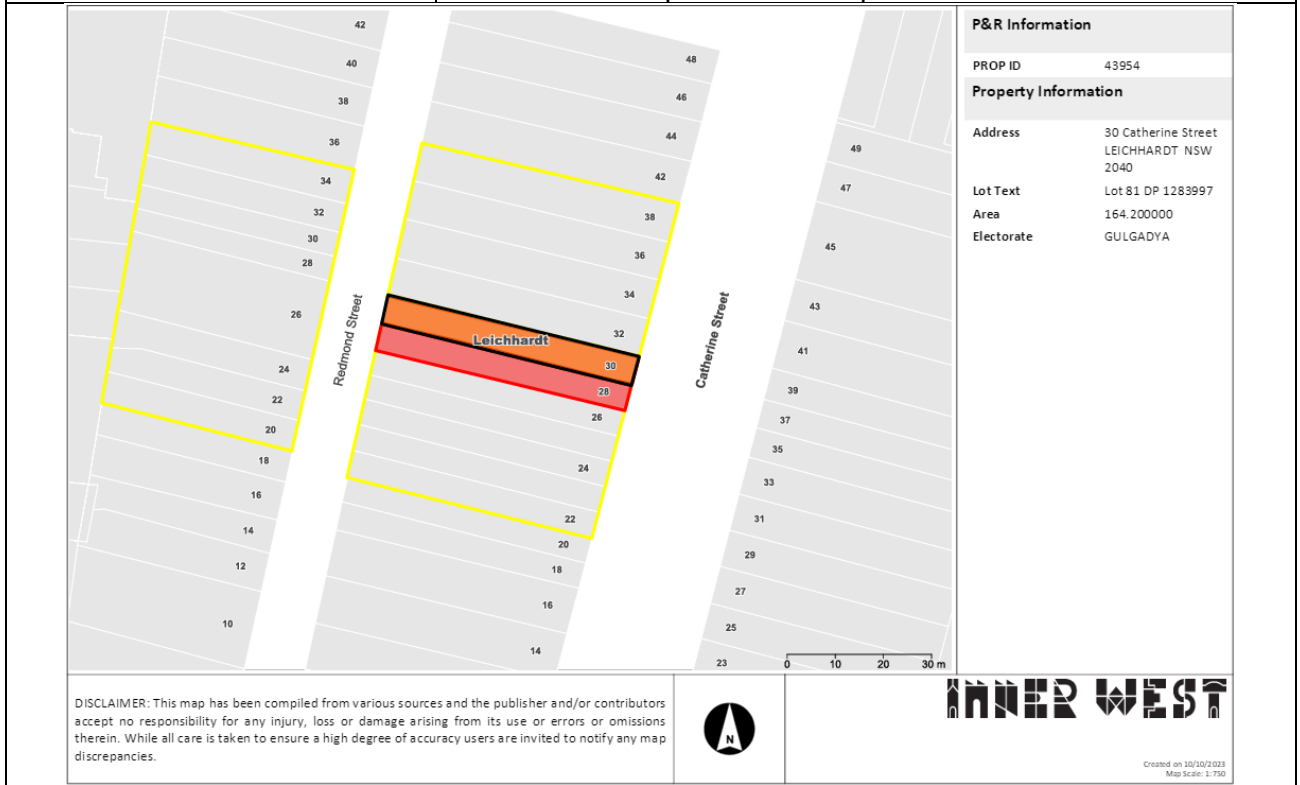


INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0295
Address	30 Catherine Street LEICHHARDT
Proposal	Ground and first floor alterations and additions to existing dwelling, new carport to rear and associated landscaping
Date of Lodgement	26 April 2023
Applicant	Andrew Ireland
Owner	Mr Glen C Andreacchio Mr Anthony F Andreacchio Ms Denise M Andreacchio
Number of Submissions	Initial: 1
Value of works	\$188,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Development standard breach (FSR and Site Coverage) DCP non-compliances Neighbouring objections
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for ground and first floor alterations and additions to the existing dwelling, including a new detached carport to rear and associated landscaping at 30 Catherine Street, Leichhardt. The application was notified to surrounding properties and one (1) submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Floor Space Ratio development standard breach;
- Site Coverage development standard breach;
- Side boundary setback and building location zone variations; and
- Overshadowing impacts.

The proposal generally complies with the aims, objectives and design parameters contained in the relevant Environmental Planning Instruments and Leichhardt Development Control Plan 2013 respectively.

Amenity impacts from the proposed development have been generally minimised and will be further reduced through adopting the recommended design change conditions. The recommended design change conditions are noted as follows:

- Reorientating the skillion roof located above the proposed car port so the apex of the skillion roof fronts Redmond Street.

Subject to recommended conditions, the proposed development is unlikely to result in adverse impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

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

2. Proposal

The proposed development application seeks development consent for ground and first floor alterations and additions to the existing building comprising of the following works:

- Ground floor alterations to the rear of the existing dwelling including internal layout replanning.
- First floor additions to enlarge footprint of existing first floor level, comprising bedroom, 2 x bathroom and walk in robe.
- New detached car port structure and associated hard stand car parking space accessed from Redmond Street.
- New landscaping within the front and rear setbacks of the property.

3. Site Description

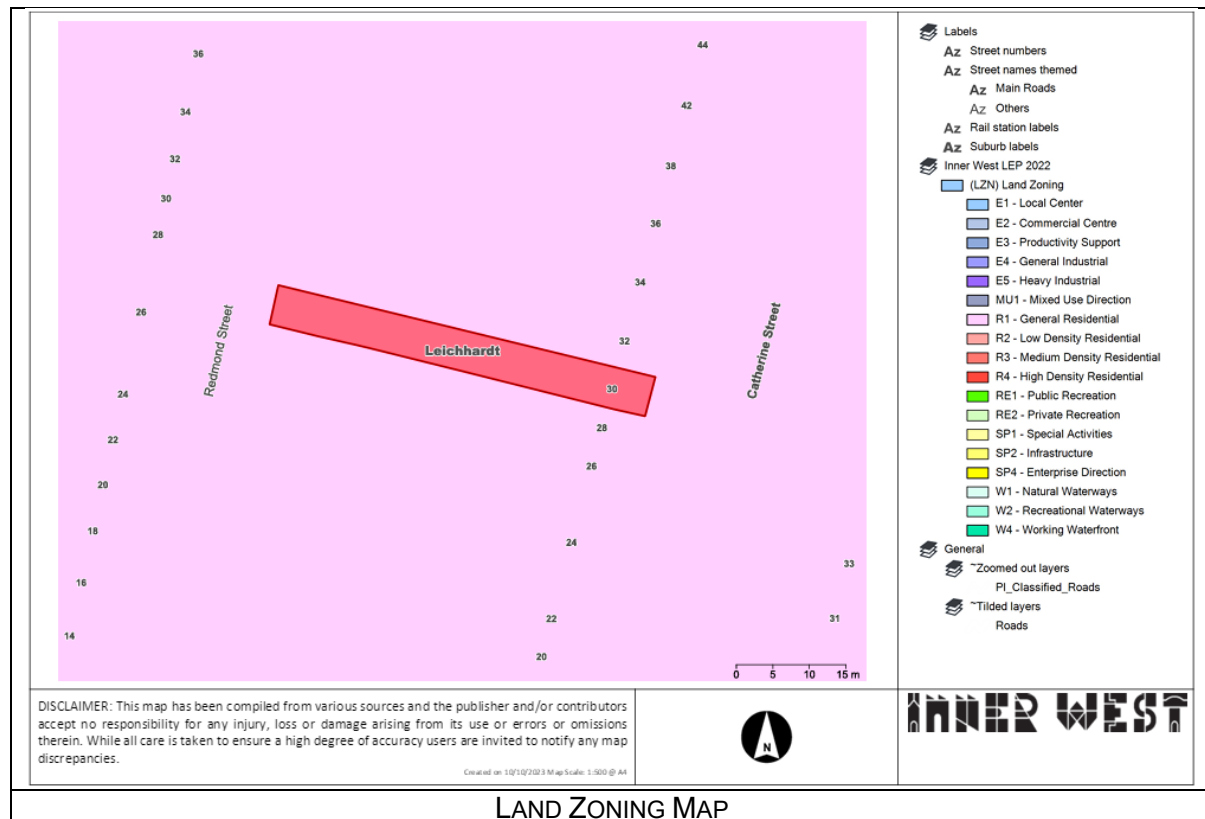
The subject site is located on the western side of Catherine Street, between Centre Street to the north and Albion Street to the south. The site is generally rectangular in shape with a total area of 164.2sqm and is legally described as Lot 81 in DP 1283997.

The site has a frontage to Catherine of 4.15 metres and a secondary frontage of 4.115 metres to Redmond Street.

The site supports a two storey attached dwelling and detached single storey garage, which provides vehicle access from Redmond Street. To the south, the subject site forms a group with Nos. 26 and 28 Catherine Street, which include similarly sized attached dwellings with detached garage structures. The immediately adjoining property to the north and located at No. 32 Catherine Street includes a part one and two storey dwelling house with a detached garage.

The subject site is not a heritage item or located within a conservation area. The site is not identified as a flood control lot; however, the site is impacted by the probable maximum flood (PMF) which is the largest flood that could conceivably occur at a particular location.

The site is zoned R1 General Residential pursuant to the *Inner West Local Environmental Plan 2022*.



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

None relevant.

Surrounding properties

28 Catherine Street LEICHHARDT		
Application	Proposal	Decision & Date
D/2001/812	Alterations and additions to the rear of an existing two storey dwelling including first floor addition and rear first floor deck.	Approved – 17/07/2002

32 Catherine Street LEICHHARDT		
Application	Proposal	Decision & Date
DA/2021/0577	Alterations and additions to existing dwelling-house, including to provide first floor addition, new double garage to rear and associated works.	Approved – 05/09/2021

4(b) Application history

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

Date	Discussion / Letter / Additional Information
26 July 2023	Council sent letter requesting further information via the NSW Planning Portal.
16 August 2023	Applicant submitted further information to the NSW Planning Portal. Renotification was not required in accordance with Community Engagement Framework . The amended plans are the subject of this report.

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 (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

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

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

5(a)(ii) State Environmental Planning Policy (Sustainable Buildings) 2022

The Sustainable Buildings SEPP was made in August 2022 and is effective from 1 October 2023. Pursuant to Section 4.2 of the Sustainable Buildings SEPP this policy does not apply to a development application submitted on the NSW planning portal but not finally determined before 1 October 2023.

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

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

5(a)(iv) State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and was referred to Ausgrid for comment for 21 days on 28 April 2023. Ausgrid has raised no objections and their recommendations are included in the recommendation.

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

Chapter 6 Water Catchments

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

5(a)(vi) *Inner West Local Environmental Plan 2022 (IWLEP 2022)*

The application was assessed against the following relevant clauses of the *IWLEP 2022*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 – Demolition requires development consent
- Clause 4.3C – Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.21 – Flood planning
- Clause 6.1 – Acid sulfate soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise

Clause 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.

Part 4 Principal Development Standards

The following table provides an assessment of the application against the relevant development standards under Part 4 of the *IWLEP 2022*:

Development Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 114.94sqm	0.86:1 or 141.5sqm	23.11% or 26.56sqm	No
Landscape Area Minimum permissible: 15% or 24.63sqm	15.41% or 25.3sqm	N/A	Yes
Site Coverage Maximum permissible: 60% or 98.52sqm	72.66% or 119.3sqm	21.09% or 20.78sqm	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3C – Landscaped areas for residential accommodation in Zone R1
 - Clause 4.3C (3)(b) – Site Coverage
- Clause 4.4 – Floor Space Ratio (FSR)

The applicant seeks a variation to the above mentioned standards under Clause 4.3C (3)(b) of the *IWLEP 2022* by 21.09% (20.78sqm) and Clause 4.4 of the *IWLEP 2022* by 23.11% (26.56sqm). Clause 4.6 of the *IWLEP 2022* allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *IWLEP 2022* below.

Clause 4.3C (3)(b): Site Coverage

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the Site Coverage development standard, which is summarised as follows:

- *The objectives of the zone and relevant standard are achieved, notwithstanding non-compliance with the Site Coverage development standard.*
- *The proposed variation satisfies part 1, 4 and 5 under Wehbe v Pittwater Council [2007] NSWLEC 827.*
- *The housing needs of the community are met as a result of the proposed development.*
- *The proposal provides for a compliant landscaped design. Landscaping is provided within the rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location consistent with the pattern of development.*
- *The proposal increases the amount of soft landscaping compared to the existing situation.*
- *The proposal continues the predominant established and desired future rear landscape corridor alignment.*
- *The bulk and scale of the proposal is consistent with the existing pattern of development and the desired future character.*
- *The proposal directly relates to the social and economic welfare of the owners with direct positive impact on the community and future owners.*
- *The proposal includes the restoration and reuse of existing resources with associated environmental benefit in waste reduction.*
- *In being reasonably expected and consistent with the existing development, recent approvals and desired future character, the proposal is considered to be an orderly and economic use and development of the land.*
- *The proposed alterations and additions are well designed and provide good amenity consistent within the existing pattern of development and subdivision without unreasonable impact on adjoining properties or streetscape.*

As outlined previously, the applicant's Clause 4.6 request variation request relies on the part 1, 4, and 5 of the "5 part test" in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as the basis for demonstrating how compliance with the Site Coverage development standard is unreasonable or unnecessary in the circumstances of this particular case. Having regard to the arguments advanced in the submitted Clause 4.6 request, the following is noted:

- Regarding the 4th test as set out in *Wehbe v Pittwater Council*, Council does not concur that the Site Coverage development standard has been abandoned. The applicant's argument, which relies on prior consents in the locality, is not considered to provide sufficient reasoning or evidence to demonstrate abandonment of the Site Coverage

development standard. The applicant has acknowledged the development standard is still applied and generally adhered to in development applications. In this regard, the applicant has not provided sufficient evidence of a pattern of abandonment such that the development standard can no longer be said to represent the existing and/or desired character of the locality.

- Regarding the 5th test *Wehbe v Pittwater Council*, Council does not concur that this particular parcel of land should not have been included in the R1 General Residential zone. The proposed zoning of the land is reasonable and appropriate.

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

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

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

Comment: The proposed alterations and additions will result in improvements to the existing dwelling house, which will provide for the housing needs of the community.

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

Comment: The proposed development will retain the existing dwelling use, with the proposed works ensuring a variety of housing types is provided within the area.

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

Comment: Not relevant.

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

Comment: The proposal will retain the existing streetscape presentation to Catherine Street, with landscaping in the front setback unchanged. The additions have been sited to minimise streetscape impacts. This ensures that 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 Site Coverage development standard, in accordance with Clause 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- Objective (a): *to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*

Comment: The proposal improves upon the existing landscaped area provision on site and maintains an area of open space in the rear yard which is dedicated for landscaped area capable of substantial tree planting. The proposed rear garden is suitable for the use and enjoyment of residents.

- Objective (b): *to maintain and encourage a landscaped corridor between adjoining properties,*

Comment: Given the narrow width of the allotment, a landscaped corridor between properties is not practical. Landscaped areas onsite are commensurate with surrounding development (i.e. at the front and rear of the property).

- Objective (c): *to ensure that development promotes the desired character of the neighbourhood,*

Comment: The proposed development retains the streetscape presentation to Catherine Street. The additional building footprint, which is located at the rear of the site, will provide a development outcome which promotes the desired future character of the neighbourhood.

- Objective (d): *to encourage ecologically sustainable development,*

Comment: The proposal will provide additional landscaping on the site and provide building upgrades which support ongoing sustainability of the dwelling.

- Objective (e): *to control site density,*

Comment: Notwithstanding the proposed site coverage breach, the proposed additions will control site density by providing compliant external private open space at the ground floor level, compliant soft landscaped areas and maintaining a similar rear alignment to surrounding properties.

- Objective (f): *to provide for landscaped areas and private open space.*

Comment: Building footprints have been limited to ensure adequate space is provided for landscaped area and private open space.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Site Coverage development standard and it is recommended the Clause 4.6 exception be granted.

