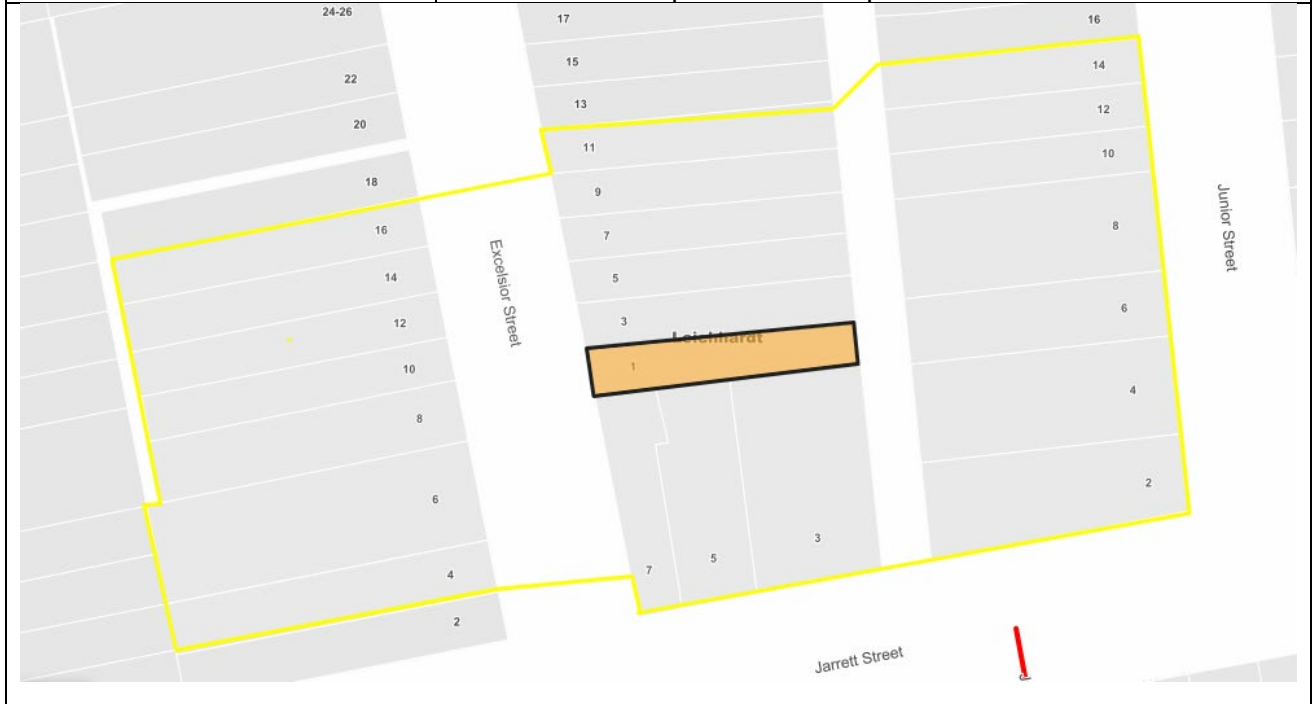






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0439
Address	1 Excelsior Street LEICHHARDT NSW 2040
Proposal	Ground and first floor alterations and additions to existing semi-detached dwelling
Date of Lodgement	08 June 2023
Applicant	Mr Mark T Van Der Wielen
Owner	Mr Mark T Van Der Wielen Ms Hannah L Fell
Number of Submissions	Nil
Value of works	\$250,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% (FSR)
Main Issues	Departure from Floor Space Ratio development standard
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



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 existing semi-detached dwelling at 1 Excelsior Street Leichhardt.

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

The main issues that have arisen from the application include:

- Departure with Floor Space Ratio development standard pursuant to *the Inner West Local Environmental Plan 2022*
- Departure with Site Coverage development standard pursuant to the *Inner West Local Environmental Plan 2022*
- Shadow Impacts

The departure from the Floor Space Ratio (FSR) and Site Coverage (SC) development standards has been assessed to be acceptable as the proposal meets all heads of consideration under the provisions of Section 4.6 of the *Inner West Local Environmental Plan 2022* including the relevant zone and development standard objectives.

The proposal generally complies with the provisions of IWLEP 2022 and LDCP 2013.

With consideration of the above and other matters discussed in this assessment report, the application is recommended for approval.

2. Proposal

The proposal seeks to carry out ground and first floor additions, new rear deck area and associated landscape works. The works are as follows:

Ground Floor

- Demolition of existing staircase, internal and external walls at the rear of the existing dwelling,
- Extending the rear ground floor addition to the southern side boundary and providing a greater rear setback,
- New rear deck and;
- Landscape works to the front and rear of the site.

First Floor

- Two (2) new bedrooms,
- New bathroom,
- A new link connecting the rear first floor addition to the existing rear roof / attic space of the main dwelling,
- New rear attic level skillion dormer.

Roof Level

- New skylight above the ground floor bathroom,
- New skylight above the first-floor level landing

3. Site Description

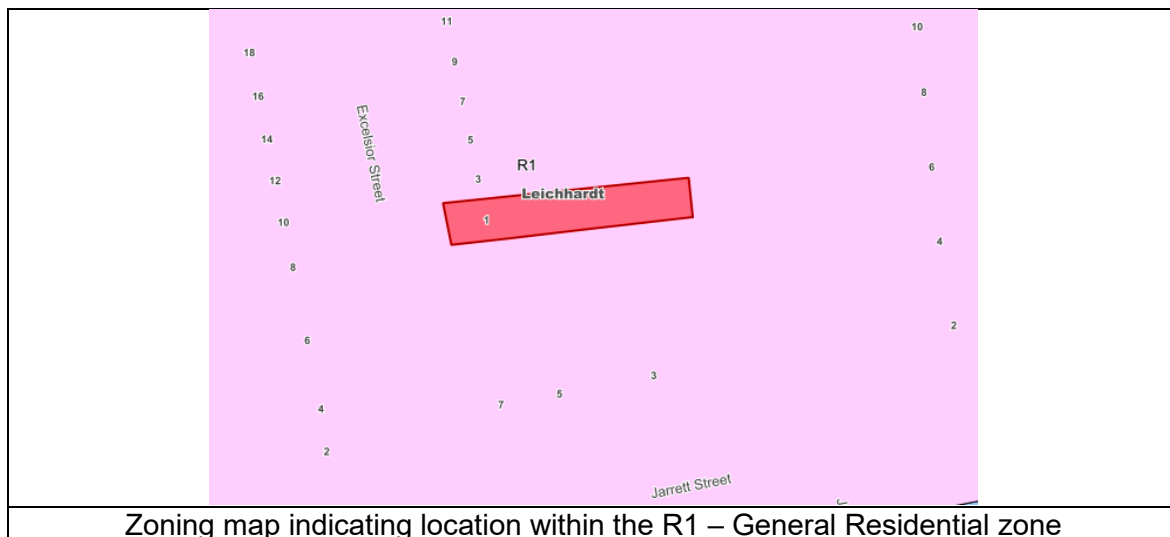
The subject site is located on the eastern side of Excelsior Street, and on the western side of an unnamed lane. The site consists of one (1) allotment and is rectangular in shape with a total area of 101.2sqm.

The site has a frontage to Excelsior Street of 4.331 metres and 3.924 metres to the rear unnamed lane. The site is not affected by any easements or right of way.

The site supports a two storey terrace dwelling house. The adjoining property to the north supports a single storey terrace dwelling house while the adjoining properties to the south support single storey dwelling houses.

The following tree is located within the vicinity.

- *Eucalyptus microcorys* (Tallow Wood) – on the adjoining property to the north at 3 Excelsior Street.



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

No recent development applications.

Surrounding properties

No similar or recent development applications.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
23 August 2023	Council sent an email to the Applicant advising that the proposal does not comply with the minimum required landscaped area as mentioned in the SEE and that a s4.6 Variation will be required.
6 September 2023	Applicant emailed Council with updated landscape plan and updated SEE which demonstrates compliance with the landscaped area development standard.
10 October 2023	Council sent an email to the Applicant requesting updated ground floor plan to reflect the updated landscape plan.
10 October 2023	Applicant emailed Council a copy of the updated ground floor plan.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EPA Act 1979)*.

5(a) Environmental Planning Instruments

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

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

- “it has considered whether the land is contaminated, and*
- 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*
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

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

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

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

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

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

Chapter 10 Sydney Harbour Catchment

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

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

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

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

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R1 -General Residential under the IWLEP 2022. The IWLEP 2022 defines the development as alterations and additions to a **semi-detached dwelling** which is permissible with consent in the zone.

