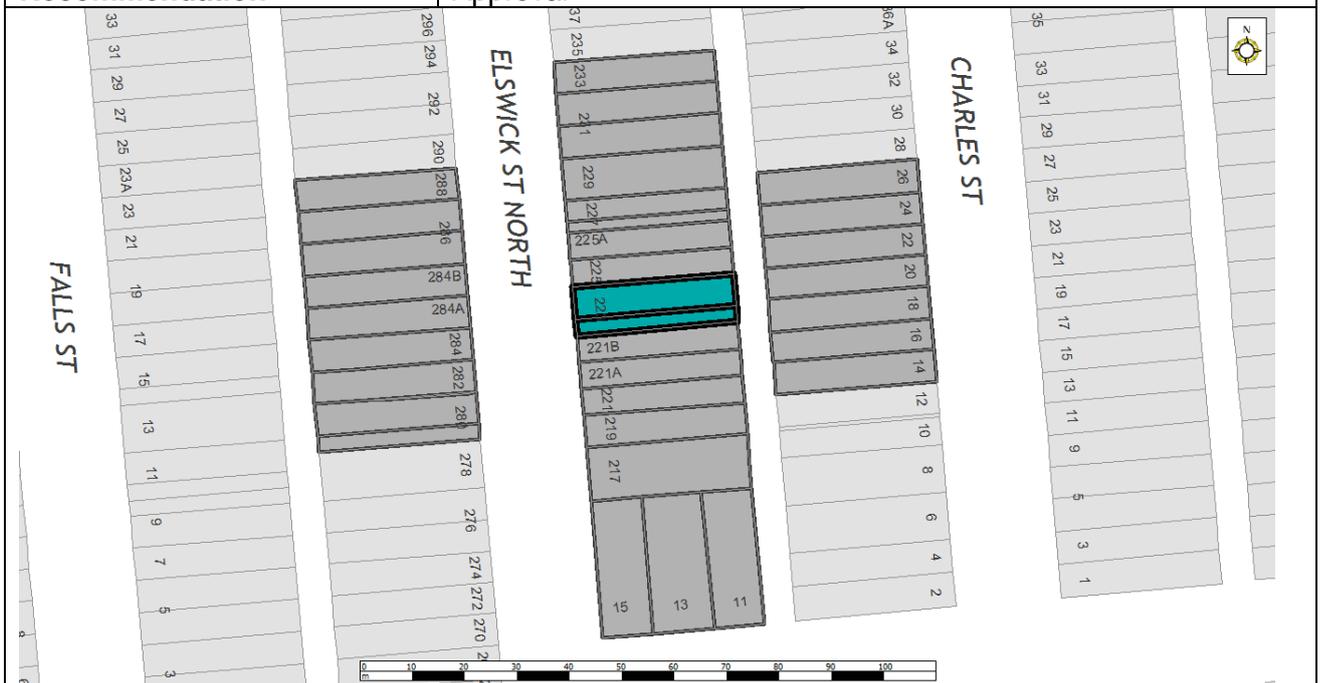




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2017/453
<b>Address</b>	223 Elswick Street North, LEICHHARDT NSW 2040
<b>Proposal</b>	Demolition of existing structures; boundary adjustment between two existing allotments; construction of two X two storey attached dwellings each located on separate lots; and associated works, including new fencing and on-site car parking and access via rear lane.
<b>Date of Lodgement</b>	5 September 2017
<b>Applicant</b>	Mrs T M Dennis
<b>Owner</b>	Mr L A Cooper and Mrs S A Cooper
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$898,724
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation to minimum lot size exceeds officer delegation
<b>Main Issues</b>	Variation to minimum lot size development standard Building Location Zone breach
<b>Recommendation</b>	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

### 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of existing structures; boundary adjustment between two existing allotments; construction of two X two storey attached dwellings each located on separate lots; and associated works, including new fencing and on-site car parking and access via rear lane at 223 Elswick Street North, Leichhardt. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application include:

- Minimum Lot Size variation
- Building Location Zone

The non-compliances are acceptable given the existing allotments, prevailing subdivision pattern and recently constructed surrounding development, and therefore the application is recommended for approval.

### 2. Proposal

The proposal involves demolition of existing structures and boundary adjustment between two existing allotments to create two lots with an area of 139.35sqm each. The proposal provides two x two storey attached dwellings each containing two bedrooms and two bathrooms on the first floor; an open plan ground floor kitchen, living and dining area, third bedroom and separate laundry and bathroom; and a rear deck and rear loaded covered single car space. New fencing and landscaping works are proposed to soften the appearance of the development.

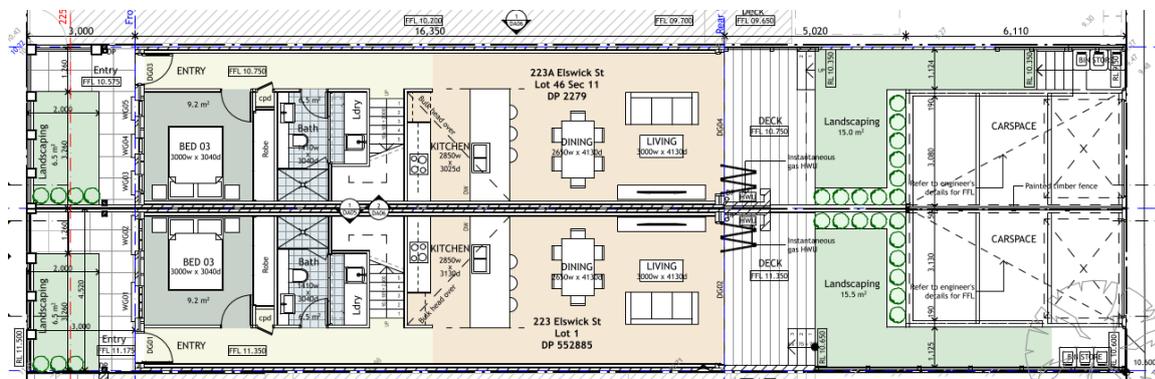


Figure 1: Proposed ground floor with rear carport at No. 223 Elswick Street North.

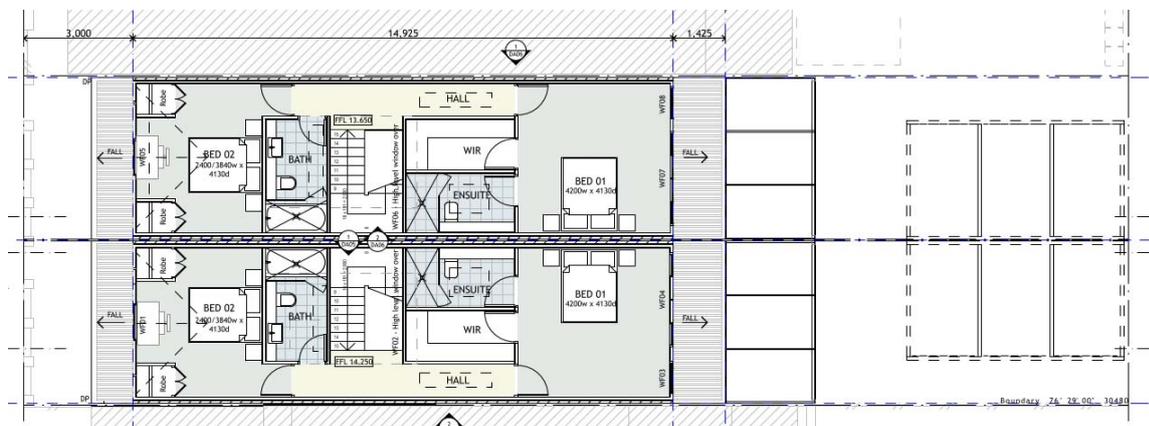


Figure 2: Proposed first floor at No. 223 Elswick Street North.



Figure 3: Proposed Street (West) Elevation at No. 223 Elswick Street North.



Figure 4: Proposed Rear (East) Elevation at No. 223 Elswick Street North.

### 3. Site Description

The subject site is located on the eastern side of Elswick Street North, between William Street and Darley Road. The site consists of two existing allotments and is generally rectangular in shape with a total area of 278.7 m<sup>2</sup> and is legally described as Lot 1 in DP 552885 and Lot 46, Section 11 in DP 2279.

The site has a frontage to Elswick Street North of 9.145 metres and a secondary frontage of approximate 9.145 metres to the Unnamed Lane at the rear.

The site supports a detached single storey brick and weatherboard cottage, associated outbuilding, detached garage to the rear and fully paved external areas with no existing vegetation. The adjoining properties support two storey cement rendered dwellings built boundary to boundary.

The property is not located within a conservation area. The subject site is not identified as a heritage item or a flood prone lot.

### 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 applicable site history.

**Surrounding properties**221 Elswick Street North

Application	Proposal	Decision & Date
CDC/2015/147	Demolition of existing structures house and garage	Approved 17/9/2015
D/2015/482	Boundary adjustments between the three existing Torrens title lots.	Approved 9/2/2016
D/2015/533	Construction of three (3) dwellings with parking at rear and associated landscaping, on lots to be created to D/2015/482. The application relies on an exception to the Floor Space Ratio development standard.	Approved 9/2/2016

225 Elswick Street North

Application	Proposal	Decision & Date
CDC/2013/125	Demolition of existing house	Approved 14/11/2013
D/2013/504	Boundary adjustments between the two existing Torrens title lots.	Approved 28/1/2014
D/2013/576	Construction of 2 x two-storey dwellings. SEPP 1 to floor space ratio.	Approved 13/5/2014

**4(b) Application history**

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

Date	Discussion / Letter/ Additional Information
10/10/2017	<p>Council wrote to the applicant requesting the following matters to be addressed:</p> <ul style="list-style-type: none"> <li>• Reduction of first floor to align with rear first floor building line of 221B Elswick Street North</li> <li>• Reduction of dormer to match 221B Elswick Street North</li> <li>• Increase front setback to at least 3m</li> <li>• Updated Survey</li> <li>• Landscaped Area and Site Coverage</li> <li>• Overshadowing</li> <li>• Stormwater Drainage</li> <li>• Amended BASIX Certificate</li> </ul>
24/10/2017	<p>Amended plans and supporting documentation received. The following amendments were carried out:</p> <ul style="list-style-type: none"> <li>• Partial reduction of first floor with rear first floor building line 1.3m rearward of 221B Elswick Street North</li> <li>• Reduction of dormer to match 221B Elswick Street North</li> <li>• Increased front setback to 3m</li> <li>• Updated Survey</li> <li>• Compliant Landscaped Area and Site Coverage provided</li> <li>• Additional shadow diagrams provided</li> <li>• Stormwater Concept Plan provided</li> </ul>

	<ul style="list-style-type: none"> <li>• Amended BASIX Certificate provided</li> </ul> <p>The additional information lodged and the plans submitted as part of that additional information form the basis of this report.</p> <p>The amended plans lodged did not require re-notification as they were considered to fall within <i>Control C5. Section A3.13 - Specific Circumstances Where Notification Is Not /Required, Part A: Introduction, Leichhardt Development Control Plan 2013</i>, which does not require the re-notification of amended plans to an undetermined application which, inter alia, constituted a lessor development have been proposed in order to address the concerns raised by Council or objectors.</p>
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## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

#### 5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with SEPP 55.

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

A BASIX Certificate was submitted with the application and annotates BASIX commitments detailed on the architectural plans and as such the requirements of the SEPP have been met.

#### 5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out

of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

### 5(a)(iv) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.6 – Subdivision Requirements
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.1 – Minimum subdivision Lot size
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Minimum Lot Size</b> Required: [200m <sup>2</sup> ]	Lot 233A: 139.35sqm Lot 233: 139.35sqm	30.33% 30.33%	No
<b>Floor Space Ratio</b> Required: [0.8:1]	Lot 233A: 0.82:1* Lot 233: 0.82:1*	2.85% (3.172sqm) 2.85% (3.172sqm)	Yes*
<b>Landscape Area: 15%</b>	Lot 233A: 15.08% Lot 233: 15.08%	N/A	Yes
<b>Site Coverage: 60%</b>	Lot 233A: 60% Lot 233: 60%	N/A	Yes

**\*A condition will be imposed requiring that the first floors of each dwelling at the rear be cutback in length by 1.3m in order to comply with the first floor rear BLZ, which will result in a compliant FSR of 0.78:1 and reduce overshadowing impacts on the adjoining property to the south and the visual scale of the development when viewed from immediate adjoining properties. This design change is readily achievable by reducing the width of the 4.2m wide bedrooms and/or reducing the widths of the 3m wide ensuites and walk-in-robos, which will still maintain generously proportioned areas of over 12sqm for the master bedrooms (excluding wardrobes and ensuites).**

The following provides further discussion of the relevant issues:

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.1 – Minimum subdivision Lot size
- Clause 4.6 – Floor Space Ratio

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

Comment: As discussed below in subclauses (3) and (4), it is considered that the contravention to the minimum lot size development standard is acceptable in this instance.