Clause 4.4: FSR

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard, which is summarised as follows:

- *The objectives of the R1 zone and FSR development standard are achieved, notwithstanding non-compliance.*

- *The proposed variation satisfies part 1 and 4 under Wehbe v Pittwater Council [2007] NSWLEC 827.*
- *The proposal specifically looks to improve the existing housing and to bring it up to a standard expected by the owners and the community.*
- *The proposal specifically looks to improve access and provide space to allow for work from home opportunities.*
- *The proposal maintains, is consistent with and reinforces existing character, style, orientation, pattern of development, streetscapes and landscape area.*
- *The proposal maintains the existing Victorian terrace form at the front and provides a sympathetic and considered addition to the rear.*
- *The proposal is consistent with and reflects existing density of the surrounding locality and recently approved development.*
- *The bulk and scale of the proposed development is commensurate with surrounding development on similar lots and the proposal does not result in significant loss of amenity to neighbouring properties.*
- *The proposal maintains and reinforces the predominant existing and desired future streetscape pattern.*
- *The proposed alterations and additions are well designed and provide good amenity consistent within the existing pattern of development and subdivision without unreasonable impact on adjoining properties or streetscape.*
- *The proposal promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.*

As outlined previously, the applicant's Clause 4.6 request variation request relies on the part 1 and 4 of the "5 part test" in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as the basis for demonstrating how compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of this particular case. Having regard to the arguments advanced in the submitted Clause 4.6 request, the following is noted:

- Regarding the 4th test as set out in *Wehbe v Pittwater Council*, Council does not concur that the FSR development standard has been abandoned. The applicant's argument has not provided sufficient evidence of a pattern of abandonment such that the development standard can no longer be said to represent the existing and/or desired character of the locality. The standard has been maintained by Council.

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

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

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

Comment: The proposed alterations and additions will result in improvements to the existing dwelling house, which will provide for the housing needs of the community.

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

Comment: The proposed development will retain the existing dwelling use, with the proposed works ensuring a variety of housing types is provided within the area.

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

Comment: Not relevant.

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

Comment: The proposal will retain the existing streetscape presentation to Catherine Street. The additions have been sited to minimise streetscape impacts. This ensures that 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 FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- Objective (a): to establish a maximum floor space ratio to enable appropriate development density

Comment: The proposed additions have been sited to the rear of an existing two storey dwelling, maintaining the existing presentation to Catherine Street. The proposed additional floorspace and resultant envelope changes will maintain an appropriate development density.

- Objective (b): to ensure development density reflects its locality

Comment: There is a fluctuating pattern of density within the surrounding locality, with properties within the surrounding visual catchment of Catherine Street presenting as a mix of single and two storeys to the street, with rear wings of varying sizes and styles. The proposed alterations and additions at the ground and floor levels generally maintains a development density that reflects the surrounding locality.

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

Comment: 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 on Turner Street and Cardwell Street.

- Objective (d): To minimise adverse impacts on local amenity

Comment: Adverse impacts on local amenity have generally been minimised as a result of the amendments to the design. No significant views are anticipated to be impacted as a result of the proposal. Visual privacy impacts have generally been prevented by retaining high-use areas (living rooms) at the ground floor level. Overshadowing to neighbouring properties has generally been ameliorated through a combination of minimising floor-to-ceiling heights at each respective level and designing the first floor addition with a low profile roof form.

- Objective (e): To increase the tree canopy and to protect the use and enjoyment of private properties and the public domain

Comment: The proposed development is suitably designed to accommodate the proposed alterations and additions, whilst retaining reasonable landscaped area on smaller lot – a typical characteristic within the immediate context of the area. The proposed works have generally considered neighbouring privacy and will reasonably protect the use and enjoyment of neighbouring properties.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *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 Clause 4.6 exception be granted.

5(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A

C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.3 Piperston Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
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

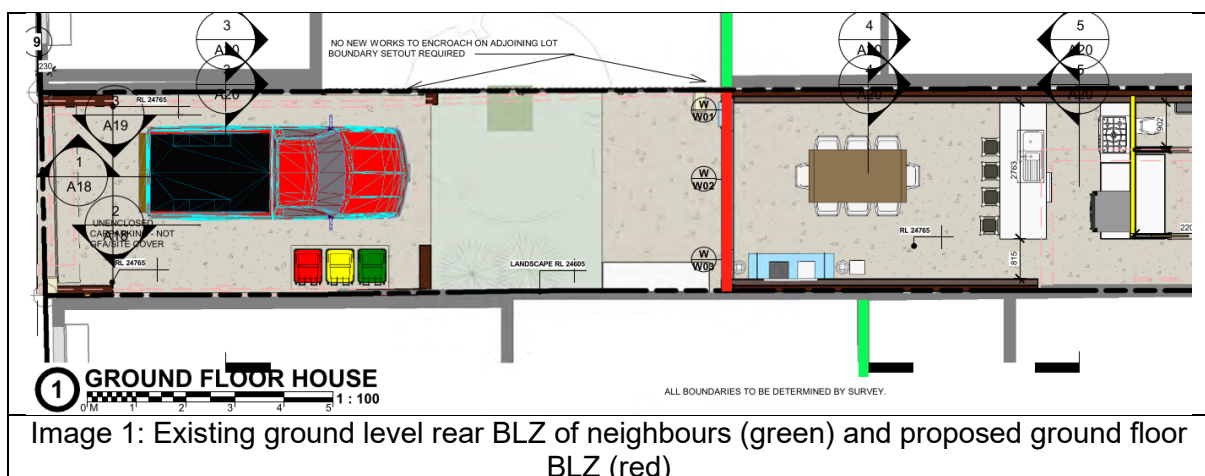
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site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

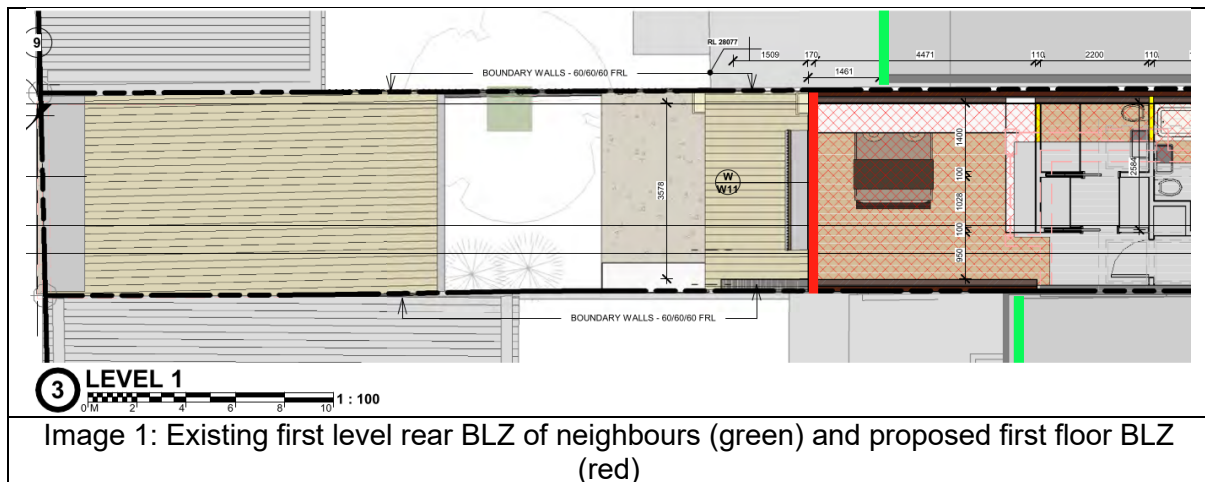
The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

Building Location Zone (BLZ)

The BLZ is the part of the subject site where it can be reasonably expected that a building can be located. The BLZ is determined by having regard to only the main building on the adjoining properties. When considering the rear building alignment of neighbouring properties (28 and 32 Catherine Street), the proposed additions at the ground and first floor level are not articulated within the average rear setbacks of those properties (see images 1 and 2 below). Therefore, the proposed development will result in variations with control C3 under Part C3.2 of the LDCP 2013 and the application seeks to establish new ground and first floor level BLZs.





In the event of a BLZ breach, Control C6 provides five merit tests, which are considered as follows:

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

Comment: The proposal has been designed to ensure adequate amenity is retained for surrounding properties. The proposed ground and first floor BLZ breaches are not considered to result in any adverse view loss impacts and will not result in any unacceptable visual privacy impacts to surrounding properties.

Additional shadows caused by the proposed BLZ breach at each respective level have been considered. New shadows are shown to fall on the rear private open space (POS) and rear main living room window of 28 Catherine Street and the POS of 26 Catherine Street. Having regard to the altitude and azimuth of the Sun during mid-winter, overshadowing caused by the proposed first floor level BLZ is limited to the POS of 26 Catherine Street. In this regard, overshadowing to 28 Catherine Street is a consequence of the ground floor level BLZ, which aligns with the northern neighbour. The reasonableness of the proposal in terms of its overshadowing impact has been assessed, and it is considered that the overshadowing impact on impacted properties is supportable on merit. For discussion of the proposal’s acceptability in terms of solar access, refer to discussion under Part C3.9 below.

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

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

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

Comment: The proposal includes adequate areas of private open space and landscaping and is satisfactory on solar access grounds – for solar access assessment, see assessment later in this report.

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

Comment: The proposal will not result in the removal of any significant vegetation on the subject site and will provide compliant soft landscaped areas for opportunities for new vegetation to be planted in the rear yard.

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

Comment: The proposal has adopted modest floor-to-ceiling heights at the ground and first floor level (2.7m and 2.4m respectively) and has recessed the first floor level behind the rear awning of 28 Catherine Street to minimise perceived bulk and scale impacts.

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

Side Boundary Setbacks – Main Building

Control C7 of Part C3.2 of the LDCP 2013 relates to side setback requirements and applies a sliding scale to setbacks, in conjunction with the relative wall heights. The proposed ground and first floor works include a full width extension, towards the northern and southern side boundaries.

Where development extends to side boundaries, the following merit requirements are considered:

- a. *the development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of this Development Control Plan;*
- b. *the pattern of development within the streetscape is not compromised;*
- c. *the bulk and scale of development is minimised by reduced floor to ceiling heights;*
- d. *the potential impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised; and*
- e. *reasonable access is retained for necessary maintenance of adjoining properties.*

In consideration of the above, the proposed extensions to the side boundary are acceptable for the following reasons:

- The proposed additions have been sited and designed to retain the integrity of the original main building and the character of consistent terrace groups and rows, as per the two-storey terrace building typology.
- The proposed building setbacks will not compromise the pattern of development in the streetscape, which is characterised by nil building setbacks.
- The bulk and scale of the proposed development has been minimised through reduced floor-to-ceiling heights.
- Amenity impacts have been considered acceptable.
- The proposal raises no concerns with respect to the maintenance of neighbouring properties.

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

C3.9 Solar Access

All Development & Alterations and Additions

The proposed improvements to the existing dwelling are located to enable openings and private open space to take advantage of the available sunlight. The proposed additions are located where it can be reasonably expected for development to be carried out and, as such, access to sunlight is considered acceptable.

Minimise Impact to Neighbouring Properties – Living Room Glazing

The only properties impacted in terms of overshadowing to main living room windows is No. 28 Catherine Street. This property is east/west facing; therefore, the following solar access provisions apply:

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

The submitted elevation shadow diagrams indicate that the proposed development will have the following impact on surrounding properties main living room windows at the winter solstice:

No. 28 Catherine Street

- **9 AM to 1 PM:** No new impact, windows are completely overshadowed as per existing
- **2 PM to 3 PM:** The west facing main living room window will be additionally overshadowed, however, the window will continue to receive solar access.

Minimise Impact to Neighbouring Properties – Private Open Space

The submitted shadow diagrams identify the proposed development will impact Nos. 26 and 28 Catherine Street Private Open Space (POS) in terms of overshadowing. These properties are east/west oriented lots; therefore, the following solar access provisions apply:

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

The POS of Nos. 26 and 28 Catherine Street currently receive less than the prescribed 2.5 hours of solar access, between 9am and 3pm at the winter solstice. The proposed development will result in additional shadowing to the POS between 9 AM and 1 PM, which contravenes Control C19. The submitted shadow diagrams indicate that the proposed development will have the following impact on surrounding properties POS at the winter solstice:

- **9 AM:** No overshadowing impact on the POS of 26 or 28 Catherine Street.
- **10 AM:** No impact to POS of 26 Catherine Street. POS of 28 Catherine Street additionally overshadowed by ~0.75sqm.
- **11 AM:** POS of 26 Catherine Street is additionally overshadowed by ~0.125sqm. POS of 28 Catherine Street additionally overshadowed by ~1.7sqm.
- **12 PM:** No overshadowing impact on 26 Catherine Street POS. POS of 28 Catherine Street is additionally overshadowing by ~0.59sqm
- **1 PM:** No overshadowing impact on POS of 26 and 28 Catherine Street.
- **2 PM:** No overshadowing impact on 26 Catherine Street POS. POS of 28 Catherine Street additionally overshadowed by ~0.36sqm.
- **3 PM:** No overshadowing impact on 26 Catherine Street POS. POS of 28 Catherine Street additionally overshadowed by ~0.16sqm.

It is also acknowledged that the POS for both 26 and 28 Catherine maintains solar access to more than 50% of the POS at equinox.

Assessing the Impact of Development on the Solar Access of Neighbours

In assessing the reasonableness of solar access impact to adjoining properties, and, in any situation where controls are sought to be varied, Council will also have regard to the ease or difficulty in achieving the nominated controls having regard to:

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

Comment: The proposed development results departures from the FSR and Site Coverage development standards under the LEP and results in DCP variations, including rear side boundary setback breaches and BLZ breaches at both the ground and first floors. It can be deduced that the proposed extensions at the ground and first floor levels contribute to additional overshadowing of neighbouring properties. It should be noted that overshadowing of No. 28 Catherine Street's POS and main living room window is a result of the proposed siting of the ground floor addition and not the proposed first floor addition.

In consideration of the overshadowing impact upon No. 28 Catherine Street and the reasonableness of the proposed envelope, the following is noted:

- Despite the proposals LEP and DCP variations, a reasonable approach, in conjunction with the Solar Access Planning Principle – *Benevolent Society v Waverley Council* [2010] NSWLEC 1082, is to consider the impact on what is likely to be built on adjoining sites. In this regard, the proposal seeks to align the ground floor with the northern neighbour (32 Catherine Street) and the changing BLZ and development of southern properties at 26 and 28 Catherine Street would establish a change in development that, in this instance, would allow Council to consider a breach considering further development of these sites in the future. In this regard, the proposed alterations and additions are an appropriate response to the building location / scale in its context.

In consideration of the overshadowing impact upon No. 26 Catherine Street and the reasonableness of the proposed envelope, the following is noted:

- The proposal results in minor additional overshadowing (~0.125sqm) of No. 26 Catherine Street's POS at 11 AM. It is considered that a reduction in the rear BLZ at the first floor level would not materially affect the solar access available to No. 26 Catherine Street.

b. Site orientation;

Comment: The site and surrounding properties are oriented east/west. Any extensions to the rear of the existing envelope will generally contribute to additional shadowing to neighbouring properties, namely properties to the south of the proposed works.

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

Comment: The proposal has not sought excessive floor-to-ceiling heights. The proposed additions are constructed generally at existing ground / grade levels and are considered acceptable.

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

Comment: The amended design solution has lowered the bulk of the development by incorporating reduced floor-to-ceiling heights and redesigning the roof with a low pitch and profile. The proposal has also been amended to design the proposed garage with a skillion roof form.

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

Comment: The applicant has made changes to the originally proposed design to ameliorate solar access to neighbouring properties. With regard to No. 28 Catherine Street, the protection of the sunlight to the house would not be readily achievable by a more sensitive design that included a reduction of the rear BLZ of the first floor addition. Further, a reduction of the first floor BLZ is not considered to materially enhance the solar access available to the No. 26 Catherine Street.

In consideration of the ground floor BLZ, it is considered that an amended design that achieves compliance with the BLZ provisions (i.e. articulated between the average rear setbacks of immediately adjoining developments) would have negligible improvements to the POS of and main living room window of No. 28 Catherine Street in terms of solar access. In the circumstances of this case the proposed ground floor level has been designed to align with the northern neighbour (32 Catherine Street) and is consistent with the general pattern of development in the vicinity of the site, which is considered a reasonable outcome.

Notwithstanding the above, it is considered that the design of the skillion roof form over the proposed carport could be flipped 180° so the apex of the skillion roof fronts Redmond Street at the rear of the site. This design change will assist to eliminate additional overshadowing to No. 28 Catherine Street in the afternoon at the winter solstice.

Having regard to the above, the proposed development will result in acceptable impacts in terms of additional overshadowing. Subject to design change conditions to reorientate the

skillion roof above the carport, the proposal is considered to satisfy the relevant controls and objectives of this part.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. One (1) submission was received in response to the initial notification.

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

- Floor Space Ratio non-compliance
- Overshadowing impacts

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

Issue: "... the documentation frequently refers to number 28 as having plans to renovate our dilapidated rear structure. I can assure you that neither is no 28 in a dilapidated state nor are we planning to submit plans for any development."

Comment: Noted, however, notwithstanding any errors contained within this document, Council's conclusions have been reached independently and an assessment of this application has found that the proposal is acceptable and generally complies with the *IWLEP 2022* and *LDCP 2013*.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers:

Referrals	Summary of Response
Engineer	Acceptable, subject to conditions.
Urban Forest	Acceptable, subject to conditions including tree protection measures during the stages of development and tree planting conditions.

