



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2018/546
Address	55 Church Street, LILYFIELD NSW 2040
Proposal	Demolition of existing dwelling-house and construction of 2X2 storey semi-detached dwellings with garages and associated works, including landscaping and tree removal, fencing works, and Torrens title subdivision into 2 lots.
Date of Lodgement	19 October 2018
Applicant	T Polvere
Owner	Velopo Nominees Pty Ltd
Number of Submissions	2 objections
Value of works	\$900,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds officer delegation
Main Issues	Lot Size, FSR, Solar Access, Amenity Impacts, Site Layout and Building Design, Desired Future Character
Recommendation	Refusal
Attachment A	Draft conditions (if not refused)
Attachment B	Proposed Plans
Attachment C	Clause 4.6 - Floor Space Ratio
Attachment D	Clause 4.6 – Minimum subdivision lot size



LOCALITY MAP

Subject Site		Objectors			N
Notified Area		Supporters			

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of the existing dwelling-house and construction of 2 X 2 storey semi-detached dwellings with garages and associated works, including landscaping and tree removal, fencing works, and Torrens title subdivision into 2 lots at 55 Church Street, Lilyfield. The application was notified to surrounding properties and two submissions were received.

The main issues that have arisen from the application include:

- Lot Size Variation
- Floor Space Ratio Variation
- Solar Access
- Site Layout and Building Design
- Desired Future Character

The non-compliances are not acceptable given the proposed lot size variation does not satisfactorily accommodate residential development that is consistent with relevant development controls, including excessive FSR and building bulk, inadequate solar access, and inconsistency with the desired future character. Therefore, the proposed Clause 4.6 requests to vary the minimum lot size and FSR development standards are not considered to be well-founded and the application is recommended for refusal.

2. Proposal

The proposal involves demolition of existing structures and subdivision to create two lots with an area of 173sqm each. The proposal (as amended) provides two x two storey semi-detached dwellings each containing three bedrooms, two bathrooms and rumpus room on the first floor; ground floor kitchen, living and dining area, fourth bedroom and separate laundry and toilet; and ground floor courtyard and semi-enclosed single car space with access off Frazer Street. New fencing and landscaping works are proposed to soften the appearance of the development.

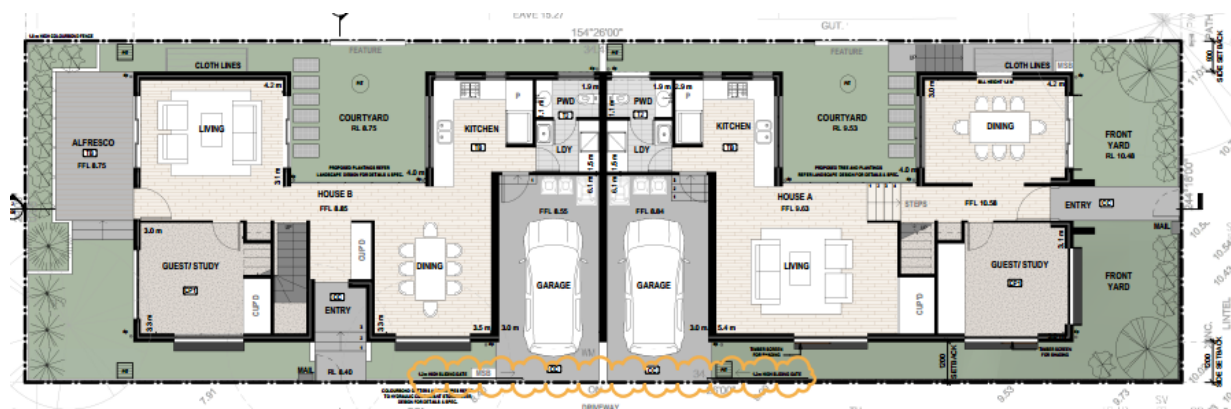


Figure 1: Proposed ground floor at No. 55 Church Street.

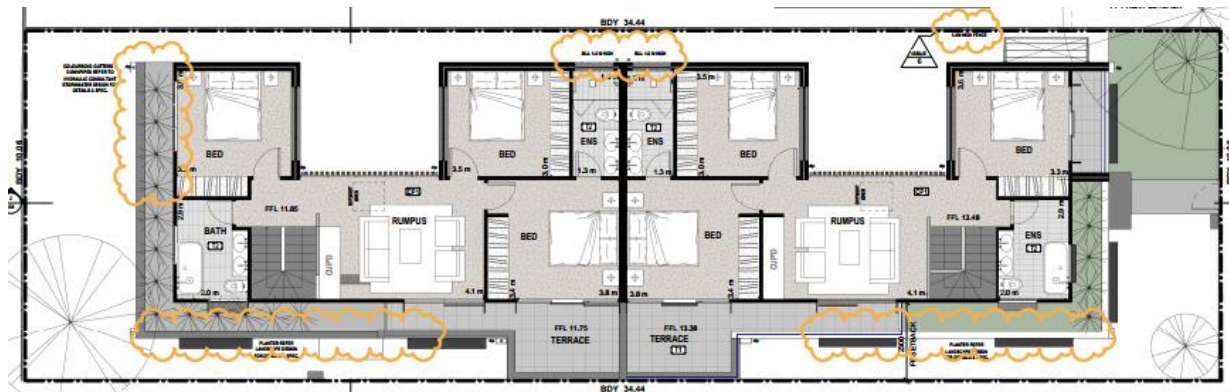


Figure 2: Proposed first floor at No. 55 Church Street.