Section 4 Principal Development Standards

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

Control	Proposed		Compliance
Section 4.3C (3)(a) Landscaped Area	Minimum	15% or 15.18sqm	Yes
	Proposed	15.01% or 15.19sqm	
Section 4.3C (3)(b) Site Coverage	Maximum	60% or 60.72sqm	No
	Proposed	71.34% or 72.2sqm	
	Variation	11.48sqm or 18.91%	
Section 4.4 Floor Space Ratio	Maximum	0.8:1 or 80.96sqm	No
	Proposed	1.01:1 or 102.3sqm	
	Variation	21.34sqm or 26.36%	

Section 4.6 Exceptions to Development Standards

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

- Section 4.3C(3)(b) – Site Coverage
- Section 4.4 – Floor space ratio

Section 4.3C(3)(b) – Site Coverage

The applicant seeks a variation to the Site Coverage development standard prescribed by Section 4.3C(3)(b) of the *IWLEP 2022* by 18.91% (11.48 sqm).

Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

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

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

- *Strict compliance of the development standard, by reducing the rear built form, would not change the bulk and scale of the streetscape as it will be generally screened by the front façade and roof form and adjoining properties.*
- *The proposal complies with the minimum 15% landscaped area development standard under Clause 4.3(C)(3)(a)(i) of the IWLEP2022.*
- *The proposal provides a compliant private open space area and has deep soil zone areas sufficient to support new plantings.*
- *The proposal includes an appropriate stormwater management system to control rainwater collected on the site.*

- *The proposed variation to the maximum site cover development standards does not hinder the proposal's ability to satisfy the objectives of the R1 General Residential zone.*
- *While it's not considered that Council has virtually abandoned or destroyed the development standards, it is acknowledged that Council has approved variations the development standard to a similar extent in reasonable circumstances such as this.*
- *The proposal will not hinder the development potential of surrounding properties.*

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

The objectives of the R1 General Residential zone are as follows:

- To provide for the housing needs of the community.*
- To provide for a variety of housing types and densities.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To provide residential development that maintains the character of built and natural features in the surrounding area.*

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

- The proposed development improves the amenity of the rear private open space and results in an overall development which provides for the housing needs of the occupants.
- The proposed addition will provide a variety of housing density.
- The proposed works are sited to the rear, retaining the garden setting as viewed from the streetscape and provides for a residential development that maintains the character of built and natural features in the surrounding area.

The objectives of the Site Coverage development standard are as follows:

- to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
- to maintain and encourage a landscaped corridor between adjoining properties,*
- to ensure that development promotes the desired character of the neighbourhood,*
- to encourage ecologically sustainable development,*
- to control site density,*
- to provide for landscaped areas and private open space.*

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 Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal will provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and Landscaped Areas;
- The proposal will improve the existing landscaped area of the subject site, resulting in compliance with the Private Open Space (POS) provision and POS controls, and hence, results in acceptable on-site amenity outcomes and provides a suitable balance between Landscaped Areas and built form;
- The footprint and scale of the development will be compatible with the pattern of development in the street and adjoining streets and the desired future character of the area;
- The breaches will not result in any undue adverse amenity impacts on adjoining 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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from site coverage development standard and it is recommended the Section 4.6 exception be granted.

Section 4.4 Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard by 26.36% or 21.34sqm, where it provides a FSR 1.01:1 or 102.3sqm.

As previously noted, Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

The objectives of the R1 General Residential Zone have been previously identified under *Section 4.3C(3)(b)* above.

The objectives of the Floor Space Area development standard 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.*

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

- *Strict compliance of the development standards would not change the bulk and scale of the streetscape as it will be generally screened by the front façade and roof form and adjoining properties.*
- *The proposal provides a compliant private open space area and has deep soil zone areas sufficient to support new plantings.*
- *The design includes initiatives, including a stepped and recessed southern boundary wall and raked ceiling, to minimise impacts to adjoining properties.*
- *The proposed variation to the maximum FSR development standard does not hinder the proposal's ability to satisfy the objectives of the R1 General Residential zone.*
- *While it's not considered that Council has virtually abandoned or destroyed the development standards, it is acknowledged that Council has approved variations to the development standard to a similar extent in reasonable circumstances such as this. Reference is made to 45 Junior Street (1.02:1 FSR) and 47 Junior Street (1.03:1 FSR) as examples.*
- *The proposal will not hinder the development potential of surrounding properties.*

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable 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 relevant objectives of the R1 zone and the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposed development will provide a contribution to the housing needs of the community;
- The proposed development will continue to provide and enhance the existing dwelling house;
- The proposed development is not inconsistent in scale, form, setbacks and character with the existing and surrounding properties, whilst respecting the surrounding streetscape;
- The development, as proposed and as conditioned, will not result in any undue adverse amenity impacts on adjoining 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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio and site coverage development standards and it is recommended the Section 4.6 exception be granted.

Section 6.3 – Stormwater Management

Subject to standard conditions, the proposal will not result in any significant runoff to adjoining properties or the environment.

Section 6.8 – Development in areas subject to aircraft noise

The site is located within the ANEF 20-25 contour, as such standard acoustic conditions are included in the recommendation which reference the Acoustic Report and require a report that demonstrates that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of this part of the LEP is considered acceptable.

5(c) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes, as conditioned – see discussion
C1.18 Laneways	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.1 Excelsior Estate Distinctive Neighbourhood C2.2.3.1(a) The Core Sub Area	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
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see discussion
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes, as conditioned
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

Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes, as conditioned
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.3 Alterations and Additions and C2.2.3.1 Excelsior Estate Distinctive Neighbourhood, C2.2.3.1(a) The Core Sub Area

The proposed alterations and additions to the existing dwelling meet the objectives and requirements of C1.3 and C2.2.3.4 as it is considered:

- a. The proposed rear additions will appear as a sympathetic addition to the existing dwelling when viewed from both Excelsior Street and the rear unnamed lane.
- b. The proposal complements the scale, form and materials of the streetscape including wall height and roof form.
- c. The proposal is sited to the rear of the existing dwelling and will not be readily visible from the public domain, thus retaining the streetscape presentation.
- d. The proposal is compatible with neighbourhood character, including prevailing site layout.
- e. The proposal protects existing residential amenity, including the retention of adequate private open space and ensuring adequate sunlight, natural ventilation and privacy to surrounding dwellings.
- f. The proposal will not obstruct any significant views.
- g. The proposal provides appropriate materials and finishes sympathetic to the streetscape, desired future neighbourhood character.

C1.14 Tree Management

The proposal does not seek to remove any trees on the subject site. However, the proposed works will be in proximity to trees located on the neighbouring properties to the south. It is considered that subject to standard tree protection and sensitive construction methods conditions being imposed as part of this recommendation the proposal will satisfy the objectives of this part.

C3.2 Site Layout and Building Design

Building Envelope

The proposed rear ground and first floor additions will be sited at the rear and will not alter or breach the building envelope of the existing dwelling.

Building Location Zone (BLZ)

The proposed rear ground floor building alignment will be reduced / further setback away from the rear eastern boundary when compared with the existing rear ground floor building alignment. In addition, the proposal does not alter the existing rear first floor BLZ. As a result, the proposal will comply with the controls under this Provision of the DCP.

Side Boundary Setback

The following is a compliance table assessed against the side setback control graph prescribed in Part C3.2 of the LDCP 2013 relating to the proposed rear ground and first floor additions:

Elevation	Wall height (m)	Required setback (m)	Proposed setback (m)	Complies
North – GF	No Change	N/A	N/A	N/A
South – GF	2.8 – 2.9	0.05	0 – 1.03	Yes (Pantry) & No
North – FF	5.8 – 6.4	1.7 - 2	Nil	No
South – FF	5 - 5.6	1.2 – 1.6	0 - 2	Yes (stairs) & No

As noted in the table above, the proposed rear ground floor addition will not comply with the side setback graph to the southern boundary, while the proposed first floor addition will not comply with the side boundary setback graph to both the northern and southern boundaries. No new works are proposed to the existing party wall on the northern elevation on the ground floor, the side setback is not applicable to this portion.

Pursuant to Clause C3.2 of the LDCP 2013, where a proposal seeks a variation to the Side Boundary Setbacks Graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP 2013 and complies with streetscape and desired future character controls.

Comment: The proposed rear ground and first floor addition is considered to be a satisfactory response to the Building Typology Statements. The proposal will be compatible with the existing and surrounding dwellings and the streetscape and will comply with desired future character controls of the LDCP 2013.