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

Comment: The 'key' reasons submitted by the applicant as justification to the contravention of the standards are:

#### Clause 4.1 – Minimum Lot Size

- The proposed development seeks to adjust the boundaries of two existing lots to create two lots with an area of 139.35sqm each. Notwithstanding numerical non-compliance, the proposed building satisfies the stated objectives given that:
  - *The subject site is located within an area of Leichhardt where single fronted, low height cottage style dwellings predominate and many lot sizes less than 200<sup>2</sup>*
  - *It provides a suitable built form to the Elswick streetscape. The development 'single level' incorporates design measures (including setbacks, mono-pitch roof to streetscape) to minimise the impacts of scale and bulk.*
  - *While the bulk of the development is concentrated behind the front roof, this enables a suitable urban massing along Elswick Street (desired character).*
  - *As a result, this built form protects the environmental amenity and reduces impacts to the public domain.*
  - *Importantly, the development provides a range of residential 'styles' within the streetscape.*
  - *Overall the development of the site as proposed will maintain the current streetscape bulk and character, and ensure ongoing street activity and hence is in the public interest with development of a landmark strategic site.*
  - *There will be no measurable public benefit by adhering to the minimum sub-division lot size requirements on the site as the reduction of the minimum sub-division lot size from 200m<sup>2</sup> (being the applicable minimum sub-division lot size) to approx. 140m<sup>2</sup> would not be spatially obvious. The sought lot size will still permit a residence of such internal dimensions to enable normal living and social activities with all room sizes therein exceeding those minimums required by the LDCP 2013 and the relevant building controls and regulations ie NCC.*
  - *The reduced lot sizes do not create any additional impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other*

*impacts than if these minimum allowable development standards were met by an alternative design. The proposed development is consistent with Council's vision for Leichhardt. On this basis, strict compliance with these development standards is considered unnecessary.*

#### Clause 4.4 – Floor Space Ratio

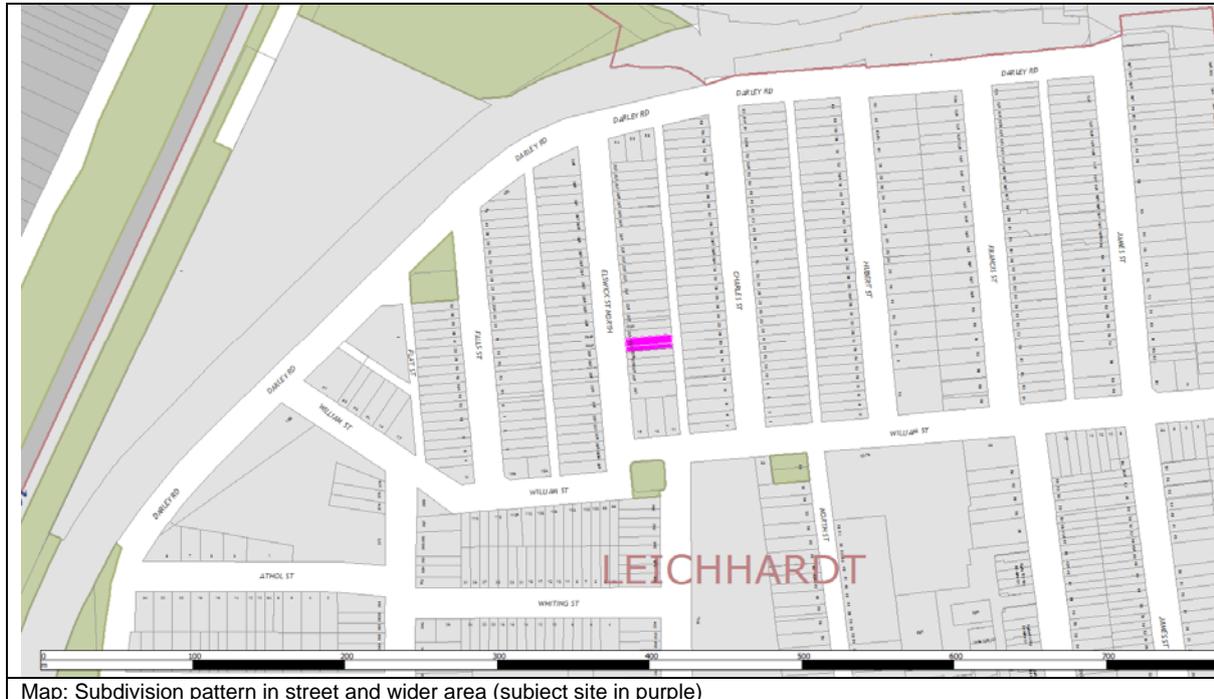
- The proposed development has a proposed FSR of 0.82:1 (dwelling of 114.6sqm). Notwithstanding numerical non-compliance, the proposed building satisfies the stated objectives given that:
  - *The low scale generally single storey street facade, with low impact rear 2 storey elements of this development are consistent with the area, and match adjacent recently developed properties of 221 and 225 Elswick Street.*
  - *The proposal has been designed to minimise the bulk of the development.*
  - *The development incorporates rear lane access and an onsite car parking space, consistent with recently developed properties adjacent at 221 and 225 Elswick Street.*
  - *The density, built form and outcomes of the development are suitable as they are consistent with the existing subdivision pattern and streetscape.*
  - *The building scale and street elevation is single storey to reduce its apparent scale when viewed from Elswick Street.*
  - *The proposed total GFA of the development is 229.4m<sup>2</sup> therefore the development has a total floor space ratio of 0.82:1, representing 5.64m<sup>2</sup> (or 2.82m<sup>2</sup> for each residential unit) over the allowable GFA. The additional GFA does not have any physical/built form impacts on the streetscape and adjoining land than if the FSR were complied with.*
  - *The height of the development is consistent with the recent developments to each side at 221 and 225 Elswick Street.*
  - *The proposed built form is not likely to have any adverse visual, privacy or amenity impacts to other properties or public areas.*
  - *The non-compliant GFA will not cause any adverse or additional impacts than if the development standards were met.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered that the request with regard to *minimum lot size* is well founded in this instance. In this regard, the breach in question will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard and General Residential zoning as demonstrated below:

- The proposal will result in dwellings on the site that will be compatible with the desired future character of the area in relation to building form and bulk and scale (as conditioned);
- The proposed lots are able to accommodate development that is consistent with relevant development controls and complies with the Landscaped Area and Site Coverage standards, providing a suitable balance between landscaped areas and the built form;
- The siting of the building is within the building location zones where it can be reasonably assumed development can occur subject to a condition requiring the first floor building line to be set back a further 1.3m to comply with the first floor BLZ and

reduce unnecessary overshadowing after 12pm to the living area skylights of 221B Elswick Street North; and

- The proposal does not result in any adverse amenity impacts to the surrounding properties;
- The proposed lots will accommodate dwellings and private open space of acceptable amenity; and
- The resultant subdivision will be compatible with the existing subdivision pattern of the area comprising largely of long rectangular lots less than 200sqm in area (see below).



Map: Subdivision pattern in street and wider area (subject site in purple)

However, the request to vary the maximum FSR standard is not considered to be well founded in this instance. In this regard, and as noted previously, the additional floor space is partly attributable to a 1.3m variation of the first floor rear BLZ, which will result in overshadowing impacts on the adjoining property to the south and additional visual bulk when viewed from immediately adjoining properties. Further, it is noted that a compliant proposal would not unduly reduce internal amenity given the proposal will still maintain generously proportioned areas of over 12sqm for the rear master bedrooms (excluding wardrobes and ensuites). Therefore, a condition will be imposed requiring that the first floors of each dwelling at the rear be cutback in length by 1.3m in order to comply with the first floor rear BLZ, which will result in a compliant FSR of 0.78:1 and reduce overshadowing impacts on the adjoining property to the south and the visual scale of the development when viewed from immediate adjoining properties.

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

- (b) *the public benefit of maintaining the development standard, and*

The proposed variation to the development standard will not compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is no material public benefit to the enforcing of the development standards.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

No other matters are required to be considered before granting concurrence.

Clause 6.8 – Development in areas subject to aircraft noise

The subject site is located within the ANEF 20-25 corridor. An Acoustic Report was submitted as a part of the proposal to ensure that potential acoustic impacts from aircraft noise will be satisfactorily mitigated as a part of the design and construction. A condition will be imposed requiring compliance with the requirements of the Acoustic Report.

5(b) Draft Environmental Planning Instruments

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

- State Environmental Planning Policy (Coastal Management) 2016

The subject site is not located within “the coastal zone” pursuant to Cl 5 of the draft SEPP, as identified on the map to the SEPP. Consequently, the draft SEPP is not applicable.

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.

Part	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.17 Minor Architectural Details	N/A

C1.18 Laneways	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.3.4 Helsarmel Distinctive Neighbourhood, Leichhardt	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	No
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see below
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
N/A	
<b>Part D: Energy</b>	
Section 1 – Energy Management	
Yes	
Section 2 – Resource Recovery and Waste Management	
Yes	
D2.1 General Requirements	
Yes	
D2.2 Demolition and Construction of All Development	
Yes	
D2.3 Residential Development	
Yes	
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
Yes	
E1.1 Approvals Process and Reports Required With Development Applications	
Yes	
E1.1.1 Water Management Statement	
N/A	
E1.1.2 Integrated Water Cycle Plan	
N/A	
E1.1.3 Stormwater Drainage Concept Plan	
Yes	
E1.1.4 Flood Risk Management Report	
N/A	
E1.1.5 Foreshore Risk Management Report	
N/A	
E1.2 Water Management	
Yes	
E1.2.1 Water Conservation	
Yes	
E1.2.2 Managing Stormwater within the Site	
Yes	
E1.2.3 On-Site Detention of Stormwater	
Yes	
E1.2.4 Stormwater Treatment	
Yes	
E1.2.5 Water Disposal	
Yes	
E1.2.6 Building in the vicinity of a Public Drainage System	
N/A	
E1.2.7 Wastewater Management	
Yes	
E1.3 Hazard Management	
N/A	
E1.3.1 Flood Risk Management	
N/A	
E1.3.2 Foreshore Risk Management	
N/A	

The following provides discussion of the relevant issues:

### C3.2 Site Layout and Building Design

*Building Location Zone (BLZ)*

The proposed dwellings are compliant with the building envelope control, and established ground floor building location zone control. However, the proposal seeks to vary the first floor building location zone and rely upon a variation to the side setback controls along the northern and southern elevation. As shown in the figure below, the adjoining properties at 221B and 225 Elswick Street North maintain generally consistent first floor BLZ rear setbacks of 13.9m and 13.8m, respectively. This equates to a required first floor BLZ rear setback of approximately 13.85m.

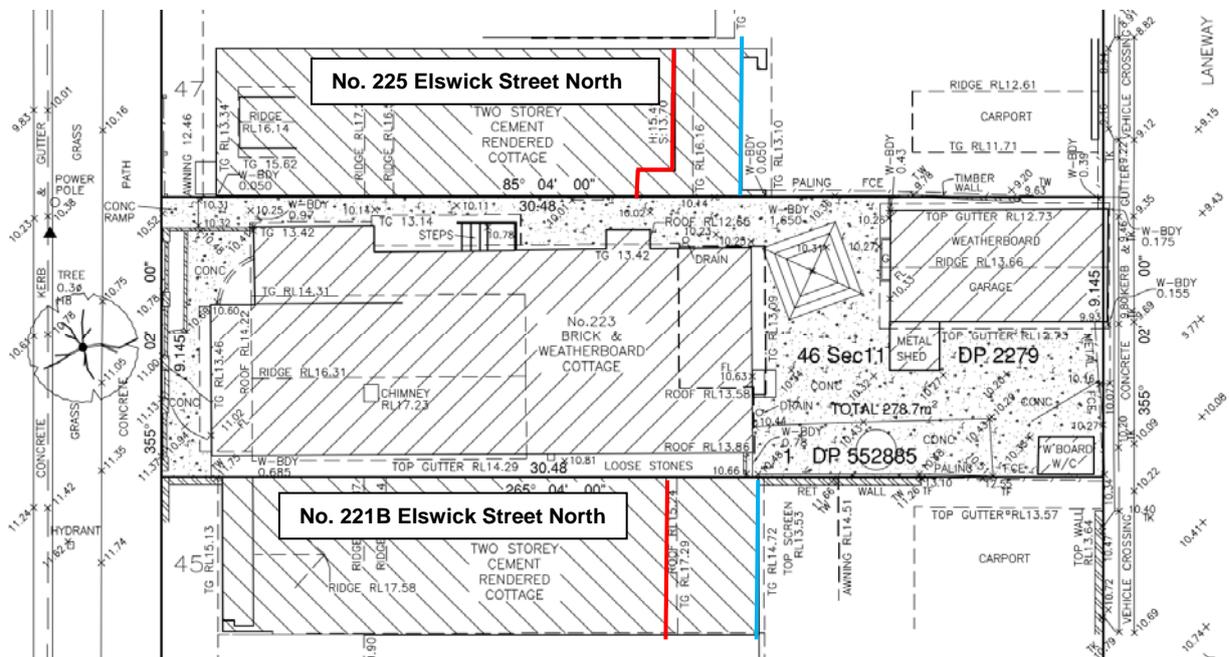


Figure 5: Existing pattern of development. The blue lines indicate ground floor BLZ and red lines indicate first floor rear BLZ.

The proposed first floor BLZ rear setback of 12.55m equates to an encroachment of 1.3m for the full width of the site. The variation results in reduced amenity to the adjoining property to the south through unnecessary overshadowing of the rear ground floor living area skylights after 12pm and does not satisfy the test of minimising the visual scale of the development when viewed from adjoining properties as required by Clause C3.2 of the LDCP 2013. Further, the BLZ variation results in a variation to the maximum FSR control of 0.8:1 permitted under Leichhardt LEP 2013, which is not supported given the impacts of the additional floor space have not been minimised compared to an otherwise compliant proposal. Therefore, a condition will be imposed requiring that the first floors of each dwelling at the rear be cutback in length by 1.3m in order to comply with the first floor rear BLZ and mitigate unnecessary and adverse amenity impacts on adjoining properties, noting sufficient internal space will be available to maintain a useable master bedroom, walk-in-robe and ensuite.