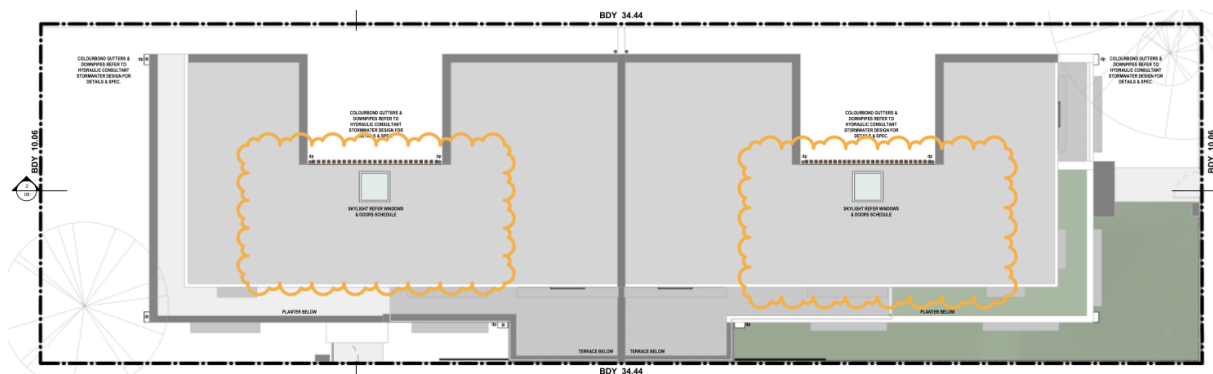


Figure 3: Proposed roof level at No. 55 Church Street.

3. Site Description

The subject site is located on the northern side of Church Street, between Frazer Street and Mary Street. The site consists of one allotment and is rectangular in shape with a total area of 346.3sqm and is legally described as Lot 18 DP 975479.

The site has a frontage to Church Street of 10.06 metres and a secondary frontage of approximate 34.44 metres to Frazer Street.

The site supports a single storey brick dwelling and detached carport. The adjoining properties support one and two storey dwellings.

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

The following trees are located on the site and within the vicinity.

- 2 x Plumeria rubra to the rear of the site adjacent to the western Frazer Street frontage
- Banksia integrifolia in vicinity within front setback of 53 Church Street



Figure 4: Aerial Photo at 55 Church Street Lilyfield.



Figure 5: Existing view looking north-east towards 55 Church Street Lilyfield.

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
PREDA/2018/182,	Demolition of existing single storey dwelling and garages and construction of 2 x 2 storey semi detached dwelling and garages	Advice Letter issued 19/9/2018
NOTE: the subject proposal does not satisfactorily respond to the concerns raised in the Pre-DA advice letter issued.		

Surrounding properties

No relevant application history.

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
8/2/2019	Council requested further information to address concerns raised in relation to solar access, visual privacy, streetscape appearance and consistency with desired future character, non-compliance with building location zone, side setbacks and building envelope, variation to minimum lot size, calculation of Gross Floor Area, tree impacts and inadequate landscaping. In light of the above, it was advised that a substantial re-design of the site layout and building design would be required to address the concerns raised.
8/3/2019	Applicant provided an Arboricultural Impact Assessment, revised Landscape Plans, revised Architectural Plans with changes to the roof design and an alternate roof plan with roof terraces for each dwelling, and revised Gross Floor Area calculations inclusive of the enclosed portions of car parking. No changes to the overall site layout and building envelope are proposed. NOTE: the amended plans incorporating no roof terrace form the basis of the final assessment under this Report given the roof terrace option is not supported on visual privacy grounds and would have necessitated re-notification.
2/4/2019	Council requested a Clause 4.6 request for the proposed FSR variation indicated on the revised Gross Floor Area calculations to enable the Panel to consider the proposal.
5/4/2019	Applicant provided a Clause 4.6 request to vary the FSR standard.

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:

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Coastal Management) 2018
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires the consent authority to be satisfied that the site is, or can be made, suitable for the proposed use prior to the granting of consent.