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 Contributions or 7.12 levies are not payable for the proposal.

8. Conclusion

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

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

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

9. Recommendation

- The applicant has made a written request pursuant to Clause 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio and Site Coverage 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.
- 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/2023/0295 for ground and first floor alterations and additions to an existing dwelling, new carport to rear and associated landscaping at 30 Catherine Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
A00, Rev. C	Development Application	14/08/2023	[a ⁴ A] ^d
A11, Rev. C	Ground, First & Roof Plans	14/08/2023	[a ⁴ A] ^d
A16, Rev. C	Elevations	14/08/2023	[a ⁴ A] ^d
A17, Rev. D	Elevations	19/09/2023	[a ⁴ A] ^d
A18, Rev. C	Long Sections	14/08/2023	[a ⁴ A] ^d
A19, Rev. C	Long Sections	14/08/2023	[a ⁴ A] ^d
A20, Rev. C	Backyard Elevations and Shot Sections	14/08/2023	[a ⁴ A] ^d
A452608_04	BASIX Certificate	15/08/2023	Chapman Environmental Services Pty Ltd
Ref. 23131, Issue A	ANEF Assessment for Acoustica	20/04/2023	West & Associates Pty Ltd on behalf of Acoustica Pty Ltd

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 skillion roof form over the carport structure must be reoriented 180 degrees so the apex of the skillion roof fronts Redmond Street.

FEES

3. Security Deposit - Custom

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

Security Deposit:	\$2,800.00
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.

GENERAL CONDITIONS

5. Boundary Alignment Levels

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

6. Tree Protection

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

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

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

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

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

Tree No.	Botanical/Common Name	Location
-	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	Front on Council controlled land

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

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

7. 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 properties 28 and 32 Catherine Street 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. 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;
- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- c. 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;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- e. 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;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. As there is no overland flow/flood path available from the rear and central courtyards to the Catherine Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- h. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- i. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- j. No nuisance or concentration of flows to other properties;

- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- l. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- m. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- o. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- p. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- q. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- r. 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. Parking Facilities - Domestic

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

- a. The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;

- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
- d. The garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 3000 mm (length x width) and a door opening width of 3000 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- f. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- g. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- h. The external form and height of the approved structures must not be altered from the approved plans.

18. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Structural Certificate from a practising structural engineer which verifies that the structural integrity of the existing "Party Walls" are adequate to accept the additional loads imposed thereon by the proposal. A copy of the Structural Certificate must be provided to all owners of the party wall/s.

19. 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.

20. 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

21. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION

22. Tree Protection

To protect the following tree, ground, trunk and branch protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* and/or with Council's *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
-	<i>Callistemon viminalis</i> (Weeping Bottlebrush)

23. Construction Hours – Class 1 and 10

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

24. 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**25. Public Domain Works**

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

- a. Light duty concrete vehicle crossing(s) at the vehicular access location(s); and
- b. Other works subject to the *Roads Act 1993* approval.

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

26. No Encroachments

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

27. Protect Sandstone Kerb

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

28. Light Duty Vehicle Crossing

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

29. Parking Signoff – Minor Developments

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

30. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF5 Certificate of Horticulture or Arboriculture that:

A minimum of 1 x 75 litre size additional trees, that will attain a minimum mature height of 6 metres, has been planted in a more suitable location within the property at a minimum of 1 metre from any boundary, 1.5m from any dwelling or garage wall and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape*. Trees listed as exempt species from Council's Tree Management Controls, and species recognised to have a short life span will not be accepted as suitable replacements.

If the tree is found dead or dying before they reach the dimensions where they are protected by Council's Tree Management Controls, they must be replaced in accordance with this condition.

31. Aircraft Noise –Alterations and Additions

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

ON-GOING

32. Bin Storage

All bins are to be stored within the site.

ADVISORY NOTES

Permits

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

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

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

Insurances

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

Public Domain and Vehicular Crossings

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

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

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

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

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

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

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.

Dividing Fences Act

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

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions 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.

Asbestos Removal

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

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

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Ausgrid Overhead Powerlines

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected to be entering and leaving the site.

The "as constructed" minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website: www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

For new connections or to alter the existing electrical connection to the property from the Ausgrid network, the proponent should engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details: <https://www.ausgrid.com.au/Connections/Get-connected>

Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au

Ausgrid Underground Cables

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).

In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:

- SafeWork Australia – Excavation Code of Practice.
- Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

- Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.
- Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au

Attachment B – Plans of proposed development

DEVELOPMENT APPLICATION

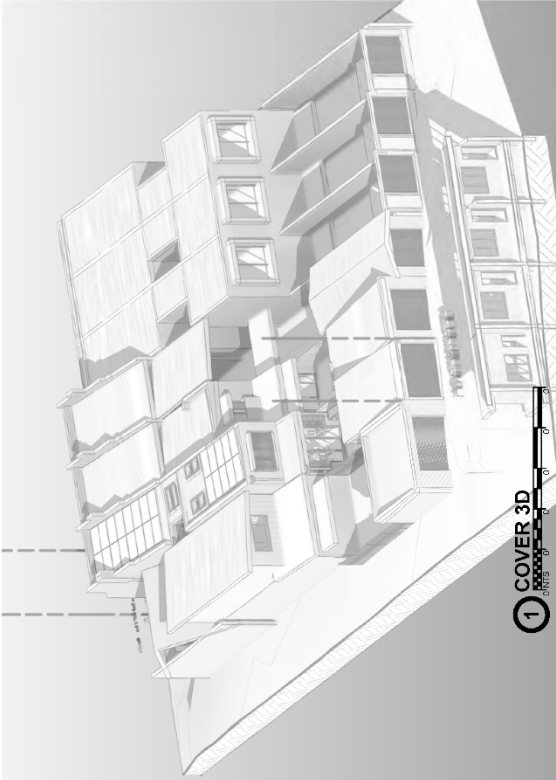
DEVELOPMENT APPLICATION C DA RFI

A00



GENERAL NOTES:
 ALL WORKS TO COMPLY WITH CURRENT BC/ACC AND RELEVANT STANDARDS.
 DO NOT SCALE OFF DRAWINGS.
 ALL DIMENSIONS TO BE VERIFIED ON-SITE.
 BOUNDARIES, OFFSETS AND DISTANCES TO BE VERIFIED BY A REGISTERED SURVEYOR PRIOR TO COMMENCEMENT.
 STRUCTURAL, MECHANICAL, ELECTRICAL AND PLUMBING WORKS TO BE CO-ORDINATED PRIOR TO CONSTRUCTION (AS REQUIRED).
 INTERCONNECTED SMOKE ALARMS TO AS3786.

NO	REV	DATE	DESCRIPTION
001	1	14/06/2023	ISSUE FOR PERMIT
002	1	14/06/2023	ISSUE FOR PERMIT
003	1	14/06/2023	ISSUE FOR PERMIT
004	1	14/06/2023	ISSUE FOR PERMIT
005	1	14/06/2023	ISSUE FOR PERMIT
006	1	14/06/2023	ISSUE FOR PERMIT
007	1	14/06/2023	ISSUE FOR PERMIT
008	1	14/06/2023	ISSUE FOR PERMIT
009	1	14/06/2023	ISSUE FOR PERMIT
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027	1	14/06/2023	ISSUE FOR PERMIT
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030	1	14/06/2023	ISSUE FOR PERMIT

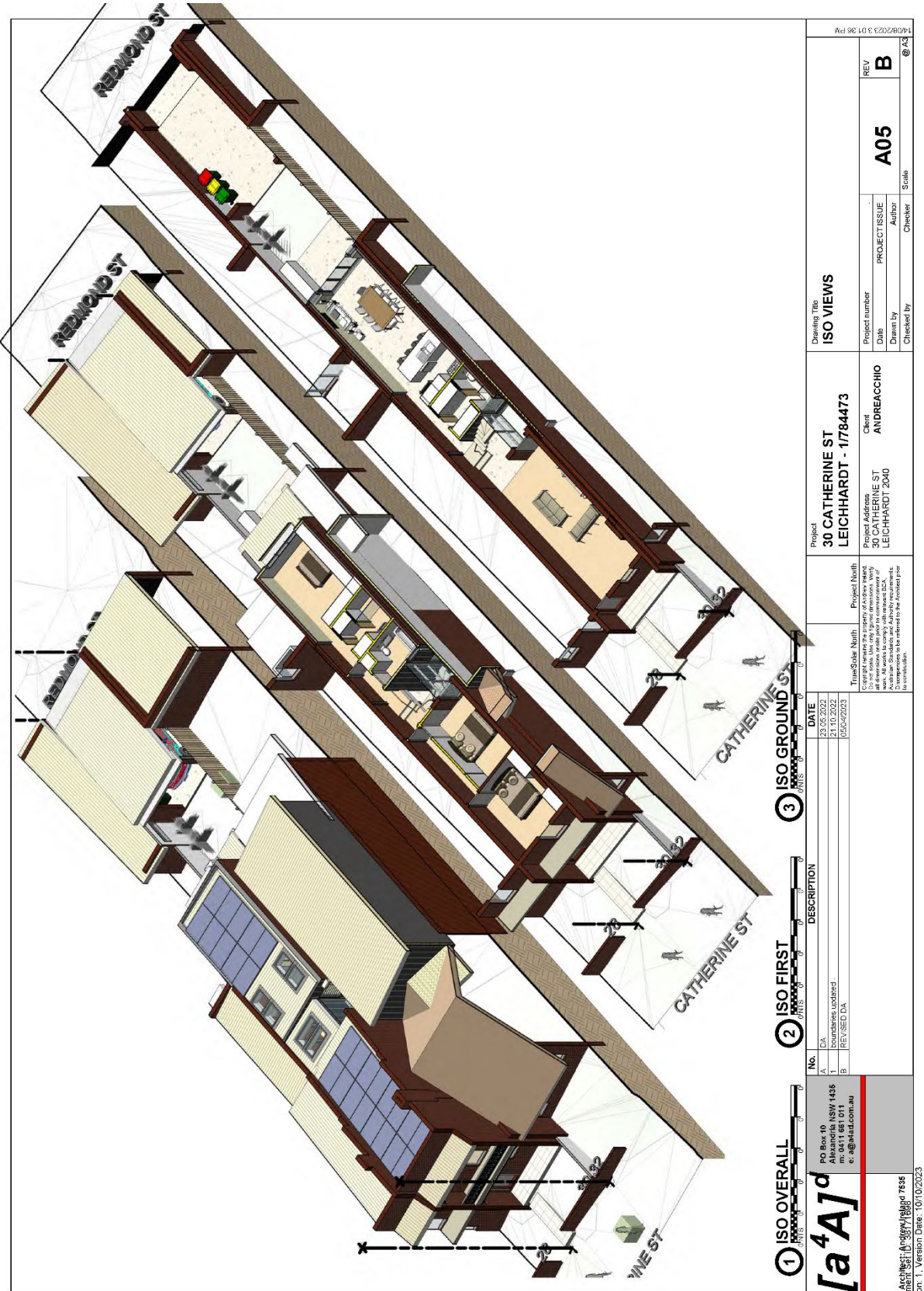


COVER 3D

[a⁴A]^d 30 CATHERINE ST LEICHHARDT 2040

30 CATHERINE ST LEICHHARDT - 1/1784473 ANDREACCHIO

PO BOX 10, Albury NSW 2642
 Document Set 11188181000000000000
 Version: 1, 14/06/2023 3:01:34 PM



1 ISO OVERALL

[a4A]d

PO Box 10
ASHLY 1435
NSW 1585
t: 0411 681 011
e: a@4ad.com.au

No.	DESCRIPTION	DATE
A	DA	23.05.2022
B	Foundations updated REVISED DA	21.10.2022 05/04/2023

2 ISO FIRST

3 ISO GROUND

Time/Site North Project North
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Project 30 CATHERINE ST LEICHHARDT - 1784473		Drawing Title ISO VIEWS	
Client ANDREACCHIO	Project Address 30 CATHERINE ST LEICHHARDT 2040	Project number A05	Project Issue B
Drawn by	Checked by	Author	Checker
Scale	Scale	Scale	Scale

Architect: Andrew Acchio 7535
 Document Set ID: 38771888
 Version: 1, Version Date: 10/10/2023

Department of Planning and Environment
 Project ID: 14567
 Date: 14/05/2023
 Title: FSR & BLZ
 Client: ANDREACCHIO
 Address: 30 CATHERINE ST LEICHHARDT 2040

FSR GROUND FLOOR / LANDSCAPE
 Scale: 1:200

FSR LEVEL 1
 Scale: 1:200

FSR FIRST FLOOR BLZ
 Scale: 1:500

LEGEND:

- 13.7m PREVIOUS LANDSCAPE
- 23.7m PRIVATE OPEN SPACE
- 31.7m SITE COVERED BY GFA EX NOD
- 39.3m PROPOSED GFA
- 3.0m PREVIOUS LANDSCAPE
- 32 CATHERINE AS PER DA2021087
- 8.2m PREVIOUS LANDSCAPE
- 25 CATHERINE
- 65.3m PROPOSED GFA
- 41.7m EX GFA
- UP
- 30 CATHERINE ST BLZ
- 30 CATHERINE ST BLZ
- 30 CATHERINE ST BLZ

NOTES:

1. The site is bounded by Catherine St to the north, Richmond St to the south, and Leichhardt St to the east.
2. The proposed development is shown in pink hatching.
3. The site is shown with its surrounding context, including existing buildings and landscaping.
4. The proposed development is shown in pink hatching.
5. The site is shown with its surrounding context, including existing buildings and landscaping.

DEPARTMENT OF PLANNING AND ENVIRONMENT

FSR & BLZ

LEGEND:

- 13.7m PREVIOUS LANDSCAPE
- 23.7m PRIVATE OPEN SPACE
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4. The proposed development is shown in pink hatching.
5. The site is shown with its surrounding context, including existing buildings and landscaping.

DATE: 23/05/2022	DATE: 23/05/2022
BY: DA	BY: DA
FOR: DA	FOR: DA
BY: DA	BY: DA
FOR: DA	FOR: DA

32 CATHERINE ST - APPROVED DA

Client: DANIEL & ALAN IRVING
 Project: 32 CATHERINE ST
 Council: INNER WEST COUNCIL

Scale: 1:100

DATE: 23/05/2022	DATE: 23/05/2022
BY: DA	BY: DA
FOR: DA	FOR: DA
BY: DA	BY: DA
FOR: DA	FOR: DA

24 CATHERINE ST - APPROVED MODIFICATION

Client: Development Design Pty Ltd
 Project: 24 CATHERINE ST
 Council: INNER WEST COUNCIL