In consideration of the above, the siting of the proposal is in a location where development could be readily assumed given the context of the area subject to suitable conditions.

Side Setback

The following table indicates compliance with the Side Boundary Setback Graph –

Elevation	Proposed Wall Height (m)	Required setback (m)	Proposed setback (m)	Difference (m)
Northern	7.06	2.45	0	2.45
Southern	6.78	2.3	0	2.3

Council's DCP allows for a variation to the wall height for the required setback, provided the proposal demonstrates compliance with the relevant Building Typology; pattern of development is not compromised; the bulk and scale is minimised; and amenity impacts are minimised; and reasonable access is retained for maintenance.

The proposal (as conditioned) is considered acceptable for the following reasons:

- The proposed new dwellings will establish a first floor building location zone that does not result in any adverse amenity impacts upon the surrounding properties in terms of solar access and visual privacy or bulk and scale;
- The proposal complies with the site coverage and landscaped area development standards, and as such will provide a suitable area within the rear of the property to accommodate vegetation and a large canopy tree;
- The proposal will provide a compatible area of private open space and outdoor recreation, that achieves an acceptable level of privacy and solar access for the occupants;
- The proposal is considered to be compatible with the scale and character of surrounding development.

#### C3.4 Dormers

The proposed new dwellings include dormer windows to the western (Elswick Street North) elevation which are generally consistent with the provisions of the dormer control with the exception of the dormer width, which will exceed the maximum 25% of the roof width. The form of the proposed dormers is not traditional in style, but is considered to be compatible with the architectural style of the proposed dwelling, and seeks to complement the pitched roof elements of the surrounding detached dwellings including those adjoining the development. The style also allows for the overall roof form to be lower, whilst still providing for habitable floor area at the first floor level. Accordingly the proposed dormers are supported on merit.

#### C3.9 Solar Access

The subject site and adjoining properties are orientated east-west; therefore the following solar access controls are applicable to the development:

- *C4 Private open space is to receive a minimum three hours of direct Sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice.*
- *C9 New residential dwellings are to obtain a minimum of three (3) hours of direct Sunlight to the main living room between 9am and 3pm during the winter solstice.*
- *C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.*
- *C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*

#### *Private Open Space*

The application was supported by shadow diagrams demonstrating the available solar access to each private open space, including the adjoining residential property at No. 221B Elswick Street North, which concluded that both the private open space of the adjoining property and proposed lots will receive solar access to greater than 50% between 9am and 12pm from a seated position. This is considered acceptable having regard to the established pattern of development in this section of the street and level changes between adjoining properties resulting in fence heights greater than the standard 1.8m.

#### *Living Areas*

In relation to the available solar access to the main living areas of the proposed new dwellings, it is expected that each dwelling will each receive an acceptable level of solar

access, as they are benefitted by significant glazing along the eastern elevations of the proposed living area, and have also incorporated skylights above the open plan kitchen and living areas to further assist.

In relation to the solar access impact to main living areas of No. 221B Elswick Street North, in excess of 2.5 hours solar access will be maintained to living area glazing without any additional overshadowing subject to a condition requiring the first floor rear building line to be set back a further 1.3m in order to comply with the first floor rear BLZ.

#### 5(d) 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(e) The suitability of the site for the development

The site is zoned R1 – General Residential. 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(f) Any submissions

The application was notified in accordance with Council's Policy for a period of 14 days to surrounding properties. No submissions were received.

#### 5(g) 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:

- Development Engineer; and
- Landscape Officer.

These sections/officers raised no objections to the proposal proceeding subject to conditions relating to required on-site landscaping and stormwater management addressing relevant controls of the Leichhardt Development Control Plan 2013, which are recommended to be imposed on any consent granted.

## 7. Section 94 Contributions

Section 94 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 financial contribution would be required for the development under Leichhardt Section 94 Contributions Plans as follows:

Open Space & Recreation

• Two (2) dwellings 106m <sup>2</sup> - 160m <sup>2</sup> @ \$25,811.00 per dwelling	\$51,622.00
• Less credit for one (1) dwelling 53m <sup>2</sup> – 160m <sup>2</sup> @ \$25,811.00 per dwelling	- \$25,811.00
<b>Total</b>	<b>\$25,811.00</b>

Community Facilities & Services

• Two (2) dwellings 106m <sup>2</sup> – 160m <sup>2</sup> @ \$3,945.00 per dwelling	\$7,890.00
• Less credit for one (1) dwelling 106m <sup>2</sup> – 160m <sup>2</sup> @ \$3,945.00 per dwelling	-\$3,945.00
<b>Total</b>	<b>\$3,945.00</b>

Transport and access, Works & Facilities

• LATM for two (2) dwellings 86m <sup>2</sup> to 120m <sup>2</sup> @ \$227.32 per dwelling	\$384.69
• Less LATM credit for one (1) dwelling 86m <sup>2</sup> to 120m <sup>2</sup> @ \$227.32 per dwelling	- \$227.32
<b>LATM Total</b>	<b>\$157.37</b>
• Bicycle works for two (2) dwellings 86m <sup>2</sup> to 120m <sup>2</sup> @ \$34.13 per dwelling	\$50.71
• Less Bicycle works credit for one (1) dwelling 86m <sup>2</sup> to 120m <sup>2</sup> @ \$34.13 per dwelling	-\$34.13
<b>Bicycle Total</b>	<b>\$16.58</b>
<b>Total</b>	<b>\$173.95</b>
<b>NET</b>	<b>\$29,929.95</b>

Pursuant to the Ministerial Direction on Local Infrastructure Contributions dated 3 March 2011:

- (2) *A council (or planning panel) must not grant development consent (other than for development on land identified in Schedule 2) subject to a condition under section 94 (1) or (3) of the Environmental Planning and Assessment Act 1979 requiring the payment of a monetary contribution that:*
- (a) *in the case of a development consent that authorises one or more dwellings, exceeds \$20000 for each dwelling authorised by the consent, or*
- (b) *in the case of a development consent that authorises subdivision into residential lots, exceeds \$20 000 for each residential lot authorised to be created by the development consent.*

In this instance the consent authorises the erection of two dwellings (notwithstanding a credit is given for the existing dwelling), and hence Council may not impose a condition that requires payment in excess of \$40,000. As the proposed condition requires payment of \$29,929.95, the Direction is complied with.

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

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The variation to Clause 4.1 Minimum Lot Size of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2017/453 for Demolition of existing structures; boundary adjustment between two existing allotments; construction of two X two storey attached dwellings each located on separate lots; and associated works, including new fencing and on-site car parking and access via rear lane at 223 Elswick Street North, LEICHHARDT NSW 2040 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. D/2017/453 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
16.291 DA01.B (Site Analysis / Roof Plan)	Realize Architecture	24.10.17
16.291 DA02.B (Ground Floor Plan)	Realize Architecture	24.10.17
16.291 DA03.B (First Floor Plan)	Realize Architecture	24.10.17
16.291 DA04.B (West & East Elevations)	Realize Architecture	24.10.17
16.291 DA05.B (223 North & South Elevations)	Realize Architecture	24.10.17
16.291 DA06.B (223A North & South Elevations)	Realize Architecture	24.10.17
16.291 DA07.B (Sections Sheet 01)	Realize Architecture	24.10.17
16.291 DA08.B (Sections Sheet 02)	Realize Architecture	24.10.17
16.291 DA09.B (Section 3 & Driveway Sections)	Realize Architecture	24.10.17
16.291 DA16.A (Plan of Subdivision)	Realize Architecture	4.9.17
LP 1735 Rev. A Sheet 1 of 3 (Landscape Plan)	Stylish Gardens	24.10.17
LP 1735 Rev. A Sheet 2 of 3 (Plant Schedule)	Stylish Gardens	24.10.17
LP 1735 Rev. A Sheet 3 of 3 (Landscape Plan-Details)	Stylish Gardens	24.10.17
1038 C1 Issue E (Drainage Concept Plan & Roof Plan)	Alan L Wright & Associates	24.10.17
1038 C2 Issue B (Drainage Concept Plan & Roof Plan)	Alan L Wright & Associates	24.10.17
Document Title	Prepared By	Dated
BASIX Certificate No. 854782S_02	Greenview Consulting Pty Ltd	25 October 2017
BASIX Certificate No. 854774S_02	Greenview Consulting Pty Ltd	25 October 2017
Waste Management Plan	Realize Architecture	16 August 2017
External Finishes Schedule	Realize Architecture	16 August 2017
Acoustic Report	Acoustica Pty Ltd	31 August 2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

2. The demolition works approved by this consent shall strictly comply with the following conditions:

- a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
  - i) A pre commencement inspection when all the site works are installed on the site and prior to demolition commencing.
  - ii) A final inspection when the demolition works have been completed.

NOTE: If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.

- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: Demolition of structures.
- g) The hours of demolition work are limited to between 7:00am and 6.00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig [www.1100.com.au](http://www.1100.com.au) should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 Demolition of structures by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:

- i) A WorkCover licensed contractor must undertake removal of all asbestos.
- ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
- iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
- iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
- v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

### PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

3. Amended plans are to be submitted incorporating the following amendments:
  - a) The first floors and rooves of each dwelling at the rear are to be cutback in length by 1.3m. As a result of the above design change, the roof over the ground floor living rooms behind the first floors is to remain a skillion pitching up from RL14.1 at the same pitch shown on the approved plans.

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

4. A contribution pursuant to the provisions of Section 94 of the *Environmental Planning and Assessment Act 1979* for the services detailed in column A and for the amount detailed in column B must be made to Council prior to the issue of a Construction Certificate:

COLUMN A	COLUMN B
Open space and recreation	\$28,811.00
Community facilities and services	\$3,945.00
Local area traffic management	\$157.37
Bicycle works	\$16.58

**The total contribution is: \$29,929.95**

Payment will only be accepted in the form of cash, bank cheque or EFTPOS / Credit Card (to a maximum of \$10,000). It should be noted that personal cheques or bank guarantees cannot be accepted for Section 94 Contributions. Contribution Plans may be inspected on Council's website [www.leichhardt.nsw.gov.au](http://www.leichhardt.nsw.gov.au) or a copy purchased at the Citizen Service in Council's Administration Centre, 7-15 Wetherill Street, Leichhardt, during business hours.

A receipt demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

5. A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant must be provided prior to the issue of a Construction Certificate. The plan must include:
- a) Location of all proposed and existing planting delineating existing trees to be retained, removed or transplanted.
  - b) A detailed planting schedule including species by botanical and common names, quantities, pot sizes and estimated size at maturity.
  - c) At least 85% of the plantings must be native species from the Sydney locale.
  - d) One canopy tree (per lot) capable of achieving a mature height of at least six (6) metres and in a container size of a minimum of 1 x 100 litre, shall be planted in a more suitable location within the property. The tree is to conform to AS2303—Tree stock for landscape use.
  - e) Details of planting procedure including available soil depth.
  - f) Details of earthworks including mounding, retaining walls, and planter boxes (consistent with the approved architectural plans).
  - g) A landscape maintenance strategy for the owner / occupier to administer over a twelve (12) month establishment period.
  - h) Details of drainage and watering systems.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

6. Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

7. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:

- i) 10:00pm to 7:00am on Monday to Saturday: and
  - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

8. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
9. In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
- a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
  - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
  - c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

10. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

11. Materials and finishes must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
12. A stormwater drainage design, incorporating on site stormwater detention and on site retention/ re-use facilities (OSR/OSD), prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:
  - a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 1038 C1 / Rev E prepared by Alan L Wright & Associates and dated 24 October 2017.
  - b) Comply with Council's Stormwater Drainage Code.
  - c) Charged or pump-out stormwater drainage systems are not permitted.
  - d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
  - e) A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings.
  - f) The rear yard must be graded so that bypass flows from the site drainage system are directed to the rear laneway. The front yard must be graded so the surface flows are directed towards Elswick Street in the event the pipe system becomes blocked or its capacity exceeded.
  - g) All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2003 Plumbing and Drainage – Stormwater Drainage.
  - h) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
  - i) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.

- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) 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 section height of 100mm.
- l) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- m) The proposed on-site retention tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

13. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues must be addressed in the design:
- a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary are 150mm above the adjacent road gutter invert for the full width of the vehicle crossing. The garage slab or driveway must then rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
  - b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
  - c) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
  - d) Each carport must have minimum clear internal dimensions of 6000 x 3000mm (length x width).
  - e) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate and

provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

14. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
  - a) Must preserve and protect the adjoining building from damage
  - b) Must, at least seven (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.
  - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

15. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
  - The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the application prior to the issuing of a for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

16. An application must be made to Council for the issue of a Levels Certificate. The certificate, issued by Council, must be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

The certificate specifies the surface levels in the road reserve adjacent to the property that must be used as the basis for the design of vehicle or pedestrian accesses, finished floor levels, fences, vents and any structures in the vicinity of the property boundary.

The architectural & engineering plans must be updated to reflect the information in the levels certificate and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The overall height of the external

form must not alter from that depicted within the approved plans and/specified by this consent.

The levels certificate may specify that levels in the adjacent road reserve are required to be changed.

17. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:
- a) Minimise the area of soils exposed at any one time.
  - b) Conservation of top soil.
  - c) Identify and protect proposed stockpile locations.
  - d) Preserve existing vegetation. Identify revegetation technique and materials.
  - e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
  - f) Control surface water flows through the site in a manner that:
    - i) Diverts clean run-off around disturbed areas;
    - ii) Minimises slope gradient and flow distance within disturbed areas;
    - iii) Ensures surface run-off occurs at non erodable velocities;
    - iv) Ensures disturbed areas are promptly rehabilitated.
  - g) Sediment and erosion control measures in place before work commences.
  - h) Materials are not tracked onto the road by vehicles entering or leaving the site.
  - i) Details of drainage to protect and drain the site during works.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

18. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

19. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
  - a) A plan view of the entire site and frontage roadways indicating:
    - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
    - ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
    - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
    - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
    - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
  - b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information.
  - c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
  - d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
  - e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

20. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking. The following specific issues must be addressed in the design:
- a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with those obtained in the Levels Certificate issued by Council. The garage slab or driveway must then rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
  - b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
  - c) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
  - d) Each carport must have minimum clear internal dimensions of 6000 x 3000 (length x width).
  - e) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

The design must be certified by a suitably qualified Civil Engineer as complying with the above requirements.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

21. The applicant must bear the cost of construction of the following works:
- a) Construction of a concrete vehicle crossing at the laneway frontage of the site.
  - b) Reconstruction of the concrete kerb and gutter and infill footpath for the remainder of the laneway frontage of the site.

Development Consent does NOT give approval to undertake any works on Council property. An application must be made to Council and a Roadworks

Permit issued under Section 138 of the Roads Act 1993 prior to construction of these works.

The Roadworks Permit must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of an Occupation Certificate.

Note: The cost of adjustment or relocation of any public utility service shall be borne by the owner/applicant. Where the finished levels of the new works will result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.

22. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:

- a) Estimated volume (m3) or weight (t) of materials that are reused, recycled or removed from site.
- b) On site material storage areas during construction.
- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

**PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)**

23. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued (whichever occurs first), a security deposit as set out below must be paid to Council to cover the costs associated with the road, footpath and drainage works required by this consent.

<b>Works</b>	<b>Security Deposit</b>
Roadworks (ROADWB)	\$ 4,400
<b>Total</b>	<b>\$ 4,400</b>

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 amount nominated is only current for the financial year in which the 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.

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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 24. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below must be 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.

Security Deposit	\$2,399.70
Inspection fee	\$225.00

Payment will be accepted in the form of cash, bank cheque or 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 Council to determine the condition of the adjacent road reserve & footpath prior to & 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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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 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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be

submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 25. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
221B Elswick Street, North Leichhardt	Dwelling
225 Elswick Street, North Leichhardt	Dwelling

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 26. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
  - a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application

- b) A concrete pump across the roadway/footpath. – A Standing Plant permit
- c) Mobile crane or any standing plant – A Standing Plant Permit
- d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
- e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
- f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
- g) Awning or street verandah over footpath. – Road works Application
- h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

27. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

- a) location of the building with respect to the boundaries of the site;
28. The site must be 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 property 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.

Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

29. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

30. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt 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.
31. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
32. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
33. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
- a) Unauthorised entry to the work site is prohibited.

- b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
- c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

### **DURING WORKS**

34. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

35. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

36. The site must be appropriately secured and fenced at all times during works.
37. All fill used with the proposal shall be virgin excavated material (such as clay,

gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority.

38. Excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and  
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

39. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
40. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
41. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
  - a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element, and
  - d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
42. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
43. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

The requirements of the Soil and Water Management Plan must be maintained at all times during the works and shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

44. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.

45. 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.

#### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

46. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

47. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

48. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on-site retention/re-use facilities. The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.

- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

The Plan must be prepared by a suitably qualified professional and provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

- 49. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance the development consent and with relevant Australian Standards must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

- 50. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
- 51. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
- 52. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with Council Roadworks Permit approval.

Written notification from Council that the works approved under the Roadworks Permit have been completed to its satisfaction and in accordance with the conditions of the Permit, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

- 53. Prior to the issue of an Occupation Certificate, a positive covenant must be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) with the requirement to maintain the on-site detention and on-site retention/re-use facilities on the property.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a) The Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the on-site stormwater detention facilities (“OSD”) and on-site retention/re-use facilities (“OSR”).
- b) The Proprietor shall have the OSD and OSR inspected annually by a competent person.
- c) The Council shall have the right to enter upon the land referred to above,

at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSD and OSR or which convey stormwater from the said land; and recover the costs of any such works from the proprietor.

- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD and OSR, or failure to clean, maintain and repair the OSD and OSR.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Proof of registration with the NSW Land and Property Information must be submitted to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate / Subdivision Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

54. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

55. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and tree planting, have been undertaken in accordance with the approved plan(s) and conditions of consent. A copy of an active Landscape management plan/contract for the maintenance of the landscaping for a period of not less than two years after the installation is to be provided prior to the issue of the Occupation Certificate.

56. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and plumbing section on the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Plumbing, building & developing".

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

57. All letter boxes must be constructed and located in accordance with the relevant

provisions of Australian Standard AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction. Work is to be completed prior to the issue of any Occupation Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

58. A street number must be clearly displayed at the ground level frontage of the building prior to the issue of an Occupation Certificate. A separate application must be made to Council if new street numbers or a change to street numbers is required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

59. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
  - BASIX certificate (where relevant),
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.

#### **PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

60. Prior to the issue of a Subdivision Certificate, the applicant shall submit an original plan of subdivision plus three (3) copies for Council's endorsement and administration sheet. The following details shall also be submitted:
- a) Evidence that all conditions of this Development Consent have been satisfied.
  - b) Evidence of payment of all relevant fees and contributions.
  - c) The 88B instrument plus six (6) copies.
  - d) A copy of the final Occupation Certificate issued for the development.
  - e) All surveyor's or engineer's certification required by the Development Consent.
  - f) A copy of the Section 73 Compliance Certificate issued by Sydney Water.

All parking spaces and common property, including visitor car parking spaces and on-site detention facilities must be included on the final plans of subdivision and allocated in accordance with the approved plans.

61. A Registered Surveyor shall provide certification that all services (eg drainage, stormwater, water supply, gas, electricity, telephone) as constructed are contained within each lot or within appropriate easements to accommodate

such services. The certification is to be provided prior to the issue of a Subdivision Certificate.

### ONGOING CONDITIONS OF CONSENT

62. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
63. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
64. The Operation and Management Plan for the on-site retention/re-use facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
65. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
66. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling, is defined under the *Leichhardt Local Environmental Plan 2013*.

### PRESCRIBED CONDITIONS

#### A. BASIX Commitments

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
  - i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or

- ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

## **B. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

## **C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions 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 Leichhardt Council written notice of the following:
  - 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, or
  - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

## **D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

**E. Condition relating to shoring and adequacy of adjoining property**

- 1) For the purposes of section 80A (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:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**NOTES**

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 82A of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development, integrated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 82A.
3. If you are unsatisfied with this determination, Section 97 of *the Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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 96 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. 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.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.









**REALIZE ARCHITECTURE**  
 1/08 Water Street, Leichhardt, NSW 2088  
 phone 02 9291 1888  
 email info@realize-arch.com.au  
 www.realize-arch.com.au

**CLIENT** Realization of the former 15 residential units for a purpose of Retail Architecture  
 The client is seeking a development which is a mix of retail and residential units. The client is seeking a development which is a mix of retail and residential units. The client is seeking a development which is a mix of retail and residential units.

**ABBREVIATIONS**  
 RL 18.590 Roof  
 RL 17.930 223A Roof  
 RL 17.210 223A Roof  
 RL 16.550 225A Roof  
 RL 14.350 223 First Floor  
 RL 13.650 223A First Floor  
 RL 11.350 223 Ground Floor  
 RL 10.750 223A Ground Floor  
 RL 0.000 223A Ground Floor

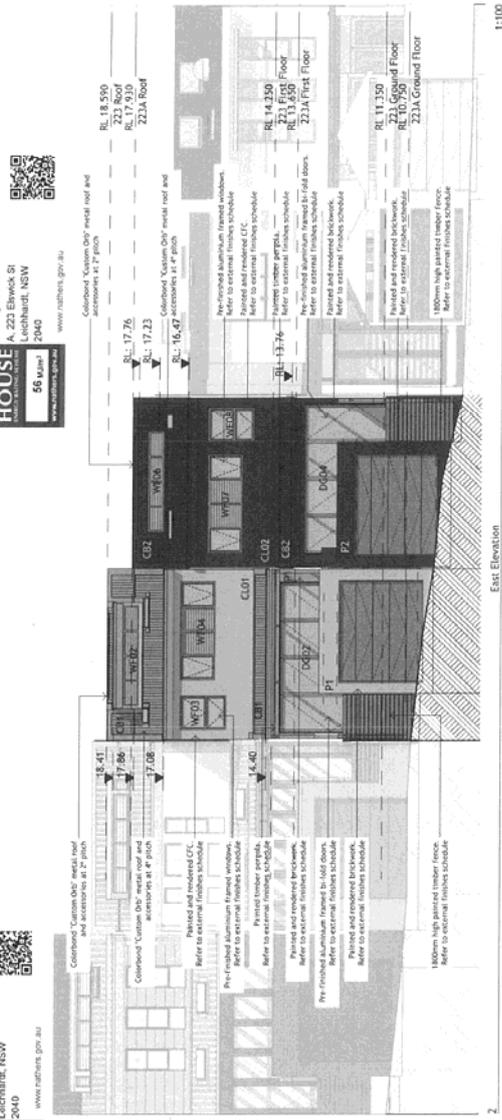
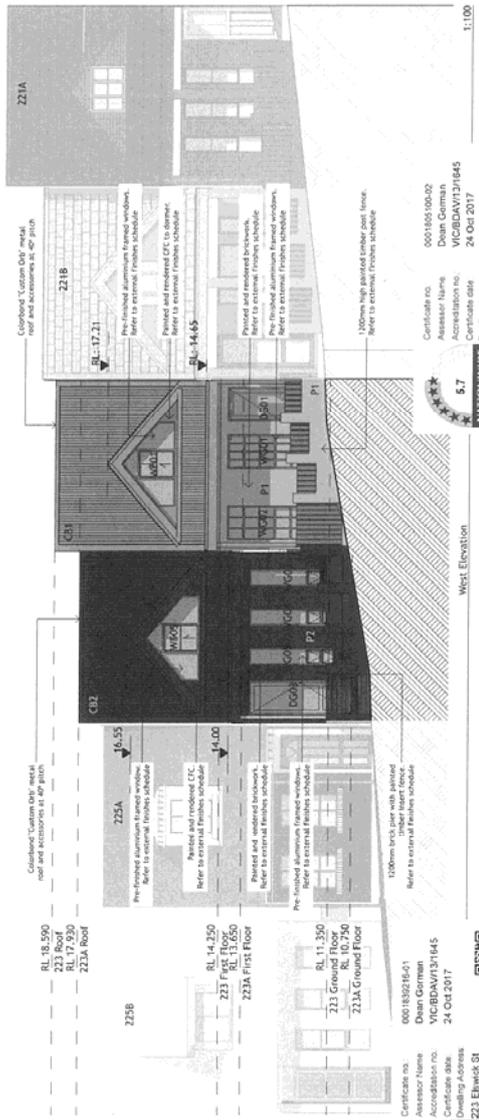
**GENERAL NOTES**  
 1. Refer to the site plan for the location of the units.  
 2. Refer to the site plan for the location of the units.  
 3. Refer to the site plan for the location of the units.

**CONTRACTS**  
 The following contracts are to be used:  
 1. The following contracts are to be used:  
 2. The following contracts are to be used:

**PROJECT** 223 Elwick Street  
 address 223 Elwick Street, Leichhardt NSW 2088  
 lot 46-50: 1 in 805279 B, Lot 1 (SPS)1283  
 client Therese B. Tony Dennis

**REALIZE**  
 drawing title Elevation - Sheet D1  
 scale 1:100  
 drawn B.G./G.C.  
 checked T.S.  
 date 14/08/2017  
 drawing no. 16-291 DA04B

0 1 2 3 4 5 6  
 metres







**REALIZE** Realize Architecture  
 1/10 Water Street, Haberfield, NSW 2088  
 email: info@realize.com.au  
 phone: 02 4294 9888

**PROJECT:** Reproduction of this drawing is prohibited without the written consent of Realize Architecture.  
 This drawing is to be used in accordance with the relevant Building Code of Australia and any other applicable laws, regulations and standards. It is not to be used for any other purpose without the written consent of Realize Architecture.  
 Realize Architecture is not responsible for any errors or omissions in this drawing.

**ABBREVIATIONS:**  
 RL: Reduced Level  
 RL 18.590: 223 Roof  
 RL 14.250: 223A Roof  
 RL 13.650: 223A First Floor  
 RL 11.350: 223 Ground Floor  
 RL 10.750: 223A Ground Floor

**GENERAL NOTES:**  
 1. This drawing shows the proposed development.  
 2. All dimensions are in millimetres unless otherwise stated.  
 3. All work is to be in accordance with the relevant Building Code of Australia and any other applicable laws, regulations and standards.  
 4. The applicant is responsible for obtaining all necessary approvals from the relevant authorities.  
 5. The applicant is responsible for ensuring that the development complies with all applicable laws, regulations and standards.  
 6. The applicant is responsible for ensuring that the development is constructed in accordance with the approved plans.  
 7. The applicant is responsible for ensuring that the development is maintained in accordance with the approved plans.  
 8. The applicant is responsible for ensuring that the development is demolished in accordance with the approved plans.