The proposal seeks to continue the existing residential use of the land. Therefore, it is considered that the site will not require remediation in accordance with SEPP 55. On this basis, the site is considered suitable for residential use.

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

The proposal was accompanied with a valid BASIX Certificate.

5(a)(iii) 5(a)(iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The proposal involves the removal of existing trees on site and consent is sought as a part of the subject application. The proposed tree removal and replacement landscaping is discussed under Section 5(c) of this Report.

5(a)(iv) State Environmental Planning Policy (Coastal Management) 2018

The subject site is not located within the coastal zone and as such, these provisions are not applicable.

5(a)(v) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is not within the Foreshores and Waterways Area.

5(a)(vi) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.6 – Subdivision Requirements
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.1 – Minimum subdivision Lot size

- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise

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

Standard (maximum)	Proposal	% of non compliance	Compliances
Minimum Lot Size Permitted: [200m ²]	Lot 1: 173sqm Lot 2: 173sqm	13.5% 13.5%	No
Floor Space Ratio Permitted: [0.8:1]	Lot 1: 0.855:1 Lot 2: 0.838:1	6.93% (9.6sqm) 4.77% (6.6sqm)	No
Landscape Area: 15%	Lot 1: 39%* Lot 2: 39.8%*	N/A	Yes
Site Coverage: 60%	Lot 1: 58.3% Lot 2: 58.3%	N/A	Yes

***The Applicant’s Landscape Area calculation includes the alfresco and patio areas and side setbacks less than 1m in width that would not constitute Landscape Area (as defined). Council calculates landscape areas of 58.11sqm (33.5%) on Lot 1 and 42.106sqm (24.3%) on Lot 2.**

The following provides further discussion of the relevant issues:

Clause 1.2 Aims of Plan

By virtue of the excessive bulk and scale, inadequate solar access and adverse streetscape and visual bulk impacts, the proposal is considered to be inconsistent with the following aims of the Plan:

- (d) to promote a high standard of urban design in the public and private domains,*
- (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- (f) to maintain and enhance Leichhardt’s urban environment*
- (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*
- (m) to ensure that development provides high quality landscaped areas in residential developments,*

Clause 2.3 Zone objectives and Land Use Table

The subject site is zoned R1 General Residential and the proposal is permissible development in the zone. For reasons outlined in this Report, the proposal is considered to be inconsistent with the following objectives of the R1 General Residential zone:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.1 – Minimum subdivision Lot size
- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Minimum Lot Size development standard under Clause 4.1 of Leichhardt Local Environmental Plan (LLEP) 2013 by 13.5% (27sqm). The applicant also seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of LLEP 2013 by 6.93% (9.6sqm) on proposed Lot 1 and 4.77% (6.6sqm) on proposed Lot 2.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

Clause 4.1 – Minimum Lot Size

- Notwithstanding numerical non-compliance, the applicant contends that the proposed lot sizes satisfy the stated objectives given that:
 - *The proposal achieves adequate solar access;*
 - *The proposal meets the requirements for private open space;*
 - *The proposal provides adequate parking;*
 - *The proposal meets the key numerical compliance with FSR, Site Coverage and soft landscaping;*
 - *Approval of the proposed subdivision lot sizes will not impact on the proposals ability to:*
 - *achieve an appropriate balance between development and management of the environment that will be ecologically sustainable, socially equitable and economically viable;*
 - *minimising adverse impacts of development;*
 - *protect and enhance the amenity of residents;*
 - *protect and enhance the natural and built environment; and*
 - *meet the future housing needs of the population in the LGA.*

Clause 4.4 – Floor Space Ratio

- Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:
 - *The non-compliance with FSR is minimal (6.25% increase);*

- *The building bulk, form and scale is compatible with the diverse character of the locality that includes a significant number of dwellings that have similar bulk, form and scale characteristics to the proposed development, particularly on similar corner locations such as 44 Church Street. Corner allotments in inner city urban environments are traditionally the sites that accommodate an increased density expressed by building, bulk, form and scale;*
- *39.4% of the site is landscaped open space that provides for the amenity of the residents and adjoining properties as well as maintaining the existing streetscape;*
- *The proposed development has a site coverage of 58.3% that is less than the 60% maximum required by Council;*
- *Dwellings have been designed to maximise direct sunlight to the main living room;*
- *All habitable rooms have access to natural daylight;*
- *There are no unacceptable overshadowing impacts on adjoining properties;*
- *There are no unacceptable overlooking impacts;*
- *There are no unacceptable view loss impacts;*
- *Adequate on-site parking is provided at a rate of 1 space per dwelling; and*
- *Site is considered suitable for the proposed development.*

The applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard as demonstrated below:

- The proposal is not considered to be compatible with the desired future character of the area in relation to building bulk, form and scale.
- The proposed lots are not able to accommodate development that is consistent with relevant development controls, including excessive FSR and building bulk thereby not providing a suitable balance between landscaped areas and the built form.
- The siting of the building is not within the building location zones, side setbacks, and envelope where it can be reasonably assumed development can occur.
- The proposal does not comply with the solar access requirements for private open space areas resulting in an unacceptable amenity outcome.
- The proposal results in adverse amenity impacts to the surrounding properties in terms of visual bulk.
- Council's FSR controls have recently been amended to increase the applicable FSR as lot size decreases under LLEP 2013. This reflects a specific strategic planning objective to have FSR controls that more closely resemble the existing form, scale and density of residential development on existing small lots under LLEP 2013 given the high occurrence and extent of variation requests under the former FSR controls. However, the proposed creation of new lots that are less than the minimum lot size results in an increase to the bulk, form and scale of development expressed in terms of maximum FSR (from 0.7:1 to 0.8:1), as well as minimum landscaped area (from 20% to 15%), than would otherwise be permitted on the existing site area and similar adjoining properties. Accordingly, the proposed variation to minimum lot size is considered to exacerbate the inconsistency of the proposal in terms of building bulk, form and scale with the existing pattern of development along this section of Church Street and would be inconsistent with the desired future character of the area.

It is considered the development is not in the public interest because it is inconsistent with the following relevant objectives of the R1 General Residential zone in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

It is considered the development is not in the public interest because it is inconsistent with the following objectives of the Minimum Subdivision Lot Size and Floor Space Ratio development standards, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

Clause 4.1 – Minimum Lot Size

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

Clause 4.4 – Floor Space Ratio

- (a) to ensure that residential accommodation:*
 - (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) provides a suitable balance between landscaped areas and the built form, and*
 - (iii) minimises the impact of the bulk and scale of buildings,*

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of the applicable local environmental plan.

5(b) Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Environment) 2018

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 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 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
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	No
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	No – see discussion
C1.6 Subdivision	No – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	No – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
Part C: Place – Section 2 Urban Character	
Suburb Profile	
C2.2.4.3(d) Iron Cove Backdrop Sub Area, Leichhardt Park Distinctive Neighbourhood, Lilyfield	No – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion
C3.9 Solar Access	No – see discussion
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes

Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

The following provides discussion of the relevant issues:

C1.5 – Corner Sites

Controls C2 and C4 require development to be compatible with the predominant character and scale of each streetscape. In this instance, the desired future character as expressed under the Leichhardt Park Distinctive Neighbourhood controls is to promote the consistent rhythm in the residential streetscapes created by regular allotment sizes, regular side setbacks, the predominance of hipped and gabled roof forms and the predominance of low scale detached dwellings with 3.6m building wall heights. The proposal provides a bulky two-storey form across the majority of the length of the site (81%), in excess of the permitted building envelope and oriented “against the grain” of other development in the streetscape.

Control C5 requires that development does not have an adverse impact on surrounding properties, the streetscape or public domain by way of amenity, solar access, views, privacy, urban design, and being inconsistent with the desired future character. The proposed variations to building location zone, side setbacks, 3.6m building wall height and envelope controls result in excessive bulk and scale, inadequate solar access, and adverse streetscape, visual bulk, and potential view loss impacts.

C1.6 – Subdivision

The proposal is considered to be inconsistent with the objective to create lots of sufficient area and dimensions to accommodate residential development that is consistent with the controls in the Development Control Plan. In addition, the proposal is considered to be contrary to Control C2, which requires new allotments to be consistent with the prevailing subdivision pattern, noting the regular north (rear) to south (front) alignment of rectangular lots along this section of Church Street.

C1.12 – Landscaping

The proposal is not considered to achieve objectives O1(a) to “enhance the visual setting of buildings”, (b) to contribute to the distinct landscape character within the neighbourhood” and (j) to “encourage the retention and enhancement of green corridors” given the non-compliant siting and design of the proposal. The proposed species selection and planting layout has also not demonstrated ongoing viability in the landscape in terms of necessary spatial requirements and soil volumes relative to the proposed building and adjoining properties.

C2.2.4.3(d) Iron Cove Backdrop Sub Area, Leichhardt Park Distinctive Neighbourhood

In its proposed building form and configuration, the proposal is not considered to satisfy the following controls:

- *C1 Maintain the character of the area by keeping development consistent in architectural style, building form and materials.*
- *C2 Maintain and enhance the predominant low scale cottage character of the residential streets.*
- *C4 Promote the consistent rhythm in the residential streetscapes created by the regular allotment sizes, regular side setbacks, the predominance of detached dwellings and the predominance of hipped and gabled roof forms.*
- *C7 Preserve and enhance sharing of views from private land.*
- *C10 Maximum building wall height of 3.6m applies unless an alternative building wall height is prescribed under the Sub Area controls.*

C3.2 Site Layout and Building Design

Building Location Zone (BLZ)

