the landscape area and site coverage of the site by 1.55m² and 1.12m², it can be concluded that the existing density sought on the site through the proposed alterations and additions has been largely contained within the footprint of the existing dwelling.

...(f) to provide for landscaped areas and private open space.

Landscaping will be slightly increased within the front setback area. Given the limited allotment shape and width, additional landscape areas cannot be accommodated anywhere else on the site. Adequate private open space will continue to be provided on the subject site with approximately 24.43m² of the site allocated towards private open space. The proposed private open space is greater than the minimum 16m² requirement outlined in the Leichhardt DCP 2013.

In view of the above comments, the variation meets the objectives of Clause 4.3C in the Inner West LEP 2022.

6. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The key environmental grounds are:

- The proposed development slightly increases the provision of landscaping on the site.
- The proposed alterations and additions are largely contained within the existing envelope of the building and only increase the existing site coverage by 1.12m².
- The non-compliance to landscaped area and site coverage is primarily attributed to irregular lot shape which is bounded by roads along three boundaries.
- The narrow allotment width stretches the built form over a longer portion of the site area, exacerbating site coverage.



- The proposed alterations and additions are required to meet the accessibility needs of the home owner.

The proposal addresses the site constraints, streetscape, and relevant objectives of both the standard and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

The variation sought to landscaped area and site coverage is primarily as a result of the small area and unusual shape of the existing lot. The site is bounded by Cecily Street to the east, Lilyfield Road to the south and a rear lane to the west with only a narrow 3.9m primary street frontage. As a result, any reasonably sized built form on the site would occupy the majority of the available site area.

It is important to reiterate that the purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. The alterations and additions sought have been guided by the recommendations made in the Occupational Therapy Support Letter prepared by Attendant Support Australia. The proposed increase to site coverage allows for the addition of a wheelchair accessible bathroom and office space which will provide work-from-home opportunities for the home owner.

In this case, strict compliance with the development standard for landscape area and site coverage in the Inner West Local Environmental Plan 2022 is unnecessary and unreasonable. Given the constraints of the site, strict compliance with the landscaped area site coverage control will result in a dwelling that does not respond to the current livability needs of the home owner.

7. Is the Variation in the Public Interest?

Clause 4.6 states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

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

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3C.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development.

The objectives of the zone and comments in response are as follows:

Zone R1 General Residential

Objectives of zone

- *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 provide residential development that maintains the character of built and natural features in the surrounding area.*

The following comments are provided in response to the objectives:



- The proposed development will retain the residential use of the site through the retention of the existing dwelling.
- The proposal seeks alterations and additions to improve accessibility to and within the dwelling.
- The use on the site will remain as a dwelling house and does not preclude other land uses in the zone.
- The proposed built form responds to the character of the area and respects the existing orientation and scale of developments within the vicinity of the site. The existing rock outcrop within the front setback area will be retained.

The proposed development, therefore, meets the objectives of the zone. The landscaped area and site coverage variations have not precluded consistency with any of the objectives.

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

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard.

The proposed development does not significantly alter the existing landscape area and site coverage of the site. The proposal will continue to align with the desired future character of the Nanny Goat Hill Distinctive Neighbourhood.

It is important to reiterate that the proposed development is sought to cater for the accessibility needs of the home owner. This has been achieved without generating any adverse impacts to the amenity of neighbouring properties or the character of the streetscape.

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

It is considered that the public is not impacted in any way by maintaining the standard.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5 to 7 of this written request. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the IWLEP 2022 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied (landscaped area in zone R1), as well as the objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and



- The development submitted aligns with the residential character of the area.

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

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

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

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

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.27(4)*
- (cb) clause 6.28,*
- (cc) clause 6.29,*
- (cd) clause 6.31.”*

Comment:

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

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

The development proposed is not complying development.

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

The development is not affected by Clause 5.4, Clause 5.5, Clause 6.27(4), Clause 6.28, Clause 6.29 or Clause 6.31.



10. Conclusion

The proposal does not strictly comply with the minimum landscaped area and maximum site coverage standard as prescribed by Clause 4.3C of the Inner West LEP 2022. Having evaluated the likely effects arising from the non-compliances, we are satisfied that the objectives of Clause 4.6 of the Inner West LEP 2022 are satisfied as the breach of the controls does not create any adverse environmental impacts.

Overall, the proposed alterations and additions sought do not significantly alter the existing provision of landscaping on the subject site. Conversely, the proposed development will slightly improve upon the existing arrangement. While the proposed development will slightly increase the site coverage of the dwelling, the additional built form will largely be contained within the existing setbacks of the dwelling.

The purpose of the proposed alterations and additions is to ensure the internal spaces of the dwelling can cater for the accessibility needs of the home owner, which involves the use of a wheelchair. Strict compliance with the landscaped area and site coverage control will result in a dwelling that does not respond to the current liveability needs of the home owner.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of the Inner West LEP 2022 to vary this development control is appropriate in the context of the case.

Based on the above, it is sensible to conclude that strict compliance with the minimum landscaped area and maximum site coverage is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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Plan 4484