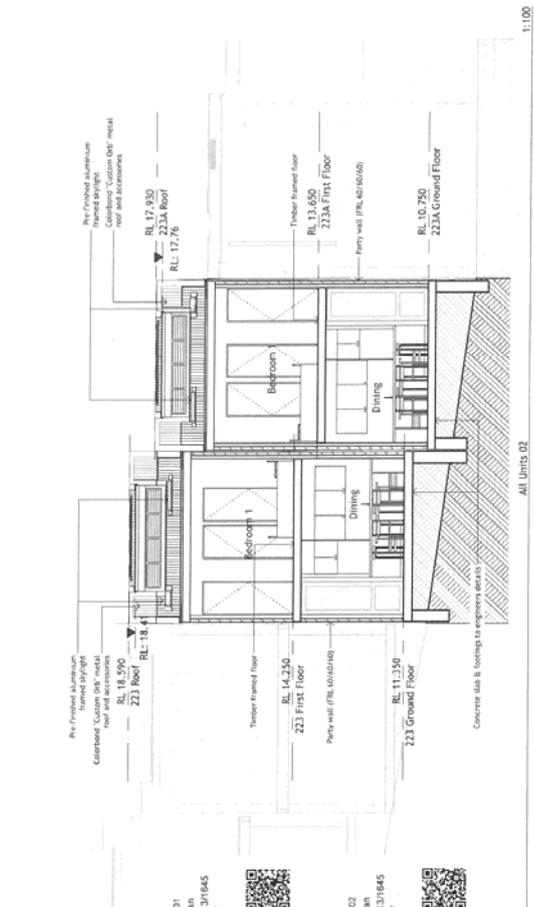
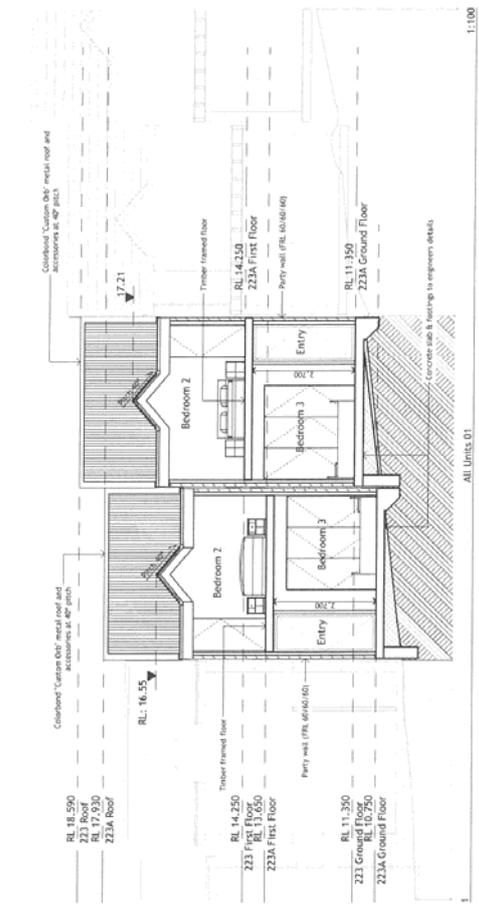
**CONTRACTORS:**  
 The following contractors are to be engaged to carry out the works shown on this drawing:  
 Structural: [Name]  
 Mechanical: [Name]  
 Electrical: [Name]  
 Plumbing: [Name]  
 Fire: [Name]  
 Landscaping: [Name]  
 Painting: [Name]  
 Joinery: [Name]  
 Glass: [Name]  
 Metalwork: [Name]  
 Carpentry: [Name]  
 Brickwork: [Name]  
 Concreting: [Name]  
 Earthworks: [Name]  
 Driveway: [Name]  
 Fencing: [Name]  
 Retaining Walls: [Name]  
 Stormwater: [Name]  
 Sewerage: [Name]  
 Gas: [Name]  
 Water: [Name]  
 Power: [Name]  
 Telecommunications: [Name]  
 Other: [Name]

**CLIENT:** 223 Elswick Street  
 223 Elswick Street  
 Lot 46-50: 1 in 802278 B, Lot 1 (PPS1)883  
 Therese B. Tony Dennis

**DATE:** 14/08/2017  
**SCALE:** 1:100  
**DRAWN BY:** B.G./G.C.  
**APPROVED BY:** T.S.  
**DRAWING NO.:** 16-291 DA07 B

**REALIZE**  
 Development Application  
 Sections - Sheet 01

0 1 2 3 4 5 6  
 metres



**5.2**  
 NATIONWIDE HOUSE  
 63 Mark  
 www.nathans.gov.au

**5.7**  
 NATIONWIDE HOUSE  
 56 Mark  
 www.nathans.gov.au

090 183076 01  
 Dean Gorman  
 VIC/BDV/13/1645  
 24 Oct 2017

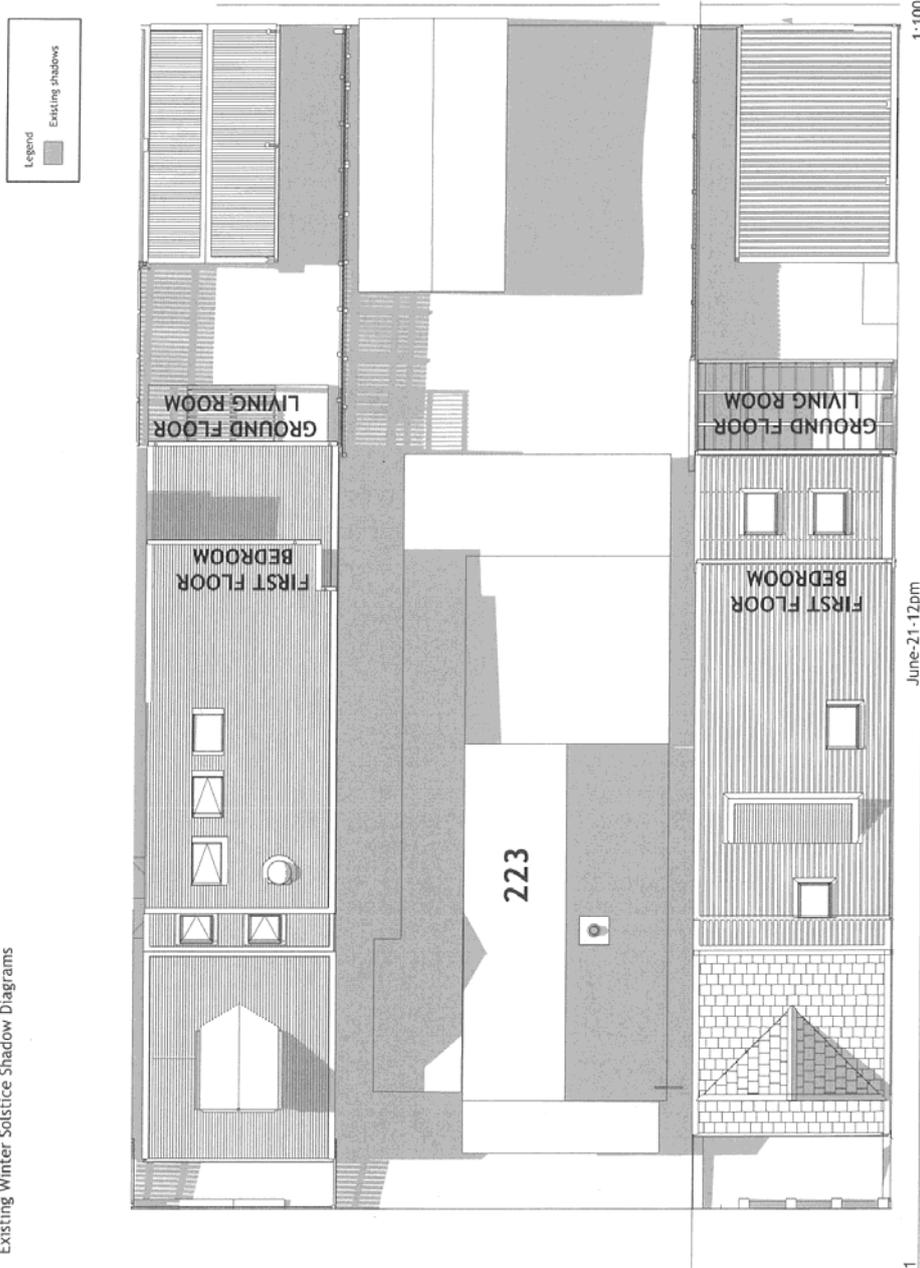
090 183076 02  
 Dean Gorman  
 VIC/BDV/13/1645  
 24 Oct 2017







Existing Winter Solstice Shadow Diagrams



resize Raganize Architecture  
 170 Mowbray Street, Haberfield, NSW 2060  
 phone 02 924 8666

NOTES: 1. This drawing has been prepared in accordance with the requirements of the Building Act 2006 and the Building Regulation 2006. The contractor shall confirm all other existing dimensions and levels shall be verified for the architect for all construction. All dimensions shall be taken from the face of the work unless otherwise stated.

- ABBREVIATIONS
- BBB Block
  - BTM Brickwork
  - CC Concrete
  - CCC Concreted floor concrete
  - CCB Concrete
  - CCF Carpet
  - CCG Concrete
  - CCS Concrete
  - CCV Concrete
  - CCW Concrete
  - CCX Concrete
  - CCY Concrete
  - CCZ Concrete
  - CCAA Concrete
  - CCAB Concrete
  - CCAC Concrete
  - CCAD Concrete
  - CCAE Concrete
  - CCAF Concrete
  - CCAG Concrete
  - CCAH Concrete
  - CCAI Concrete
  - CCAJ Concrete
  - CCAK Concrete
  - CCAL Concrete
  - CCAM Concrete
  - CCAN Concrete
  - CCAO Concrete
  - CCAP Concrete
  - CCAQ Concrete
  - CCAR Concrete
  - CCAS Concrete
  - CCAT Concrete
  - CCAU Concrete
  - CCAV Concrete
  - CCAW Concrete
  - CCAX Concrete
  - CCAY Concrete
  - CCAZ Concrete
  - CCBA Concrete
  - CCBB Concrete
  - CCBC Concrete
  - CCBD Concrete
  - CCBE Concrete
  - CCBF Concrete
  - CCBG Concrete
  - CCBH Concrete
  - CCBI Concrete
  - CCBJ Concrete
  - CCBK Concrete
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  - CCBM Concrete
  - CCBN Concrete
  - CCBO Concrete
  - CCBP Concrete
  - CCBQ Concrete
  - CCBR Concrete
  - CCBS Concrete
  - CCBT Concrete
  - CCBU Concrete
  - CCBV Concrete
  - CCBW Concrete
  - CCBX Concrete
  - CCBY Concrete
  - CCBZ Concrete
  - CCCA Concrete
  - CCCB Concrete
  - CCCC Concrete
  - CCCD Concrete
  - CCCE Concrete
  - CCCF Concrete
  - CCCG Concrete
  - CCCH Concrete
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  - CCCL Concrete
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  - CCCN Concrete
  - CCCO Concrete
  - CCCP Concrete
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  - CCCR Concrete
  - CCCS Concrete
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  - CCCX Concrete
  - CCCY Concrete
  - CCCZ Concrete

GENERAL NOTES

1. All dimensions are in millimetres unless otherwise stated.
2. All levels are in metres above datum unless otherwise stated.
3. All work shall be in accordance with the Australian Standards.
4. All work shall be in accordance with the Building Act 2006 and the Building Regulation 2006.
5. All work shall be in accordance with the relevant codes of practice.
6. All work shall be in accordance with the relevant specifications.
7. All work shall be in accordance with the relevant standards.
8. All work shall be in accordance with the relevant requirements.
9. All work shall be in accordance with the relevant conditions.
10. All work shall be in accordance with the relevant provisions.
11. All work shall be in accordance with the relevant arrangements.
12. All work shall be in accordance with the relevant procedures.
13. All work shall be in accordance with the relevant practices.
14. All work shall be in accordance with the relevant methods.
15. All work shall be in accordance with the relevant techniques.
16. All work shall be in accordance with the relevant skills.
17. All work shall be in accordance with the relevant knowledge.
18. All work shall be in accordance with the relevant experience.
19. All work shall be in accordance with the relevant expertise.
20. All work shall be in accordance with the relevant competence.

COMPLIANCE

This drawing has been prepared in accordance with the requirements of the Building Act 2006 and the Building Regulation 2006.

Author: [Name]

Designer: [Name]

Checker: [Name]

Approver: [Name]

Date: [Date]

PROJECT

223 Elswick Street  
 223 Elswick Street  
 Leichhardt NSW 2040  
 Lot 48 Sec 11 in DP9274 B Lot 1 DP93285

CLIENT

Therese E. Terry Dennis

SCALE

1:100

DRAWN BY

T.S.

DATE

14/08/2017

DRAWING NO.