Scale: 1:100

DATE: 23/05/2022	DATE: 23/05/2022
BY: DA	BY: DA
FOR: DA	FOR: DA
BY: DA	BY: DA
FOR: DA	FOR: DA

26 REDWOOD ST - APPROVED AND BUILT

Client: ANDREACCHIO
 Project: 26 REDWOOD ST
 Council: INNER WEST COUNCIL

Scale: 1:100

DATE: 23/05/2022	DATE: 23/05/2022
BY: DA	BY: DA
FOR: DA	FOR: DA
BY: DA	BY: DA
FOR: DA	FOR: DA

30 CATHERINE ST - APPROVED AND BUILT

Client: ANDREACCHIO
 Project: 30 CATHERINE ST
 Council: INNER WEST COUNCIL

Scale: 1:100

DATE: 23/05/2022	DATE: 23/05/2022
BY: DA	BY: DA
FOR: DA	FOR: DA
BY: DA	BY: DA
FOR: DA	FOR: DA

30 CATHERINE ST - APPROVED AND BUILT

Client: ANDREACCHIO
 Project: 30 CATHERINE ST
 Council: INNER WEST COUNCIL

Scale: 1:100

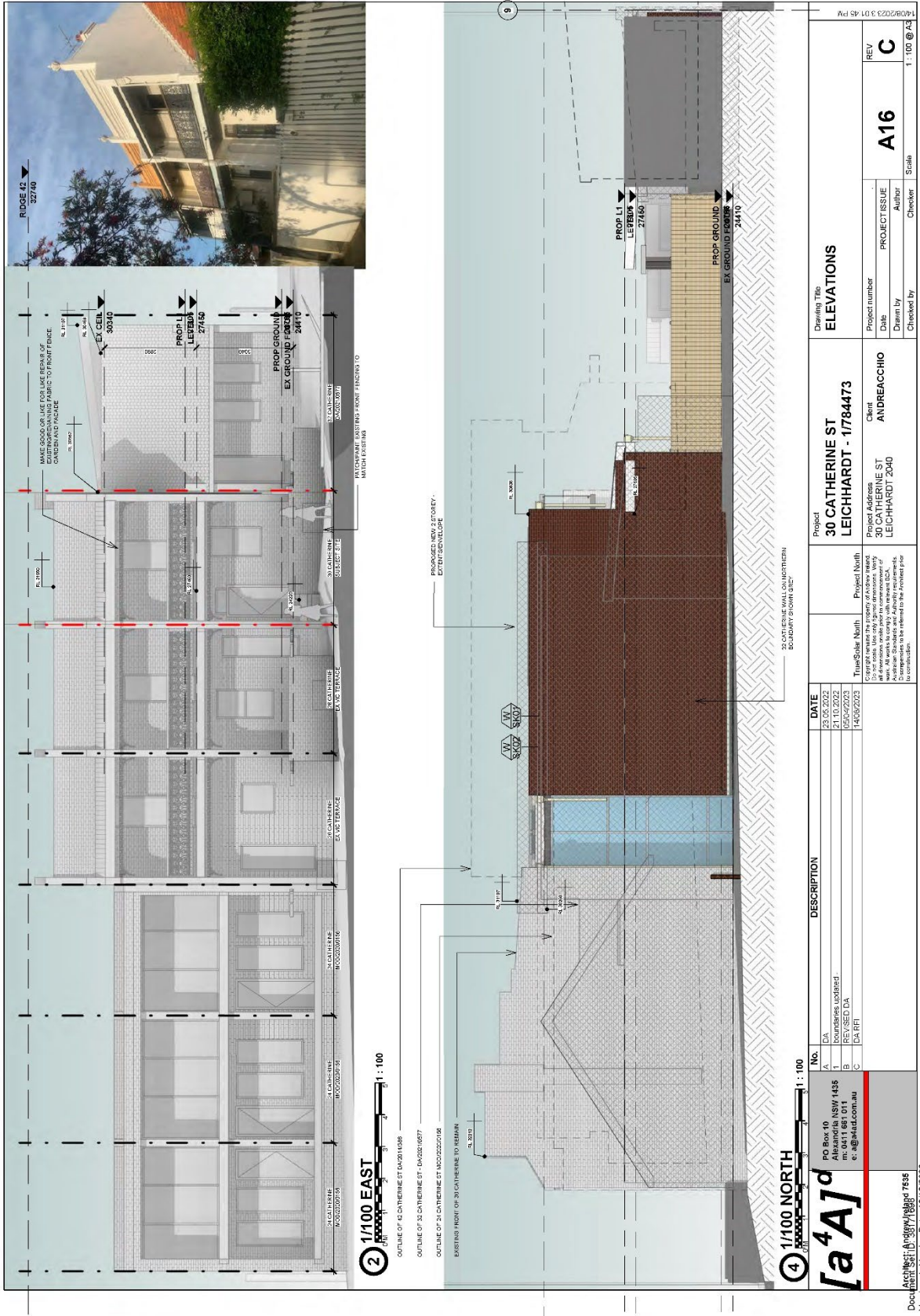


No.	DESCRIPTION	DATE
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B	Boundaries updated	21.10.2022
C	DA RED DA	14.05.2023
	DA REF	

Drawing Title GROUND, FIRST & ROOF PLANS	
Project 30 CATHERINE ST LEICHHARDT - 1754473	
Client ANDREACCHIO	
Project number 1754473	Project Issue A11
Date 14/05/2023	Author [Signature]
Drawn by [Signature]	Checker [Signature]
Checked by [Signature]	Scale As indicated @ A1

PO Box 10 Ashby NSW 1435 Ph: 0411 681 011 e: a@4ad.com.au	[a4A] ^d
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Architect: Andrew Grogan 7535
 Document ID: 3871888
 Version: 1.1, Version Date: 10/10/2023

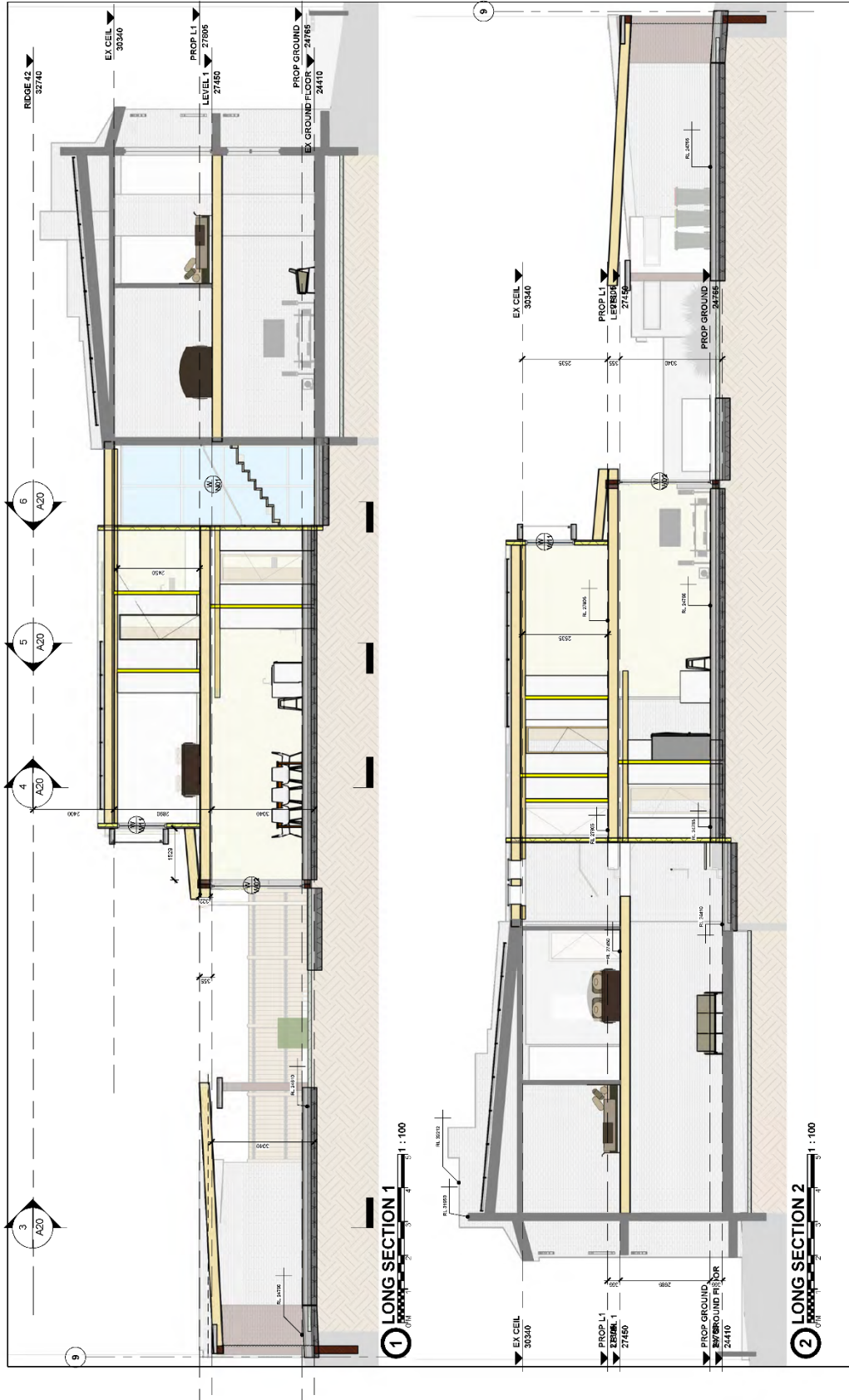


Drawing Title ELEVATIONS	
Project 30 CATHERINE ST LEICHHARDT - 1754473	Client ANDREACCHIO
Project Number A16	Project Issue C
Date	Author
Drawn by	Checked by
Scale	Scale

DATE	DESCRIPTION
23.05.2022	DA
21.10.2022	Boundaries updated
14.05.2023	DA REVISED DA
14.05.2023	DA REV

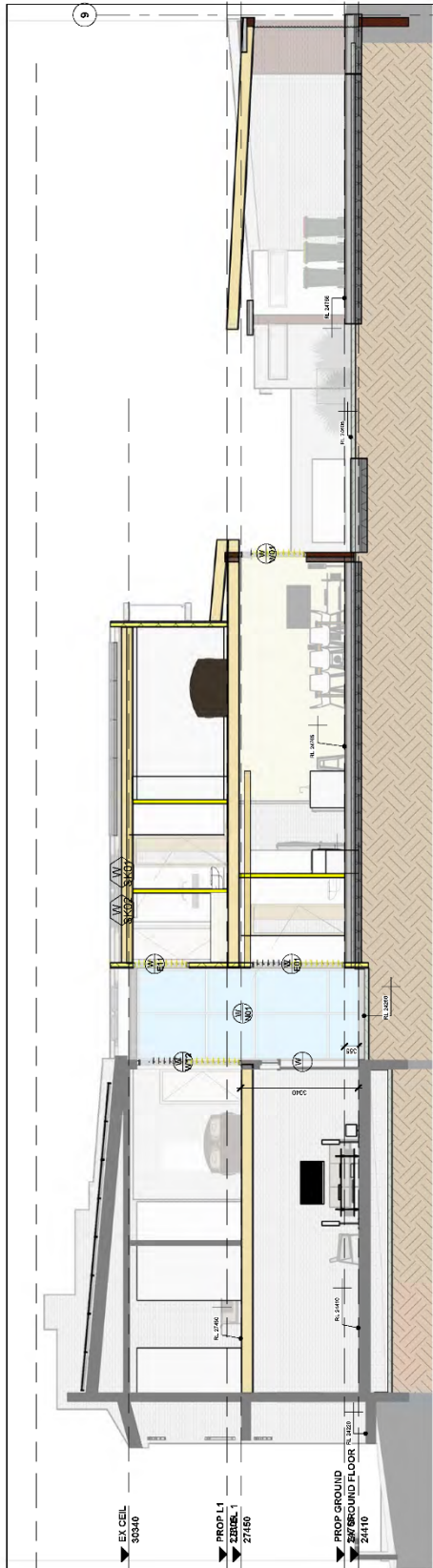
PO Box 10 ASHW 1435 NSW 2068 t: 0411 681 011 e: a@4ad.com.au	No.	1:100
	A	DA
	B	Boundaries updated
	C	REVISED DA
	D	DA REV

Architect: Andrew Kibbey 7535
 Document Set ID: 38771888
 Version: 1, Version Date: 10/10/2023



[a⁴A]^d PO Box 10 NSW 1435 Australia m: 0411 681 011 e: a@4ad.com.au	DESCRIPTION		DATE		Project 30 CATHERINE ST LEICHHARDT - 1784473		Drawing Title LONG SECTIONS	
	No.	A	CA	23.05.2022	Time/State North	Project North	Date	Project number
	B	CA	21.10.2022	Copyright © 2022 by the property of Andrew Reed All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the copyright owner.		Client	Project ISSUE	
	C	CA	14.05.2023	All works to comply with relevant LGA, LEP, and other applicable laws and regulations. All dimensions are to be confirmed by the Architect prior to construction.		30 CATHERINE ST LEICHHARDT 2040	Author	
						ANDREACCHIO	Checker	
							Scale	
							1:100 @ A3	
							REV	
							C	

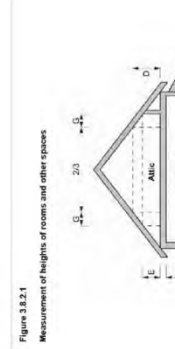
Architect: Andrew Reed
 Document Set ID: 3871888
 Version: 1, Version Date: 10/10/2023



3 LONG SECTION 3
1 : 100

Table 3.5.11 RISER AND CEILING DIMENSIONS (mm)

START TYPE	RISER (A)	CEILING (G)	SLOPE RELATIONSHIP
None	180	200	1:1
Stairs (other than spiral)	220	180	2:1
Spiral	220	170	2:1
Other	180	200	1:1



Note: The letters in the diagram represent the following minimum dimensions:

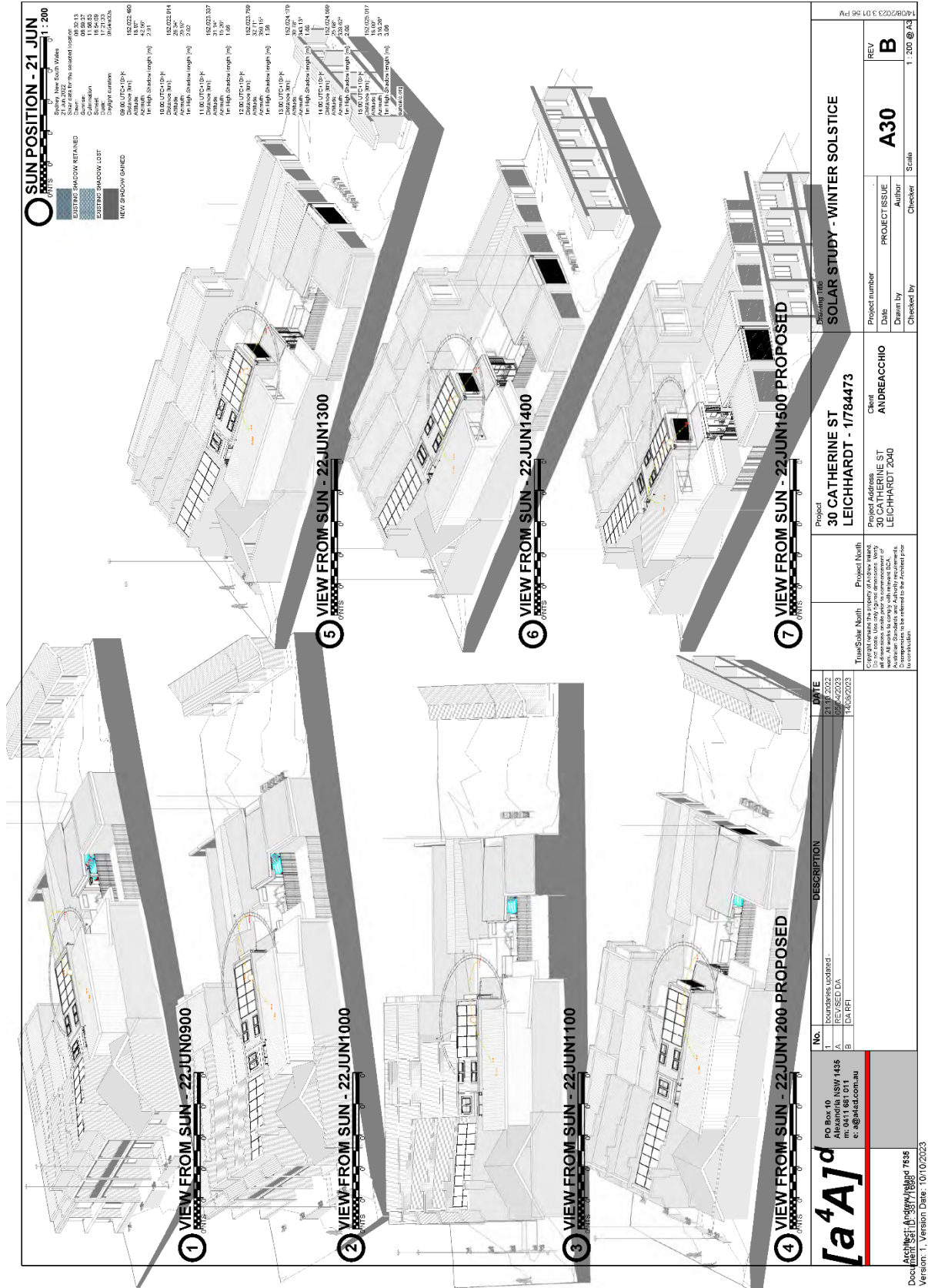
- A = 2.4 m In a habitable room (excluding a kitchen)
- B = 2.4 m In a habitable room with a sloping ceiling for at least two-thirds of the floor area of the room or space
- C = 2.1 m In a non-habitable room with a sloping ceiling for at least two-thirds of the floor area of the room or space
- D = 2.2 m In a room with a sloping ceiling for at least two-thirds of the floor area of the room or space
- E = 1.5 m For the purpose of calculating the floor area of a room or space, any ceiling height of less than 1.5 m is ignored.
- F = 2.0 m In a hallway (measured vertically above the landing level).

The combined dimensions of G must not exceed one-third of the floor area (See E above) of the room or space.

