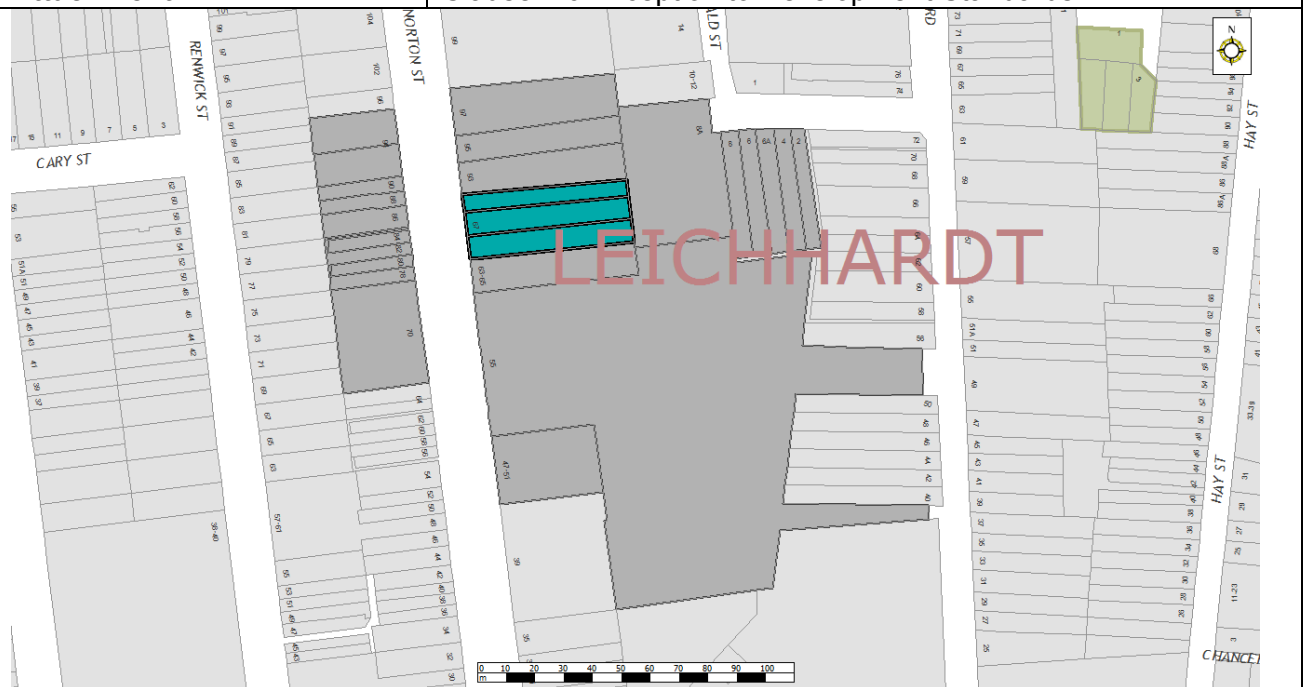




INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/144
Address	67 Norton Street, LEICHHARDT NSW 2040
Proposal	Alterations and additions to Co.As.It tenancy to provide foyer
Date of Lodgement	10 April 2019
Applicant	Leaf Architecture
Owner	Co.As.It. Italian Association of Assistance
Number of Submissions	Nil
Value of works	\$1,050,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds officer delegation
Main Issues	Floor Space Ratio
Recommendation	Approval
Attachment A	Recommended Conditions of Approval
Attachment B	Plans of Proposed Development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site



Objectors



N

Notified Area



Supporters



1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the entrance to the CoAsIt tenancy of the building, including construction of a foyer area including an addition to the Norton Street level of the building at 67 Norton Street, Leichhardt. The application was notified to surrounding properties and no submissions were received.

The main issue that has arisen from the assessment of the application involves:

- Floor Space Ratio

Notwithstanding the above non-compliance, the proposal is acceptable given the existing pattern of surrounding development and its acceptable amenity impacts, and therefore, the application is recommended for approval.

Amended plans were submitted on 23 July 2019 seeking to resolve engineering concerns raised with respect to stormwater and flood mitigation design. These plans result in the proposed rearward projection of the foyer being reduced, the retention of windows in the southern elevation of the building; and consequent internal replanning of the ancillary spaces within the existing central area of this floor of the building ie WCs, Kitchen. These plans form the basis of this report.

2. Proposal

The proposal involves internal and external alterations and additions to provide a new foyer providing improved access and presentation for the Co.As.It. office tenancy which is located at the rear of the existing building. The foyer addition to the southern rear side of the building comprises an additional 47.5m² in floor space.

The alterations and additions also provide for the maintenance of an existing flood prevention design to the building through a revised design of the Co.As.It. entry /foyer.

In order to provide natural light to the foyer, the design include skylights above the addition to the southern boundary and a rear facing window to the foyer.

No changes are proposed to the existing child care centre tenancy located within the building.

Whilst the proposed additional 49.5m² of gross floor space generates the need for one additional car space, no additional on-site car parking is proposed a condition will be imposed on any consent requiring the payment of a contribution for off-site car parking in accordance with the Leichhardt Traffic and Transport Section 94 Contributions Plan.

Extracts of the proposed plans are shown in the figures below.

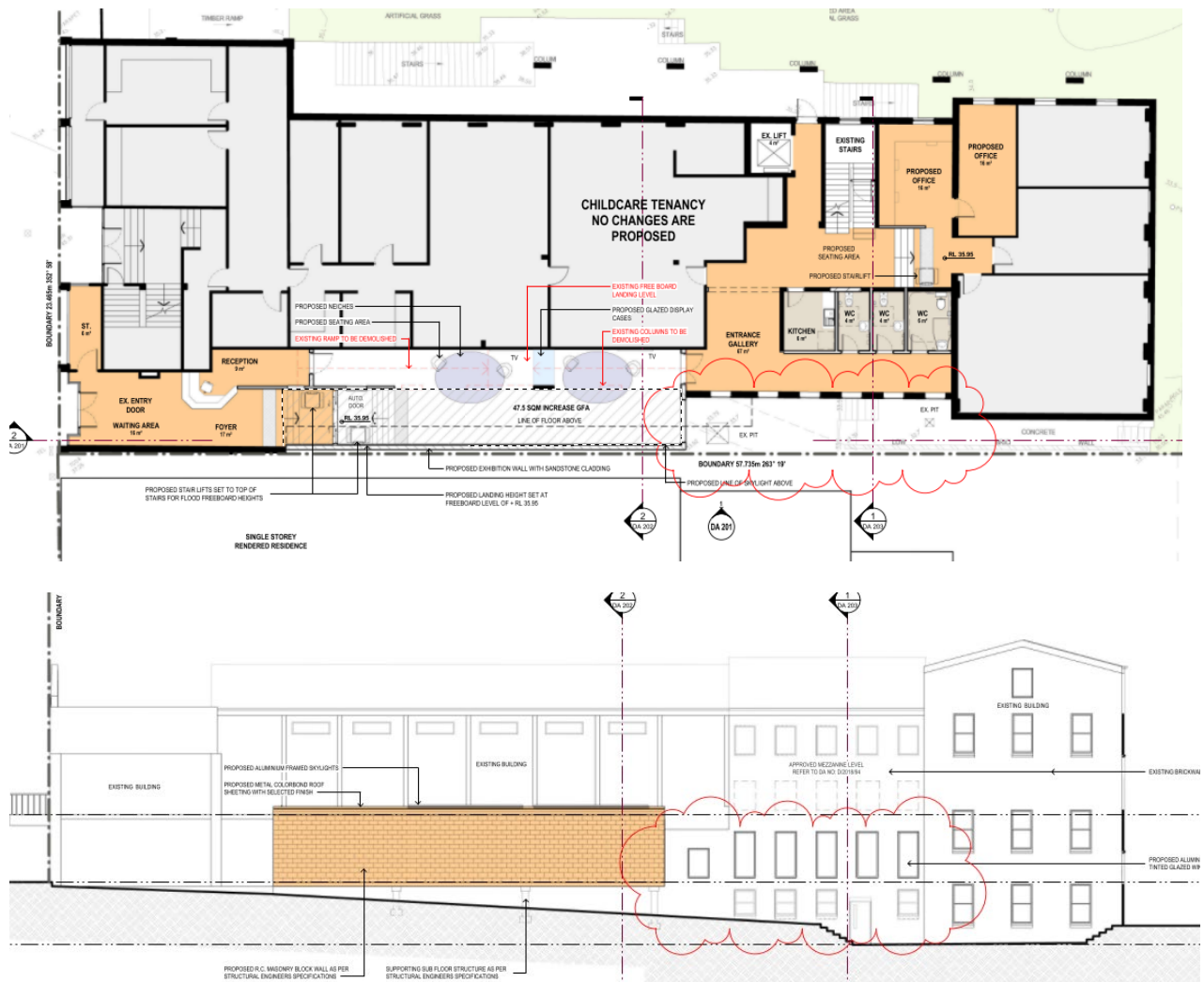


Figure 1: Plan and Elevation of side additions at 67 Norton Street.

3. Site Description

The subject site is located on the eastern side of Norton Street, between Marion Street and Parramatta Road. The site consists of three allotments and is generally regular in shape with a total area of 1,313.45sqm and is legally described as Lot A in DP 312436 and Lots 5 and 6 in DP 303292.

The site has a frontage to Norton Street of approximately 22.7m.

The site supports an existing two to three storey commercial building. The adjoining properties support a mix of one to three storey commercial buildings to the north and south and a two and three storey residential apartment building to the east.