- The pattern of development is not adversely compromised.

Comment: The proposed rear first floor addition and works are sited at the rear where additions are generally permitted to be carried out in accordance with relevant streetscape controls and amenity controls, and will have wall heights and setbacks that will be compatible with the existing dwelling and that will not be out of character with adjoining and nearby development. This test is therefore deemed to be met.

- The bulk and scale of the development has been minimised and is acceptable.

Comment: The proposal provides a low skillion roof form which provides a wall height of 2.8m on the northern boundary which slopes down to provide a 2.2m wall height on the southern boundary to minimise the overall bulk and scale impacts. The rear first floor addition does not

extend further beyond the existing rear BLZ which ensures no new additional visual bulk and scale impacts are created when viewed from the Private Open Space of adjoining properties. As a result, this test is therefore deemed to be met.

- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.

Comment: For the reasons discussed and mentioned later in this Report, including under Parts C3.9 and C3.11 of the DCP, the proposal will result in minimal to no undue adverse solar access impacts and will comply with the relevant Controls under the visual privacy provision and will not result in any undue adverse view loss implications.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The proposed development will not result in any obstruction of any lightweight walls at adjoining properties, and hence, will not result in any maintenance issues for any neighbours.

In light of the above, and in consideration of the development's impact upon the streetscape and amenity impacts for adjoining properties, the proposal is considered to be satisfactory with respect to the provisions and objectives of Part C3.2 of the LDCP 2013.

C3.9 Solar Access

The subject site and its adjoining neighbouring properties to the north are all east west orientated with an east facing rear private open space and the adjoining properties to the south are all north south orientated with a north facing rear private open space. As such, the following controls are applicable.

Retaining solar access to neighbouring dwellings main living room glazing

- C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice.
- 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.

Retaining solar access to neighbouring dwellings private open space

- C17 Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice.
- 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 shadow diagrams submitted demonstrate that the proposal will comply with Control 13 as mentioned above as the north facing glazing at Nos. 5 and 7 Jarrett Street will receive the

minimum required 3 hours of sunlight to the north facing glazing from 9am to 3pm at mid-winter.

In addition, the proposal will not cast any new additional shadows onto the rear Private Open Space (POS) of Nos. 5 and 7 Jarrett Street, thus complying with Control 17 of this part. However, the proposal will result in additional overshadowing to the rear yard of No. 3 Jarrett Street from 9am to 3pm at mid-winter

Given that No. 3 Jarrett Street already does not receive the requisite solar access (3 hours to 50% of its rear yard), the proposed additional overshadowing impacts would be contrary to the provisions of Clause C3.9 of the LDCP 2013.

Assessing the impact of development on the solar access of neighbours:

In assessing the reasonableness of solar access impact to adjoining properties, and in particular, 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:

- 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: As previously noted and mentioned elsewhere in this report, the proposed rear first floor addition will be located to the rear of the subject site in a location where additions and extensions are generally allowed / permitted to be carried out. The proposed rear ground floor addition will also provide a greater rear setback (eastern boundary) when compared with the existing rear ground floor BLZ. In terms of compliance with Council's development standards, the proposal will comply with the minimum required Landscaped Area but due to the small lot size, the proposal will not comply with the maximum allowed FSR and Site Coverage development standards.

- Site orientation;

Comment: The subject site and its northern adjoining neighbour have an east-west site orientation with the rear private open space facing the east. However, the southern adjoining properties are north-south site orientated with a north facing rear private open space. As such, any rear additions or extensions will have an adverse impact to the southern adjoining properties in terms of overshadowing in mid-winter. However, as discussed elsewhere in this report, the additions are sited in a location where developments can be reasonably be expected to be carried out and is acceptable.

- The relative levels at which the dwellings are constructed.

Comment: The proposed additions are constructed generally at existing ground / grade levels, the side wall heights at first floor are considered acceptable as the higher wall is located on the northern section of the dwelling that are adjacent to the roof structures of 3 Excelsior Street and the lower wall height being located to the southern boundary that are adjacent to the rear yards of the southern neighbouring properties.

- The degree of skill employed in the design to minimise impact and whether reasonably available alternative design solutions would produce a superior result.

Comment: As previously noted, the proposal has been designed to set higher portions of the building towards the northern section of the dwelling to minimise overshadowing impacts to southern adjoining neighbouring properties. In addition, the first-floor addition is located at the rear of the main dwelling where developments are generally located and allowed in the area.

As per the above discussion, it is considered that the proposed works in this application are considered appropriate in bulk, scale and location given the existing context of the subject site, the surrounding area and the overshadowing impacts onto the southern neighbouring properties in mid-winter are not considered unreasonable. It is also noted that the rear yard of No. 3 Jarrett Street is currently being used for car parking space and storage space.

On the basis of the above, the proposal is considered to be satisfactory with respect to its solar access impacts on this adjoining sites.

C3.11 Visual Privacy

As the proposal includes a new first floor addition with windows to service the new bedrooms and bathroom, the following controls are applicable to the application.

- **C1** - *Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.*
- **C8** - *Glazing to proposed bathrooms must be designed to ensure that they provide privacy to the subject bathroom, through the provision of obscure glazing or screening.*

Note: The privacy of bathrooms is not protected under the controls relating to development on surrounding properties.

The proposed Windows 3, 4, 5, and 6 on the first-floor level will have sightlines of roof structures and the rear yards of the subject and adjoining sites at Nos. 3 Excelsior Street, 3, 5 and 7 Jarrett Street. As these windows that are servicing a bathroom and two bedrooms, the proposal will comply with Controls 1 and 8 as mentioned above as they are not highly trafficable rooms, resulting in minimal to no undue adverse privacy impacts to the adjoining properties.

5(b) 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(c) 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(d) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

No submissions were received in response to the notification.

5(e) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

Engineer

Acceptable subject to conditions

Urban Forest

Acceptable subject to conditions

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$12,371.00 would be required for the development under Inner West Local Infrastructure Contribution Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

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

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

9. Recommendation

- A. The applicant has made a written requests pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the requests, 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 are unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedances are not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/0439 for ground and first floor alterations and additions to existing semi-detached dwelling at 1 Excelsior 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	Cover Sheet, Materials & Finishes	26.4.23	Justin Long Design
A04 Rev A	Ground Floor Plan, Site & Landscape Proposed Plan	6.9.23	Justin Long Design
A05	Upper Level Floor Plan Proposed	26.4.23	Justin Long Design
A06	Roof & Concept Stormwater Proposed Plan	26.4.23	Justin Long Design
A07	Proposed Section & Elevation	26.4.23	Justin Long Design
A08	Proposed Elevations	26.4.23	Justin Long Design
A09	Sediment & Erosion Control Plan	26.4.23	Justin Long Design
A10A Rev A	Ground Floor Plan, Site & Landscape Plan Proposed	6.9.23	Justin Long Design
A10B	Ground Floor Plan Existing	26.4.23	Justin Long Design
20230356.1	Aircraft Noise Intrusion Assessment	4/4/2023	Acoustic Logic
A495200	BASIX Certificate	26 April 2023	Justin Long Design

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$2,800.00
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.

3. Long Service Levy

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

4. Section 7.11 Contribution

In accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:

Contribution Category	Amount
Open Space & Recreation	\$8,845.00
Community Facilities	\$1,639.00
Transport	\$1,163.00
Plan Administration	\$114.00
Drainage	\$610.00
TOTAL	\$12,371.00

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

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

Where:

C_{payment} = is the contribution at time of payment

C_{consent} = is the contribution at the time of consent, as shown above

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

CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

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

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

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

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

GENERAL CONDITIONS

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
1	Eucalyptus microcorys (Tallowwood(3 Excelsior Street

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

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

7. Project Arborist

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

8. 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.

9. 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.

10. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**12. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

13. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining property (No. 3 Excelsior 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.

14. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

15. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**16. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

17. Stormwater Drainage System – Minor Developments (OSD is 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 stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- g. As there is no overland flow/flood path available from the central courtyards to the rear lane 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);

18. 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.

19. Construction Methods to Minimise Impact on Trees

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that the concrete slab for the new addition utilise tree sensitive construction techniques (such as isolated pier or pier and

beam construction and/or installed above the existing grade) within the specified radius of the trunk/s of the following tree/s:

Tree No.	Botanical/Common Name	Radius in metres
1	Eucalyptus microcorys (Tallowwood)	9.6m

Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).

20. 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.