Control C5 requires the BLZ of a corner site to be determined by the location of the building on the adjacent property that most resembles the orientation, frontage width and site layout of the subject site. The single storey dwelling at 53 Church Street has a front setback of 6.6m and rear setback of 14.4m. In this instance, the proposal varies the ground floor BLZ with front and rear setbacks of 3.2m, and seeks to establish a new first floor BLZ

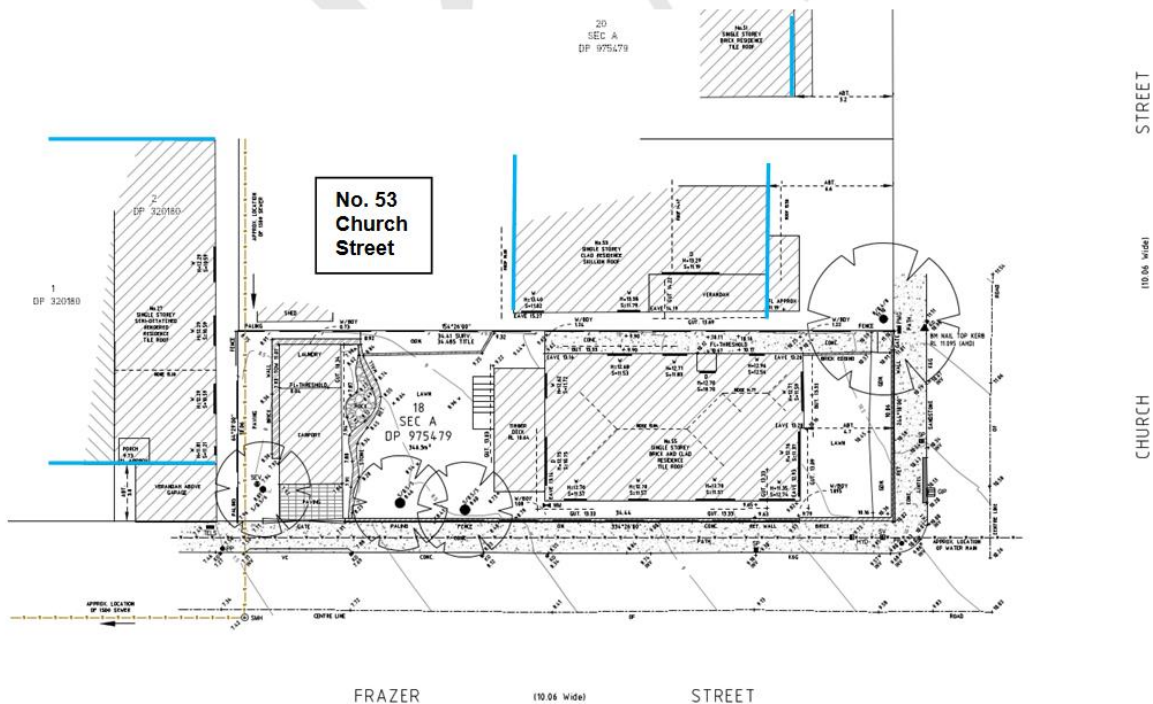


Figure 6: Existing pattern of development. The blue lines indicate ground floor BLZ.

Whilst Control C6 enables a variation to the BLZ, it is considered that the applicant has not satisfactorily demonstrated that the proposed building is consistent with the pattern of development in the immediate locality (usually taken as the same street) and that:

- a. amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;
- b. the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;
- c. the proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping;
- d. retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and
- e. the height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

In consideration of the above, the siting of the proposal is not in a location where development could be readily assumed given the context of the area.

Side Setback

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

Elevation	Proposed Wall Height (m)	Required setback (m)	Proposed setback (m)	Difference (m)
Eastern	6.55	2.1	0.9	1.2
Western	6.55	2.1	1.2	0.9

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

The proposal is not considered acceptable for the following reasons:

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

C3.8 Private Open Space

Control C1 requires private open space to be located at ground level consistent with the location of private open space on the surrounding properties and the siting controls with the Development Control Plan that is connected directly to the principal indoor living area. The non-compliant siting and design of the proposal results in inadequate primary private open space areas surrounded by two-storey walls on three sides that will be overshadowed throughout the year. The proposed private open space is considered to result in a poor amenity outcome for the development and reliance on potential roof terraces to compensate for poor site planning and building layout is not considered an appropriate design response in the context of the existing pattern of development.

C3.9 Solar Access

The subject site and adjoining properties are orientated north-south, which requires a minimum of 3 hours solar access to 50% of the private open space and living rooms to be maintained between 9am to 3pm at midwinter. Whilst the proposal does not result in any unacceptable adverse overshadowing impacts to adjoining properties, inadequate solar access is provided to the private open space areas of each dwelling with less than 50% solar access throughout the day. Furthermore, given the primary courtyards are surrounded by two-storey walls on three sides, it is considered that solar access will be poor throughout the year. This is considered unacceptable given it is a result of poor site planning and building design, where a reduced scale of development could otherwise provide significantly improved solar access and better internal amenity.