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

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
DA/589/1997	Conversion of existing building to Italian community centre.	Approved 30 January 1998.
M/2000/41	Modification to development consent DA 589/97 to delete condition 28 pertaining to a limitation on commercial use of the premises.	Approved 4 July 2000.
D/2013/433	Alterations to Existing Building for Part Use as a Child Care Centre (Long Day) for 90 Children.	Approved 20 March 2017
M/2016/239	Application to modify D/2013/433 which approved use for childcare. Modifications include deletion of condition 75 and allow for signage to ground floor.	Approved 29 March 2017
PREDA/2017/308	Construct a mezzanine level to provide office space for CoAslt staff within rear section of the building.	Advice letter issued 5 December 2017.
D/2018/94	Alterations and additions to existing building, including construction of a mezzanine level within existing building envelope.	Approved 10 July 2018
PREDA/2019/25	Alterations and additions to the existing building including demolition of internal/external walls, internal fitout/refurbishment and a new side balcony courtyard	Advice letter issued 12 April 2017

Surrounding properties

Application	Proposal	Decision & Date
DA/518/1996	<u>63-65 Norton Street</u> Internal alterations to restaurant & erect storage shed in rear yard.	Approved 31 May 2001.
M/2018/67	Modify Development Consent DA518/96 which approved restaurant refurbishment, facade upgrade and erection of a new storage shed. Consent is sought to delete Condition 3 relating to number of employees and modify	Refused 15 February 2019

	Condition 6 to retrospectively approve the existing internal building layout which is inconsistent with the original approval.	
BA/1994/854	<u>8A McDonald Street</u> Erect 15 townhouses.	Approved 12 January 1995.

4(b) Application history

Not applicable

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

- **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject site is not within the Foreshores and Waterways Area, therefore no assessment under the Plans is required.

- **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 4.4 – Floor Space Ratio
- Clause 4.4A – Floor Space Incentives for active street frontages
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management

Clause 6.8 – Development in areas subject to aircraft noise

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned B2 Local Centre under the LLEP 2013. The LLEP 2013 defines the development as Office Premises and the development is permitted with consent within the zone. The development is consistent with the objectives of the B2 Local Centre zone.

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

Standard (maximum)	Proposal	non compliance	Complies
Floor Space Ratio 1:1 [GFA of 1,313.45m ²]	1.18:1 1,513m ² (existing) + 47.5m ² = 1,560.5m ²	18.8%	No

Note: The existing building currently has a non-compliant FSR of 1.15:1

The following provides further discussion of the relevant issues:

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – 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 breach of the 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.*

The subject site has an area of 1,313.45m² and the proposed development seeks to provide a total FSR of 1.18:1 (or a commercial building of 1,560.5m²), equating to a total variation to the standard of 18.8%, or 247m². Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *The proposed increase in GFA is minor*
- *The proposed alterations and additions are commensurate in bulk and scale with the form of development typical of the B2 Zone, with the mixed-use zone characterised by one to three storey mixed use buildings, built boundary to boundary with an active presentation to the street. The proposal retains the existing building on site, and proposes alterations and*

additions that are similar in scale and nature to the existing mixed use development on the site and in the area, and is therefore acceptable within the context of its B2 zoning.

- The proposed works are located on the ground floor level of an existing part 2/part 3 storey commercial building, to the site's southern side boundary setback. The proposed works will present as a seamless extension to the existing building form, by continuing the nil side boundary setback established at the front of the property and extending it east, along the site's southern boundary. Due to the location and height, the works are not visible from the public domain, and will have no impact on the site's existing presentation to the street.
 - The interface of the ground floor addition to the south, and adjoining slightly smaller scaled commercial building at 63-65 Norton Street (which is occupied by a restaurant/tavern) has been carefully considered. The proposed addition will reach a maximum height of RL 38.55 at the boundary, matching the wall height of the adjoining property (with a RL 38.41) directly adjacent. The bulk and scale of the addition at the boundary is therefore consistent in form with the property to the south. A smooth white render finish, with no openings is also proposed to the southern elevation of the new addition, to limit adverse visual and acoustic privacy impacts both to and from the development site.
 - The proposal complies with the Leichhardt Development Control Plan 2013 (Leichhardt DCP 2013) front, side and rear setback controls, and also the height and wall height control. Further, the proposal does not reduce the existing landscaped area on site, with the works occurring above existing hardstand areas. The proposal therefore has an appropriate bulk and scale for the site when assessed against the relevant provision contained within Part C - Section 4 – Non-Residential Development.
 - The additional FSR is sited and designed in a manner that does not result in any significant adverse impacts upon adjacent properties or the public realm.
 - The proposal is consistent with the desired future character of the area as established in Leichhardt DCP 2013 (C.2.2.3.5(a) Leichhardt Commercial Distinctive Neighbourhood - Norton Street Entrata Sub-Area), as follows:
 - Retains the existing building on site
 - Supports the continued and improved commercial use of the site
 - Improves the commercial facilities on site for staff and visitors
 - Supports the viability of the local centre
 - Has a maximum wall height <12m.
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 objectives of the B2 Local Centre zone are: • To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To ensure that development is appropriately designed to minimise amenity impacts.
- To allow appropriate residential uses to support the vitality of local centres.
- To ensure that uses support the viability of local centres.
- To provide a mixture of compatible land uses.

- To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations.

Further, the applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered to be well founded in this instance. It is considered that the proposed development, as a minor extension to the current office usage of the existing building, will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard and B2 Local Centre zoning as:

- The proposal is compatible with the existing character of the area in relation to building bulk, form and scale.
- The proposal results in additional office (foyer) space within the B2 Local Centre zone, encouraging employment opportunities in accessible locations without any adverse streetscape impacts.
- The proposal does not result in any undue adverse amenity impacts to the surrounding properties.
- The FSR will be compatible with that characteristic of neighbouring commercial and mixed-use development along this section of Norton Street as shown in the aerial photo below.

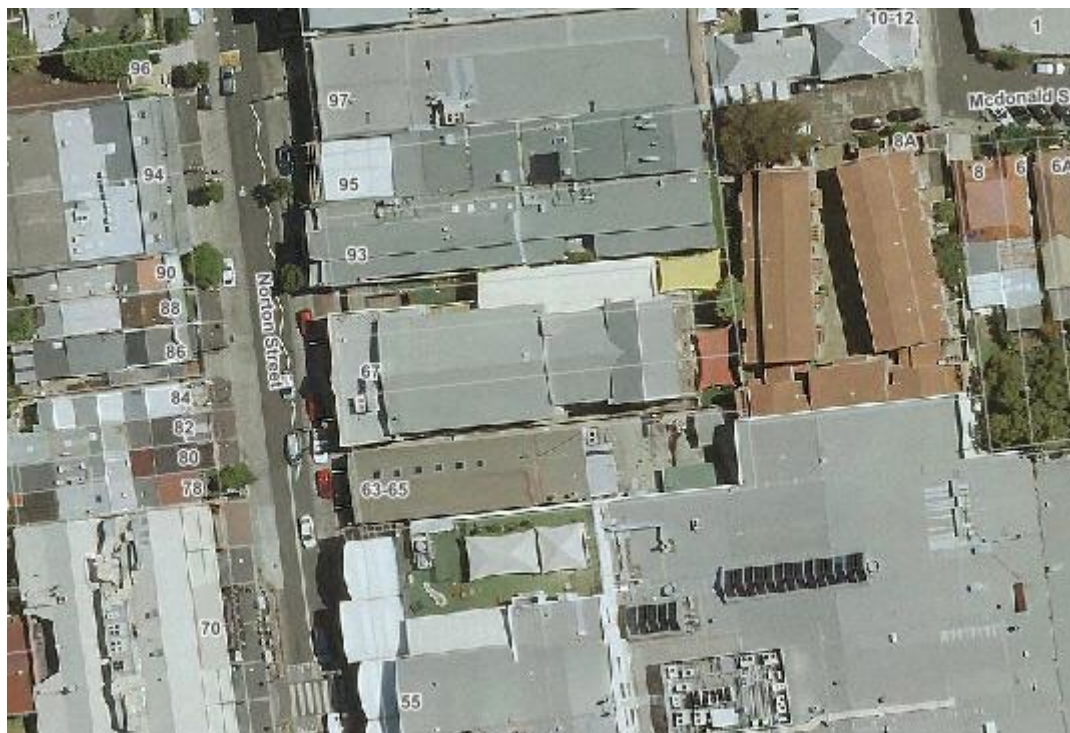


Figure 2: Aerial photo indicating existing pattern of development along this section of Norton Street

Clause 6.8 – Development in areas subject to aircraft noise

The subject site is located within the Australian Noise Exposure Forecast (ANEF) contour 25-30. An acoustic report has been submitted with the application demonstrating compliance with the requirements of AS 2021-2015, *Acoustics—Aircraft noise intrusion—Building siting and construction*. A condition will be imposed requiring the proposal to be designed and constructed in accordance with the recommendations of an appropriate acoustic report.

5(b) Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Environment)

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

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
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.3 Alterations and additions	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No Subject to condition requiring payment of a S.7.11 contribution in-lieu of on-site parking provision.
Part C: Place – Section 2 Urban Character	
Suburb Profile	
C2.2.3.5(a) Norton Street – Entrata Sub Area, Leichhardt Commercial Distinctive Neighbourhood	Yes

Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	Yes
Part D: Energy	
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
D2.4 Non-Residential Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.5 Water Disposal	Yes
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes. (See comments above. Appropriate conditions are included in the recommendation to this report)

The following provides discussion of the relevant issues:

C1.11 Parking

Based on the minimum car parking rate of 1 space per 100sqm for office premises, one additional car space is required for the additional increase of floor space of 49.5m².

Given the existing site is unable to accommodate the required parking on-site, in accordance with the *Leichhardt Traffic and Transport Section 94 Contributions Plan* a levy of \$10,000 for 1 car space can be imposed by way of condition of consent. The contribution would be payable prior to issue of any construction certificate. In the circumstances of the case, a contribution is considered satisfactory.

C2.2.3.5(a) Norton Street – Entrata Sub-Area, Leichhardt Commercial Distinctive Neighbourhood

It is considered that the development is minor and is consistent with the objectives and relevant controls of the Sub-Area and the Leichhardt Commercial Neighbourhood.

E1.3.1 Flood Risk Management

While the site is identified as a Flood Control Lot under Part E of Leichhardt DCP 2013, the proposed foyer addition slab is set at a level which is above the existing ground level within the southern side setback. It is noted that works were previously required to the ground floor level under previous development consent (D/2013/433) to mitigate the potential risk of floodwater entry to the site.

The revised plans, the subject of this report, now reflect the existing arrangement of the building floor plate, including the adjoining childcare tenancy.