	PO Box 10 Ashby 1435 Ashby NSW Ph: 0411 681 011 E: a@4ad.com.au	No. CA A CA B CA C CA REF	DATE 23/05/2022 21/10/2022 14/05/2023	Project 30 CATHERINE ST LEICHHARDT - 1754473	Drawing Title LONG SECTIONS
	Copyright © 2022 [a4A]d All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without the prior written permission of [a4A]d.	Time/State North Project North	Project Address 30 CATHERINE ST LEICHHARDT 2040	Client ANDREACCHIO	Project number A19
Architect: Andrew Taggart 7535 Document Set ID: 38171888 Version: 1, Version Date: 10/10/2023	Drawn by Checked by Author Checker Scale 1 : 100 @ A3				



	PO Box 10 Ashby 1435 Ashby NSW 1435 t: 0411 681 011 e: a@4ad.com.au	No. CA A B C	DESCRIPTION CA Surrounds updated CA CA CA	DATE 23.05.2022 21.10.2022 14.05.2023	Project 30 CATHERINE ST LEICHHARDT - 1754473	Drawing Title BACKYARD ELEVATIONS AND SHORT SECTIONS	Project number A20	REV C
	Architect: Andrew Lloyd 7535 Version: 1, Version Date: 10/10/2023	True/State North Copyright © Andrew Lloyd All dimensions are to the center of work Areas marked with asterisks (*) Dimensions to be referred to the Architect prior to construction.	Project North Client ANDREACCHIO	Project number A20	Drawing Title BACKYARD ELEVATIONS AND SHORT SECTIONS			







SUN POSITION - 21 JUN

Sydney Area Sun Path

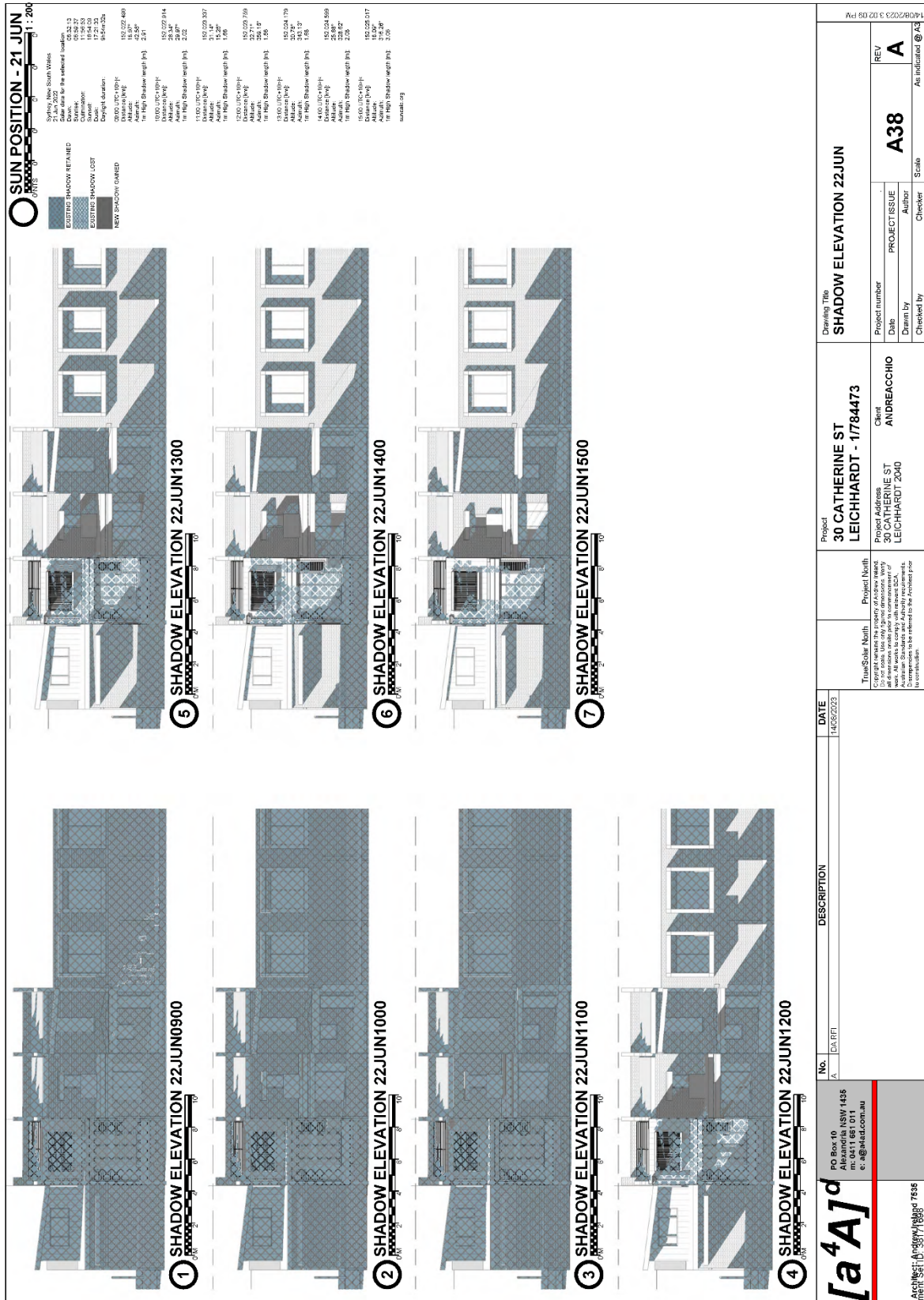
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06:00	12.8	173.1	3.5	0.7
06:30	14.2	167.2	3.1	0.6
07:00	15.5	160.7	2.8	0.5
07:30	16.8	153.7	2.5	0.4
08:00	18.0	146.2	2.3	0.3
08:30	19.1	138.1	2.1	0.3
09:00	20.2	129.5	1.9	0.2
09:30	21.2	120.5	1.8	0.2
10:00	22.2	111.2	1.7	0.2
10:30	23.1	101.6	1.6	0.2
11:00	23.9	91.8	1.5	0.2
11:30	24.6	81.8	1.4	0.2
12:00	25.2	71.6	1.4	0.2
12:30	25.7	61.3	1.4	0.2
13:00	26.1	50.9	1.4	0.2
13:30	26.4	40.6	1.4	0.2
14:00	26.6	30.4	1.4	0.2
14:30	26.8	20.2	1.4	0.2
15:00	26.9	10.1	1.4	0.2
15:30	27.0	0.0	1.4	0.2
16:00	27.0	9.9	1.4	0.2
16:30	26.9	19.8	1.4	0.2
17:00	26.8	29.7	1.4	0.2
17:30	26.6	39.6	1.4	0.2
18:00	26.4	49.4	1.4	0.2
18:30	26.1	59.2	1.4	0.2
19:00	25.8	68.9	1.4	0.2
19:30	25.4	78.6	1.4	0.2
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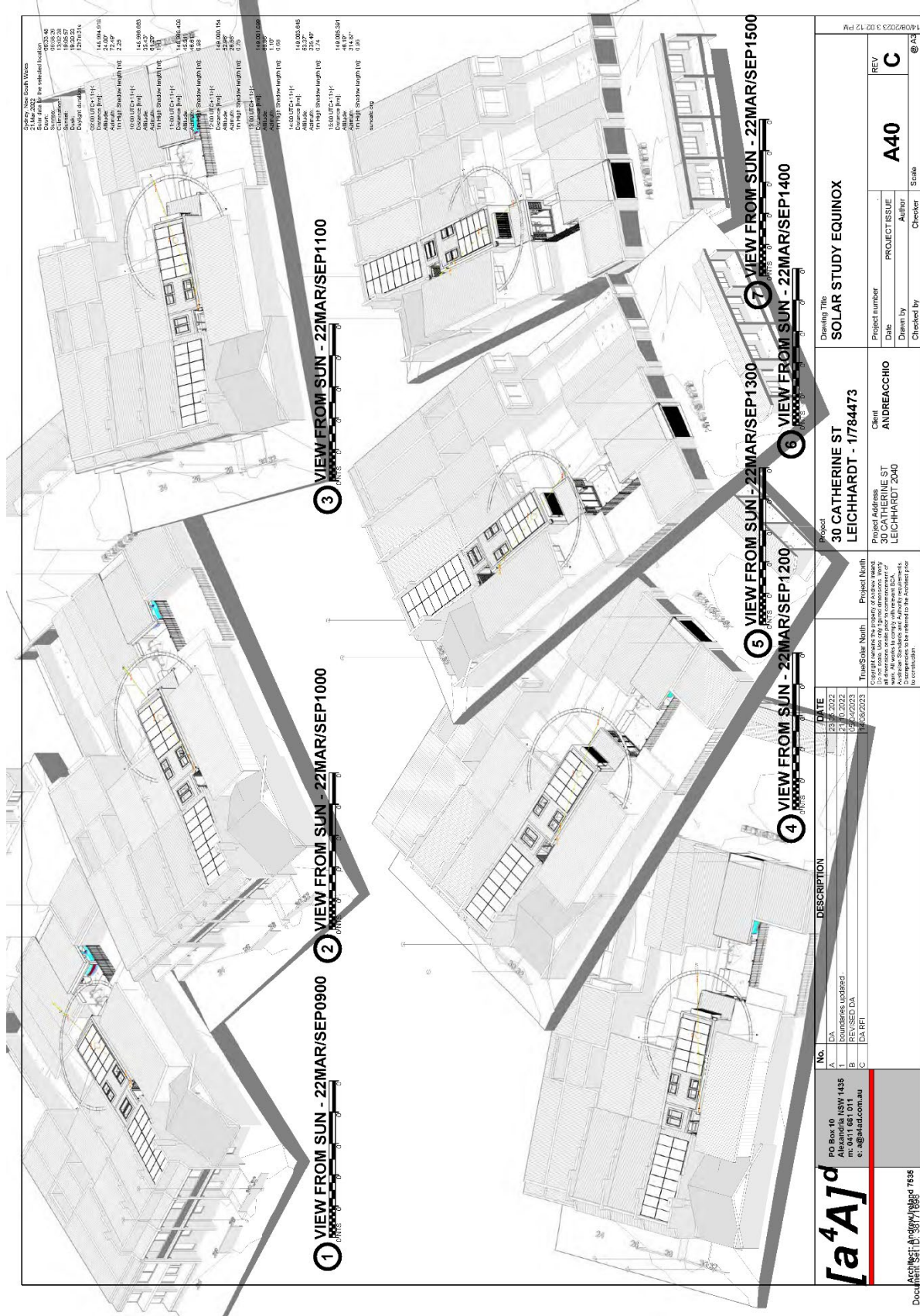
 PO Box 10 Ashfield NSW 1585 Ph: 0411 681 011 E: a@a4ad.com.au	No. 1 Boundaries Updated A REVISION DA B DA.PRT DATE 21.10.2022 05/24/2023 14/09/2023	DATE 21.10.2022 05/24/2023 14/09/2023	Project 30 CATHERINE ST LEICHARDT - 1784473 Client ANDREACCHIO	Drawing Title SHADOW DIAGRAM 21 JUN 1100 & 22 JUN 1200	
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PO Box 10 Ashfield NSW 1585 Ph: 0411 681 011 E: a@a4ad.com.au	No. 1 Boundaries Updated A REVISION DA B DA.PRT DATE 21.10.2022 05/24/2023 14/09/2023	DATE 21.10.2022 05/24/2023 14/09/2023	Project 30 CATHERINE ST LEICHARDT - 1784473 Client ANDREACCHIO	Drawing Title SHADOW DIAGRAM 21 JUN 1100 & 22 JUN 1200	Project Number 1784473 Project Issue A32
[a^4A]^d Architectural Services Pty Ltd Document No: AS1-38771888-7638 Version: 1.1 Version Date: 10/10/2023	No. 1 Boundaries Updated A REVISION DA B DA.PRT DATE 21.10.2022 05/24/2023 14/09/2023	DATE 21.10.2022 05/24/2023 14/09/2023	Project 30 CATHERINE ST LEICHARDT - 1784473 Client ANDREACCHIO	Drawing Title SHADOW DIAGRAM 21 JUN 1100 & 22 JUN 1200	Project Number 1784473 Project Issue A32





	PO Box 10 Ashfield NSW 1585 Ph: 0411 681 011 Fax: 0411 681 011 e: a@4ad.com.au	No. CA A CA B CA C CA REF	DATE 23.05.2022 21.10.2022 14.05.2023	DESCRIPTION Surrounds updated CA REF	Project 30 CATHERINE ST LEICHHARDT - 1794473 Client ANDREACCHIO	Drawing Title SHADOW DIAGRAM 21 JUN 1500
	Architects: Andrew Taggart 7535 Document Set ID: 38771888 Version: 1, Version Date: 10/10/2023	Copyright © 2023 All rights reserved. This is a confidential document. All dimensions are in millimeters unless otherwise stated. All work is to be done in accordance with the Australian Standards. Dimensions are to be referred to the Architect's floor plan.	Project North True Star North Project North	Project number Date Drawn by Checked by	Project ISSUE Author Checker Scale As indicated @ A4	REV C

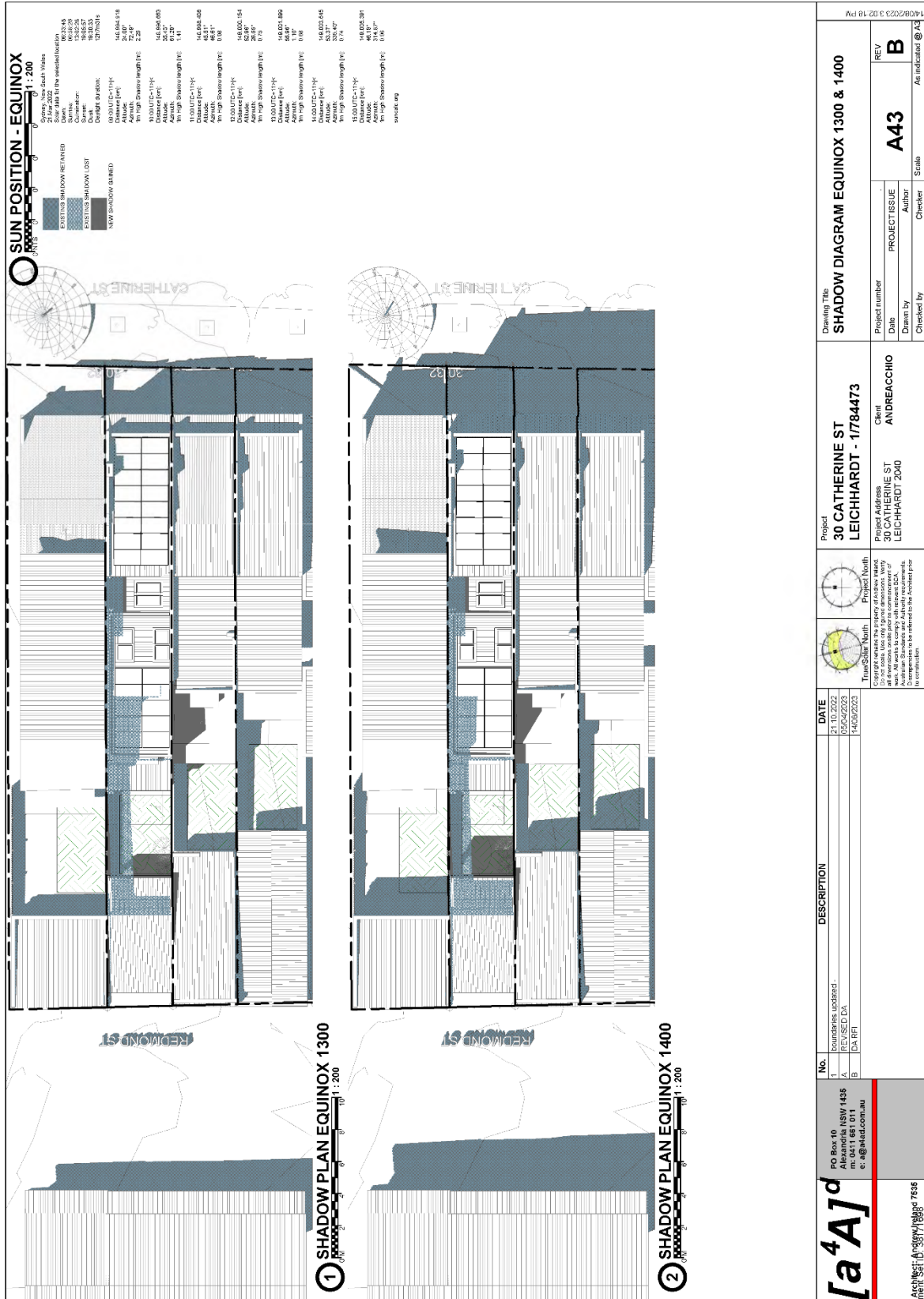






[a⁴A]^d PO Box 10 Ashfield NSW 1585 Ph: 0411 681 011 e: a@a4ad.com.au	No. 1 Boundaries updated A REVISED DA B DA REF	DATE 21/10/2022 05/05/2023 14/03/2023	Project 30 CATHERINE ST LEICHHARDT - 1784473 Client ANDREACCHIO	Drawing Title SHADOW DIAGRAM EQUINOX 1100 & 1200	Rev B
	Description [Empty]	Project North [Empty]	Project North [Empty]	Project Number [Empty]	Date [Empty]
[Empty]	[Empty]	[Empty]	Project Address 30 CATHERINE ST LEICHHARDT 2040	Drawn by [Empty]	Checker [Empty]
[Empty]	[Empty]	[Empty]	[Empty]	Checked by [Empty]	As indicated @ A42