21. Structural Certificate for retained elements of the building

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

22. Sydney Water – Tap In

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

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

23. 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

24. Inspections by Project Arborist

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

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
Tree 1 - Eucalyptus microcoys - located within 3 Excelsior Street	During Works	<ul style="list-style-type: none"> • Supervise all site preparation and demolition works within the TPZ; • Supervise all works inside or above the TPZ; • Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ;

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

25. Limited Root Pruning

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
1	Eucalyptus microcorys (Tallowwood)	9.6m

All excavation within the specified radius of the trunk of the above tree must be hand dug using hand held tools only under direct supervision of the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

26. Excavation Methods to Limit Impacts to Trees

Excavation for the installation of any services within the specified radius of the trunk/s of the following tree/s must utilise the thrust boring method or non-destructive excavation method such as either pneumatic or hydraulic tools only (e.g. *Airspade®* or hydro excavation). Thrust boring being carried out at least 600mm beneath natural ground level to minimise damage to tree/s root system:

Tree No.	Botanical/Common Name	Radius in metres
1	Eucalyptus microcorys (Tallowwood)	9.6m

27. 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.

28. 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**29. 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.

30. Project Arborist Certification

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

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.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

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.

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

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

Waste Service - SITA 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.

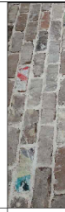




All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Attachment B – Plans of proposed development

DEVELOPMENT APPLICATION ISSUE
ARCHITECTURAL DRAWINGS
 JUSTIN LONG DESIGN
 E: 307816@JLDDESIGN.COM.AU
 P: 02 9539 6000
ACOUSTIC REPORT
 ACROUSTIC LOGIC
 P: 02 9539 6000
 1 EXCELSIOR ST, LEICHHARDT, NSW
 AIRCRAFT NOISE INTRUSION ASSESSMENT

- APRIL 2023

SCHEDULE OF EXTERNAL FINISHES

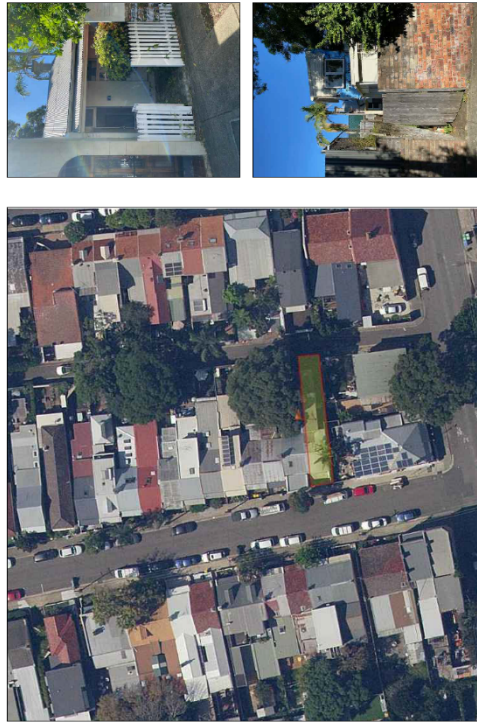
AREA	FINISH	COMMENT	IMAGE
NEW MASONRY WALL	FACE BRICK	RECYCLED BRICK	
NEW CLADDING TO UPPER LEVEL REAR	JAMES HARDIE SCYON VELOQUE GLAZING OR SIMILAR PAINT FINISH	COLOR MONUMENT TBC	
ROOFING - METAL SHEETING	PRE-FINISHED CUSTOM ORB METAL SHEET ROOFING FOR ROOFS WITH A PITCH >5° & UNFINISHED CUSTOM METAL SHEET ROOFING FOR ROOFS WITH A PITCH <5°	COLOR: "ZINCALUM". REPLACE EXISTING ROOF, REAR DORMER & ROOF LINK & MONUMENT TO THE REAR UPPER LEVEL. ADDITION	
GUTTERS	145MM LINE BRAIN CUTTERS ON HEAVY DUTY BRACKETS TO REAR, QUAD TO FRONT	PRE-FINISHED - COLOR: "MONUMENT"	
DOWNPIPES	90MM COLORBOND		
FLASHING	FOLDED COLORBOND FLASHING		
WINDOW & DOOR FRAMES	POWDER COATED ALUMINUM FRAMED DOORS AND WINDOWS. POWDERCOAT FINISH	COLOR: MONUMENT, SATIN FINISH	

SURVEY
 SYDNEY SURVEYORS
 P: 02 9736 6177

PLAN SHOWING DETAIL AND LEVELS AT EXCELSIOR STREET LEICHHARDT - LOT 1 IN DP10118

- BASIS COMMITMENTS:**
- FIXTURES & SYSTEMS
 - HOT WATER: GAS INSTANT ANODEOUS
 - LIGHTING: MIN 400K RECESSED DOWNLIGHTS
 - ALL NEW TOILET FLUSH SYSTEMS TO HAVE MIN 3 STAR RATINGS
 - ALL NEW TAPS TO HAVE MIN 3 STAR RATINGS.
 - CONSTRUCTION
 - CONCRETE SLAB ON GROUND - MIN 100MM
 - EXTERNAL WALL FRAMED FIBRO CLAD R1.6 (or R1.70 INCLUDING CONSTRUCTION)
 - RAKED CEILING R1.74 up / FOL BACKED BLANKET 55MM
 - ROOFING: DARK SOLAR ABSORBENTANCE
 - WINDOWS & DOORS
 - D1, W1, W2 & W6: STANDARD ALUMINUM SINGLE CLEAR GLAZIE 7.63 SHGC 0.75
 - D2, W3, W4, W5, W7, W8, W9, W10, W11, W12: STANDARD ALUMINUM DOUBLE GLAZIE 7.63 SHGC 0.47
 - SKYLIGHTS: 51, 52, THREEB LOWE INTERNAL ARGON FILL CLEAR EXTERNAL U VALUE 2.5 SHGC 0.465

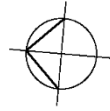
- ACOUSTIC REPORT**
- 1 EXCELSIOR ST, LEICHHARDT, NSW
 - AIRCRAFT NOISE INTRUSION ASSESSMENT



GENERAL NOTES

- REFER ALL QUERIES & DISCREPANCIES TO THE ARCHITECT. ALL MEASUREMENTS ARE IN MM UNLESS OTHERWISE NOTED.
- BUILDING WORK THAT INVOLVES RESIDENTIAL BUILDING WORK (WITHIN THE MEANING AND EXCEPTIONS PROVIDED IN THE HOME BUILDING ACT 1989) MUST NOT BE CARRIED OUT UNLESS THE PRINCIPAL CERTIFYING AUTHORITY FOR THE DEVELOPMENT TO WHICH THE WORK RELATES HAS GIVEN COUNCIL WRITTEN NOTICE OF THE FOLLOWING:
 - IN THE CASE OF WORK TO BE DONE BY AN OWNER-BUILDER - THE NAME OF THE INSURER BY WHICH THE WORK IS INSURED UNDER PART B OF THAT ACT
 - IN THE CASE OF WORK TO BE DONE BY AN OWNER-BUILDER PERMIT UNDER THAT ACT, THE NUMBER OF THE OWNER-BUILDER PERMIT.
- IF ARRANGEMENTS FOR DOING RESIDENTIAL BUILDING WORK ARE CHANGED WHILE THE WORK IS IN PROGRESS SO THAT THE AUTHORITY FOR THE DEVELOPMENT TO WHICH THE WORK RELATES (NOT BEING THE COUNCIL), HAS GIVEN THE COUNCIL WRITTEN NOTICE OF THE UPDATED INFORMATION, (11) OF THE ACT, IT IS A PRESCRIBED CONDITION OF DEVELOPMENT CONSENT THAT IF THE DEVELOPMENT INVOLVES AN EXCAVATION THAT EXTENDS BELOW THE LEVEL OF THE BASE OF THE FOOTINGS OF A BUILDING ON ADJOINING LAND, THE PERSON HAVING THE BENEFIT OF THE DEVELOPMENT CONSENT MUST, AT THE PERSON'S OWN EXPENSE, PROTECT AND SUPPORT THE ADJOINING PREMISES FROM POSSIBLE DAMAGE FROM THE EXCAVATION.
- WHERE NECESSARY, UNDERTAKE THE ADJOINING PREMISES TO PREVENT ANY SUCH DAMAGE.