The development is considered satisfactory subject to the following appropriate conditions being placed on any consent, which will include requiring flood risk management works to ensure the adjoining tenancy and rear areas of the building are not subject to ingress of flood waters.

- *Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer. The Plan must be prepared/amended to make provision for the following:*
 - a) *Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:*
 - i) *Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.*
 - ii) *Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.*
 - iii) *Flood warning signs/depth indicators for areas that may be inundated*
 - iv) *A flood evacuation strategy.*
 - v) *On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.*
 - vi) *Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.*
 - b) *All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with National Construction Code and the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.*
 - i) *Building Code of Australia*
 - ii) *Defined flood level (DFL) 100-year Average Recurrence Interval flood level*
 - iii) *Defined flood event (DFE) 100-year Average Recurrence Interval flood*
 - iv) *Flood hazard level (FHL) Flood Planning Level (FPL)*
- *Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Flood Risk Management Plan. The design must be prepared to make provision for the following:*
 - a) *Specification of materials.*
 - b) *Waterproofing works, where applicable.*
 - c) *Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the*

Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.

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

- *Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer that incorporate the following recommendations of the Flood Risk Management Plan prepared under Condition Flood Risk Management Plan. The design must be prepared to make provision for the following:*
 - a) *Structural integrity of all structures from immersion and/or impact of velocity and debris.*
 - b) *Waterproofing works, where applicable.*
 - c) *Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.*
- *Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer that all aspects of the flood risk management plan including provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD and construction of the Wall(s) and Reception Desk as permanent structures, have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.*
- *Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the Conveyancing Act 1919, has been created on the title of the property detailing the following:*
 - a) *Positive Covenant related to Flood Risk Management works including the provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.*

The wording in the Instrument must be in accordance with Councils Standard wording.

- *The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.*

E1.2.2 Managing Stormwater within the Site

The applicant has provided updated plans [DA101/C dated 22/7/2019] which reflect the existing arrangement of the building floor plate including the adjoining childcare tenancy.

Further, the proposed new extension works have been offset from the existing stormwater pit located within in the southern side setback of the site.

Therefore, no objection is raised to additional structures near the drainage easement, on the basis that the existing situation is not significantly altered, subject to protection of the stormwater pipe during construction and also from loadings from footings.

The development is considered satisfactory subject to the following appropriate conditions being placed on any consent:

- *Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared by a suitably qualified Civil Engineer that demonstrate any footings or excavation to be located or undertaken adjacent to Council's stormwater pipeline address the following requirements:*
 - a) *All footings and excavation must be located outside of the easement boundaries.*
 - b) *All footings and excavation must be located a minimum of 1000mm from the centreline of the pipeline or 500mm from the outside of the pipeline, whichever is the greater distance from the centreline.*
 - c) *All footings adjacent to Council's stormwater pipe must be taken to a depth 500mm below a line of influence measured at 450 from a point 1m from the invert of the stormwater pipe in the direction of the footing unless the footings are to be placed on competent bedrock.*
 - d) *If permanent excavation is proposed beneath the overtop of the pipeline, suitable means to protect the excavation and proposed retaining structures from seepage or other water flow from the pipeline and surrounding subsoil must be provided.*
- *During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to take measures to protect any in-ground Council stormwater drainage pipeline and associated pits.*

The location of the pipeline shall be assumed to be located within the Easement for Drainage as outlined on the Survey Plan on Drawing No 50599 001 DT prepared by LTS Lockley and dated 25-01-2018 unless determined otherwise on site.

If the Council pipeline is uncovered during construction, all work must cease within two (2) metres of the pipeline and the Principal Certifying Authority and Council must be contacted within 24 hours for instruction. The applicant should carefully expose the infrastructure for inspection by the Principal Certifying Authority and the Council. The structural design prepared under Condition Works adjacent to Council's Stormwater Pipeline is to be adjusted as required and provided to Council's Coordinator Development Engineering prior to any further works in the vicinity of the pipeline. If no response has been provided by Council within 7 days, the applicant is at liberty to take steps to install a pier and beam footing system over the infrastructure in accordance the following:

- a) *ensures that no loads are imposed upon the infrastructure by any building over;*
- b) *a minimum of 750mm clearance is to be provided from the ascertained outside face of the stormwater infrastructure to the inside face of the pier; and*
- c) *All piers must be designed to extend to bedrock or minimum 500mm below the ascertained invert of the pipeline, whichever is higher.*

Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed by and at no cost to Council.

If during excavation, it can be demonstrated that the Council pipeline does not exist within the subject property, the structural design may be amended accordingly, subject to written approval from Council.

5(d) The Likely Impacts

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

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

The site is zoned B2 Local Centre. 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 Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties originally between 13 December 2018 to 24 January 2019. The amended drawings the subject of this report did not require notification. 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 and certain issues raised in those referrals have been discussed in section 5 above.

- Development Engineer

See comments above.

- Building

The Building is Class 5 & 9b; 3 storeys; with Type A construction.

A review of the submitted drawings suggests that the following matters under the NCC are of concern:

- Issues with protection of openings in the building located less than 3 metres from the southern site boundary, including proposed skylights and foyer glazing facing the rear boundary.
- Existing fire safety services within the building.
- Access from the principle pedestrian access to all affected areas of the building. In this regard, an existing set of stairs provides access to the proposed kitchen.
- Travel distances to exits.

The proposed works are required to be amended so as to comply with the National Construction Code (NCC). A condition to this effect is to be placed on any consent.

It is noted that the applicant has verbally advised Council that it is intended to delete the proposed skylights thereby resolving that fire protection issue. A condition is to be imposed on any consent specifically requiring the glazing in the rear facing wall of the foyer addition and the altered windows in the south facing wall of the building to be fire protected in satisfaction of the NCC.

As the proposal includes significant alterations to the subject building, a condition is to be placed on any consent requiring the submission of an NCC Audit Report demonstrating compliance, including with required Building Access provisions.

6(b) External

The application was not required to be referred externally.

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A financial contribution would be required for the development under Leichhardt Section 94 Contributions Plans as follows:

Column A	Column B
Open space and recreation	\$2,684.92
Community facilities and services	\$4,413.56
In-lieu of adequate on-site parking	\$10,000.00
Local area traffic management	\$356.57
Leichhardt town centre improvements	\$6,075.66
TOTAL	\$23,110.20

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 applicant has made a written request pursuant to *Clause 4.6* to *Clause 4.4 – Floor Space Ratio* of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No. D/2019/144 for Alterations and additions to Co.As.It tenancy to provide foyer at 67 Norton Street Leichhardt subject to the conditions listed in Attachment A below for the following reasons.

Attachment A – Recommended conditions of consent

Building Classification	5 & 9b[Planners insert Building Classification for a change of use which changes the building classification and no Construction Certification is required. Otherwise delete.]
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Conditions of Consent

FeesPlanning

1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of **\$23,110.20** in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access ("CP") has been paid to the Council.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Local Infrastructure Type:	Contribution \$
Open Space and Recreation	\$2,684.92
Community Facilities and Services	\$4,413.56
Payment in Lieu of Adequate Parking	\$10,000.00
Leichhardt Town Centre Improvements	\$6,075.66
Local area traffic management	\$356.57
TOTAL	\$23,110.20

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*.

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

2. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

3. Security Deposit - Standard

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

Security Deposit:	\$8,056.50
Inspection Fee:	\$230.65

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

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

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

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

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

General Conditions

4. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA001/C	Site Plan	22/7/2019	Leaf Architecture
DA010/C	Existing Floor Plans	22/7/2019	Leaf Architecture
DA101/C	Proposed Ground Floor Plans	22/7/2019	Leaf Architecture
DA102/C	Proposed Roof Plan	22/7/2019	Leaf Architecture
DA201/C	South Elevation & Long-Section	22/7/2019	Leaf Architecture
DA202/C	East Elevation & Cross-Sections	22/7/2019	Leaf Architecture
DA203/C	Section and Materials Palette	22/7/2019	Leaf Architecture
67NortonStGallery_v1.1	Acoustic Report -	2/4/2019	Acoustic Directions
-	Plan of Management	10/4/2019	Co.As.It
Rev B	Access Report	2/4/2019	Ergon Consulting
-	Flood Engineering Report	3/4/2019	Northrop
-	NCC Capability Report	2/4/2019	Benchmark

As amended by the conditions of consent.

5. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

6. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

7. Standard Street Tree Protection

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

8. Verification of Levels and Location

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

9. Works Outside the Property Boundary

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

10. Boundary Alignment Levels

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

11. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, down pipe, pits and pipelines discharged by gravity to the existing site drainage system.

Any existing component of the stormwater system that is to be retained must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road or Council's stormwater pipe that passes through the site.

Prior to any Demolition

12. Hoardings

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

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

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

13. Construction Traffic Management Plan

Prior to any demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP) to cater for construction prepared by a person with RMS accreditation to prepare a work zone traffic management plan. Details must include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities. A work zone approval must be obtained.

14. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by

a suitably qualified person. The report is required to include colour photographs of the adjoining property 63-65 Norton Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

15. Advising Neighbors Prior to Excavation

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

16. Construction Fencing

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

Prior to Construction Certificate

17. Dilapidation Report – Pre-Development – Major

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report on the visible and structural condition of the following public infrastructure:

- a) Half-width of Norton Street adjacent the site, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath.
- b) Council drainage pipe that passes through the site between Norton Street and Balmain Road including CCTV inspection in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia. CCTV must be taken for the full length of pipe within the site.

The dilapidation report is to be prepared by a suitably experienced Chartered/Registered Civil and/or Structural Engineer.

18. Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer. The Plan must be prepared/amended to make provision for the following:

- a) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
 - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
 - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
 - iii. Flood warning signs/depth indicators for areas that may be inundated
 - iv. A flood evacuation strategy.
 - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
 - vi. Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.
- b) All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with National Construction Code and the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.
 - i. Building Code of Australia
 - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level
 - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood
 - iv. Flood hazard level (FHL) Flood Planning Level (FPL)

19. Amended Architectural Plans to Reflect Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Flood Risk Management Plan. The design must be prepared to make provision for the following:

- a) Specification of materials.
- b) Waterproofing works, where applicable.
- c) Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.

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

20. Engineering Design - Structural Engineer Plans and Certification

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer that incorporate the following recommendations of the Flood Risk Management Plan prepared under **Condition 19**.