18.291.DA20LB

SCALE

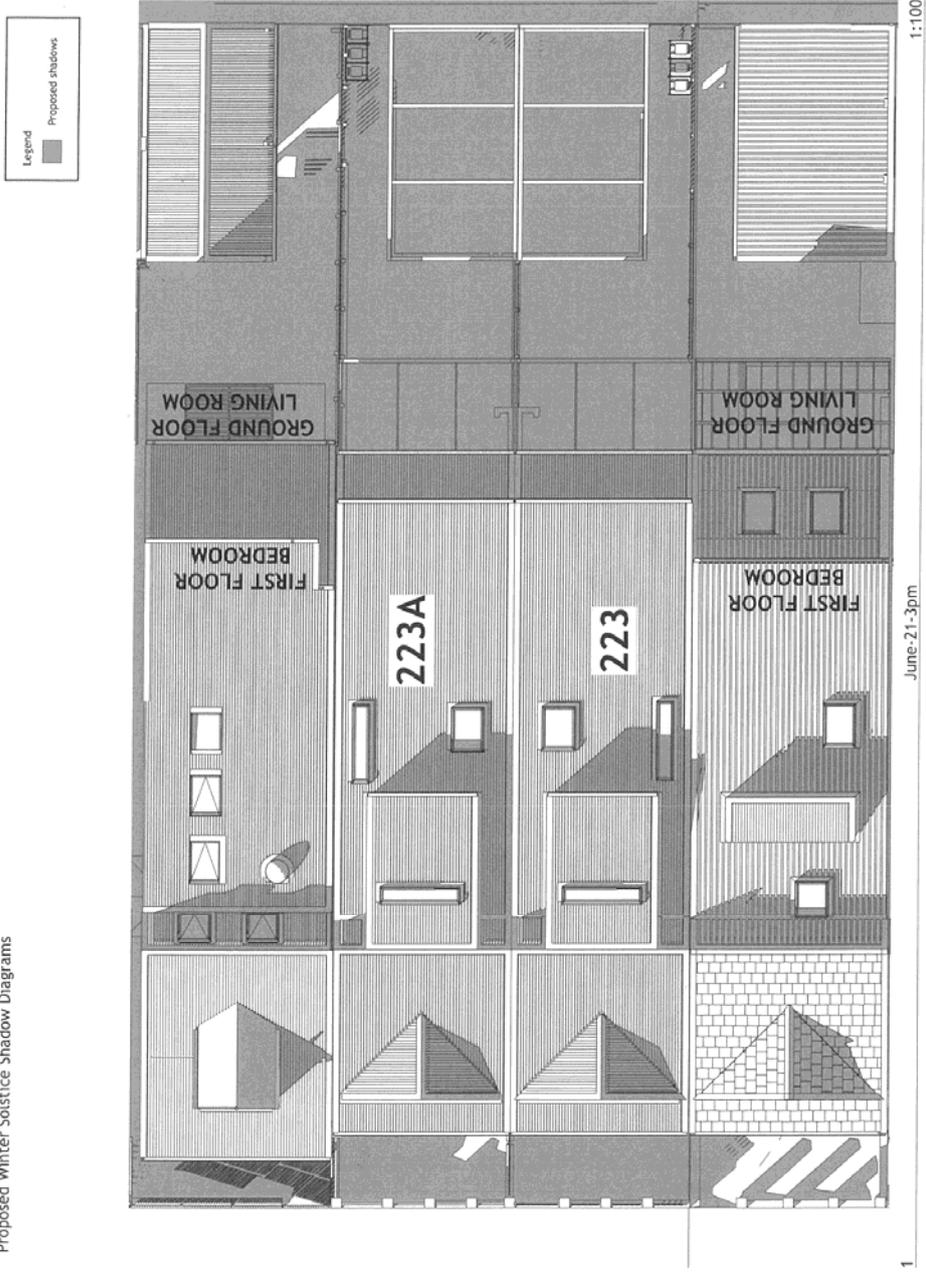
0 2 4 6 8 10 12 metres







Proposed Winter Solstice Shadow Diagrams



**REALIZE ARCHITECTURE**  
 100/400  
 address 170 Maber Street, Haberburg, NSW 2208  
 email art@realizearch.com.au  
 phone 61 2 954 8828  
 www www.realizearch.com.au

**NOTES**  
 1. This drawing is to be used in conjunction with the relevant floor plan and section drawings.  
 2. The particular small details on this drawing are for information only and should be referred to the relevant floor plan and section drawings for further details.  
 3. All dimensions are in millimetres unless otherwise stated.

- ABBREVIATIONS**
- AB Brickwork
  - BS Bath
  - CB Concrete
  - CC Concrete
  - CG Carpet
  - CL Ceiling
  - CS Cladding
  - CSB Concrete Slab
  - CSF Concrete Slab
  - CSL Concrete Slab
  - CSM Concrete Slab
  - CSN Concrete Slab
  - CSO Concrete Slab
  - CSR Concrete Slab
  - CSU Concrete Slab
  - CSV Concrete Slab
  - CSW Concrete Slab
  - CSX Concrete Slab
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  - CSAZ Concrete Slab
  - CSAAA Concrete Slab
  - CSAAB Concrete Slab
  - CSAAC Concrete Slab
  - CSAAD Concrete Slab
  - CSAAE Concrete Slab
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  - CSAAZ Concrete Slab

**GENERAL NOTES**

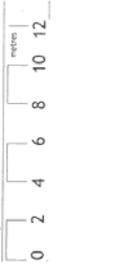
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2. The particular small details on this drawing are for information only and should be referred to the relevant floor plan and section drawings for further details.
3. All dimensions are in millimetres unless otherwise stated.

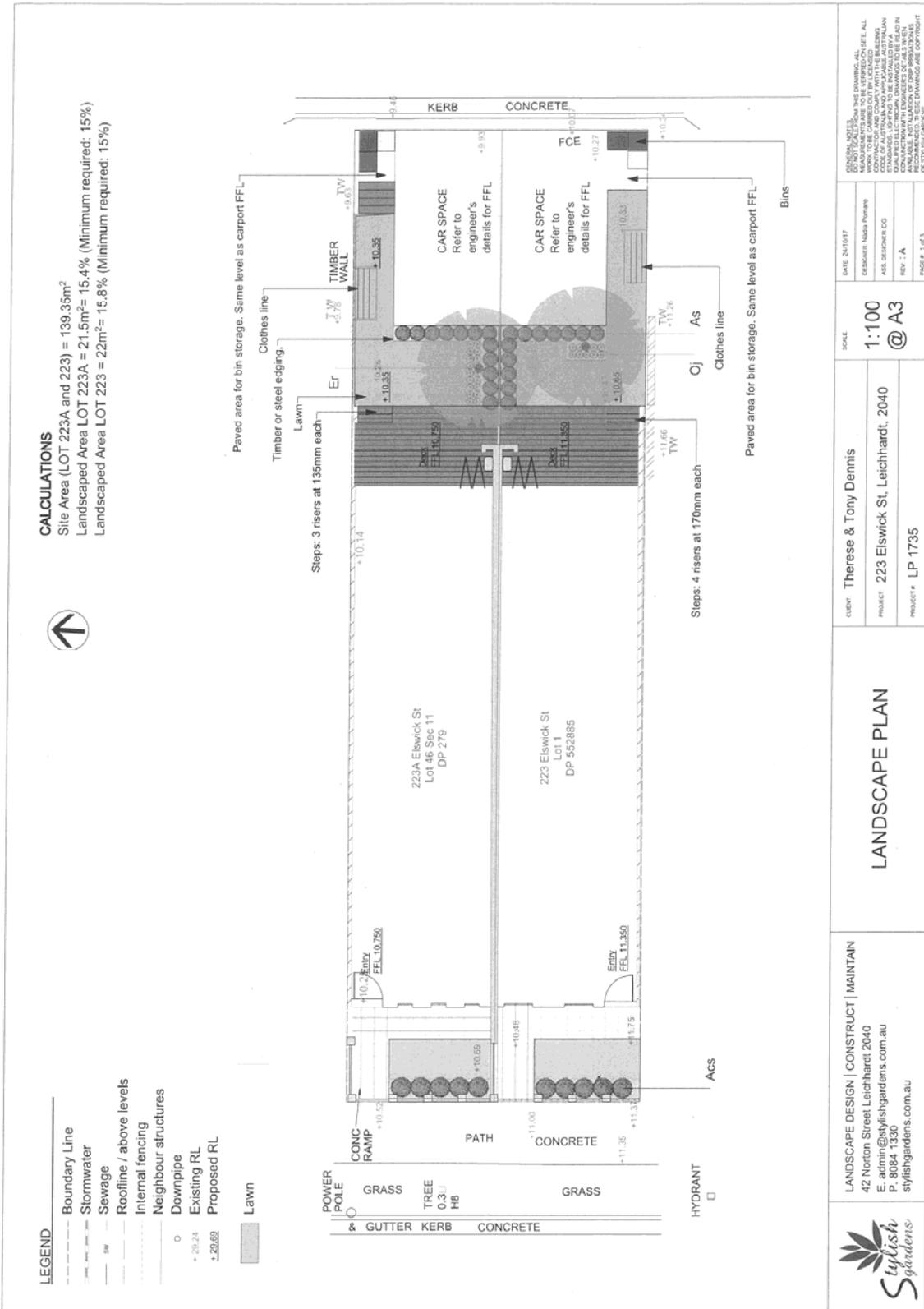
**CONSULTANTS**

Architect: REALIZE ARCHITECTURE  
 Structural Engineer: [Name]  
 Civil Engineer: [Name]  
 Electrical Engineer: [Name]  
 Mechanical Engineer: [Name]  
 Fire Engineer: [Name]  
 Landscape Architect: [Name]  
 Quantity Surveyor: [Name]  
 Project Manager: [Name]

**PROJECT**  
 223 Elbowick Street  
 223 Elbowick Street  
 Leichhardt, NSW 2040  
 client: [Name]

**REALIZE ARCHITECTURE**  
 Development Application  
 Proposed Shadows 3pm  
 scale: A3 1:100  
 drawn: B.G./G.C.  
 checked: T.S.  
 date: 14/08/2017  
 drawing no.: 16-291-DA30-B







## Attachment C – Clause 4.6 Exceptions to Development Standards

Our Ref:16.291/ts.ss/24.01.18



24 January 2018

by email: [eltin.miletic@innerwest.nsw.gov.au](mailto:eltin.miletic@innerwest.nsw.gov.au)

The General Manager  
 Inner West Council - Leichhardt  
 PO Box 45  
 LEICHHARDT NSW 2040

Attention: Mr. Eltin Miletic

Dear Sir,

16.291 AMENDED LLEP 2013: CLAUSE 4.6 'EXCEPTIONS TO DEVELOPMENT STANDARDS' STATEMENT - FSR; DA/2017/453  
 PROJECT NAME 223 Elswick Street, Leichhardt  
 DESCRIPTION 2 New Residences  
 ADDRESS 223 Elswick Street, Leichhardt NSW 2040  
 LOT/DP NO. LOT 46 DP 2279 & LOT 1 DP 552885

#### 1. Background & Compliance with Key Numerical Planning Controls

This letter accompanies development plans prepared by Realize Architecture for submitted DA/2017/453, and addresses the provisions of Clause 4.6 'Exception to Development Standards' of Leichhardt LEP 2013.

(Please note that the development is subject to a separate 'Clause 4.6 Exceptions' statement for the lot size, seeking approval of 2 lots of 139.35m<sup>2</sup> each).

From the Floor Space Ratio Map and Clause 4.4 (2B)(c)(i) of the LLEP 2013, the maximum allowable FSR on the site is 0.8:1. The site has a total area of 279.7m<sup>2</sup> thereby allowing a total Floor Space Ratio of 223.75m<sup>2</sup> under the LEP provisions.

The proposal has a Gross Floor Area of 229.4m<sup>2</sup> representing 5.64m<sup>2</sup> over the allowable the Gross Floor Area.

(i.e. 2.4% exceedance of permissible FSR)

#### 2. Clause 4.6 'Exceptions to Development Standards' Statement: Clause 4.4 Floor Space Ratio

Clause 4.6 'Exceptions to Development Standards' of Leichhardt Local Environmental Plan 2013 provides the opportunity to contravene a development standard with approval of the consent authority and concurrence by the Director-General.

A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

*"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".*

The objectives of Clause 4.6 are as follows:

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

This Submission is therefore provided in order to justify why a maximum Floor Space Ratio requirement of 0.8:1 as required by LLEP 2013, is considered unreasonable or unnecessary for this particular development, i.e:

- Clause 4.4 Floor Space Ratio

**Realize Architecture**  
 A division of Savill Holdings (NSW) P/L  
 ABN 87 954 108 925 ACN 113 368 791

a 1/20 Walker Street  
 p PO Box 105  
 Helensburgh NSW 2508

p 02 4294 9688  
 e [architects@realize.com.au](mailto:architects@realize.com.au)  
 w [www.realize.com.au](http://www.realize.com.au)

Terry Savill Nominated Architect  
 NSW 4652

**Variation to Clause 4.4 Floor Space Ratio**

The objectives of Clause 4.4 Floor Space Ratio pursuant to Leichhardt LEP 2013 are as follows:

- (a) to provide effective control over the bulk of future development,
- (b) to protect the environmental amenity and desired future character of an area,
- (c) to minimise adverse environmental impacts of adjoining properties and the public domain,
- (d) to optimise development density within easy walk of the railway stations and commercial centres.

Sub Clause 4.4 (2) Floor Space Ratio states that:

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

**Floor Space Ratio** is defined under Part 4.5 (2) of LLEP 2013 as ‘the ratio of the gross floor area of all buildings on the site to the site area’.

**Gross Floor Area** is defined under the Dictionary to LLEP 2013 as ‘the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
  - (b) habitable rooms in a basement or an attic, and
  - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:**
- (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used to the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.

The subject site is zoned R1 General Residential pursuant to Leichhardt LEP 2013. The Floor Space Ratio Map confirms that a maximum floor space ratio of 0.8:1 applies to the site.