Architect: Andrew Lloyd 7535
 Document Ref: D-3871888
 Version: 1, Version Date: 10/10/2023



[a4A]d PO Box 10 Ashfield NSW 1585 Ph: 0411 681 011 e: a@a4ad.com.au	No. 1 Boundaries updated A REVISED DA B DA PER	DATE 21/10/2022 05/05/2023 14/09/2023	Project 30 CATHERINE ST LEICHHARDT - 1784473 Client ANDREACCHIO Project Address 30 CATHERINE ST LEICHHARDT 2040	Drawing Title SHADOW DIAGRAM EQUINOX 1300 & 1400
	Description [Empty]	Project North TimeStar North Copyright © 2013 TimeStar North Pty Ltd. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of TimeStar North Pty Ltd.	Project North Project North Copyright © 2013 TimeStar North Pty Ltd. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of TimeStar North Pty Ltd.	Drawing Date 21/10/2022

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 Version: 1, Version Date: 10/10/2023



 PO Box 10 Ashby NSW 1435 Ph: 0411 681 011 E: a@4ad.com.au	No. 1 Description: Boundaries updated Date: 21/10/2022	No. A Description: REVISED DA Date: 05/05/2023	No. B Description: DA RPT Date: 14/09/2023
	Project: 30 CATHERINE ST LEICHHARDT - 1784473 Client: ANDREACCHIO Project Address: 30 CATHERINE ST LEICHHARDT 2040		
Drawing Title: SHADOW DIAGRAM EQUINOX 1500		Drawing No.: A44 Author: [Name] Checked by: [Name] Scale: As indicated @ A4	

Architect: Andrew Ngbor 7535
 Version: 1, Version Date: 10/10/2023

SUN POSITION - EQUINOX

Scale: 1 : 200

Legend:
 DISTINGUISH SHADOW RETAINED
 DISTINGUISH SHADOW LOST
 NEW SHADOW GAINED

Time	Altitude [°]	Distance [m]	Time	Altitude [°]	Distance [m]
08:00 UTC+11h	72.8°	148,096.689	12:00 UTC+11h	90.0°	148,096.689
09:00 UTC+11h	77.8°	148,096.689	13:00 UTC+11h	85.0°	148,096.689
10:00 UTC+11h	82.8°	148,096.689	14:00 UTC+11h	80.0°	148,096.689
11:00 UTC+11h	87.8°	148,096.689	15:00 UTC+11h	75.0°	148,096.689
12:00 UTC+11h	90.0°	148,096.689	16:00 UTC+11h	70.0°	148,096.689
13:00 UTC+11h	85.0°	148,096.689	17:00 UTC+11h	65.0°	148,096.689
14:00 UTC+11h	80.0°	148,096.689	18:00 UTC+11h	60.0°	148,096.689
15:00 UTC+11h	75.0°	148,096.689	19:00 UTC+11h	55.0°	148,096.689
16:00 UTC+11h	70.0°	148,096.689	20:00 UTC+11h	50.0°	148,096.689
17:00 UTC+11h	65.0°	148,096.689	21:00 UTC+11h	45.0°	148,096.689
18:00 UTC+11h	60.0°	148,096.689	22:00 UTC+11h	40.0°	148,096.689
19:00 UTC+11h	55.0°	148,096.689	23:00 UTC+11h	35.0°	148,096.689
20:00 UTC+11h	50.0°	148,096.689	24:00 UTC+11h	30.0°	148,096.689
21:00 UTC+11h	45.0°	148,096.689			
22:00 UTC+11h	40.0°	148,096.689			
23:00 UTC+11h	35.0°	148,096.689			
24:00 UTC+11h	30.0°	148,096.689			

No.	DESCRIPTION	DATE
A	DATE	14/09/2023

1 SHADOW ELEVATION EQUINOX0900

2 SHADOW ELEVATION EQUINOX1000

3 SHADOW ELEVATION EQUINOX1100

4 SHADOW ELEVATION EQUINOX1200

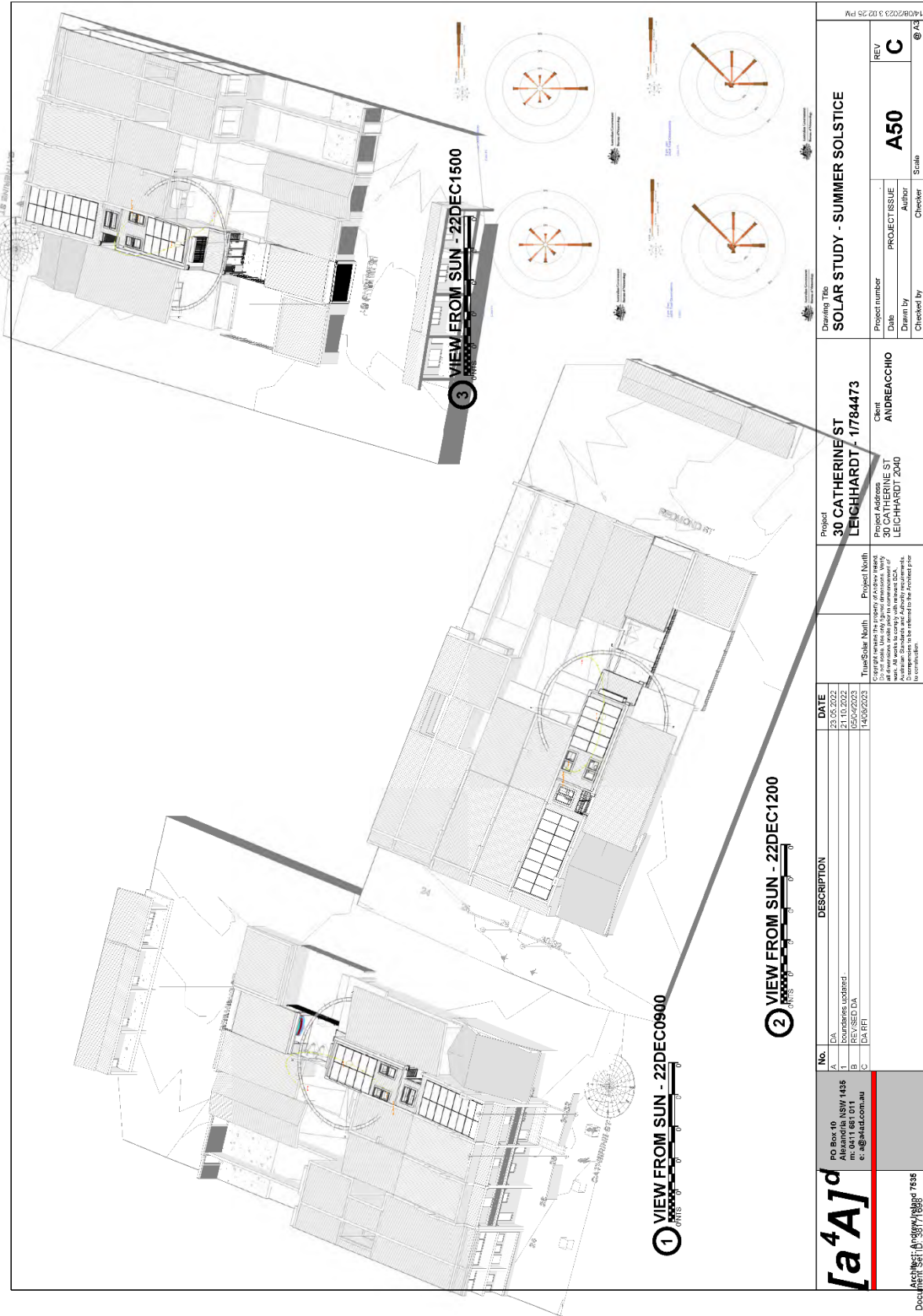
5 SHADOW ELEVATION EQUINOX1300

6 SHADOW ELEVATION EQUINOX1400

7 SHADOW ELEVATION EQUINOX1500

Project	30 CATHERINE ST LEICHHARDT - 1764473
Client	ANDREACCHIO
Project Address	30 CATHERINE ST LEICHHARDT 2040
Project North	True/State North
Project North	Copyright reserves the property of Andreacchio Architects Pty Ltd. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Andreacchio Architects Pty Ltd. Dispersions to be referred to the Architect prior to any publication.

Doc: Architect: Andreacchio Architects Pty Ltd
Version: 1, Version Date: 10/10/2023



Attachment C- Section 4.6 Exception to Development Standards

LEPIDCP COMPLIANCE
 30 CATHERINE ST LEICHHARDT 2040
 [A/V] - ANDREW IRELAND - Architect (NSW) 7535 - 0411 661 011

PURSUANT TO CLAUSE 4.6 OF Inner West Local Environmental Plan 2022

1. Environmental Planning Instrument that applies to the land?
 Inner West Local Environmental Plan 2022,
<https://legislation.nsw.gov.au/view/html/inforce/current/ep2-2022-0467>

2. Zoning and Zone Objectives of the land?

- Zone R1 General Residential
 1 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.

Clause 4.6 request – Floor Space Ratio control
 Request for exception under clause 4.6 of Inner West Local Environmental Plan 2022 to clause 4.4 of Inner West Local Environmental Plan 2022

Address: 30 Catherine Street, Leichhardt

Lot/DP: 1/DP784473

Proposal: Alterations and additions to existing terrace.

Control: Floor Space Ratio

Clause 4.4(2B)(c) of LLEP 2020:
 The maximum floor space ratio for a building on this site is not to exceed 0.7:1.

Lot size =	FSR	Sqm
164.2 sqm	0.7	114.94
Maximum =	0.58	95.3
Existing =	0.86	141.3
Proposed =	+0.16	+26.56
Variation =		

Extent of variation:
 The proposal seeks a variation to the control of 26.6m² or 16%.

This additional floor area provides functional living and service areas and a study/work from home opportunity to an existing heavily altered and compromised dwelling and is consistent with adjoining development.

30 CATHERINE ST LEICHHARDT 2040 – SEE/4.6

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

Inner West Local Environmental Plan 2022 (IWLEP2023), Clause 4.4, Floor Space Ratio

Specifies requirements and seeks to control bulk, scale and size of development.

EP&A Act 1979 – cl 1.4 Definitions

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

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

4. What are the objectives of the development standard?

4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
 - (a) to establish a 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.

5. What is the numeric value of the development standard in the environmental planning instrument?

4.4 Floor space ratio

- (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—

(c) on land shown edged brown on the Floor Space Ratio Map is—

Site area	Maximum floor space ratio
< 150m ²	0.8:1
≥ 150 < 300m ²	0.7:1
≥ 300m ² < 450m ²	0.6:1
≥ 450m ²	0.5:1



FSR MAP 004

LEP/DCP COMPLIANCE
 30 CATHERINE ST LEICHHARDT 2040
 [A]P - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?

Floor Space Ratio - Site Area 164.2 sqm			
Existing Floor Space Ratio	Maximum Floor Space Ratio under LEP	Proposed Floor Space Ratio	Percentage Variation
0.58:1	0.7:1	0.86:1	16.0%
95.3 sqm	114.94 sqm	141.5 sqm	26.56 sqm

7. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests

Test 1:

The objectives of the zone and relevant standard are achieved notwithstanding non-compliance with the standard.

Zone R1 General Residential

1 Objectives of zone

- To provide for the housing needs of the community. The proposal specifically looks to improve the existing housing and to bring it up to a standard expected by the owners and the community. The additional non-compliant floor space allows this objective to be met.
- To provide for a variety of housing types and densities. The proposal specifically looks to provide adequate housing to meet the owners' requirements within an existing housing type and density. The proposal does not alter type or density and is considered consistent with existing character. The additional non-compliant floor space allows this objective to be met.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents. The proposal specifically looks to improve access and provide space to allow for work from home opportunities. The additional non-compliant floor space allows this objective to be met.

- To provide residential development that maintains the character of built and natural features in the surrounding area. The proposal maintains, is consistent with and reinforces existing character, style, orientation, pattern of development, streetscapes and landscape area. The proposal provides landscaped areas consistent with LEP and DCP requirements. The proposal provides for a landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location consistent with the predominant pattern.

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 30 CATHERINE ST LEICHHARDT 2040
 [A/P] - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

The proposal protects, enhances and improves the amenity of existing and future residents and the neighbourhood. The proposal maintains the existing Victorian terrace form at the front streetscape and provides a sympathetic and considered addition to the rear. The rear building form is consistent with recent approvals and applications. The form provides a model for aging development on the deep adjacent lots. The objective is met notwithstanding the numerical non-compliance

The proposal achieves the principal and relevant zone objectives.

Standard Objectives

- (1) The objectives of this clause are as follows—
 - (a) to establish a maximum floor space ratio to enable appropriate development density,

The proposal maintains the existing Victorian terrace form at the front and provides a sympathetic and considered addition to the rear. The rear building form is consistent with recent approvals and applications. The form provides a model for aging development on adjacent lots. The desired future character includes encouraging work from home opportunities. The proposal specifically provides additional space to allow for work/study from home. The proposal specifically looks to improve the existing housing within an existing type and density to bring it up to a standard expected by the owners and the community. The objective is met notwithstanding the numerical non-compliance.

- (b) to ensure development density reflects its locality,
 - The proposal is consistent with and reflects existing density of the surrounding locality and recently approved development. The objective is met notwithstanding the numerical non-compliance

- (c) to provide an appropriate transition between development of different densities,
 - The proposal maintains the existing Victorian terrace form at the front streetscape and provides a sympathetic and considered addition to the rear. The proposed addition is concealed from the primary streetscape by the existing Victorian terrace and the approved development on 32 Catherine st. The rear lane bulk, scale and setbacks are consistent with adjoining terrace development and the terrace form. The bulk and scale of the proposal is consistent with the existing pattern of development and the desired future character. The proposed envelope and density is

consistent with the existing development pattern and recent approvals. The objective is met notwithstanding the numerical non-compliance

- (d) to minimise adverse impacts on local amenity,
 - The proposal maintains the existing Victorian terrace form at the front streetscape and provides a sympathetic and considered addition to the rear. The rear building form is consistent with recent approvals and applications. The form provides a model for aging development on the deep adjacent lots. The proposed addition is concealed from the primary streetscape by the existing Victorian terrace and the approved development on 32 Catherine st. The rear lane bulk, scale and setbacks are consistent with adjoining terrace development and the terrace form. The bulk and scale of the proposal is consistent with the existing pattern of development and the desired future character. The objective is met notwithstanding the numerical non-compliance

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

The proposal provides landscaped areas consistent with LEP and DCP requirements, improves existing landscaping and includes provision for a new tree. The proposal provides for a landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location consistent with the predominant pattern. The objective is met notwithstanding the numerical non-compliance.

The proposal achieves the principal and relevant standard objectives.

Test 2:

The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.
Does Not Apply.

LEP/DCP COMPLIANCE
30 CATHERINE ST LEICHHARDT 2040
[A] [A] - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

Test 3:

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

Does Not Apply

Test 4:

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:

It is noted that a number of similar recent 4.6 variations in the LGA have been approved including on neighbouring lots.
Notable examples include:

D/2019/287 – 163 Catherine St – Leichhardt – FSR Var 106.29%

MOD/2020/0156 – 24 Catherine St – Leichhardt	
LOT	FSR Var
1/24	12%
2/24	16%
3/24	15%

DAREV/2016/22 – 26 Redmond St – Leichhardt	
LOT	FSR Var
1/26	21%
2/26	24%
3/26	22%

The above approvals show that recent local approvals with higher densities are compatible with the desired future character.

- a) The FSR development standard restricts the reasonable redevelopment of existing dwellings to carry out modest additions and alterations such as an additional bedroom, bathroom or increased living area. This has been recognised historically by state and local

government and is reflected in the high number of DA's determined relying on Clause 4.6/SEPP1.