The design must be prepared to make provision for the following:

- a) Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b) Waterproofing works, where applicable.
- c) Provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.

21. Works adjacent to Council's Stormwater Pipeline

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared by a suitably qualified Civil Engineer that demonstrate any footings or excavation to be located or undertaken adjacent to Council's stormwater pipeline address the following requirements:

- a) All footings and excavation must be located outside of the easement boundaries.

- b) All footings and excavation must be located a minimum of 1000mm from the centreline of the pipeline or 500mm from the outside of the pipeline, whichever is the greater distance from the centreline.
- c) All footings adjacent to Council's stormwater pipe must be taken to a depth 500mm below a line of influence measured at 450 from a point 1m from the invert of the stormwater pipe in the direction of the footing unless the footings are to be placed on competent bedrock.
- d) If permanent excavation is proposed beneath the obvert of the pipeline, suitable means to protect the excavation and proposed retaining structures from seepage or other water flow from the pipeline and surrounding subsoil must be provided.

22. Enclosure of Fire Hydrant

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

23. Structural Certificate for retained elements of the building

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

24. Sydney Water – Tap In

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

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

25. Acoustic Report – Aircraft Noise

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

26. Consolidation of Lots

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

27. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork including stormwater downpipes within the outer walls of the building so they are not visible.

28. National Construction Code - NCC Audit Report

Prior to the issue of a Construction Certificate, an Audit Report demonstrating the building complies with the NCC shall be prepared and submitted to the satisfaction of the Certifying Authority.

During Demolition and Construction

29. Protection of Council Stormwater Drainage Infrastructure

During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to take measures to protect any in-ground Council stormwater drainage pipeline and associated pits.

The location of the pipeline shall be assumed to be located within the Easement for Drainage as outlined on the Survey Plan on Drawing No 50599 001 DT prepared by LTS Lockley and dated 25-01-2018 unless determined otherwise on site.

If the Council pipeline is uncovered during construction, all work must cease within two (2) metres of the pipeline and the Principal Certifying Authority and Council must be contacted within 24 hours for instruction. The applicant should carefully expose the infrastructure for

inspection by the Principal Certifying Authority and the Council. The structural design prepared under Condition Works adjacent to Council's Stormwater Pipeline is to be adjusted as required and provided to Council's Coordinator Development Engineering prior to any further works in the vicinity of the pipeline. If no response has been provided by Council within 7 days, the applicant is at liberty to take steps to install a pier and beam footing system over the infrastructure in accordance the following:

- a) Ensures that no loads are imposed upon the infrastructure by any building over;
- b) A minimum of 750mm clearance is to be provided from the ascertained outside face of the stormwater infrastructure to the inside face of the pier; and
- c) All piers must be designed to extend to bedrock or minimum 500mm below the ascertained invert of the pipeline, whichever is higher.

Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed by and at no cost to Council.

If during excavation, it can be demonstrated that the Council pipeline does not exist within the subject property, the structural design may be amended accordingly, subject to written approval from Council.

30. Construction Hours – Class 2-9

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a) 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm 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 out of hours 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 must be limited to:

8:00am to 12:00pm, Monday to Saturday; and

2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must 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.

31. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

Prior to Occupation Certificate

32. No Encroachments

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

33. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

34. Dilapidation Report – Post-Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

35. Flood Risk Management Plan - Certification

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer that all aspects of the flood risk management plan including provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD and construction of the Wall(s) and Reception Desk as permanent structures, have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

36. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified Civil Engineer that:

- a) The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.
- b) Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

37. Easements, Restrictions on the Use of Land and Positive Covenants

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under

Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a) Positive Covenant related to Flood Risk Management works including the provision of flood barriers/flood proofing of the Wall(s) and Reception Desk to RL 35.95m AHD to prevent ingress of floodwaters into the adjoining Childcare Tenancy, the Reception area and areas at the rear of the building. The Reception Desk and Walls must be constructed as permanent structures.

The wording in the Instrument must be in accordance with Councils Standard wording.

38. Aircraft Noise –Alterations and Additions

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

39. Smoke Alarms - Certification of upgrade to NCC requirements

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

40. Section 73 Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

On-going

41. Flood Risk Management Plan

The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

42. Hours of Operation

- a) As specified in the Plan of Management submitted with the application, the hours of operation of the tenancy must not exceed the following:

Day	Hours
Monday to Friday	9am-5pm

Advisory notes

Planning

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Permits

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

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

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)

- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

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

Noise

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

Amenity Impacts General

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

Fire Safety Certificate

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Lead-based Paint

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

Asbestos Removal

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

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Dial before you dig

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

Useful Contacts

BASIX Information 1300 650 908 weekdays 2:00pm - 5:00pm

www.basix.nsw.gov.au

Department of Fair Trading	13 32 20	www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100	www.dialprior toyoudig.com.au
Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	

www.environment.nsw.gov.au

Sydney Water

13 20 92

www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions

www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

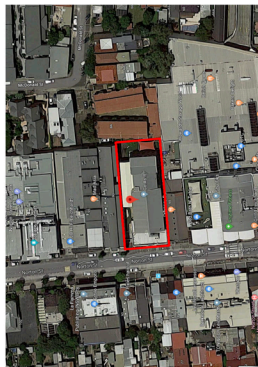
WorkCover Authority of NSW

13 10 50

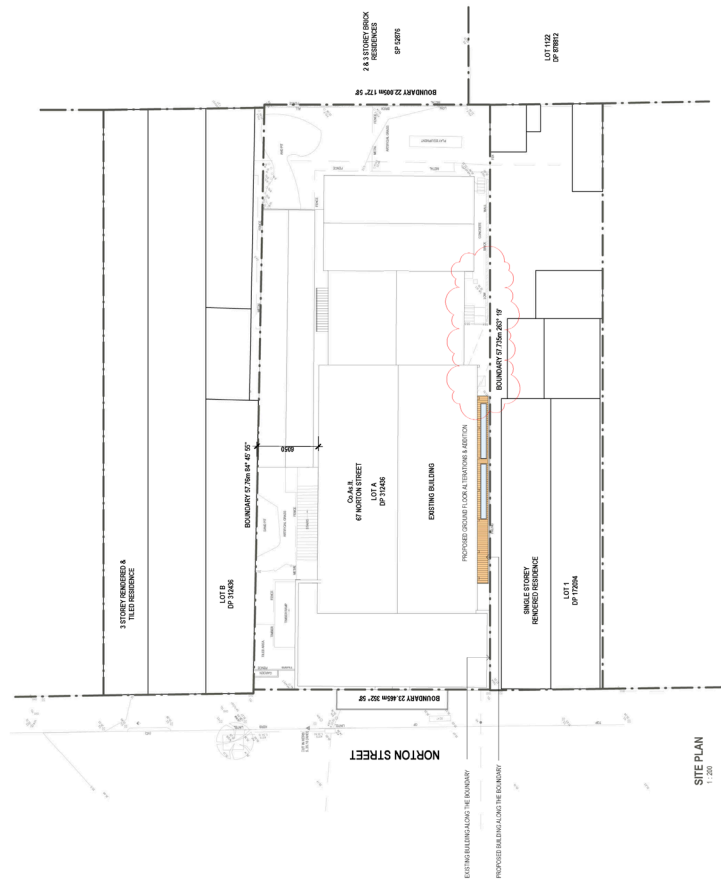
www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development



LOCALITY PLAN



SITE PLAN
1 - 200

ALTERATIONS & ADDITIONS LEGEND	
	PROPOSED ALTERNATIVE ADDITIONS AREA
	NOT RECONFIGURIZED AREA
	WALLS TO BE DEMOLISHED

CALCULATIONS GFA		
SITE AREA	FOR 1:1	PROPOSED GFA/FOR
120.0 (3.50M)	224.15 SQM	224.15 SQM
LOWER GROUND FLOOR	646.95 SQM	646.95 SQM
GROUND FLOOR	877.25 SQM	877.25 SQM
FIRST FLOOR	87.85 SQM	87.85 SQM
MEZZANINE FLOOR	1057.55 SQM / 11.3	1058.65 SQM / 11.34
TOTAL GFA AREA / PER FLOOR		

DA 001 DAVID ARONSON ARCHITECTS

C CONCEPT

As indicated
AS INDICATED BY THE
 PROJECT PROGRAM

1000 SQUARE FEET

LEAF ARCHITECTURE



4777 Paramount Hill, Leichhardt, NSW 2040
 PO Box 258, Leichhardt, NSW 2040
 T +61 2 9550 1234
 E MAIL: info@leafarch.com.au
 WWW: www.leafarch.com.au
 ABN 75 515 929 115