**Proposed**

**Calculated FSR: 0.82:1                      Maximum Allowable: 0.8:1**

**Clause 4.6 - Exceptions to Development Standards**

Clause 4.4(2) of LLEP 2013 contains a development standard in the form of a maximum permissible floor space ratio. A written justification for the proposed variation to the floor space ratio is required in accordance with Clause 4.6. Table 12 below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standards in Clause 4.4 of the LLEP:

- The variation to the FSR is in line with the existing mix of residential development.

**Table 12: Compliance with LLEP 2013 - Contravention of Clause 4.4 Floor Space Ratio**

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/Complies
(1) Objectives a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Flexibility is sought for the application of the FSR for the proposed development so that a better outcome is achieved for the site. The particular circumstances for this are as follows: • The subject site is located within an area of Leichhardt where single fronted, low height cottage style dwellings predominate.	Justified
(2) Consent may, subject to this clause, be granted for development even though the development may contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	This subclause is not relevant to the subject proposal.	N/A
(3) Consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:	This table comprises the written request seeking to justify the contravention of the FSR development standard.	Provided and justified

<p>a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>Compliance with the applicable FSR is considered to be unreasonable and unnecessary in the circumstances of the case as the proposal provides a superior site planning and built form outcome to that anticipated by the formal planning controls, i.e.</p> <ul style="list-style-type: none"> <li>• The low scale generally single storey street facade, with low impact rear 2 storey elements of this development are consistent with the area, and match adjacent recently developed properties of 221 and 225 Elswick Street.</li> <li>• The proposal has been designed to minimise the bulk of the development.</li> <li>• The development incorporates rear lane access and an on-site car parking space, consistent with recently developed properties adjacent at 221 and 225 Elswick Street.</li> <li>• The density, built form and outcomes of the development are suitable as they are consistent with the existing subdivision pattern and streetscape.</li> <li>• The building scale and street elevation is single storey to reduce its apparent scale when viewed from Elswick Street.</li> <li>• The proposed total GFA of the development is 229.4m<sup>2</sup> therefore the development has a total floor space ratio of 0.82:1, representing 5.64m<sup>3</sup> (or 2.82m<sup>3</sup> for each residential unit) over the allowable GFA. The additional GFA does not have any physical/built form impacts on the streetscape and adjoining land than if the FSR were complied with.</li> <li>• The height of the development is consistent with the recent developments to each side at 221 and 225 Elswick Street.</li> <li>• The proposed built form is not likely to have any adverse visual, privacy or amenity impacts to other properties or public areas.</li> <li>• The non-compliant GFA will not cause any adverse or additional impacts than if the development standards were met.</li> </ul>	<p>Provided and justified</p>
<p>b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>As demonstrated in this Statement of Environmental Effects, the proposed development is satisfactory having regard to environmental planning grounds, including:</p> <ul style="list-style-type: none"> <li>• Other provisions of the LLEP 2013;</li> <li>• Section 79C of the Environmental Planning and Assessment Act 1979 (refer Section 9).</li> </ul> <p>The increased FSR does not create any additional impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other impacts than if the maximum allowable FSR was met.</p>	<p>Justified</p>
<p>(4) Consent must not be granted for a development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p>		
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the floor space ratio requirements.</p>	<p>Satisfied</p>
<p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>Despite the exceedance of the allowable FSR, the proposed development will be in the public interest as it still meets the objectives of the FSR development standard as it:</p> <ul style="list-style-type: none"> <li>• Provides a suitable built form to the Elswick streetscape. The development 'single level' incorporates design measures (including setbacks, mono-pitch roof to streetscape) to minimise the impacts of scale and bulk.</li> <li>• Because the bulk of the development is concentrated behind the front roof, this enables a suitable urban massing along Elswick Street (desired character).</li> <li>• As a result, this built form protects the environmental amenity and reduces impacts to the public domain.</li> <li>• Importantly, the development provides a range of residential 'styles' within the streetscape.</li> </ul> <p>Hence the proposed development achieves ALL of the objectives of the FSR development standard.</p>	<p>Justified</p>

<p><b>Leichhardt LLEP 2013:</b></p> <p><b>Objectives of the Standard</b></p> <p>(a) to provide effective control over the bulk of future development,</p> <p>(b) to protect the environmental amenity and desired future character of an area,</p> <p>(c) to minimise adverse environmental impacts of adjoining properties and the public domain,</p> <p>(d) to optimise development density within easy walk of the railway stations and commercial centres.</p>	<p>Overall the development of the site as proposed will maintain the current streetscape bulk and character, and ensure ongoing street activity and hence is in the public interest with development of a landmark strategic site.</p> <ul style="list-style-type: none"> <li>The proposed development is consistent with the intent of the R1 Residential Zone, while providing a low scale development consistent with the surrounding existing housing stock;</li> <li>The proposed development is well within the maximum allowable height and meets the minimum setback distance requirements.</li> <li>The proposal is compatible with the existing bulk and scale of the site development and the surrounding locality.</li> <li>The increased gross floor area does not impact on the required landscaped area or site facility requirements for the townhouse development on the site.</li> <li>The development is therefore suitable for the size of the site.</li> </ul>	
<p><b>Objectives of the Zone</b></p> <p>R1 General Residential</p>	<p>the concurrence of the Director-General has been obtained.</p>	<p>Addressed</p>
<p>In deciding whether to grant concurrence, the Director-General must consider:</p>	<p>Council will need to consult with the Department of Planning and Infrastructure as to whether the concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003- Variations to Development Standards (Department of Planning, May 2008).</p>	
<p>a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p>	<p>The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.</p> <p>There will be no measurable public benefit by adhering to the FSR requirements on the site as the increase to the FSR from 0.8:1 (being the applicable FSR) to 0.82:1 would not be visually obvious.</p> <p>A reduction in the floor space of the development from that proposed will not change the visual perception of the scale of the development, nor its ability to integrate with the scale of surrounding development.</p> <p>Hence, the proposed development will not raise any matter of state or regional planning significance.</p>	
<p>c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	<p>It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.</p>	<p>Addressed</p>

**Conclusion**

This Statement has addressed the provisions of Clause 4.6 of Leichhardt LLEP 2013 and demonstrates that the variation sought to the development standards of the LLEP (Floor Space Ratio) justifiable and should be given concurrence to, on the basis of the site circumstances and achievement of environmental planning outcomes. The increased FSR does not create any additional impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other impacts than if these maximum allowable development standards were met by an alternative design. The proposed development is consistent with Council's vision for Leichhardt. On this basis, strict compliance with these development standards is considered unnecessary.

Should you require any further supporting information please do not hesitate to contact the writer on phone (02) 4294 9688 or via email on [terry@realize.com.au](mailto:terry@realize.com.au).

Yours faithfully,



Terry Savill  
 Realize Architecture  
 Encl As scheduled above  
 Copy A & T Dennis

Our Ref:16.291/ts.ss/24.01.18



**REALIZE**

24 January 2018

by email: [eltin.miletic@innerwest.nsw.gov.au](mailto:eltin.miletic@innerwest.nsw.gov.au)

The General Manager  
Inner West Council - Leichhardt  
PO Box 45  
LEICHHARDT NSW 2040

Attention: Mr. Eltin Miletic

Dear Sir,

**AMENDED LLEP 2013: CLAUSE 4.6 'EXCEPTIONS TO DEVELOPMENT STANDARDS' STATEMENT - LOT SIZES; DA/2017/453**

16.291  
PROJECT NAME 223 Elswick Street, Leichhardt  
DESCRIPTION 2 New Residences  
ADDRESS 223 Elswick Street, Leichhardt NSW 2040  
LOT/DP NO. LOT 46 DP 2279 & LOT 1 DP 552885

#### 1. Background & Compliance with Key Numerical Planning Controls

This letter accompanies development plans prepared by Realize Architecture for submitted DA/2017/453, and addresses the provisions of Clause 4.6 'Exception to Development Standards' of Leichhardt LEP 2013.

The Lot Size Map associated with Clause 4.4 of the LLEP 2013 provides that minimum sub-division lot size shall be 200m<sup>2</sup>. The proposed calculated lot size is 139.35m<sup>2</sup>, representing a 60.65m<sup>2</sup> shortfall for each lot.

#### 2. Clause 4.6 'Exceptions to Development Standards' Statement: Clause 4.1 Minimum Sub Division Lot Size

Clause 4.6 'Exceptions to Development Standards' of Leichhardt Local Environmental Plan 2013 provides the opportunity to contravene a development standard with approval of the consent authority and concurrence by the Director-General.

A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

*"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".*

The objectives of Clause 4.6 are as follows:

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

This Section is therefore provided in order to justify why a variation is required under the following provisions of LLEP 2013, in accordance with Clause 4.6 of that Plan, as the application of these requirement is considered unreasonable or unnecessary for this particular development:

- Clause 4.1 Minimum Sub-division Lot Size

#### Variation to Clause 4.1 Minimum Sub-division Lot Size

The objectives of Clause 4.1 Minimum sub-division lot size pursuant to Leichhardt LEP 2013 are as follows:

- (a) to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,
- (b) to ensure that lot sizes are capable of supporting a range of development types

**Realize Architecture**  
A division of Savill Holdings (NSW) P/L  
ABN 87 954 108 925 ACN 113 368 791

a 120 Walker Street  
p PO Box 105  
Helensburgh NSW 2508

p 02 4294 9688  
e [architects@realize.com.au](mailto:architects@realize.com.au)  
w [www.realize.com.au](http://www.realize.com.au)

Terry Savill Nominated Architect  
NSW 4652

Sub Clause 4.1 (2) Minimum Sub-division Lot Size states that:

The minimum sub-division lot size for a building on any land is not to exceed the minimum sub-division lot size shown for the land on the Minimum Sub-division Lot Size Map.

The subject site is zoned R1 General Residential pursuant to Leichhardt LEP 2013. The Minimum Sub-division Lot Size Map confirms that a minimum sub-division lot size of 200m<sup>2</sup> applies to the site, i.e.

**Calculated Lot Size: 139.35m<sup>2</sup> LLEP Minimum Sub-Division Lot Size: 200m<sup>2</sup>**

**Clause 4.6 - Exceptions to Development Standards**

Clause 4.1(2) of LLEP 2013 contains a development standard in the form of a minimum sub-division lot size. A written justification for the proposed variation to the minimum sub-division lot size is required in accordance with Clause 4.6. Table 1 below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standards in Clause 4.1 of the LLEP:

- The variation to the minimum sub-division lot size is in line with the existing mix of residential development.

**Table 1: Compliance with LLEP 2013 - Contravention of Clause 4.1 Minimum sub-division lot size**

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent/Complies
(1) Objectives a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Flexibility is sought for the application of the minimum sub-division lot size for the proposed development so that a better outcome is achieved for the site. The particular circumstances for this are as follows: <ul style="list-style-type: none"> <li>The subject site is located within an area of Leichhardt where single fronted, low height cottage style dwellings predominate and where adjacent lot sizes are less than 200m<sup>2</sup>. (At 221 &amp; 221B Elswick Street (155m<sup>2</sup>/lot) and at 225 Elswick Street (158m<sup>2</sup>/lot).</li> </ul>	Justified
(2) Consent may, subject to this clause, be granted for development even though the development may contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	This subclause is not relevant to the subject proposal.	N/A
(3) Consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:  a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	This table comprises the written request seeking to justify the contravention of the minimum sub-division lot size development standard.  Compliance with the applicable minimum sub-division lot size's are considered to be unreasonable and unnecessary in the circumstances of the case as the proposal provides a superior site planning and built form outcome to that anticipated by the formal planning controls. <ul style="list-style-type: none"> <li>The proposed lot size is, as demonstrated in the floor plans, capable of providing residential dwellings compliant with the relevant sections of Leichhardt DCP 2013,</li> <li>including: <ul style="list-style-type: none"> <li>Landscaped Area &gt; 15m<sup>2</sup> (15.8 and 15.4m<sup>2</sup> respectively)</li> <li>Site Coverage &lt; 60% (Actual site coverage 53.03%)</li> <li>Height Controls within prescribed envelope.</li> </ul> </li> <li>The proposal provides for NCC/BCA compliant dwellings.</li> <li>The proposal results in dwellings similar to recent developments to the adjacent properties at 221 and 225 Elswick Street.</li> </ul>	Provided and justified
b) that there are sufficient environmental planning grounds to justify contravening the development standard.	As demonstrated in the Statement of Environmental Effects, the proposed development is satisfactory having regard to environmental planning grounds, including: <ul style="list-style-type: none"> <li>Other provisions of the LLEP 2013;</li> <li>Section 79C of the Environmental Planning and Assessment Act 1979 (refer Section 9).</li> </ul> The reduced minimum sub-division lot size does not create any additional impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other impacts than if the minimum sub-division lot size was met.	Justified
(4) Consent must not be granted for a development that contravenes a development standard unless: (a) the consent authority is satisfied that:		