- b) Former Leichhardt council identified the primary motivation for intentionally low FSR values:
"A benefit of low FSR controls are that they provide a strong negotiating tool with developers to ensure the suite of DCP controls is adhered to." Leichhardt Council – Floor Space Ratio Review – Attachment 2 – <https://www.innerwest.nsw.gov.au/ArticleDocuments/2007/Attachment%20-%20FSR%20Review%20-%20Background%20Report.pdf.aspx>
 Despite the proposed contravention of the control, the proposal adheres to and complies with the suite of DCP controls, thus addressing the stated benefit of the control.
- c) **"What are the Weaknesses of FSR?"**
*As a density and development control, fsr, is considered a poor measure. Whilst it controls the total floor space in relation to site size, it does not directly control the bulk or scale of buildings by itself. The size of the FSR itself does not determine impacts on neighbours nor internal amenity of a building.
 FSR controls only achieve positive planning outcomes in partnership with other built form controls such as building height envelope, building alignments, setbacks, privacy distances, roof forms or landscaped areas. Overall FSR is a very coarse control of building bulk in proportion to lot size. It is particularly problematic when dealing with small scale development and minor differences in a FSR control, such as in the Leichhardt LGA where FSR controls vary from only 0.5:1 to 0.7:1. FSR works better on larger sites and is more relevant where precincts have a much larger range in building scale, such as CBDs such as the City of Sydney, North Sydney and Chatswood."* Leichhardt Council – Floor Space Ratio Review – Attachment 2 – <https://www.innerwest.nsw.gov.au/ArticleDocuments/2007/Attachment%20-%20-%20FSR%20Review%20-%20Background%20Report.pdf.aspx>
- d) The control produces step change permissible GFA whereby a site of 150sqm is permitted a higher GFA than the subject site (166.27sqm). This reinforces the inconsistencies of the FSR control.
- e) Although the development standard is still applied and generally adhered to in development applications, it can be seen from the

LEP/DCP COMPLIANCE

30 CATHERINE ST LEICHHARDT 2040
[A]P - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

- recent approved 4.6 variations that standard is applied with flexibility.
As such, strict compliance with the numerical standard is deemed unnecessary and unreasonable.
- f) Recent relevant variations to clause 4.4 FSR in the Inner West LGA are listed in the following tables.

LEP/DCP COMPLIANCE
 30 CATHERINE ST LEICHHARDT 2040
 (A'AP' - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

4.6 Var - FSR - R1 zoning				
DA	Postcode	Percentage Variation	DA determined	
DA/2020/0291	2040	9.13%	01/06/2020	
DA/2020/0299	2040	8.48%	25/06/2020	
DA201600674.01	2204	38%	11/02/2020	
DA201900425	2050	9.8%	11/03/2020	
DA201900449	2049	4.8%	12/03/2020	
D/2019/242	2041	27.7%	16/03/2020	
D/2019/287	2040	106.29%	12/03/2020	
D2019/360	2040	70.48%	16/03/2020	
M/2019/168	2038	8.78%	12/03/2020	
D/2019/417	2041	19.16	11/02/2020	
010219000196.1	2130	5.3%	04/03/2020	
D/2019/134	2041	11.47	08/10/2019	
D/2019/304	2039	2.53%		
D/2019/8	2038	9.78%	04/09/2019	
D/2019/178	2038	6.41%		
D/2019/188	2038	9.5%		
D/2019/196	2040	112.12%	08/10/2019	
D/2019/225	2038	6.23%		
D/2019/230	2041	2.82%		
D/2019/288	2040	39.78% -		
		75.9SQM		
D/2019/335	2041	4.03%		
D/2019/366	2041	1.94%		
D/2019/407	2041	6.60	6/12/2019	
D/2019/453	2041	7.45%		
DA201900218	2042	8.8%	10/10/2019	

4.6 Var - FSR - R1 zoning				
DA	Postcode	Percentage Variation	DA determined	
DA/2020/0549	2040	7.37%	23/02/2021	
DA/2020/0731	2041	9.96%	04/03/2021	
DA/2020/0774	2042	19%	19/01/2021	
DA/2020/0901	2040	3.76%	27/11/2020	
DA/2020/0667	2040	4.86%	04/12/2020	
DA/2020/0632	2040	38.4%	27/10/2020	
MOD/2020/0255	2038	7.91%	28/10/2020	
DA/2020/0488	2040	4.59%	29/10/2020	
DA/2020/0486	2038	22.6%	08/12/2020	
DA/2020/0448	2038	9.4%	26/11/2020	
DA/2020/0147	2041	109.1%	13/10/2020	
D/2020/4	2048	28.04%	13/10/2020	
MOD/2020/0080	2038		17/11/2020	
DA/2020/0202	2041		19/10/2020	
DA/2020/0163	2038		13/10/2020	
DA/2020/0136	2038		08/12/2020	
D/2019/477	2041		13/10/2020	
DA/2020/0164	2040	7.8%	03/08/2020	
DA/2020/0674	2038	7.35%	29/09/2020	
DA/2020/0543	2041	7.34%	25/09/2020	
DA/2020/0235	2048	20.7	22/09/2020	
DA/2020/0462	2038	6.61	25/09/2020	
DA/2020/0470	2040	6.37%	10/08/2020	
DA/2020/0471	2040	9.61%	28/08/2020	
D/2018/686	2038	137.07%	21/04/2020	
D/2019/506	2038	5.68%	15/04/2020	
D/2019/508	2041	1.59%	25/05/2020	
D/2019/530	2040	9.85%	01/06/2020	
0102019000176.1	2130	17.8%	12/05/2020	

LEP/IDCP COMPLIANCE
30 CATHERINE ST LEICHHARDT 2040
[A] [A] - ANDREW IRELAND - Architect (nsw) 7535 - 0411 661 011

Test 5:

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Does Not Apply.

8. Does non-compliance with the development standard raise any matter of significance for State or regional environmental planning?

No

9. Are there sufficient environmental planning grounds to justify contravening the development standard?

Environmental Planning Grounds "refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."

(Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [23].)

Environmental Planning and Assessment Act 1979 No 203

Subject Matter of the Act:

"An Act to institute a system of environmental planning and assessment for the State of New South Wales."

Relevant purpose and scope of the Act:

To provide a legal framework to plan and control development.

control, in relation to development or any other act, matter or thing, means—

- (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions, or
- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions.

1.3 Meaning of "development"

(1) For the purposes of this Act, development is any of the following—

- (a) the use of land,
 - (b) the subdivision of land,
 - (c) the erection of a building,
 - (d) the carrying out of a work,
 - (e) the demolition of a building or work,
 - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally, for the purposes of this Act or only for the purposes of specified provisions of this Act).

(3) For the purposes of this Act, the carrying out of development is the doing of the acts, matters or things referred to in subsection (1).

Note—

There are the following categories of development under this Act—

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- (a) exempt development (development that is exempt from the assessment and consent or approval requirements of this Act);
- (b) development requiring development consent under Part 4, including the following—
 - (i) complying development (development that complies with pre-determined development standards and requires consent in the form of a complying development certificate by a consent authority or registered certifier);
 - (ii) development that requires consent by a council or other public authority specified as the consent authority (including by a local planning panel or delegated council staff on behalf of a council);
 - (iii) regionally significant development (development that requires consent by a Sydney district or regional planning panel);
 - (iv) State significant development (development that requires consent by the Independent Planning Commission or the Minister);
 - (v) designated development (development that also requires approval, that requires an environmental impact statement for an application for consent);
 - (vi) integrated development (development that requires approval under other legislation that are integrated under general terms of approval);
 - (c) development that is an activity requiring environmental assessment under Division 5.1 before it is carried out by a public authority or before a public authority gives approval for the carrying out of the activity;
 - (d) State significant infrastructure (including critical State significant infrastructure) requiring approval under Division 5.2 by the Minister

The proposal is development which requires consent by a public consent authority.

1.3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

The proposed alterations and additions update a heavily modified Victorian terrace dwelling to include living arrangements and services (kitchen and bathrooms) suitable for modern living, comparable to adjoining and surrounding development and to meet the expectations of the users and broader community. The proposal improves the existing housing stock to meet the expected housing standards.

The proposal directly relates to the social and economic welfare of the owners with direct positive impact on the community and future owners.

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;

The proposed alterations and additions include envelope upgrades to increase the energy efficiency of the existing dwelling and ensure that the built form is resilient and enduring.

The proposal includes the restoration and reuse of existing resources with associated environmental benefit in waste reduction. The proposal maintains the historical façade and integration with the adjoining terraces and streetscape emphasizing cultural heritage.

- (c) to promote the orderly and economic use and development of land;

The proposed alterations and additions are considered to be reasonably expected and consistent with the existing historical pattern of development, approvals and subdivision.

In being reasonably expected and consistent, the proposal is considered to be an orderly and economic use and development of the land.

- (d) to promote the delivery and maintenance of affordable housing;

The proposal reuses and updates the existing in an affordable manner allowing the dwelling to affordably and comfortably accommodate additional occupants.

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;

N/A – site and proposal does not affect native animals and plants, ecological communities and their habitats

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage);

The site and surrounding development is not part of a HCA. The original dwelling represents a Victorian terrace, being 1 of 3 in the set.

The proposal includes new elements and reconstruction of elements consistent with the late Victorian subdivision, construction techniques,

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materials and style contributing to the streetscape interpretation and ongoing inhabitation and engagement of built and cultural heritage. The proposal follows the recent development of nearby and adjoining lots and creates a logical and repeatable pattern which can be repeated on the remaining terraces while maintaining the Victorian period facades and the established desired future character.

(g) to promote good design and amenity of the built environment.

The proposed alterations and additions are well designed and provide good amenity consistent with the existing pattern of development and subdivision without unreasonable impact on adjoining properties or streetscape

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

Compliance will require BCA/NCC upgrades as part of the works to protect the health and safety of the occupants.

The alterations and additions are proposed to improve the functionality and construction of the dwellings.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

Not Relevant

(j) to provide increased opportunity for community participation in environmental planning and assessment

Not Relevant

The variation in FSR:

- a) Achieves the Objectives of the Zone;
- b) Achieves the Objectives of the Standard;
- c) Addresses site specific constraints;
- d) Maintains and reinforces the predominant existing and desired future streetscape pattern;
- e) Provides minor variation with substantive functional return and little material impact on amenity of adjoining developments;
- f) Is a minor variation comparable to recent approved variations of the development standard within the LGA;
- g) Is consistent with bulk, scale, form and pattern of development of existing and approved future works in the streetscape;
- h) Provides most consistent built form with the least impact compared to explored alternatives including attic development over existing house and new attic development over the garage scale and built form of existing and approved pattern;
- i) Promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.
- j) Is in the public interest as improved benefit allows continuity of occupation, providing stable communities, opportunities for families, neighbourhood development and bonding.
- k) Promotes environmentally efficient renovation and investment in existing building stock and suburbs to meet modern expectations and densities in lieu of greenfields development, resulting in lower carbon footprint, reduced greenhouse emissions and less environmental impact.

In relation to the FSR development standard:

- a) Strict compliance would not result in discernible benefits of amenity to owners, neighbours, public or surrounding area.

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- b) It is common practice to distinguish the application of fsr standards on smaller sites, where a minor difference in floor area produces a marked change to the ratio.
 - c) The particular site circumstances mean that the building that results from the proposed fsr contravention has no material implications for any sensitive land.
 - d) The fsr control does not reasonably relate to the height control. A building to the maximum height would require an exceptionally low site coverage. This is problematic for small sites. It would produce a building form that is contrary to that envisaged by the dcp, which has an emphasis on building to the streetscape and side boundaries.
 - e) The FSR development standard restricts the reasonable redevelopment of existing dwellings to carry out modest additions and alterations such as an additional bedroom or increased living area. This has been recognised historically by state and local government and is reflected in the high number of DA's determined relying on Clause 4.6/SEPP1.
 - f) Former Leichhardt council identified the primary motivation for intentionally low FSR values:
"A benefit of low FSR controls are that they provide a strong negotiating tool with developers to ensure the suite of DCP controls is adhered to."
 Leichhardt Council – Floor Space Ratio Review – Attachment 2 – <https://www.imnervest.nsw.gov.au/ArticleDocuments/2007/Attachment%20-%20-%20FSR%20Review%20-%20Background%20Report.pdf.aspx>
- Despite the proposed contravention of the control, the proposal adheres to and complies with the suite of DCP controls, thus addressing the stated benefit of the control.
- g) **"What are the Weaknesses of FSR?**
As a density and development control, fsr is considered a poor measure. Whilst it controls the total floor space in relation to site size, it does not directly control the bulk or scale of buildings by itself. The size of the FSR itself does not determine impacts on neighbours nor internal amenity of a building. FSR controls only achieve positive planning outcomes in partnership with other built form controls such as building height envelope, building alignments, setbacks, privacy distances, roof forms or landscaped areas. Overall FSR is a very coarse control of building bulk in proportion to lot size. It is particularly problematic when dealing with small scale development and minor differences in a FSR control, such as in the Leichhardt LGA where FSR controls vary from only 0.5:1 to 0.7:1. FSR works better on larger sites and is more relevant where precincts have a much larger range in building scale, such as CBDs such as the City of Sydney, North Sydney and Chatswood."
 Leichhardt Council – Floor Space Ratio Review – Attachment 2 – <https://www.imnervest.nsw.gov.au/ArticleDocuments/2007/Attachment%20-%20-%20FSR%20Review%20-%20Background%20Report.pdf.aspx>
 - h) The control produces step change permissible GFA whereby a site of 150sqm is permitted a higher GFA than the subject site (166.27sqm). This reinforces the inconsistencies of the FSR control.
- It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

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10. Is the proposed development, despite the contravention to the development standard, in the public interest?

- a) The LEC tests and environmental planning grounds above, establish that, despite the contravention of the development standard, the proposed development is in the public interest.
- b) Public Interest will not be undermined or affected by contravention or variation of the standard.
- c) The proposed development promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.
- d) The reuse and renovation of the existing building fabric to meet modern housing requirements within an established community and infrastructure results in a reduced environmental cost (carbon footprint) and should be promoted for the public benefit to climate change.

e)

11. Is there any other relevant information to be considered in order to justify varying the development standard?

Significant negotiation with council and modification has occurred from the original scheme submitted including,

- Removal of a first floor bedroom to reduce overshadowing;
- Increased rear setback of first floor to reduce overshadowing;
- Removal of rear awning to reduce overshadowing;
- Modification of carport roof to simple skillion to reduce overshadowing
- Modification of first floor roof to reduce overshadowing.

The neighbours to the south (26 & 28) represent underdeveloped terraces with unapproved building works within an area undergoing change.

The proposal is consistent with the extents of the desired future, pattern of development and building location established by recent approvals and building works at 24, 32 and 42 Catherine St.

12. Is the exception request well founded?

As addressed above, the exception request is considered to be well founded.

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Clause 4.6 request – Site Coverage

Request for exception under clause 4.6 of Inner West Local Environmental Plan 2022 to clause 4.3C (3(b)) of Inner West Local Environmental Plan 2022

Address: 30 Catherine Street, Leichhardt

Lot/DP: 1/DP784473

Proposal: Alterations and additions to existing terrace.

Control: Site Coverage

Clause 4.3C(3(b)) of IWLEP 2022:

The site coverage does not exceed 60% of the site area.

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

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

A difference of interpretation has arisen based around a multifunctional covered pergola/carport and inclusion in the site coverage calculation. The covered pergola is open on its sides (unenclosed) has a roller door and existing vehicle crossover to a rear lane and is open to the private outdoor space (backyard). The covered pergola is to be multifunctional acting as an adjunct to the private open space. In residential dwellings covered outdoor space connected to outdoor living areas is prized and flexible space that allows for crafts, hobbies, covered clothes drying, bikes, motorbikes, cars, services, storage, spas, bars, pets, parties etc. The actual space is essentially an unenclosed eaves as there is no building line enclosure. It was agreed that paved areas, eaves and covered pergolas are not included in the calculation of Site Cover.

Council is arguing that covered parking is required to be counted as site cover as a car may be parked there continuously. We make the point that although a car may be parked there, equally a table may be setup, pets may be housed, bikes may be stored. The inclusion as site cover is not defined by use in the IWLEP, it is defined by construction and enclosure. If potential for a car to be parked defined site cover, then driveways and open parking should be included as site cover (including lawns accessible).

The proposed covered outdoor structure can be defined as most similar to an unenclosed pergola. The exposed underside/ceiling of the pergola forms a continuous eave. By this interpretation of the structure, it should be excluded from the site cover calculation as per the IWLEP definition.

The existing form appears to be the result of historically unregulated renovations to a 2 storey Victorian terrace. The adjoining terraces to the South (26 & 28) show similar compromised additions to the rear and are in need of similar renovation. Both 26 and 28 have substantial informal outbuildings (enclosed garages) which extend past the carport proposed by 30 Catherine st and include enclosed living spaces. The property to the North (32) includes a recent renovation to the rear and garage.

As interpretations of the LEC definitions still vary, we have included the following site cover calculations:

- A. Site cover not including the unenclosed pergola (carport);
- B. Site cover including 18 sqm of parking under the unenclosed pergola (1 car)
- C. Site cover including the roofed area of the unenclosed pergola

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Extent of variation:

	Site Cover Sqm	Site Cover %
Lot size =		
164.2 sqm		
Maximum =	98.52	60
Existing =	84.5	51.5
		COMPLIES
Proposed A=	87.2	53.1
Variation A=	-11.3	-6.9
		COMPLIES
Proposed B=	105.2	64.1
Variation B=	+6.7	+4.1
Proposed C=	120.1	73.1
Variation C=	+21.52	+13.1

As can be seen from above, the interpretation of exclusions from the Site Cover calculation determines whether this is an issue for the LPP.