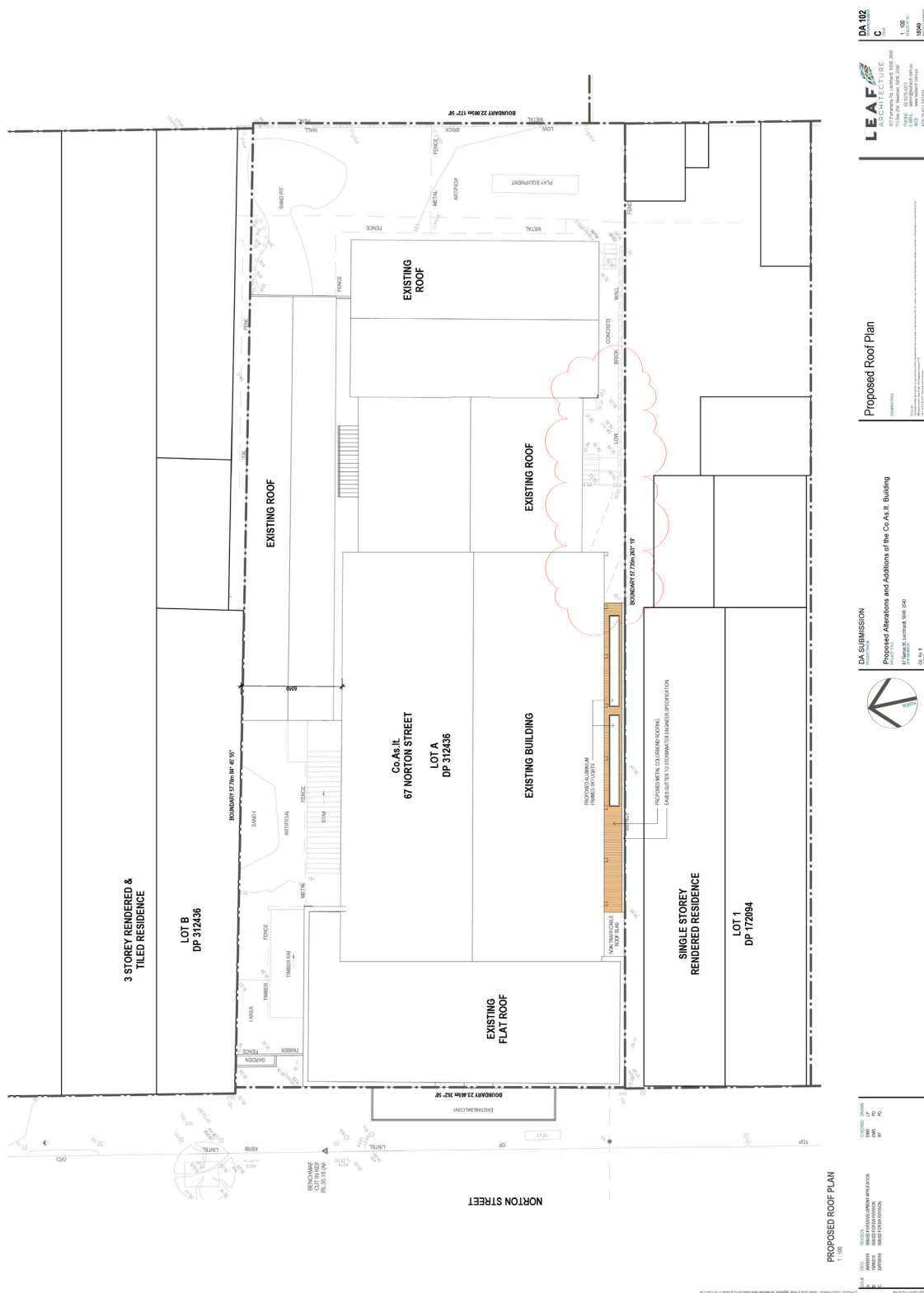
Site Plan

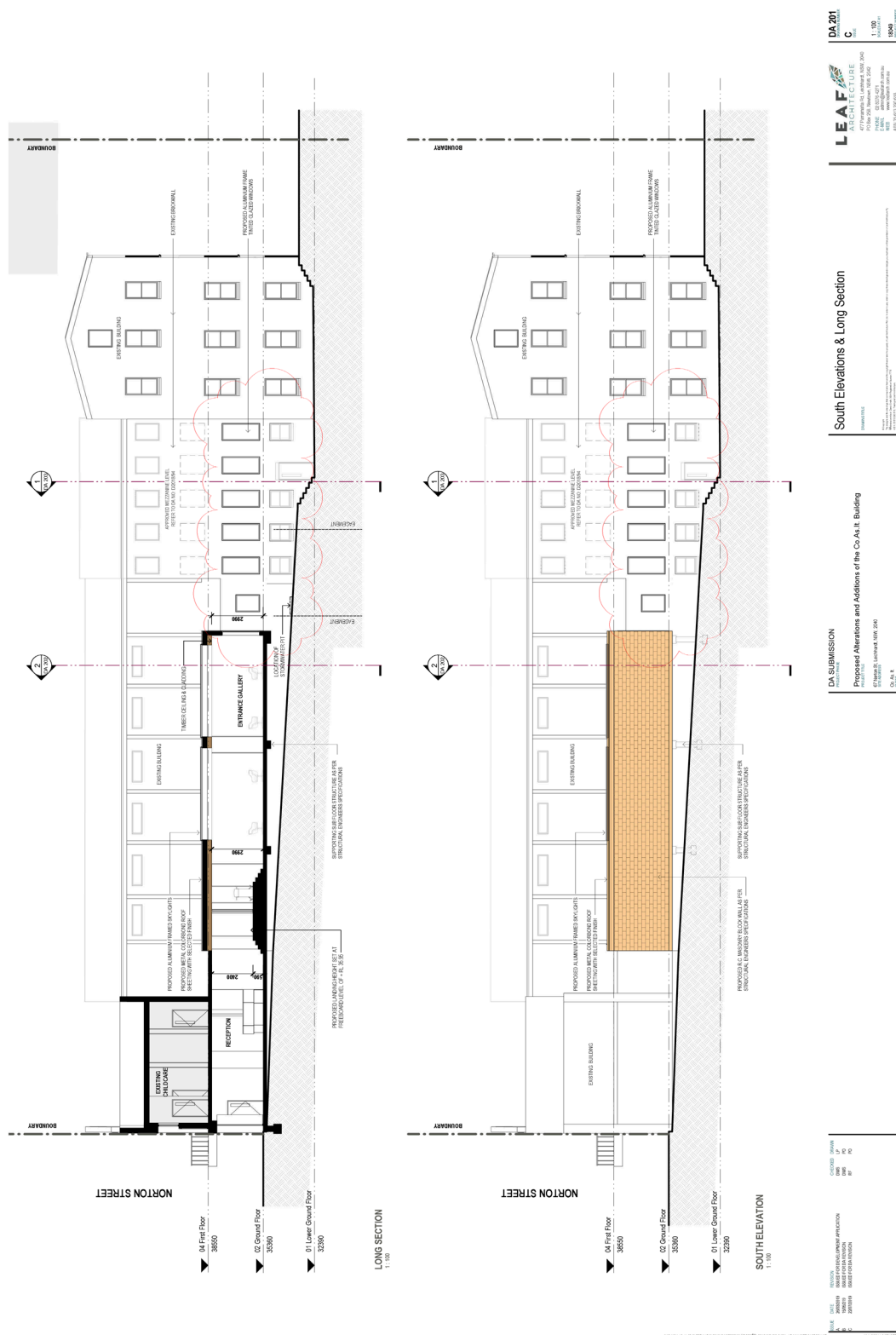
ENVIRONMENTAL

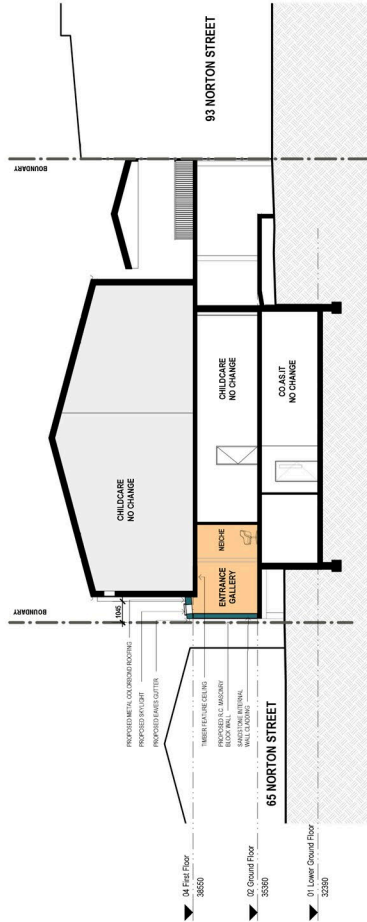
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DA SUBMISSION
PROJECT NAME
Proposed Alterations and Additions of the Co.As It Building
PROJECT NO.
67 North St., Larchmont, NEW YORK 10538
OWNER
CO. AS. INC.
CO. AS. INC.

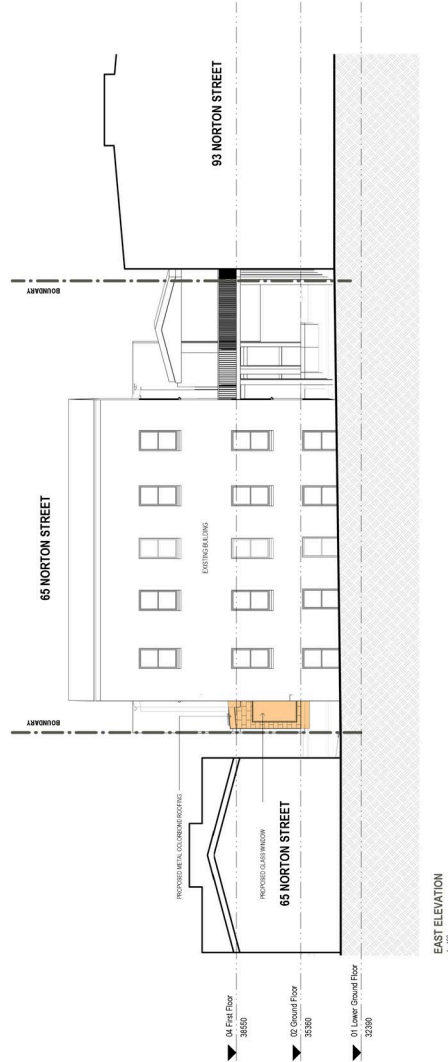
NAME	DATE	REVISION	CHECKED	25/06/98
A	25/03/99	ISSUED FOR DEVELOPMENT APPS/CONDOM	DMS	UP
B	19/05/99	ISSUED FOR LIA REVISION	DMS	PO
C	25/03/99	ISSUED FOR LIA REVISION	SP	PO







SECTION THROUGH NEW ENTRANCE GALLERY
1:100



EAST ELEVATION
1:100

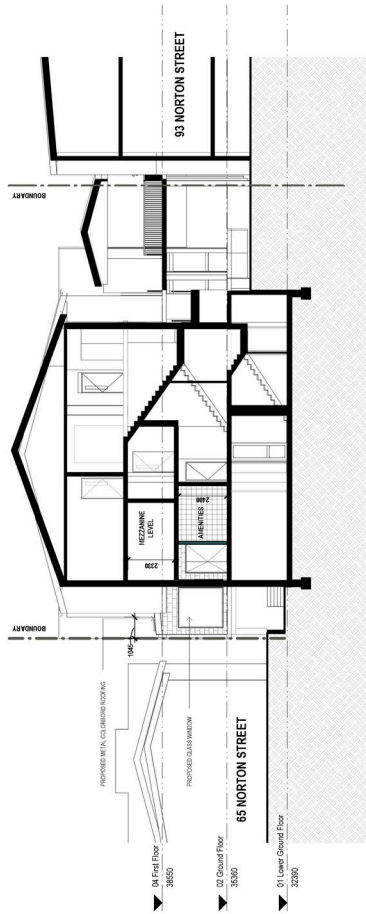


DA SUBMISSION
Proposed Alterations and Additions of the Co-As It Building
477 Norton St, Sydney NSW 2000
DA 202
1:100
15000