0 5M
 1:100 @A3



Architect:
Justin Long Design
 Growing
 COVER SHEET, MATERIALS & FINISHES
 www.jldesign.com.au
 10/2018 updated with the latest issues

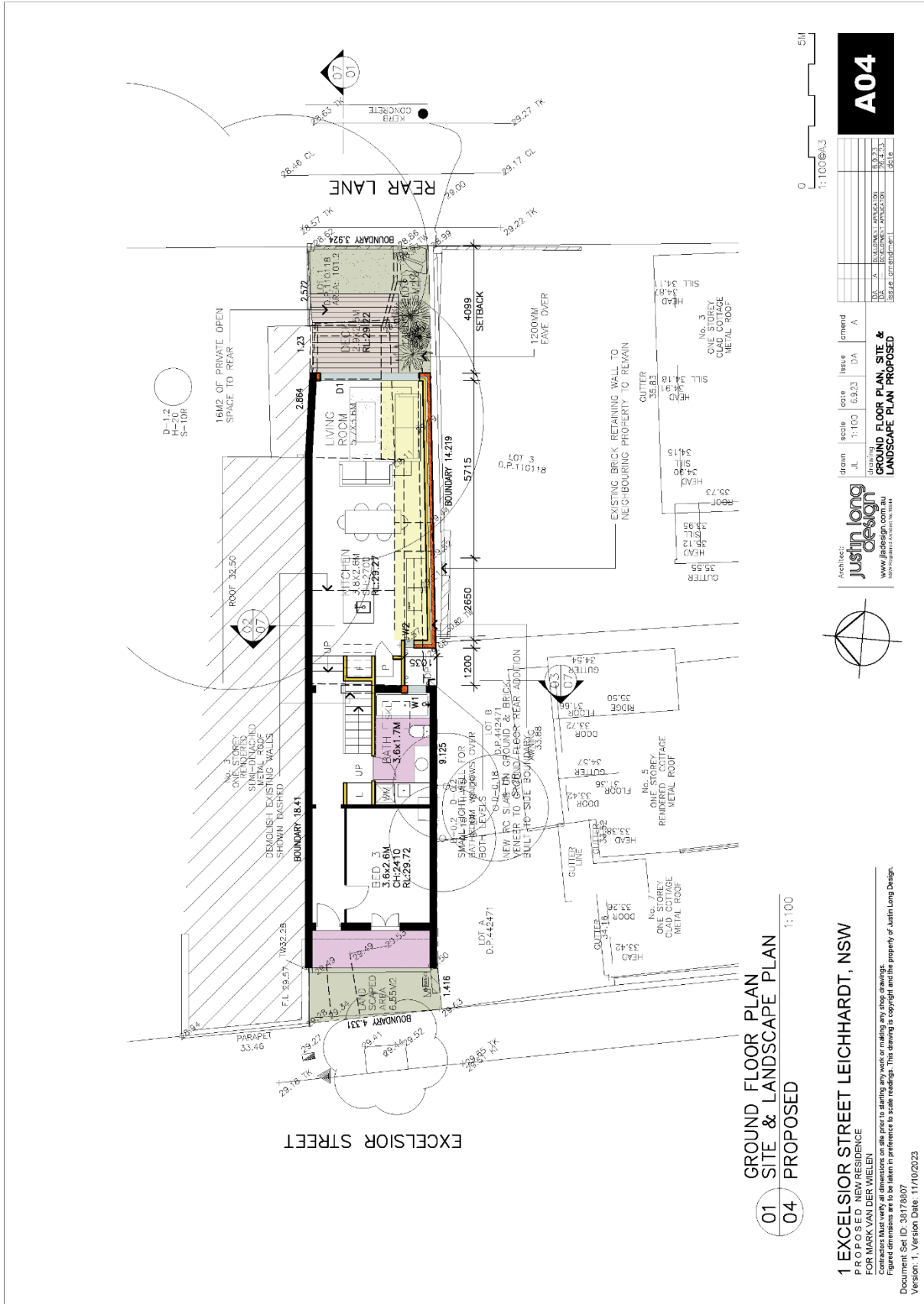
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JL	1:100	28.4.23	DA	-

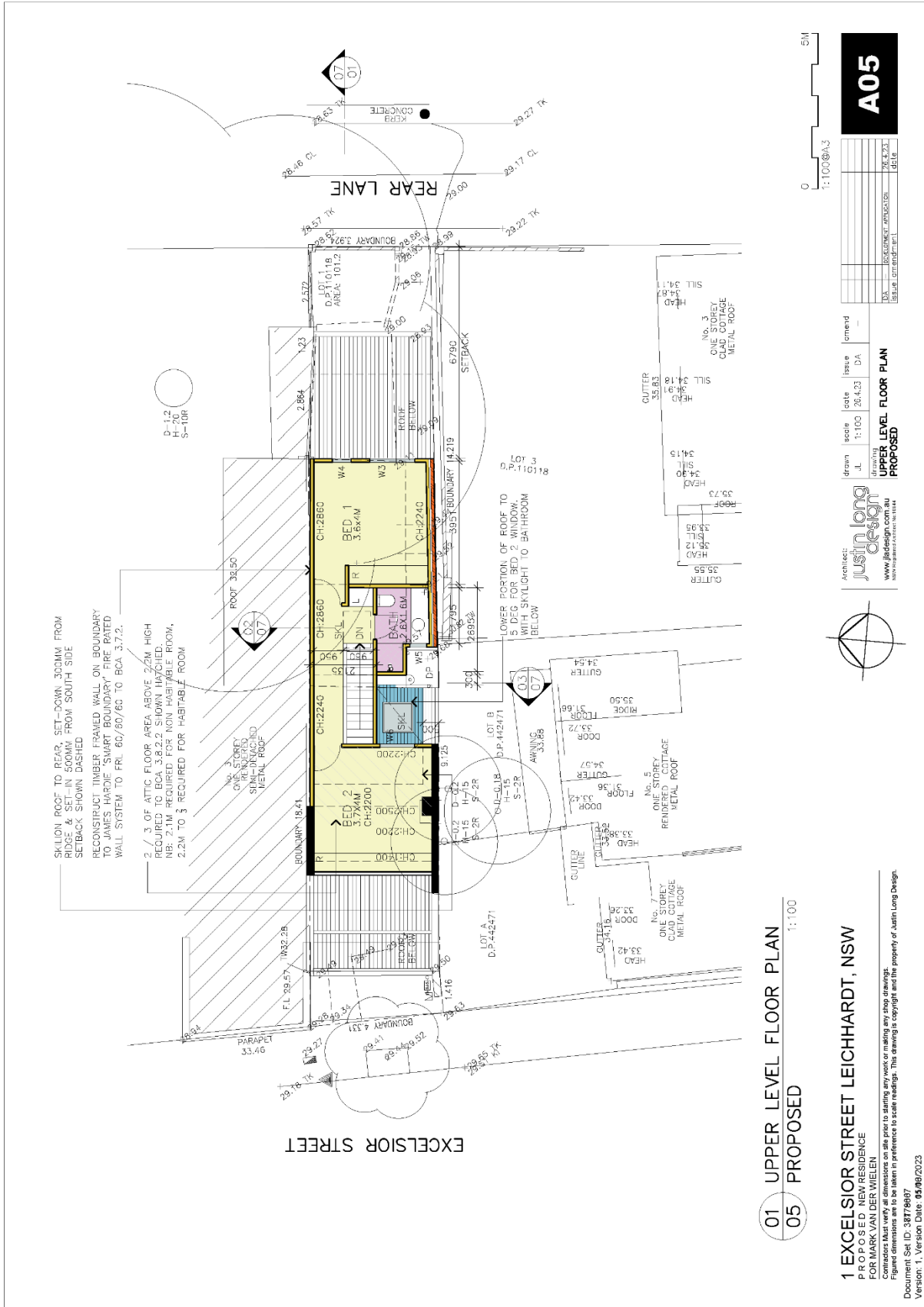
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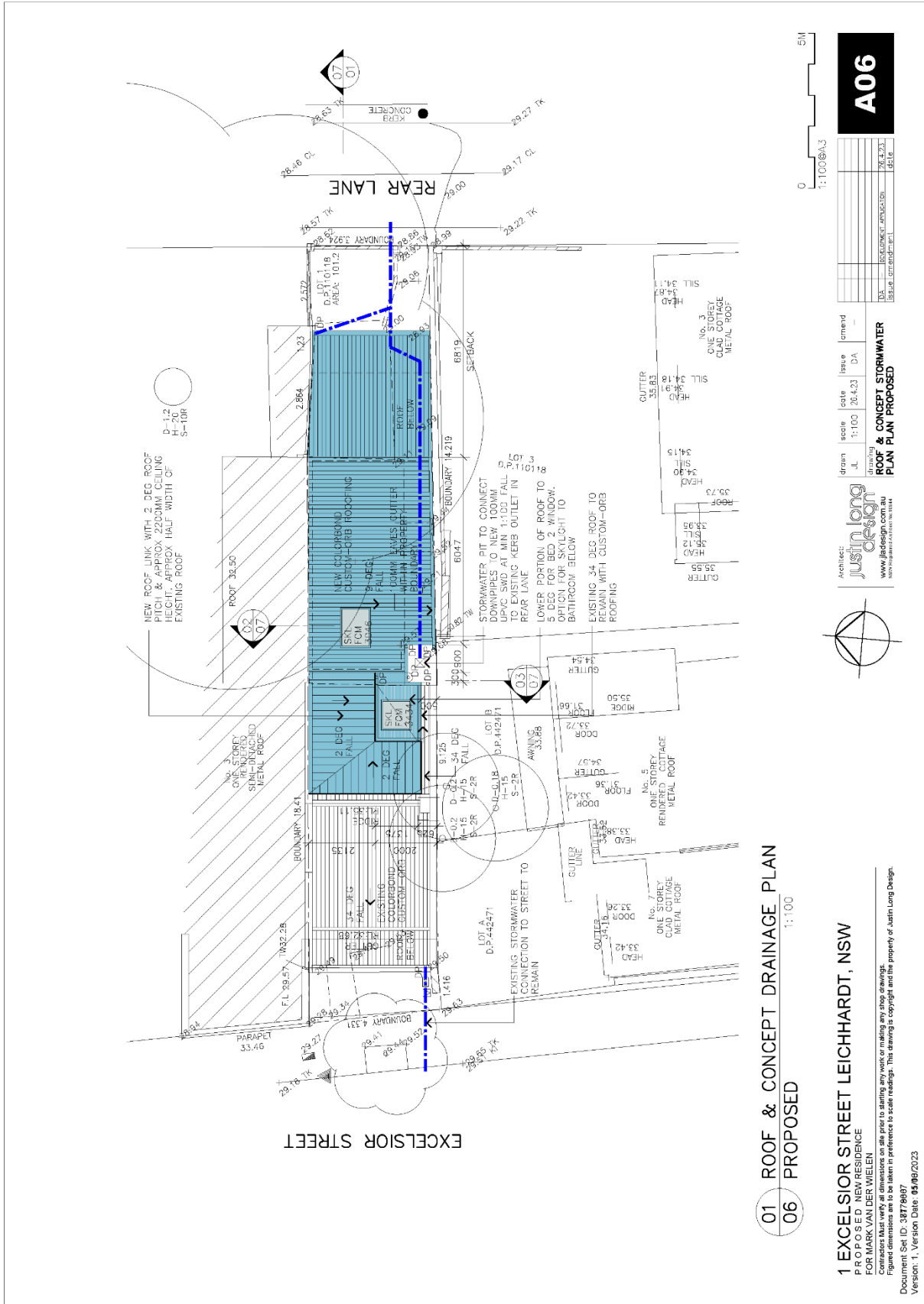
1 EXCELSIOR STREET LEICHHARDT, NSW
 PROPOSED NEW RESIDENCE
 FOR MARK VAN DER WIELEN