The additional site cover provides a prized and flexible space which acts as an adjunct to the private open space providing multi-functional living and service areas for a range of domestic activities including crafts, hobbies, covered clothes drying, bikes, motorbikes, cars, services, storage, spas, bars, pets, parties etc. The proposed space and form is consistent with adjoining development.

Depending on interpretation of the multifunctional covered outdoor space, the proposal either:

- A - complies with the control (covered pergola is excluded from site cover)
- B - exceeds the control by 4.1% (18 sqm allowance for carparking included in site cover)
- C - exceeds the control by 13.1% (entire covered pergola - eaves - included in site cover calculation)

13. Environmental Planning Instrument that applies to the land?

Inner West Local Environmental Plan 2022,
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2022-0457>

14. Zoning and Zone Objectives of the land?

Zone R1 General Residential
1 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.

15. Identify the Development Standard to which this Clause 4.6 Variation applies?

Inner West Local Environmental Plan 2022 (IWLEP2022), 4.3C(3(b)) – Site Coverage

Specifies requirements and seeks to control the percentage of the area of a site which a building may occupy.

EP&A Act 1979 – cl 1.4 Definitions
development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

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

16. What are the objectives of the development standard?

4.3C Landscaped areas for residential accommodation in Zone R1

- (1) The objectives of this clause are as follows—
- (a) to provide landscaped areas 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 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.

17. What is the numeric value of the development standard in the environmental planning instrument?

4.3C Landscaped areas for residential accommodation in Zone R1

- (3) Development consent must not be granted to development to which this clause applies unless—
- (b) the site coverage does not exceed 6% of the site area.

18. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?

As our interpretations of the LEC definitions still vary, we have included the following site cover calculations:

- A. Site cover not including the unenclosed pergola (carport);
- B. Site cover including 1.8 sqm of parking under the unenclosed pergola (1 car)
- C. Site cover including the roofed area of the unenclosed pergola

Extent of variation:

Lot size = 164.2 sqm	Sqm	%
Maximum =	98.52	60
Existing =	84.5	51.5
Proposed A=	87.2	53.1
Variation A=	-11.3	-6.9
Proposed B=	105.2	64.1
Variation B=	+6.7	+4.1
Proposed C=	120.1	73.1
Variation C=	+21.52	+13.1

As can be seen from above, the interpretation of exclusions from the Site Cover calculation determines whether this is an issue for the LPP.

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19. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wahbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests

requirements. The proposal provides for a compliant landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location consistent with the predominant pattern. The proposal protects, enhances and improves the amenity of existing and future residents and the neighbourhood. The proposal maintains the existing Victorian terrace form at the front streetscape and provides a sympathetic and considered addition to the rear. The rear building form is consistent with the existing pattern of development, recent approvals and applications. The objective is met notwithstanding the numerical non-compliance

Test 1:

The objectives of the zone and relevant standard are achieved notwithstanding non-compliance with the standard.

The proposal achieves the principal and relevant zone objectives.

**Zone R1 General Residential
 1 Objectives of zone**

Standard Objectives

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

- (a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents. The proposal provides landscaped areas consistent with LEP and DCP requirements, improves existing landscaping and includes provision for a new tree. The proposal provides for a landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location and site density consistent with the predominant pattern and adjoining lots. The proposal includes multifunctional covered open space accessed directly from the outdoor landscaped areas which provides further space for use and enjoyment of the residents. The proposal increases the amount of soft landscaping compared to existing. The objective is met notwithstanding the numerical non-compliance.
- (b) to maintain and encourage a landscaped corridor between adjoining properties. The Site Coverage control does not reasonably relate to the existing width of the lot (4.15m). The control anticipates side boundary setbacks incorporated into the landscaped area. This is problematic for narrow sites built to the boundary. It would produce a building form that is contrary to that envisaged by the dep, which has an emphasis on building to the streetscape, period development pattern and side boundaries.

- To provide for the housing needs of the community. The proposal specifically looks to improve the existing housing and to bring it up to a standard expected by the owners and the community. The proposed covered pergola/carport space allows multifunctional covered outdoor space consistent in size and function with adjoining dwellings.
- To provide for a variety of housing types and densities. The proposal specifically looks to provide adequate housing, storage and private open spaces to meet the owners' requirements within an existing housing type and density. The proposal does not alter type or density and is considered consistent with existing and adjoining character.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents. The proposed covered pergola/carport space allows multifunctional covered outdoor space consistent with adjoining dwellings. This flexible covered outdoor space provides facilities to meet the day to day needs of the occupants such as covered clothes drying, carparking, storage, and sheltered/shaded entertaining. The space is directly accessible from the living areas and private open space.
- To provide residential development that maintains the character of built and natural features in the surrounding area. The proposal maintains, is consistent with and reinforces existing character, style, orientation, pattern of development, streetscapes and landscape area. The proposal provides landscaped areas consistent with LEP and DCP

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The proposal provides landscaped areas consistent with LEP and DCP requirements, improves existing landscaping and includes provision for a new tree. The existing dwelling is a terrace and does not have landscaped corridors between the adjoining properties. The subdivision pattern is a series of long narrow lots with small or zero side boundary setbacks. The shared landscape corridor is aligned in the backyards, bound by the predominant main rear building alignment and the predominant line of outbuildings which access the rear lane. The proposal increases the amount of soft landscaping compared to existing. The proposal continues the predominant established and desired future rear landscape corridor alignment.

(c) to ensure that development promotes the desired character of the neighbourhood. The proposal maintains the existing Victorian terrace form at the front streetscape and provides a sympathetic and considered addition to the rear consistent with the recent approvals and desired future character. The proposed addition is concealed from the primary streetscape by the existing Victorian terrace and the approved development on 32 Catherine st. The rear lane bulk, scale and setbacks are consistent with adjoining terrace development and the terrace form. The bulk and scale of the proposal is consistent with the existing pattern of development and the desired future character. The proposed envelope and density is consistent with the existing development pattern and recent approvals. The objective is met notwithstanding the numerical non-compliance

(d) to encourage ecologically sustainable development. The proposal complies with BASIX and is designed to benefit from passive lighting and ventilation. The proposal includes additional tree canopy and an improvement on existing site permeability and landscaping. The objective is met notwithstanding the numerical non-compliance.

(e) to control site density. The proposal does not affect density and proposes alterations and additions to the existing single dwelling on the lot. The proposal provides landscaped areas consistent with LEP and DCP requirements, improves existing landscaping and includes provision for a new tree. The proposal provides for a landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and

location and site density consistent with the predominant pattern and adjoining lots. The objective is met notwithstanding the numerical non-compliance.

(f) to provide for landscaped areas and private open space. The proposal increases the amount of soft landscaping compared to existing. The proposal provides landscaped areas consistent with LEP and DCP requirements, improves existing landscaping and includes provision for a new tree. The proposal provides for a landscaped rear yard, off the internal living areas, for the use and enjoyment of the future residents with a size and location consistent with the predominant pattern. The proposed multiuse covered pergola provides further flexible protected private open space.

The control anticipates side boundary setbacks incorporated into the landscaped area. This is problematic for narrow sites built to the boundary. It would produce a building form that is contrary to that envisaged by the dep, which has an emphasis on building to the streetscape, period development pattern and side boundaries. The objective is met notwithstanding the numerical non-compliance.

The proposal achieves the principal and relevant standard objectives.

Test 2:

The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.

Does Not Apply

Test 3:

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Does Not Apply

Test 4:

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

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It is noted that several similar recent 4.6 variations in the LGA have been approved including on neighbouring lots.

- a) Although the development standard is still applied and generally adhered to in development applications, it can be seen from the recent approved 4.6 variations that standard is applied with flexibility. As such, strict compliance with the numerical standard is deemed unnecessary and unreasonable.
- b) Council approvals of similar 4.6 variations on recent local approvals establish that higher densities are compatible with the desired future character.
- c) Recent relevant variations to clause 4.4 FSR in the Inner West LGA are listed in the following tables.

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Test 5:

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The site is a historical narrow (4.115 m wide) terrace small lot subdivision with zero side boundary setback.
 The development standard is targeted towards larger lots that allow for single homes on larger blocks with side setbacks. In the case of a larger block, the side setbacks (paved, under eaves or otherwise) would not count as site coverage. If the site was wide enough to allow side setbacks, then it would easily comply with the standard.
 In this instance, the narrow lot combined with a proposed building alignment consistent with the desired future character and with compliant landscaped area does not comply with the site cover control.
 The Site Cover control should be modified to address the efficiency of building to side boundaries and should be applied in its current form to existing small/narrow terrace lots.

20. Does non-compliance with the development standard raise any matter of significance for State or regional environmental planning?
 No

21. Are there sufficient environmental planning grounds to justify contravening the development standard?

Environmental Planning Grounds "refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."

(Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [23].)

Environmental Planning and Assessment Act 1979 No 203

Subject Matter of the Act:

"An Act to institute a system of environmental planning and assessment for the State of New South Wales."

Relevant purpose and scope of the Act:

To provide a legal framework to plan and control development.

control, in relation to development or any other act, matter or thing, means—

- (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions, or
- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions.

1.3 Meaning of "development"

(1) For the purposes of this Act, development is any of the following—

- (a) the use of land,
 - (b) the subdivision of land,
 - (c) the erection of a building,
 - (d) the carrying out of a work,
 - (e) the demolition of a building or work,
 - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally, for the purposes of this Act or only, for the purposes of specified provisions of this Act).

(3) For the purposes of this Act, the carrying out of development is the doing of the acts, matters or things referred to in subsection (1).

Not—

There are the following categories of development under this Act—

- (a) exempt development (development that is exempt from the assessment and consent or approval requirements of this Act);
- (b) development requiring development consent under Part 4, including the following—
- (i) complying development (development that complies with pre-determined development standards and requires consent in the form of a complying development certificate by a consent authority or registered certifier);
- (ii) development that requires consent by a council or other public authority specified as the consent authority (including by a local planning panel or delegated council staff on behalf of a council);
- (iii) regionally significant development (development that requires consent by a Sydney district or regional planning panel);
- (iv) State significant development (development that requires consent by the Independent Planning Commission or the Minister);
- (v) designated development (development that requires consent, that requires an environmental impact statement for an application for consent);
- (vi) integrated development (development that also requires approvals under other legislation that are integrated under general terms of approval);
- (c) development that is an activity requiring environmental assessment under Division 5.1 before it is carried out by a public authority or before a public authority gives approval for the carrying out of the activity;
- (d) State significant infrastructure (including critical State significant infrastructure) requiring approval under Division 5.2 by the Minister

The proposal is development which requires consent by a public consent authority.

1.3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

The proposed alterations and additions update a heavily modified Victorian terrace dwelling to include living arrangements and services (kitchen and bathrooms) suitable for modern living, comparable to adjoining and surrounding development and to meet the expectations of the users and broader community.

The proposal improves the existing housing stock to meet the expected housing standards.

The proposal directly relates to the social and economic welfare of the owners with direct positive impact on the community and future owners.

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;

The proposed alterations and additions include envelope upgrades to increase the energy efficiency of the existing dwelling and ensure that the built form is resilient and enduring.

The proposal includes the restoration and reuse of existing resources with associated environmental benefit in waste reduction. The proposal maintains the historical façade and integration with the adjoining terraces and streetscape emphasizing cultural heritage.

- (c) to promote the orderly and economic use and development of land;

The proposed alterations and additions are considered to be reasonably expected and consistent with the existing historical pattern of development, approvals and subdivision.

The non compliance (if any) is driven by the economic use of the existing small, narrow (4.15m) lot.

In being reasonably expected and consistent with the existing development, recent approvals and desired future character, the proposal is considered to be an orderly and economic use and development of the land.

- (d) to promote the delivery and maintenance of affordable housing;

The proposal reuses and updates the existing in an affordable manner allowing the dwelling to affordably and comfortably accommodate additional occupants.

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;

N/A – site and proposal does not affect native animals and plants, ecological communities and their habitats

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage);

The site and surrounding development is not part of a HCA.

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The original dwelling represents a Victorian terrace, being 1 of 3 in the set.

The proposal includes new elements and reconstruction of elements consistent with the late Victorian subdivision, construction techniques, materials and style contributing to the streetscape interpretation and ongoing inhabitation and engagement of built and cultural heritage. The proposal follows the recent development of nearby and adjoining lots and creates a logical and repeatable pattern which can be repeated on the remaining terraces while maintaining the Victorian period facades and the established desired future character.

(g) to promote good design and amenity of the built environment.

The proposed alterations and additions are well designed and provide good amenity consistent within the existing pattern of development and subdivision without unreasonable impact on adjoining properties or streetscape.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

Compliance will require BCA/NCC upgrades as part of the works to protect the health and safety of the occupants.

The alterations and additions are proposed to improve the functionality and construction of the dwellings.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

Not Relevant

(j) to provide increased opportunity for community participation in environmental planning and assessment

Not Relevant

The proposed variation in Site cover:

- a) Is dependent on an interpretation of the multiuse covered pergola adjoining the private open space as purely for carparking;
- b) Achieves the Objectives of the Zone;
- c) Achieves the Objectives of the Standard;
- d) Addresses site specific constraints;
- e) Maintains and reinforces the predominant existing and desired future streetscape pattern;
- f) Provides minor variation with substantive functional return and little material impact on amenity of adjoining developments;
- g) Is a minor variation comparable to recent approved variations of the development standard within the LGA;
- h) Is consistent with bulk, scale, form and pattern of development of existing and approved future works in the streetscape;
- i) Provides most consistent built form with the least impact compared to explored alternatives including attic development over existing house and new attic development over the garage scale and built form of existing and approved pattern;
- j) Promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.
- k) Is in the public interest as improved benefit allows continuity of occupation, providing stable communities, opportunities for families, neighbourhood development and bonding.
- l) Promotes environmentally efficient renovation and investment in existing building stock and suburbs to meet modern expectations and densities in lieu of greenfields development, resulting in lower carbon footprint, reduced greenhouse emissions and less environmental impact.

In relation to the Site Cover development standard:

- i) Strict compliance would not result in discernible benefits of amenity to owners, neighbours, public or surrounding area.
- j) It is common practice to distinguish the application of Site Coverage standards on smaller/narrow sites, where a minor difference in site coverage produces a marked change to the ratio.
- k) The particular site circumstances mean that the building that results from the proposed Site Coverage contravention has no material implications for any sensitive land.
- l) The Site Coverage control does not reasonably relate to the existing width of the lot (4.15m). The control anticipates side boundary setbacks incorporated into the landscaped area. This is problematic for narrow sites built to the boundary. It would produce a building form that is contrary to that envisaged by the dcp, which has an emphasis on building to the streetscape, period development pattern and side boundaries.
- m) The Site Coverage development standard restricts the reasonable redevelopment of existing dwellings to carry out modest additions and alterations consistent with adjoining lots. This has been recognised historically by state and local government and is reflected in the high number of DA's determined relying on Clause 4.6/SEPP1.

Despite the proposed contravention of the control, the proposal adheres to and complies with the suite of DCP controls, thus addressing the stated benefit of the control.

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

22. Is the proposed development, despite the contravention to the development standard, in the public interest?

- a) The LEC tests and environmental planning grounds above, establish that, despite the contravention of the development standard, the proposed development is in the public interest.
- b) Public interest will not be undermined or affected by contravention or variation of the standard.
- c) The proposed development promotes compact, orderly, economic and efficient land use and densities within and consistent with an existing established urban pattern.
- d) The reuse and renovation of the existing building fabric to meet modern housing requirements within an established community and infrastructure results in a reduced environmental cost (carbon footprint) and should be promoted for the public benefit to climate change.

23. Is there any other relevant information to be considered in order to justify varying the development standard?

Significant negotiation with council and modification has occurred from the original scheme submitted including:

- Removal of a first floor bedroom to reduce overshadowing;
- Increased rear setback of first floor to reduce overshadowing;
- Removal of rear awning to reduce overshadowing;
- Modification of carport roof to simple skillion to reduce overshadowing
- Modification of first floor roof to reduce overshadowing.

The variation (if any) results from the interpretation of exclusions in the definition of Site Coverage. The proposal includes a multifunctional covered area that is directly linked to the private open space and the living area of the house. This provides a variety of protected outdoor living opportunities and is not restricted to a carport.

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The neighbours to the south (26 & 28) represent underdeveloped terraces with unapproved building works within an area undergoing change.

The proposal is consistent with the extents of the desired future, pattern of development and building location established by recent approvals and building works at 24, 32 and 42 Catherine St.

24. Is the exception request well founded?

As addressed above, the exception request is considered to be well founded.