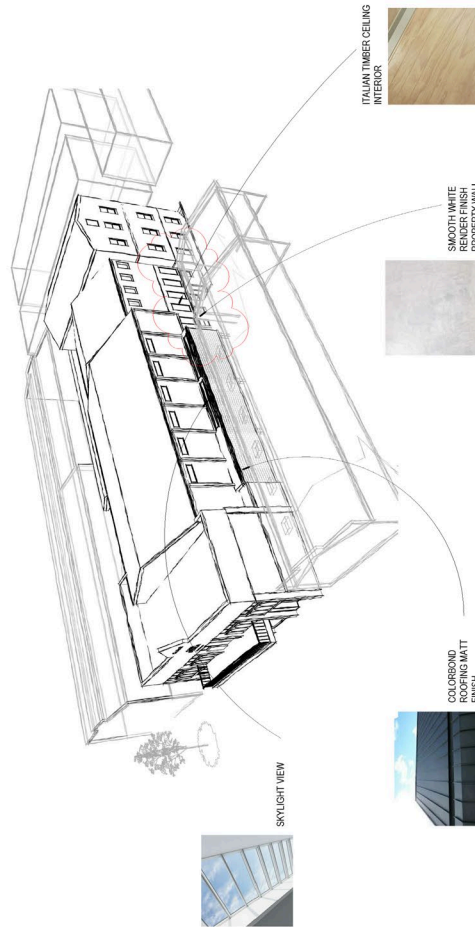
DA SUBMISSION
Proposed Alterations and Additions of the Co-As It Building
477 Norton St, Sydney NSW 2000
DA 202
1:100
15000

DA SUBMISSION
Proposed Alterations and Additions of the Co-As It Building
477 Norton St, Sydney NSW 2000
DA 202
1:100
15000

DA SUBMISSION
Proposed Alterations and Additions of the Co-As It Building
477 Norton St, Sydney NSW 2000
DA 202
1:100
15000



SECTION THROUGH GARDEN
1:100



Section & Material Palette

DA SUBMISSION
Proposed Alterations and Additions of the Co As It Building
477 Parramatta Rd, Sydney NSW 2150
DA 203
C
1:100
15000

NO.	REVISION	DATE	BY	CHKD
1	ISSUED FOR PERMIT APPLICATION	10/01/2023	MM	PD
2	ISSUED FOR PERMIT APPLICATION	10/01/2023	MM	PD

Attachment C – Clause 4.6 – Exceptions to Development Standards

WRITTEN REQUEST TO VARY A DEVELOPMENT STANDARD

CLAUSE 4.4 FLOOR SPACE RATIO - LEICHHARDT LEP 2013

67 Norton Street, Leichhardt

Submitted to the Inner West Council

On Behalf of Co.As.It.

4 April 2019 ■ 1901

A: 13 Cliff Street, Manly NSW 2095 | M: 0419 249 467 | E: kdtownplanning@outlook.com | ABN: 251441520211

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

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4.0 <i>Winten Developments Pty Ltd v North Sydney Council</i> [2001] NSWLEC 46	16
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Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)
67 Norton Street, Leichhardt

4 April 2019

1.0 Preliminaries

1.1 Land to which this variation applies and proposed development

This written request to vary a development standard is provided in support of a development application (DA) seeking approval for the following works to the ground floor level of the existing commercial building located at 67 Norton Street, Leichhardt (the **site**).

1. Infill the existing southern side boundary setback to create a wider entrance corridor with improved reception and lobby area
2. Internal modification to the staff kitchen and toilet facilities
3. New landscaped courtyard to the southern side boundary setback
4. Increase the gross floor area (GFA) of the building by 60m².

There is no change proposed to the operation of the Italian Association of Assistance (also known as Co.As.It.) office as a result of this application, with staff numbers and operating hours to remain unchanged.

The document has been prepared by KD Town Planning and should be read in conjunction with the Statement of Environmental Effects (SEE) that accompanies the DA.

1.2 Relevant environmental planning instrument

This exception to development standards request relates to Leichhardt Local Environmental Plan 2013 (Leichhardt LEP 2013).

1.3 Relevant development standard

This exception to development standards request relates to the floor space ratio (FSR) standard at cl. 4.4(2) of Leichhardt LEP 2013 which states:

4.4 Floor space ratio

...

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

.....

The FSR standard for the site is 1:1, as shown on **Figure 1**.

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)
67 Norton Street, Leichhardt

4 April 2019

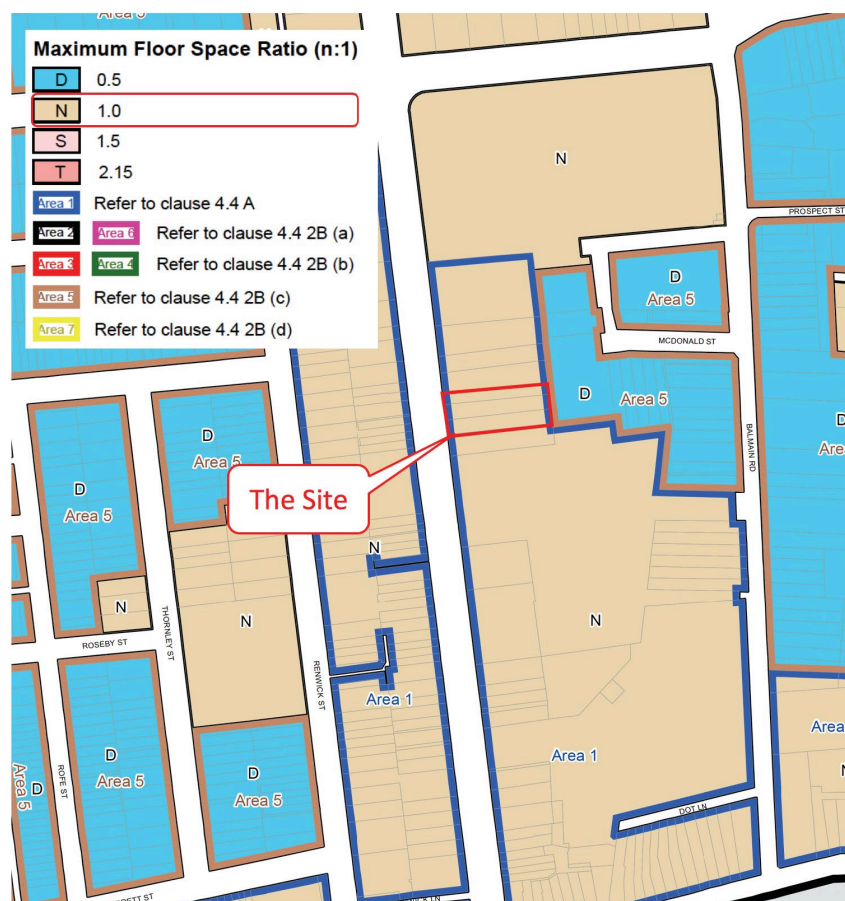


Figure 1 – Extract of the Floor Space Ratio Map Leichhardt LEP 2013 (LZN_005)

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

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1.4 Proposed variation to the standard

The site has an area of 1,313.45m².

As calculated by Leaf Architecture the existing GFA is 1,513m² which equates to a FSR of 1.15:1 on site which includes the recently approved mezzanine level (under D/2018/94) that is yet to be constructed.

The proposed GFA is 1,573m², (an increase of 60m² or 4%) which equates to a FSR of 1.19:1.

The proposed non-compliance with the FSR development standard therefore equates to 259.6m² or 19% above the 1:1 FSR standard.

Table 1 compares the existing, approved and proposed GFA and FSR for the site.

Table 1 – Existing, Approved and Proposed GFA and FSR for the site

Site area 1,313.45m ²	Existing	Approved	Proposed	Change
GFA (m ²)	1,440	1,513	1,573	+60
FSR	1:1.07	1:1.15	1:1.19	+4%

Table 2 compares the proposed GFA and FSR against the Leichhardt LEP 2013 FSR standard.

Table 2 – Proposed GFA and FSR compared to the Leichhardt LEP 2013 FSR standard

Site area 1,313.45m ²	Proposed	FSR Standard	Non-compliance
GFA (m ²)	1,573	1,313.4	+259.6
FSR	1:1.19	1:1	+19%

Figures 2 -4 shows the location of the proposed new GFA on the ground floor level of the existing building.

4 April 2019



Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

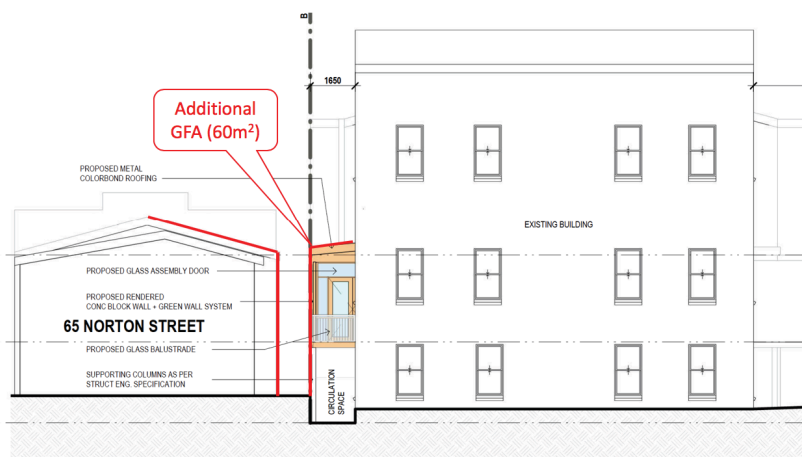


Figure 4 – Extract of the Proposed Cross Section (Source: Drawing DA_202_A prepared by Leaf Architecture), with the location of the new GFA marked in red

1.5 Project need

Co.As.It. was established in 1968 to fulfil two distinct aims:

- to promote the Italian language and culture in NSW, and
- to assist the growing number of migrants arriving from Italy.