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the Minimum sub-division lot size requirements.	Satisfied
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>Despite the less than minimum sub-division lot size, the proposed development will be in the public interest as it still meets the objectives of the minimum sub-division lot size development standard as it:</p> <ul style="list-style-type: none"> <li>• Provides a suitable built form to the Elswick streetscape. The development 'single level' incorporates design measures (including setbacks, mono-pitch roof to streetscape) to minimise the impacts of scale and bulk.</li> <li>• While the bulk of the development is concentrated behind the front roof, this enables a suitable urban massing along Elswick Street (desired character).</li> <li>• As a result, this built form protects the environmental amenity and reduces impacts to the public domain.</li> <li>• Importantly, the development provides a range of residential 'styles' within the streetscape.</li> </ul> <p>Hence the proposed development achieves ALL of the objectives of the Minimum sub-division lot size development standard.</p> <p>Overall the development of the site as proposed will maintain the current streetscape bulk and character, and ensure ongoing street activity and hence is in the public interest with development of a landmark strategic site.</p> <ul style="list-style-type: none"> <li>• The proposed development is consistent with the intent of the R1 Residential Zone, while providing a low scale development consistent with the surrounding existing housing stock;</li> <li>• The proposed development is well within the maximum allowable height and meets the minimum setback distance requirements.</li> <li>• The proposal is compatible with the existing bulk and scale of the site development and the surrounding locality.</li> <li>• The increased gross floor area does not impact on the required landscaped area or site facility requirements for the townhouse development on the site.</li> <li>• The development is therefore suitable for the size of the site.</li> </ul>	Justified
<p><b>Leichhardt LLEP 2013:</b></p> <p><b>Objectives of the Standard</b></p> <p>(a) to provide effective control over the bulk of future development,</p> <p>(b) to protect the environmental amenity and desired future character of an area,</p> <p>(c) to minimise adverse environmental impacts of adjoining properties and the public domain,</p> <p>(d) to optimise development density within easy walk of the railway stations and commercial centres.</p>	<p>Overall the development of the site as proposed will maintain the current streetscape bulk and character, and ensure ongoing street activity and hence is in the public interest with development of a landmark strategic site.</p> <ul style="list-style-type: none"> <li>• The proposed development is consistent with the intent of the R1 Residential Zone, while providing a low scale development consistent with the surrounding existing housing stock;</li> <li>• The proposed development is well within the maximum allowable height and meets the minimum setback distance requirements.</li> <li>• The proposal is compatible with the existing bulk and scale of the site development and the surrounding locality.</li> <li>• The increased gross floor area does not impact on the required landscaped area or site facility requirements for the townhouse development on the site.</li> <li>• The development is therefore suitable for the size of the site.</li> </ul>	
<p><b>Objectives of the Zone</b></p> <p>R1 General Residential</p>		
the concurrence of the Director-General has been obtained.	Council will need to consult with the Department of Planning and Environment as to whether the concurrence of the DPE can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).	Addressed
In deciding whether to grant concurrence, the Director-General must consider:		
a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.	
b) the public benefit of maintaining the development standard, and	<p>There will be no measurable public benefit by adhering to the minimum sub-division lot size requirements on the site as the reduction of the minimum sub-division lot size from 200m<sup>2</sup> (being the applicable minimum sub-division lot size) to approx. 140m<sup>2</sup> would not be spatially obvious. The sought lot size will still permit a residence of such internal dimensions to enable normal living and social activities with all room sizes therein exceeding those minimums required by the LDCP 2013 and the relevant building controls and regulations ie NCC.</p> <p>Hence, the proposed development will not raise any matter of state or regional planning significance.</p>	
c) any other matters required to be taken into consideration by the Director-General before granting concurrence.	It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.	Addressed

**Conclusion**

This Statement has addressed the provisions of Clause 4.6 of Leichhardt LLEP 2013 and demonstrates that the variation sought to the development standards of the LLEP (Minimum Sub-division Lot Size) is justifiable and should be given concurrence to, on the basis of the site circumstances and achievement of environmental planning outcomes. The reduced lot sizes do not create any additional impacts on adjoining sites in terms of visual impact, disruption of views, loss of privacy or any other impacts than if these minimum allowable development standards were met by an alternative design. The proposed development is consistent with Council's vision for Leichhardt. On this basis, strict compliance with these development standards is considered unnecessary.

Should you require any further supporting information please do not hesitate to contact the writer on phone (02) 4294 9688 or via email on [terry@realize.com.au](mailto:terry@realize.com.au).

Yours faithfully,



Terry Savill  
Realize Architecture  
Encl As scheduled above  
Copy A & T Dennis

Our Ref: 16.291/ts.ss/24.01.18



24 January 2018

by email: [eltin.miletic@innerwest.nsw.gov.au](mailto:eltin.miletic@innerwest.nsw.gov.au)

The General Manager  
Inner West Council - Leichhardt  
PO Box 45  
LEICHHARDT NSW 2040

Attention: Mr. Eltin Miletic

Dear Sir,

16.291  
PROJECT NAME  
DESCRIPTION  
ADDRESS  
LOT/DP NO.

**AMENDED LLEP 2013: CLAUSE 4.6 'EXCEPTIONS TO DEVELOPMENT STANDARDS'  
STATEMENT - LANDSCAPE AREA/SITE COVERAGE; DA/2017/453**  
**223 Elswick Street, Leichhardt**  
**2 New Residences**  
**223 Elswick Street, Leichhardt NSW 2040**  
**LOT 46 DP 2279 & LOT 1 DP 552885**

#### 1. Background & Compliance with Key Numerical Planning Controls

This letter has been produced at the request of Council, and accompanies development plans prepared by Realize Architecture for submitted DA/2017/453. It addresses the provisions of Clause 4.6 'Exception to Development Standards' of Leichhardt LEP 2013, although the development is, in respect to Landscaping Area/Site Coverage compliant (refer attached drawing 'Site Coverage' 16.291 DA39.A).

Clause 4.3A (3)(a)(i) of LLEP requires that the site landscaped area - where the lot size is equal to or less than 235m<sup>2</sup> - be 15% of the site area. The proposed landscaped area for both lots are 15.8% (22m<sup>2</sup>) and 15.4% (21.5m<sup>2</sup>) respectively.

Furthermore, Clause 4.3A (3)(b) requires the site coverage to not exceed 60% of the site area.

The calculated site coverage for allotments 223 and 223A is 53.03% each.

#### 2. Clause 4.6 'Exceptions to Development Standards' Statement: Clause 4.3 Landscape Area/Site Coverage

Clause 4.6 'Exceptions to Development Standards' of Leichhardt Local Environmental Plan 2013 provides the opportunity to contravene a development standard with approval of the consent authority and concurrence by the Director-General.

A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

*"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".*

The objectives of Clause 4.6 are as follows:

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

This Section is therefore provided in order to justify why a variation is required under the following provisions of LLEP 2013, in accordance with Clause 4.6 of that Plan, as the application of these requirement is considered unreasonable or unnecessary for this particular development:

- Clause 4.3A Landscape Areas for Residential Accommodation in Zone R1.

**Realize Architecture**  
A division of Savill Holdings (NSW) P/L  
ABN 87 954 108 925 ACN 113 368 791

a 1/20 Walker Street  
p PO Box 105  
Helensburgh NSW 2508

p 02 4294 9688  
e [architects@realize.com.au](mailto:architects@realize.com.au)  
w [www.realize.com.au](http://www.realize.com.au)

Terry Savill Nominated Architect  
NSW 4652

**Variation to Clause 4.3A Landscape Areas for Residential Accommodation in Zone R1**

The objectives of Clause 4.3A Landscape Areas pursuant to Leichhardt LEP 2013 are as follows:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,
- (b) to maintain and encourage a landscaped corridor between adjoining properties,
- (c) to ensure that development promotes the desired future character of the neighbourhood,
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,
- (e) to control site density,
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

The clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.

Sub Clauses 4.3A (3)(a) and (b) state that development consent must not be granted to development to which this applies unless:

- (a) the development includes landscaped area that comprises at least:
  - (i) where the lot size is equal to or less than 235 square metres - 15% of the site area, or
  - (ii) where the lot size is greater than 235 square metres - 20% of the site area, and
- (b) the site coverage does not exceed 60% of the site area.

**Site Area** is the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan.

**Site Coverage** is defined under the Dictionary to LLEP 2013 as the proportion of site area covered by buildings, where the following are not included in the site coverage calculation:

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

i.e. Site Area 139.95m<sup>2</sup>; Residential Coverage Area 73.9%; Site Coverage 53.03%; Landscape Area Lot 223 15.8m<sup>2</sup> and Lot 223A 15.4m<sup>2</sup> respectively.

Clause 4.6 - Exceptions to Development Standards

Clause 4.3A of LLEP 2013 contains development standards in the form of a minimum permissible landscaped area and a maximum permissible site coverage. The minimum permissible landscaped area requirements are achieved. However, a written justification for the proposed variation to the site coverage is required in accordance with Clause 4.6. Table 1.0 below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standards in Clause 4.3A of the LLEP:

- The Landscapes Areas and Site Coverage complies with the LLEP 2013 and is in line with the existing adjacent mix of residential development.

**Table 1.0: Compliance with LLEP 2013 - Contravention of Clause 4.3A Landscape Areas**

Clause 4.6 Exceptions to Development Standards	Response/Justification	Consistent /Complies
(1) Objectives a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Flexibility is sought for the application of the Site Coverage for the proposed development so that a better outcome is achieved for the site. The particular circumstances for this are as follows: • The subject site is located within an area of Leichhardt where single fronted, low height cottage style dwellings with similar sized front and rear yards predominate.	Justified
(2) Consent may, subject to this clause, be granted for development even though the development may contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	This subclause is not relevant to the subject proposal.	N/A
(3) Consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:	This table comprises the written request seeking to justify the contravention of the Site Coverage development standard.	Provided and justified

<p>a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>Compliance with the applicable Site Coverage is achieved.</p> <p><b>Area Calculations</b></p> <table border="1"> <thead> <tr> <th>No:</th> <th>Site Area:</th> <th>Unit Area:</th> <th>Site Coverage:</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>223</td> <td>139.35m<sup>2</sup></td> <td>73.9m<sup>2</sup></td> <td>53.03%</td> <td>✓</td> </tr> <tr> <td>223A</td> <td>139.35m<sup>2</sup></td> <td>73.9m<sup>2</sup></td> <td>53.03%</td> <td>✓</td> </tr> </tbody> </table>	No:	Site Area:	Unit Area:	Site Coverage:	Complies	223	139.35m <sup>2</sup>	73.9m <sup>2</sup>	53.03%	✓	223A	139.35m <sup>2</sup>	73.9m <sup>2</sup>	53.03%	✓	<p>Provided and justified</p>
No:	Site Area:	Unit Area:	Site Coverage:	Complies													
223	139.35m <sup>2</sup>	73.9m <sup>2</sup>	53.03%	✓													
223A	139.35m <sup>2</sup>	73.9m <sup>2</sup>	53.03%	✓													
<p>b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>As demonstrated in this Statement of Environmental Effects, the proposed development is satisfactory having regard to environmental planning grounds, including:</p> <ul style="list-style-type: none"> <li>• Other provisions of the LLEP 2013;</li> <li>• Section 79C of the Environmental Planning and Assessment Act 1979 (refer Section 9).</li> </ul>	<p>Justified</p>															
<p>(4) Consent must not be granted for a development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p>																	
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by sub clause (3), and</p>	<p>This Variation statement has been provided at the request of Council. In our opinion, the proposal complies.</p>	<p>Satisfied</p>															
<p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>Despite the exceedance of the allowable Site Coverage, the proposed development will be in the public interest as it still meets the objectives of the Site Coverage development standard as it:</p> <ul style="list-style-type: none"> <li>(a) provides landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,</li> <li>(b) maintains and encourages a landscaped corridor between adjoining properties,</li> <li>(c) ensures that development promotes the desired future character of the neighbourhood,</li> <li>(d) encourages ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,</li> <li>(e) controls site density,</li> <li>(f) limits building footprints to ensure that adequate provision is made for landscaped areas and private open space.</li> </ul> <p>Hence the proposed development achieves ALL of the objectives of the Site Coverage development standard.</p>	<p>Justified</p>															
<p><b>Leichhardt LLEP 2013:</b></p> <p><b>Objectives of the Standard</b></p> <ul style="list-style-type: none"> <li>(a) to provide effective control over the bulk of future development,</li> <li>(b) to protect the environmental amenity and desired future character of an area,</li> <li>(c) to minimise adverse environmental impacts of adjoining properties and the public domain,</li> <li>(d) to optimise development density within easy walk of the railway stations and commercial centres.</li> </ul> <p><b>Objectives of the Zone</b></p> <p>R1 General Residential</p> <p>Overall the development of the site as proposed will maintain the current streetscape bulk and character, and ensure ongoing street activity and hence is in the public interest with development of a landmark strategic site.</p>																	
<p>the concurrence of the Director-General has been obtained.</p>	<p>Council will need to consult with the Department of Planning and Infrastructure as to whether the concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).</p>	<p>Addressed</p>															
<p>In deciding whether to grant concurrence, the Director-General must consider:</p>																	
<p>a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p>	<p>The compliance with of this development standard ensures that no matter of significance for state or regional environmental planning is impacted.</p>																
<p>b) the public benefit of maintaining the development standard, and</p>	<p>Hence, the proposed development will not raise any matter of state or regional planning significance.</p>																
<p>c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	<p>It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.</p>	<p>Addressed</p>															
<p>16,291 223 Elswick Street, Leichhardt - Clause 4.6 'Exceptions to Development Standards' Statement - Landscape Area <span style="float: right;">3 of 4</span></p>																	

Conclusion

The proposed is complaint with respect to landscaping and site coverage as required by LLEP 2013. Development is consistent with Council's vision for Leichhardt.

Should you require any further supporting information please do not hesitate to contact the writer on phone (02) 4294 9688 or via email on [terry@realize.com.au](mailto:terry@realize.com.au).

Yours faithfully,



Terry Savill  
Realize Architecture  
Encl As scheduled above  
Copy A & T Dennis