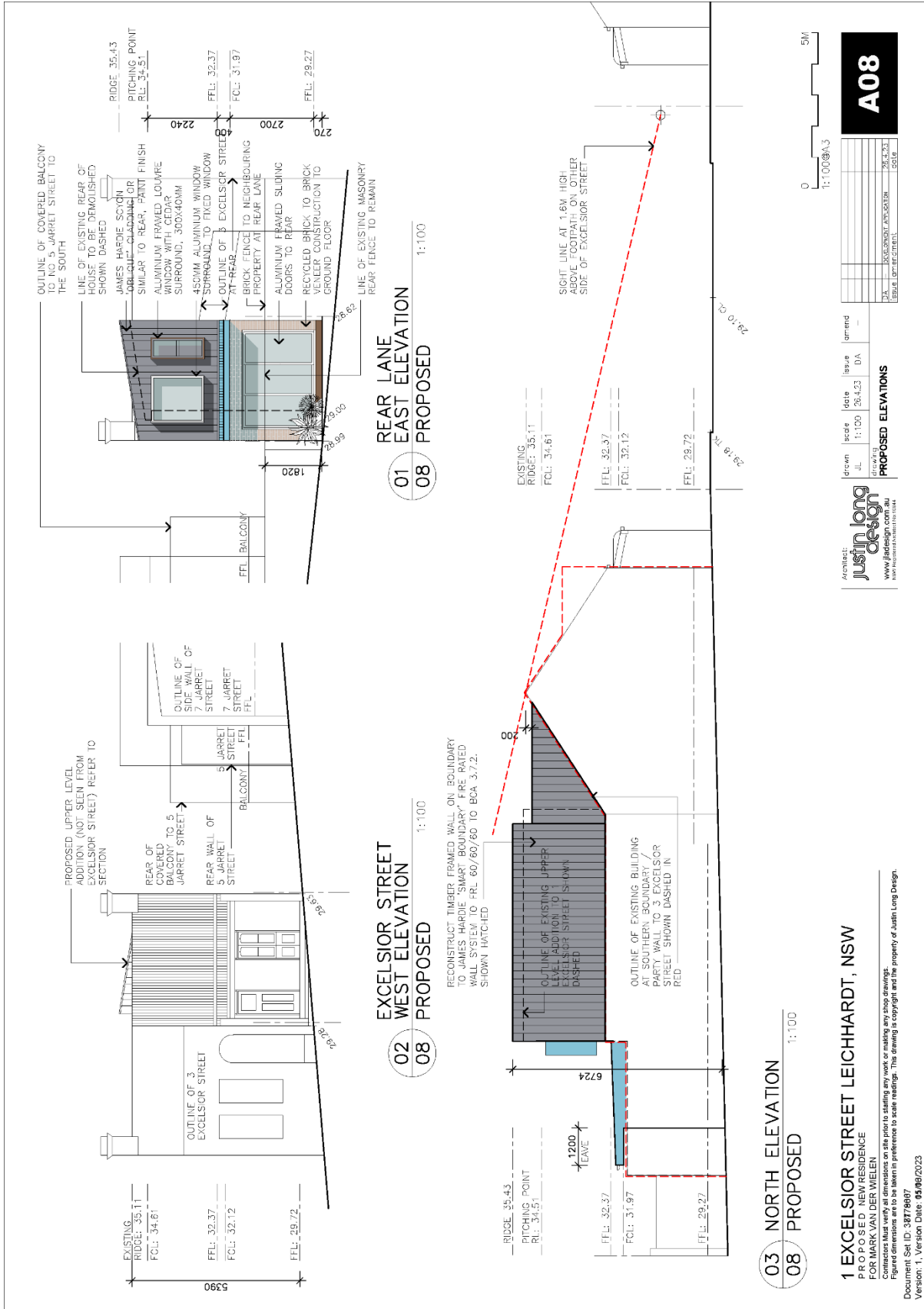
Contractors must verify all dimensions on site prior to starting any work or making any shop drawings. Pinned dimensions are to be taken in preference to scale readings. This drawing is copyright and the property of Justin Long Design.