Since this time Co.As.It. has evolved to meet the changing needs of the community and have continued to expand its services in the areas of education and community services.

Co.As.It. provides Italian language classes to adults and children both during and after school, Italian language resources, bilingual storytime for children, customised Italian language classes for business, language certification and professional development opportunities for teachers.

In the community services area, Co.As.It. provides aged care services and a wide range of community services, from youth and family to mental health, to problem gambling and many more.

Finally, Co.As.It. fully owns and operates an independent primary school, the Italian Bilingual School where the NSW curriculum is delivered both in Italian and English.

Co. As. It. head office is located on the ground floor level and first floor level of the building, with an approved mezzanine level which is yet to be built.

However, the Co.As.It. offices presently lack internal amenity, and has very poor circulation space.

Therefore to improve the amenity of the current office space, the application proposes the following works:

- Improve the presentation of the lobby and reception area on arrival
- Increase the width of the connecting corridor, and remove current ramping for better access and connection

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

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- Provide new meeting waiting areas and gallery space along the corridor for visitors
- Improve the functionality of the existing kitchen and staff amenities, as well as their amenity
- Create a new landscaped area at the end of the new widened corridor creating visual interest and connection to the outside.

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)
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2.0 Justification for the exception and matters for consideration

Clause 4.6 of Leichhardt LEP 2013 states:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

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

Note. When this Plan was made it did not include any of these zones.

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

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

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Table 3 assesses the proposed variation from the FSR standard against the cl. 4.6 considerations. More details follow in Sections 3.0 to 6.0 assessing the proposed FSR variation against the accepted tests for the assessment of development standard variations established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82
- *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

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Table 3 – Exception to standard - Clause 4.6 Leichhardt LEP 2013 – FSR

Leichhardt LEP 2012, cl. 4.6	Compliance
<p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>✓ Flexibility is appropriate in this instance given that:</p> <ul style="list-style-type: none"> • The FSR standard has not been consistently applied on the site, as the existing building exceeds the 1:1 FSR standard, by 15% (with a FSR of 1.15:1). • The proposed increase in GFA is minor (with an additional 60m² of GFA proposed), resulting in an increase of 4% • The proposed alterations and additions are commensurate in bulk and scale with the form of development typical of the B2 Zone, with the mixed-use zone characterised by one to three storey mixed use buildings, built boundary to boundary with an active presentation to the street. The proposal retains the existing building on site, and proposes alterations and additions that are similar in scale, and nature to the existing mixed use development on site and in the area, and is therefore acceptable within the context of its B2 zoning. • As shown at Figures 2 and 3, the proposed works are located on the ground floor level of an existing part 2/part 3 storey commercial building, to the site's southern side boundary setback. The proposed works will present as a seamless extension to the existing building form, by continuing the nil side boundary setback established at the front of the property and extending it east, along the site's southern boundary. Due to the location and height, the works are not visible from the public domain, and will have no impact on the site's existing presentation to the street. • As shown at Figure 4, the interface of the ground floor addition to the south, and adjoining slightly smaller scaled commercial building at 63 – 65 Norton Street (which is occupied by a restaurant/tavern) has been carefully considered. The proposed addition will reach a maximum height of RL 38.55 at the boundary, matching the wall height of the adjoining property (with a RL 38.41) directly adjacent. The bulk and scale of the addition at the boundary is therefore consistent in form with the property to the south. A smooth white render finish, with no openings is also proposed to the southern elevation of the new addition, to limit adverse visual and acoustic privacy impacts both to and from the development site. • The proposal complies with the Leichhardt Development Control Plan 2013 (Leichhardt DCP 2013) front, side and rear setback controls, and also the height and wall height control. Further, the proposal does not reduce the existing landscaped area on site, with the works occurring above existing hardstand areas. The proposal therefore has an appropriate bulk and scale for the site when assessed against the relevant provision contained within Part C – Section 4 – Non Residential Development. Refer to SEE prepared by KD Town Planning which accompanies the DA for a complete assessment (Section 5.1.4 – Table 4) • The additional FSR is sited and designed in a manner that does not result in any significant adverse impacts upon adjacent properties or the public

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

Leichhardt LEP 2012, cl. 4.6	Compliance
	<p>realm. As addressed within the following sections of the SEE prepared by KD Town Planning which accompanies the DA:</p> <ul style="list-style-type: none"> Building massing – refer to Section 5.1.4 (Table 4) Outlooks/views – refer to Section 5.1.4 (Table 4) Privacy – refer to Section 5.2.1 Noise – refer to Section 5.2.1 Overshadowing – refer to Section 5.2.2 Traffic and parking – refer to Section 5.2.3 <ul style="list-style-type: none"> The proposal is consistent with the desired future character of the area as established in Leichhardt DCP 2013 (C. 2.2.3.5 (a) Leichhardt commercial Distinctive Neighbourhood – Norton Street Entrata Sub Area), as follows: <ul style="list-style-type: none"> Retains the existing building on site Supports the continued and improved commercial use of the site Improves the commercial facilities on site for staff and visitors Supports the viability of the local centre Has a maximum wall height < 12m.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	<ul style="list-style-type: none"> ✓ The FSR standard is not excluded from the clause.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:	<ul style="list-style-type: none"> ✓ The proposal is consistent with the objectives of Leichhardt LEP 2013 cl. 4.4, satisfying Wehbe test (i) (as demonstrated at subclause 4). As such, it is unreasonable and unnecessary in this circumstance to comply with the FSR development standard. ✓ There are sufficient environmental planning grounds to justify contravening the development standard as demonstrated at subclause (1).
(a) that compliance with the development standard is	

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

Leichhardt LEP 2012, cl. 4.6	Compliance
<p><i>unreasonable or unnecessary in the circumstances of the case, and</i></p> <p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	
<p><i>(4) Development consent must not be granted for development that contravenes a development standard unless:</i></p> <p><i>(a) the consent authority is satisfied that:</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p><i>(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</i></p> <p><i>(b) the concurrence of the Secretary has been obtained.</i></p>	<p>✓ Subclause 3 has been adequately addressed (see above).</p> <p>✓ The proposal is in the public interest as it:</p> <ul style="list-style-type: none"> • Satisfies the relevant objectives of Zone B2 as follows: <ul style="list-style-type: none"> – <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i> <p>The proposed alterations and additions support the continued and improved commercial use of the site. In particular, the use of the site by Co.As.It. which directly supports the Italian community in the area, through language and support services.</p> <ul style="list-style-type: none"> – <i>To encourage employment opportunities in accessible locations</i> <p>The site is located on Norton Street, and is well serviced by public transport options. The site and proposal therefore supports employment opportunities in accessible locations.</p> <ul style="list-style-type: none"> – <i>To maximise public transport patronage and encourage walking and cycling.</i> <p>The site does not provide any on-site car parking, and no on-site car parking is proposed as part of this proposal. All staff and visitors are encouraged to either walk, cycle or use public transport to access the site.</p> <ul style="list-style-type: none"> – <i>To ensure that development is appropriately designed to minimise amenity impacts.</i> <p>The proposed alterations and additions to the ground floor level of the existing part 2/part 3 storey commercial building, have been appropriately designed to ensure no adverse amenity impacts arise.</p> <p>In particular, as addressed within the SEE prepared by KD Town Planning which accompanies the DA, the proposal does not result in any significant adverse amenity impacts for adjoining and nearby properties by way of</p> <p>Outlooks/views – refer to Section 5.1.4 (Table 4)</p> <p>Privacy – refer to Section 5.2.1</p> <p>Noise – refer to Section 5.2.1</p> <p>Overshadowing – refer to Section 5.2.2</p> <p>Traffic and parking – refer to Section 5.2.3</p> <ul style="list-style-type: none"> – <i>To allow appropriate residential uses to support the vitality of local centres.</i>

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

Leichhardt LEP 2012, cl. 4.6	Compliance
	<p>N/A</p> <p>– <i>To ensure that uses support the viability of local centres.</i></p> <p>The proposed alterations and additions directly supports the viability of the local centre, by providing improved commercial office space to a site which is located on Norton Street, the main commercial street in the area. The proposed works will also improve the functionality and amenity of the office space of Co.As.It. which provides vital community support service to the Italian community in the local area.</p> <p>– <i>To provide a mixture of compatible land uses.</i></p> <p>The proposal retains the existing commercial building on site, which is occupied by the Co.As. It. offices and a child care centre (Montessori) , the proposed works will therefore continue to support the existing compatible uses on site</p> <p>– <i>To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.</i></p> <p>As stated previously the site is located on the main commercial street of Leichhardt, and the proposal seeks to retain the existing commercial building , which is presently occupied by the Co.As.It. offices and a child care centre (Montessori). Both occupants of the building provide a critical service to the local community. The proposed works, will therefore reinforce and enhance the role of the local centre through the provision of improved office space</p> <p>– <i>To integrate suitable business, office, residential, retail and other development in accessible locations</i></p> <p>The site is located on Norton Street, and is well serviced by public transport options. The site and proposal therefore provides suitable businesses in accessible locations.</p> <ul style="list-style-type: none"> • It satisfies the relevant objectives of the FSR standard (cl. 4.4(1)) as follows: <ul style="list-style-type: none"> (a) <i>to ensure that residential accommodation:</i> <ul style="list-style-type: none"> a. <i>is compatible with the desired future character of the area in relation to building bulk, form and scale, and</i> b. <i>provides a suitable balance between landscaped areas and the built form, and</i> c. <i>minimises the impact of the bulk and scale of buildings,</i> <p>N/A –The site is located on the eastern side of Norton Street bounded by Marion Street to the north and Parramatta Road to the south, and forms part of the main commercial street in Leichhardt, within the B2 Local Centre Zone.</p> <p>The site is used for commercial purposes and no change is proposed to its use.</p>

Written request to vary a development standard (cl. 4.4 FSR, Leichhardt LEP 2013)

67 Norton Street, Leichhardt

4 April 2019

Leichhardt LEP 2012, cl. 4.6	Compliance
	<p><i>(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.</i></p> <p>The proposed alterations and additions are consistent with the desired future character of the area in relation to building bulk, form and scale. This is demonstrated by the proposals compliance with the relevant provisions contained within Leichhardt DCP 2013. In particular Part C – Section 4 – Non Residential Development. Refer to SEE prepared by KD Town Planning which accompanies the DA for a complete assessment (Section 5.1.4 – Table 4)</p>
<p><i>(5) In deciding whether to grant concurrence, the Secretary must consider:</i></p> <p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p><i>(b) the public benefit of maintaining the development standard, and</i></p> <p><i>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</i></p>	<p>✓ See Section 7.0.</p>
<i>(6) N/A</i>	<i>N/A</i>
<p><i>(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</i></p>	Noted
<i>(8) N/A</i>	<i>N/A</i>

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3.0 *Wehbe v Pittwater Council* [2007] NSW LEC 827

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. The five tests are considered below.

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

Consistency with the objectives of the standard, and the absence of any environmental impacts, would demonstrate that strict compliance with the FSR standard is both unreasonable and unnecessary in this instance.

As noted in Table 3, the proposal is consistent with the objectives to Leichhardt LEP 2013 cl. 4.4, satisfying *Wehbe* test (i). As such, it is unreasonable and unnecessary in this circumstance to comply with the FSR development standard.

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable.

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Not applicable.

The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.

(iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and

Not applicable.

(v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable.

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4.0 Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council [2001]* NSWLEC 46.

A Is the planning control in question a development standard?

Yes, cl. 4.4(2) of Leichhardt LEP 2013 is a development standard.

B What is the underlying object or purpose of the standard?

The underlying objectives of the standard are assessed in Table 3.

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

Table 3 (read in conjunction with Section 3.0) demonstrates that compliance with the 1:1 FSR standard is unnecessary and unreasonable in the circumstance of the case.

D Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?

The arguments contained in this cl. 4.6 variation support the case to allow flexibility in the application of the FSR standard.

The non-compliance with the development standard allows for an orderly use of the land and the proposal has been designed with consideration to the desired future character of the area.

Additionally, the Objects of the Act are satisfied as:

- The departure from the FSR standard in Leichhardt LEP 2013 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and
- The departure from the FSR standard in Leichhardt LEP 2013 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.

E Is the objection well founded?

As the cl. 4.6 exception to development standards request appropriately addresses *Wehbe v Pittwater Council [2007]* NSW LEC 827, the proposed variation is well founded.

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5.0 Four2Five Pty Ltd v Ashfield Council

Commissioner Pearson's decision in *Four2Five Pty Ltd* (and Pain J's endorsement the reasoning) indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a compliance with a standard is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under clause 4.6, (and 4.6(3)(a) in particular).

Further, the requirement in cl. 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development – as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

The justification for flexibility explained above in **Table 3** lists numerous planning grounds noting the following circumstances that are particular to the site and the proposal:

- The FSR standard has not been consistently applied on the site, as the existing building exceeds the 1:1 FSR standard, by 15% (with a FSR of 1.15:1).
- The proposed increase in GFA is minor (with an additional 60m² of GFA proposed), resulting in an increase of 4% on the site.
- The proposal retains the existing building onsite, which currently lacks internal amenity and has poor circulation space. The proposal seeks to rectify this, with a modest ground floor extension within the southern side boundary setback to improve the functionality and amenity of the office space.
- The proposed alterations and additions support the continued and improved commercial use of the site. In particular, the use of the site by Co.As.It. which directly supports the Italian community in the area, through language and support services.
- The proposed alterations and additions to the ground floor level of the existing part 2/part 3 storey commercial building, have been appropriately designed to ensure no adverse amenity impacts arise
- The proposed works, will reinforce and enhance the role of the local centre through the provision of improved office space

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6.0 Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

On 14 August 2018, Preston CJ handed down judgment in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). The Judgment provides a further update on the approach to be taken by Consent Authorities considering requests for variation made under clause 4.6 of a LEP.

The consent authority must first consider whether a 4.6 Request has adequately addressed the matters required to be addressed in clause 4.6(3) of the Standard Instrument. If the consent authority is not satisfied that these matters have not been adequately addressed, the consent authority simply does not have the power to grant consent. It is, therefore, essential that all 4.6 Requests clearly address each of the required elements of clause 4.6(3).

This decision demonstrates the importance of a proper analysis of the basis for a clause 4.6 request as well as the actual form of the request being 'adequate' to address the relevant cl4.6(3) matters.

The case confirms that a request that is otherwise meritorious may fail at the first hurdle because it is not well drafted.

Equally, the decision is important in so far as it rejects the notion that a request must necessarily result in a neutral or better outcome in comparison to a compliant development in relation to the development standard at issue.

As demonstrated within this Clause 4.6 Request to Vary a Development Standard, the Consent Authority can be satisfied that all of the required pre-conditions have been adequately addressed.

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7.0 Public interest and matters of State or regional significance

7.1 Is the proposal in the public interest?

This cl. 4.6 exception to development standards request and the accompanying plans and technical reports demonstrate the public advantages of providing additional and improved commercial office space on the site.

No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the proposal are minimal and/or can be adequately managed.

Further, the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the relevant zone, as demonstrated in **Table 3**.

7.2 Matters of State or Regional Significance

The proposal does not raise any other matters of significance for State or regional planning.

7.3 The public benefit of maintaining the standard

No matters of public interest arise as the impacts of the non-complying element are reasonable.

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8.0 Summary justification

A summary of the matters set out in this cl. 4.6 exceptions to development standards request to vary the Leichhardt LEP 2013 1:1 FSR standard follows:

Extent of non-compliance

- As calculated by Leaf Architecture the proposed GFA is 1,573m², (an increase of 60m² or 4%) which equates to a FSR of 1.19:1.
- The proposed non-compliance with the FSR development standard therefore equates to 259.6m² or 19% above the 1:1 FSR standard.

Justification for variation

- Flexibility is appropriate in this instance given that:
 - The FSR standard has not been consistently applied on the site, as the existing building exceeds the 1:1 FSR standard, by 15% (with a FSR of 1.15:1).
 - The proposed increase in GFA is minor (with an additional 60m² of GFA proposed), resulting in an increase of 4%
 - The proposed alterations and additions are commensurate in bulk and scale with the form of development typical of the B2 Zone, with the mixed-use zone characterised by one to three storey mixed use buildings, built boundary to boundary with an active presentation to the street. The proposal retains the existing building on site, and proposes alterations and additions that are similar in scale, and nature, and are therefore acceptable within the context of its B2 zoning.
 - As shown at **Figures 2 and 3**, the proposed works are located on the ground floor level of an existing part 2/part 3 storey commercial building, to the site's southern side boundary setback. The proposed works will present as a seamless extension to the existing building form, by continuing the nil side boundary setback established at the front of the property and extending it east, along the site's southern boundary. Due to the location and height, the works are not visible from the public domain, and will have no impact on the site's existing presentation to the street.
 - As shown at **Figure 4**, the interface of the ground floor addition to the south, and adjoining slightly smaller scaled commercial building at 63 – 65 Norton Street (which is occupied by a restaurant/tavern) has been carefully considered. The proposed addition will reach a maximum height of RL 38.55 at the boundary, matching the wall height of the adjoining property (with a RL 38.41) directly adjacent. The bulk and scale of the addition at the boundary is therefore consistent in form with the property to the south. A smooth white render finish, with no openings is also proposed to the southern elevation of the new addition, to limit adverse visual and acoustic privacy impacts both to and from the development site.
 - The proposal satisfies the objectives of the B2 Local Centre Zone, and the objectives of the FSR standard as demonstrated in **Table 3**
 - The proposal complies with the Leichhardt DCP 2013 front, side and rear setback controls, and the height and wall height control. Further, the proposal does not reduce existing landscaped areas on site, with the works occurring above existing hardstand areas. The proposal therefore has an appropriate bulk and scale for the site when assessed against the relevant provision contained within Part C – Section 4 – Non Residential Development. Refer to the SEE prepared by KD Town Planning which accompanies the DA for a complete assessment (Section 5.1.4 – Table 4)

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- The additional FSR is sited and designed in a manner that does not result in any significant adverse impacts upon adjacent properties or the public realm. As addressed within the following sections of the SEE prepared by KD Town Planning which accompanies the DA:
 - Building massing – refer to Section 5.1.4 (Table 4)
 - Outlooks/views – refer to Section 5.1.4 (Table 4)
 - Privacy – refer to Section 5.2.1
 - Noise – refer to Section 5.2.1
 - Overshadowing – refer to Section 5.2.2
 - Traffic and parking – refer to Section 5.2.3
- The proposal is consistent with the desired future character of the area as established in Leichhardt DCP 2013 (C. 2.2.3.5 (a) Leichhardt commercial Distinctive Neighbourhood – Norton Street Entrance Sub Area), as follows:
 - Retains the existing building on site
 - Supports the continued and improved commercial use of the site
 - Improves the commercial facilities on site for staff and visitors
 - Supports the viability of the local centre.
- The following circumstances are particular to the site and the proposal:
 - The FSR standard has not been consistently applied on the site, as the existing building exceeds the 1:1 FSR standard, by 15% (with a FSR of 1.15:1).
 - The proposed increase in GFA is minor (with an additional 60m² of GFA proposed), resulting in an increase of 4% on the site.
 - The proposal retains the existing building onsite, which currently lacks internal amenity and has poor circulation space. The proposal seeks to rectify this, with a modest ground floor extension within the southern side boundary setback to improve the functionality and amenity of the office space.
 - The proposed alterations and additions support the continued and improved commercial use of the site. In particular, the use of the site by Co.As.It. which directly supports the Italian community in the area, through language and support services.
 - The proposed alterations and additions to the ground floor level of the existing part 2/part 3 storey commercial building, have been appropriately designed to ensure no adverse amenity impacts arise
 - The proposed works, will reinforce and enhance the role of the local centre through the provision of improved office space.
- The proposed variation satisfies the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82, *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46, *Four2Five Pty Ltd v Ashfield Council* and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118