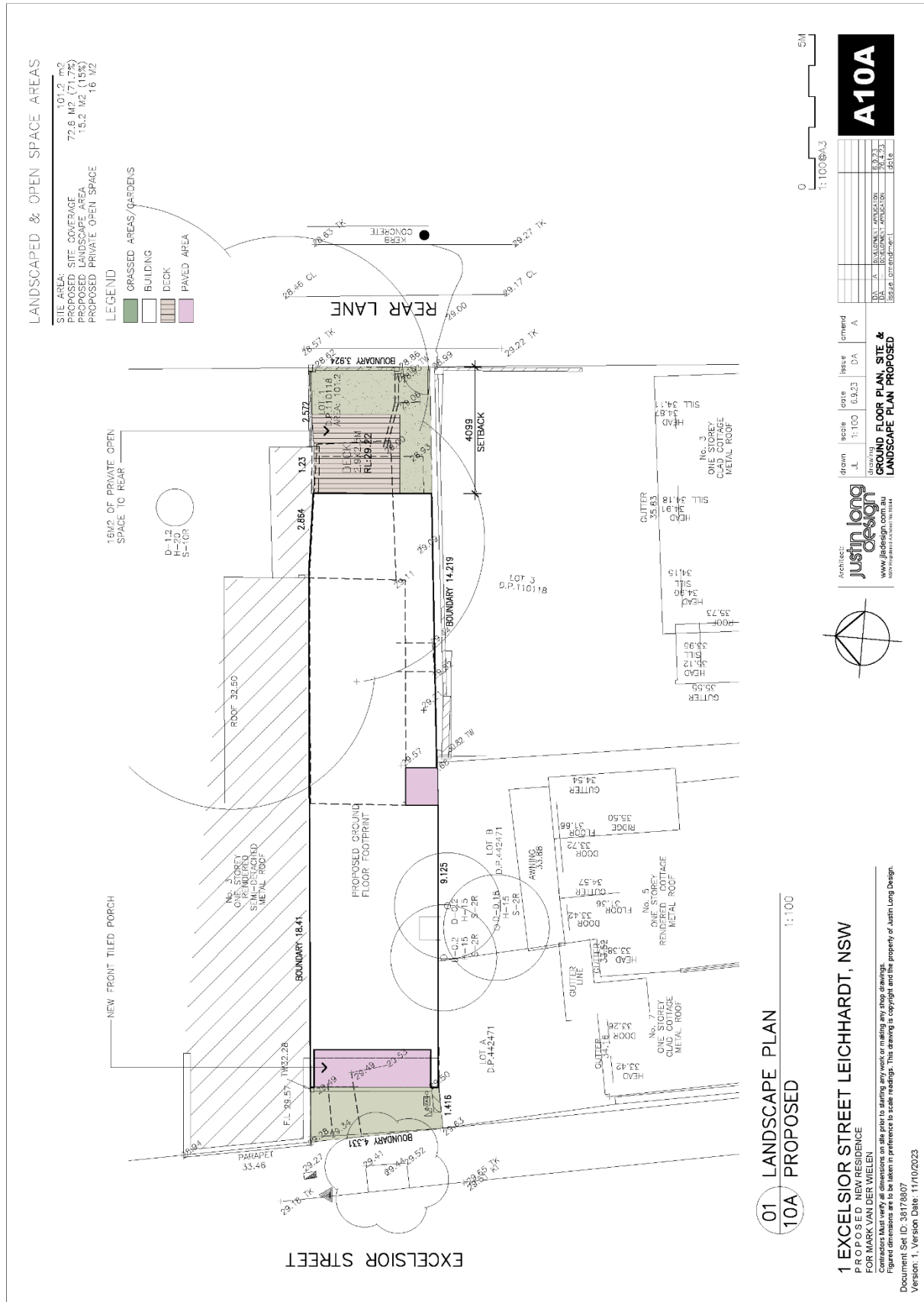
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Attachment C- Section 4.6 Exception to Development Standards

4.1.2 Clause 4.6 Request – Site Coverage

Pursuant to Clause 4.6 of the IWLEP2022 it is requested to vary the site coverage development standard under Clause 4.3C(3)(b).

Relevant Development Standards and Proposed Variation

The proposed variation to Clause 4.3C(3)(b) is summarised in the below table.

Development Standard	Requirement	Proposed	Non-Compliance
Site Coverage	60%	72%	12% / 20%

Table 3. Clause 4.6 request for site coverage (Cl4.3C(3)(b))

Clause 4.3C of the IWLEP2022 states that:

- (3) Development consent must not be granted to development to which this clause applies unless—
- (a) the development will result in a landscaped area comprising at least—
 - (i) if the lot size is 235m² or less—15% of the site area, or
 - (ii) otherwise—20% of the site area, and
 - (b) the site coverage does not exceed 60% of the site area.

Consideration of Planning Particulars

Is the Planning Controls in question development standard?

The planning control in question is Clause 4.3C ‘Landscaped areas for residential accommodation in Zone R1’ of the IWLEP2022. As a numerical control, it is a development standard capable of being varied under the provisions of Clause 4.6 of the IWLEP2022.

What are the underlying objectives of the Standard?

The objectives for the development standard provided at subclauses 4.3C(1) of the IWLEP2022 are set out in the following table, as well as an assessment of the proposal’s consistency:

Clause 4.3C(1) – Landscaped areas for residential accommodation in Zone R1 Objectives	
Objectives	Assessment
(a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents	The proposal will not impact any existing trees and will provide deep soil areas for further planting.
(b) to maintain and encourage a landscaped corridor between adjoining properties	The proposal will not disrupt any landscape corridors between properties.
(c) to ensure that development promotes the desired character of the neighbourhood	The proposal is consistent with the desired future character for the Excelsior Estate Distinctive Neighbourhood.

<i>(d) to encourage ecologically sustainable development</i>	The proposed design incorporates energy and water saving measures including solar access, natural cross ventilation and water/energy efficient fixtures.
<i>(e) to control site density</i>	The proposal will not result in an overdevelopment of the site and is sympathetic to the bulk and scale of surrounding properties. Strict compliance with the development standard
<i>(f) to provide for landscaped areas and private open space</i>	The proposal complies with the private open space requirements of the DCP and will provide sufficient area for planting.

Based on the above, despite the numerical non-compliance, the proposal is consistent with the objectives of the development standard.

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standards tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

As discussed above under Section 4.1.1, the proposed development is consistent with the objectives of the R1 General Residential zone by providing for residential development of an appropriate scale which preserves and enhances the character of the surrounding area and natural features.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- Strict compliance of the development standard, by reducing the rear built form, would not change the bulk and scale of the streetscape as it will be generally screened by the front façade and roof form and adjoining properties.
- The proposal complies with the minimum 15% landscaped area development standard under Clause 4.3(C)(3)(a)(i) of the IWLEP2022.
- The proposal provides a compliant private open space area and has deep soil zone areas sufficient to support new plantings.
- The proposal includes an appropriate stormwater management system to control rainwater collected on the site.
- The proposed variation to the maximum site cover development standards does not hinder the proposal’s ability to satisfy the objectives of the R1 General Residential zone.

□ □
□ □

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- While it's not considered that Council has virtually abandoned or destroyed the development standards, it is acknowledged that Council has approved variations the development standard to a similar extent in reasonable circumstances such as this.
- The proposal will not hinder the development potential of surrounding properties.

Considering the above, the circumstances of this application warrant a variation of the development standard and it is considered that a numerically compliant development is neither reasonable nor necessary in circumstances of the case.

Is the development standard a performance-based control?

No. The development standard is not a performance-based control.

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

Yes, there are sufficient environmental planning grounds to justify contravening the development standards. These include:

- The additions will not be visible above the front roof pitch, and hence have a negligible adverse impact on the streetscape.
- Overshadowing from the additions are generally contained within the shadows cast by the existing building envelope.
- The proposal will improve privacy to properties to the south by removing south-facing windows from the first floor study and bedroom.
- There is no view loss from adjoining properties or the streetscape as a result of the proposed additions.
- The variation does not result in unreasonable adverse amenity impacts on adjacent land and does not diminish the development potential of these properties.
- The proposal is generally consistent with all other relevant built form controls, including landscaping, private open space and the Building Location Zone (BLZ).
- The scale of development is consistent with the character of the area.

Is the objection well founded?

The objection is well founded given the proposed development does not result in any unreasonable or significant adverse environmental (social, economic or biophysical) impacts. The variation does not diminish the redevelopment potential or amenity of any adjoining land.

Furthermore, the proposal does not undermine the objectives of the development standard and strict compliance would not provide any meaningful improvements to the streetscape appearance or amenity of adjoining properties.

For these reasons, the objection is considered well founded.

Would non-compliance raise any matter of significance for State or Regional Planning?

The non-compliance will not raise any matter of State or Regional Significance.

Is there a public benefit of maintaining the planning control standards?

The proposed development is in the public interest as it will facilitate development of a dwelling house to contribute towards housing needs in the area in a manner which is sympathetic to the environment, amenity of adjoining properties and character of the area.

Conclusion

Taking into account the context of the site and the vision for the locality, strict numerical compliance with the site coverage development standard in this instance is considered both unreasonable and unnecessary for the following reasons:

- The proposal meets the objectives of the R1 General Residential zone and Clause 4.3C of the IWLEP2022.
- The numerical non-compliance will not have a perceivable difference when viewed from the streetscape.
- The proposal generally complies with other built form controls.
- The proposal provides an orderly and efficient use of the land.
- The proposal does not have an unreasonable impact on the amenity of adjoining properties and does not impede the ability to further develop these properties.

Based on these reasons, the request to vary the site coverage development standard is well founded and the circumstances of the case warrant flexibility of the application of the development standard.



4.1.1 Clause 4.6 Request – Floor Space Ratio

Pursuant to Clause 4.6 of the IWLEP2022 it is requested to vary the maximum floor space ratio development standard under Clause 4.4(2B)(c).

Clause 4.6 of the IWLEP2022 allows flexibility in applying certain development standards to particular development to achieve better outcomes in particular circumstances.

In preparing this submission for variation of the development standards (including site coverage addressed in Section 4.1.2), regard has been provided to *Varying Development Standards: A Guide* (August 2011) prepared by the NSW Department of Planning & Infrastructure (DP&I), together with relevant Land and Environment Court judgements, including *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 90* and *Wehbe v Pittwater Council (2007) NSWLEC 827*.

Relevant Development Standard and Proposed Variation

A summary of the proposed variation to the floor space ratio is provided in the following table.

Development Standard	Requirement	Proposed	Non-Compliance
Floor Space Ratio	0.8:1	1:1	0.2:1 / 25%

Table 2. Clause 4.6 request for site coverage (Cl4.4(2B)(c))

An extract of the Floor Space Ratio Map is provided for reference in Figure 11, with Clause 4.4 2B stating:

(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—

<i>Site Area</i>	<i>Maximum floor space ratio</i>
<i><150m²</i>	<i>0.8:1</i>

As the subject site is 101.2 square metres in area, a 0.8:1 FSR applies.



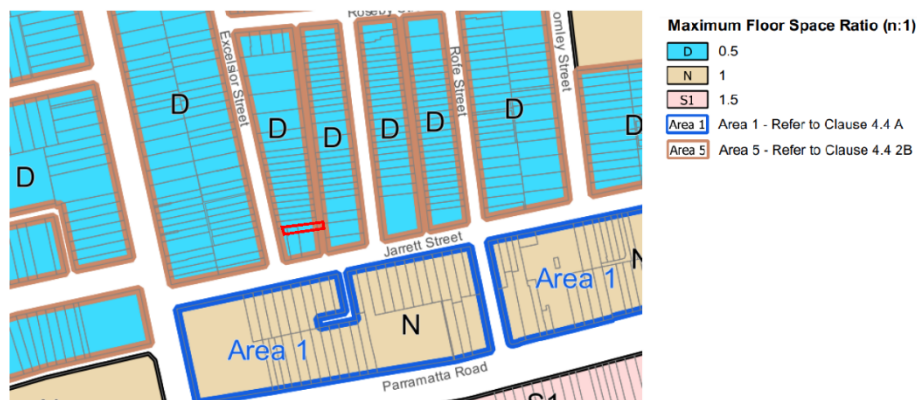


Figure 11. Extract of Floor Space Ratio Map

NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the way variations to development standards are required to be approached. These include:

- *Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46*
- *Wehbe V Pittwater Council [2007] NSW LEC 827*

The following section addresses the local provisions of Clause 4.6 of the IWLEP2022 together with principles of *Winten Property Group Ltd v North Sydney Council* as expanded by the five-part test established by *Wehbe V Pittwater Council*.

Consideration of Planning Particulars

Is the Planning Controls in question development standard?

The planning control in question is 4.4 ‘Floor space ratio’ of the IWLEP2022. As a numerical control, it is a development standard capable of being varied under the provisions of Clause 4.6 of the IWLEP2022.

What are the underlying objectives of the Standard?

The objectives for the development standards provided at subclause 4.4(1) of the IWLEP2022 are set out in the following table, as well as an assessment of the proposal’s consistency:



Clause 4.4(1) – Floor space ratio Objectives	
Objectives	Assessment
<i>(a) to establish a maximum floor space ratio to enable appropriate development density</i>	The proposed development has been designed such that they will not be visible above the existing front roof pitch. The proposed low-density attached dwelling is of a comparable scale to surrounding development.
<i>(b) to ensure development density reflects its locality</i>	The proposed development will create a 3-bedroom attached dwelling, which is consistent with the character of the surrounding area.
<i>(c) to provide an appropriate transition between development of different densities</i>	The proposed development provides a suitable transition from the 2-5 storey development fronting Parramatta Road to the south and 1-2 storey low density dwellings in the surrounding area and to the north of the site.
<i>(d) to minimise adverse impacts on local amenity</i>	The proposal will create negligible impacts to the surrounding area by way of positioning to the rear of the site, low ceiling heights and raked roof.
<i>(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain</i>	The proposal will not impact any existing trees and will provide deep soil zones for future planting.

Based on the above, despite the numerical non-compliance, the proposal is consistent with the objectives of the development standard.

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

The proposed development is consistent with the objectives of the R1 General Residential zone by providing for residential development of an appropriate scale which preserves and enhances the character of the surrounding area and natural features.

The objects set down in Part 1 Section 1.3 (formerly section 5(a)(i) and (ii)) of the *Environmental Planning and Assessment Act 1979* are summarised as follows:

“to encourage... the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment... and the promotion and co-ordination of the orderly and economic use and development of land...”

The two-storey attached dwelling is consistent with the objects of the Act, as it includes environmentally sustainable initiatives, maintains the significant ecological values of the area, is



consistent with the character of the surrounding R1 General Residential zoned area and provides an orderly and economic use of the site.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- Strict compliance of the development standards would not change the bulk and scale of the streetscape as it will be generally screened by the front façade and roof form and adjoining properties.
- The proposal provides a compliant private open space area and has deep soil zone areas sufficient to support new plantings.
- The design includes initiatives, including a stepped and recessed southern boundary wall and raked ceiling, to minimise impacts to adjoining properties.
- The proposed variation to the maximum FSR development standard does not hinder the proposal’s ability to satisfy the objectives of the R1 General Residential zone.
- While it’s not considered that Council has virtually abandoned or destroyed the development standards, it is acknowledged that Council has approved variations to the development standard to a similar extent in reasonable circumstances such as this. Reference is made to 45 Junior Street (1.02:1 FSR) and 47 Junior Street (1.03:1 FSR) as examples.
- The proposal will not hinder the development potential of surrounding properties.

Considering the above, the circumstances of this application warrant a variation of the development standard and it is considered that a numerically compliant development is neither reasonable nor necessary in circumstances of the case.

Is the development standard a performance-based control?

No. The development standard is not a performance-based controls.

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

Yes, there are sufficient environmental planning grounds to justify contravening the development standard. These include:

□ □
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- The additions will not be visible above the front roof pitch, and hence have a negligible adverse impact on the streetscape.
- Overshadowing from the additions are generally contained within the shadows cast by the existing building envelope.
- The proposal will improve privacy to properties to the south by removing south-facing windows from the first floor study and bedroom.
- There is no view loss from adjoining properties or the streetscape as a result of the proposed additions.
- The variation does not result in unreasonable adverse amenity impacts on adjacent land and does not diminish the development potential of these properties.
- The proposal is generally consistent with all other relevant built form controls, including private open space and the Building Location Zone (BLZ).
- The scale of development is consistent with the character of the area.

Is the objection well founded?

The objection is well founded given the proposed development does not result in any unreasonable or significant adverse environmental (social, economic or biophysical) impacts. The variation does not diminish the redevelopment potential or amenity of any adjoining land.

Furthermore, the proposal does not undermine the objectives of the development standard and strict compliance would not provide any meaningful improvements to the streetscape appearance or amenity of adjoining properties.

For these reasons, the objection is considered well founded.

Would non-compliance raise any matter of significance for State or Regional Planning?

The non-compliance will not raise any matter of State or Regional Significance.

Is there a public benefit of maintaining the planning controls standards?

The proposed development is in the public interest as it will facilitate development of a dwelling house to contribute towards housing needs in the area in a manner which is sympathetic to the environment, amenity of adjoining properties and character of the area.

Conclusion

Taking into account the context of the site and the vision for the locality, strict numerical compliance with the development standard in this instance is considered both unreasonable and unnecessary for the following reasons:

- The proposal meets the objectives of the R1 General Residential zone and Clause 4.4 of the IWLEP2022.
- The numerical non-compliance will not have a perceivable difference when viewed from the streetscape.
- The proposal generally complies with other built form controls.
- The proposal provides an orderly and efficient use of the land.
- The proposal does not have an unreasonable impact on the amenity of adjoining properties and does not impede the ability to further develop these properties.

Based on these reasons, the request to vary the maximum FSR development standard is well founded and the circumstances of the case warrant flexibility of the application of the development standard.