C3.10 Views

Concern was raised in relation to potential view loss from the first floor of the dwelling at 30 Church Street. Whilst insufficient information was provided to enable a comprehensive view loss assessment to be undertaken, it is noted that any loss of water views attributable to the non-compliant site layout and building design and excessive bulk and FSR would not be considered acceptable; and that views and aspect to neighbouring properties would be perceptibly better as a result of a compliant building form on the subject site.

C3.11 Visual Privacy

The proposal as amended does not give rise to any undue adverse visual privacy impacts given first floor balconies are located facing the street and proposed windows to the ground floor and first floor are either adequately screened or offset to prevent any overlooking of adjoining properties.

5(d) The Likely Impacts

The assessment of the application demonstrates that the proposal will have an adverse impact on the locality in terms of heritage and bulk and scale.

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

The site is zoned R1 General Residential. It is considered that the proposal is an overdevelopment of the site and will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

The application was notified in accordance with Council's Policy for a period of 14 days to surrounding properties. A total of 6 submissions were received.

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

- Desired Future Character – see Sections 5(a)(vi) and 5(c)
- Height, Density, Bulk and Scale – see Sections 5(a)(vi) and 5(c)
- Inadequate Private Open Space and Landscaping – see Section 5(c)
- Adverse Amenity Impacts (Overshadowing, and Potential View Loss) – see Section 5(c)
- Car Parking and Traffic – see Section 5(c)

Whilst the proposal is considered acceptable with respect to visual privacy and car parking, the remaining objections raised are valid concerns that warrant refusal of the application.

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 contrary to the public interest.

6 Referrals

6(a) Internal

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

- Landscaping: Not supported due to inadequate landscaping provision
- Development Engineer: No objections subject to conditions

6(b) External

The application was not referred to any external bodies.

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the development if the proposal is determined by grant of consent.

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

Open Space & Recreation

• Two (2) dwellings 106m ² - 160m ² @ \$25,811.00 per dwelling	\$51,622.00
• Less credit for one (1) dwelling 53m ² – 160m ² @ \$19,283 per dwelling	- \$19,283.00
Total	\$32,339.00

Community Facilities & Services

• Two (2) dwellings 106m ² – 160m ² @ \$3,945.00 per dwelling	\$7,890.00
• Less credit for one (1) dwelling 106m ² – 160m ² @ \$2,947.00 per dwelling	-\$2,947.00
Total	\$4,943.00

Transport and access, Works & Facilities

• LATM for two (2) dwellings >120m ² @ \$227.32 per dwelling	\$454.61
• Less LATM credit for one (1) dwelling 86m ² to 120m ² @ \$227.32 per dwelling	- \$227.32
LATM Total	\$227.32

• Light Rail for two (2) dwellings > 120m ² @ \$34.13 per dwelling	\$37.80
• Less Bicycle works credit for one (1) dwelling 86m ² to 120m ² @ \$18.90 per dwelling	-\$18.90
Light Rail Total	\$18.90

• Bicycle works for two (2) dwellings > 120m ² @ \$34.13 per dwelling	\$68.26
• Less Bicycle works credit for one (1) dwelling 86m ² to 120m ² @ \$34.13 per dwelling	-\$34.13
Bicycle Total	\$34.13

Total **\$280.35**

NET **\$37,562.35**

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

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

In this instance, any consent granted would authorise the erection of two dwellings (notwithstanding a credit is given for the existing dwelling), and hence any monetary contribution would be capped at \$40,000. As the proposed condition requires payment of \$37,562.35, the Direction is complied with. A condition requiring that contribution to be paid should be imposed on any consent granted.

8. Conclusion

This application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is considered to be unsatisfactory. The proposal fails on key threshold issues and does not comply with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will result in adverse impacts in terms of heritage and bulk and scale. The application is considered unsupportable and refusal of the application is recommended.

9. Recommendation

- A. The applicant has made a written request to vary Clause 4.1 Minimum Lot Size and Clause 4.4 Floor Space Ratio pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not 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 not be in the public interest because the exceedance is 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, refuse the Development Application No. D/2018/546 for Demolition of existing dwelling-house and construction of 2 x 2 storey semi-detached dwellings with garages and associated works, including landscaping and tree removal, fencing works, and Torrens title subdivision into 2 lots at 55 Church Street, Lilyfield, for the following reasons:
 1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 1.2 of the Leichhardt Local Environmental Plan 2013 – Aims of the Plan;
 - b) Clause 2.3 – Zone objectives and Land use Table;
 - c) Clause 4.1 – Minimum Subdivision Lot Size;
 - d) Clause 4.4 – Floor Space Ratio;
 - e) Clause 4.6 – Exceptions to development standards; and
 2. The proposed development cannot be approved as it breaches the Minimum Subdivision Lot Size of 200sqm by 13.5% as stipulated by Clause 4.1, and the Clause 4.6 request to vary this standard under Leichhardt Local Environmental Plan 2013 is not considered to be well-founded.
 3. The proposed development cannot be approved as it breaches the Floor Space Ratio of 0.8:1 by 6.5% as stipulated by Clause 4.4, and the Clause 4.6 request to vary this

standard under Leichhardt Local Environmental Plan 2013 is not considered to be well-founded.

4. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Clause C1.0 – General Provisions;
 - b) Clause C1.1 – Site and Context Analysis;
 - c) Clause C1.5 – Corner Sites;
 - d) Clause C1.6 – Subdivision;
 - e) Clause C1.12 – Landscaping;
 - f) Clause C2.2.4.3 – Leichhardt Park Distinctive Neighbourhood;
 - g) Clause C3.1 – Residential General Provisions;
 - h) Clause C3.2 – Site Layout and Building Design;
 - i) Clause C3.8 – Private Open Space; and
 - j) Clause C3.9 – Solar Access.
5. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
7. The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. 2018/546 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By		Dated
Dwg. No. 02, Demolition Plan, Issue 2	Derek Architecture	Raithby	February 2019
Dwg. No. 03, Ground Floor Plan, Issue 6	Derek Architecture	Raithby	February 2019
Dwg. No. 04, First Floor Plan, Issue 6	Derek Architecture	Raithby	February 2019
Dwg. No. 05, Roof Plan, Issue 5	Derek Architecture	Raithby	February 2019
Dwg. No. 06, Elevation South & East, Issue 7	Derek Architecture	Raithby	February 2019
Dwg. No. 07, Elevation North & West, Issue 7	Derek Architecture	Raithby	February 2019
Dwg. No. 08, Sections, Issue 6	Derek Architecture	Raithby	February 2019
Dwg. No. 13, Finishes Schedule, Issue 3	Derek Architecture	Raithby	October 2018
Dwg. No. SV1, Subdivision Plan, Issue 1	Derek Architecture	Raithby	October 2018
Document Title	Prepared By		Dated
Arboricultural Impact Assessment	Emma Paling		Undated
BASIX Certificate	Vipac		17 October 2018

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

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

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

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

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

2. Consent is granted for the demolition of existing structures on the property, subject to strict compliance with the following conditions:
 - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including

every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.

- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:

- i) A pre commencement inspection when all the site works are installed on the site and prior to demolition commencing.
- ii) A final inspection when the demolition works have been completed.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: Demolition of structures.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.

- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 Demolition of structures by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
 - i) A WorkCover licensed contractor must undertake removal of all asbestos.
 - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
 - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
 - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
 - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

- 3. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
 - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
 - b) A Principal Certifying Authority has been appointed and Council has been

notified in writing of the appointment.

- c) At least two days notice, in writing has been given to Council of the intention to commence work.

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

4. As the site where the property is identified as located within ANEF 20-25 or greater, the development approved under this consent must meet the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

An acoustic report prepared by a suitably qualified person and accompanying plans demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

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

The system/s shall be operated as follows:

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

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

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

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

6. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
7. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a

Construction Certificate:

- a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

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

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

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

9. Materials and finishes must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
10. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
 - a) Must preserve and protect the adjoining building from damage
 - b) Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

11. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document *Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater—Soils & Construction Volume 1 (2004)* available at www.environment.nsw.gov.au and the Construction Management and Traffic Management Plan referred to in condition/s of this

Development Consent and must address, but is not limited to the following issues:

- a) Minimise the area of soils exposed at any one time.
- b) Conservation of top soil.
- c) Identify and protect proposed stockpile locations.
- d) Preserve existing vegetation. Identify revegetation technique and materials.
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
- f) Control surface water flows through the site in a manner that:
 - i) Diverts clean run-off around disturbed areas;
 - ii) Minimises slope gradient and flow distance within disturbed areas;
 - iii) Ensures surface run-off occurs at non erodable velocities;
 - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences.
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

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

12. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

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

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

13. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
 - a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction

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

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

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

14. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
- a) Estimated volume (m³) or weight (t) of materials that are reused, recycled or removed from site.
 - b) On site material storage areas during construction.

- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

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

- 15. The architectural plans are to be amended to provide a minimum 150mm step up between the finished surfaces of all external areas the and adjacent internal floor levels.
- 16. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
- 17. A stormwater drainage design, incorporating On-site Stormwater Detention storage (OSD) and/or On-site Stormwater Retention/ re-use facilities (OSR), prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. Stormwater Drainage Concept Plan (SDCP) C-3363-01 prepared by PAVEL KAZAROVSKI must be amended to make provision for the following:
 - a) Stormwater runoff from all roof and paved areas within the property shall be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road via On-site Stormwater Detention storage (OSD).
 - b) Drainage pipes including connection of drainage pipe to rainwater tank must be under gravity. Charged or pump-out stormwater drainage systems are not permitted.
 - c) The design of the OSD tanks should be supported by calculations demonstrating that the post development flows for the 100 year Average Recurrence Interval (ARI) storm event from the site are restricted to the pre development flows for the 5 year ARI storm event.
 - d) The volume of the OSD can be reduced where on-site retention (OSR) facilities for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.

- e) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- f) All pipes, diameter and invert level and finished surface ground levels must be shown on the drainage plans.
- g) Details and dimensions of the OSD tank and OSR tank, the invert and top water level in the OSD and OSR and details of the discharge control device including calculation of rates of discharge and volume of storage must be indicated on the drainage plans.
- h) An overland flow path with a minimum width of 500mm must be provided along the eastern and northern boundaries of the development site.
- i) A minimum 150mm step up must be provided between the finished surfaces of all external courtyards and the adjacent internal floor levels.
- j) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- k) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- l) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- m) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.
- n) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- o) The proposed On-site Retention Tank must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation.

All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2015 *Plumbing and Drainage – Stormwater Drainage*.

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

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

18. The design of the vehicular access and off street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 *Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance are to be provided prior to the issue of

a Construction Certificate. The following specific issues must be addressed in the design:

- a) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing shall comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- c) The garage parking space shall have minimum clear internal dimensions of 6000mm x 3000mm (length x width) and a minimum door opening width of 2800mm at the street frontage. The dimensions shall be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.

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

COLUMN A	COLUMN B
Open space and recreation	\$32,339.00
Community facilities and services	\$4,943.00
Local area traffic management	\$227.32
Light Rail	\$18.90
Bicycle works	\$34.13

The total contribution is: \$37,562.35

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

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

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

20. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of

carrying out the works.

Security Deposit (FOOT)	\$2,152.50
Inspection fee (FOOT)	\$230.65

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

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

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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

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

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

21. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
 - a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
 - b) A concrete pump across the roadway/footpath. – A Standing Plant permit
 - c) Mobile crane or any standing plant – A Standing Plant Permit
 - d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
 - e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
 - f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application

- g) Awning or street verandah over footpath. – Road works Application
- h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

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

PRIOR TO THE COMMENCEMENT OF WORKS

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

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

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

- a) Location of the building with respect to the boundaries of the site.

23. The site must be secured with temporary fencing prior to any works commencing.

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

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

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

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

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

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

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

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

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

25. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
26. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
27. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
28. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
 - a) Unauthorised entry to the work site is prohibited.
 - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
 - c) The name, address and telephone number of the Principal Certifying Authority for the work.

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

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

29. The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for Application for Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide

evidence of adequate public liability insurance, before commencement of works.

DURING WORKS

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

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

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

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

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

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

32. The site must be appropriately secured and fenced at all times during works.
33. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

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

34. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and

- c) at no time on Sundays or public holidays.

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

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

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

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

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

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

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

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

35. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
36. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
37. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
- a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and

- d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
38. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
39. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

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

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

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

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

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

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

41. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
42. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
43. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

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

44. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
 - BASIX certificate (where relevant),
 - approved documentation (as referenced in this consent); and
 - conditions of this consent.
45. Landscaping shall be implemented in accordance with the approved Landscape Plan.
46. Light duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" shall be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.
47. All redundant vehicular crossings to the site shall be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.
48. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.
- Certification by a qualified practising Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance the development consent and with relevant Australian Standards shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
49. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.
- Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, shall be submitted and accepted by Council prior to the issue of an Occupation Certificate.
- The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.
50. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities. The Plan must set out the following at a minimum:
- a) The proposed maintenance regime, specifying that the system is to be

regularly inspected and checked by qualified practitioners.

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

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

- 51. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath, Vehicle Crossing and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.
- 52. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. It is responsibility of applicant's contractor to verify location of the utility services with the relevant service authority. 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 shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
- 53. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 110mm/150mm at both sides of the vehicle entry.
- 54. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.

PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

56. A Registered Surveyor shall provide certification that all services (eg drainage, stormwater, water supply, gas, electricity, telephone) as constructed are contained within each lot or within appropriate easements to accommodate such services. The certification is to be provided prior to the issue of a Subdivision Certificate.

ONGOING CONDITIONS OF CONSENT

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

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

PRESCRIBED CONDITIONS

A. BASIX Commitments

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

In this condition:

- a) Relevant BASIX Certificate means:
 - i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

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

C. Home Building Act

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

D. Site Sign

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

- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

E. Condition relating to shoring and adequacy of adjoining property

- 1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

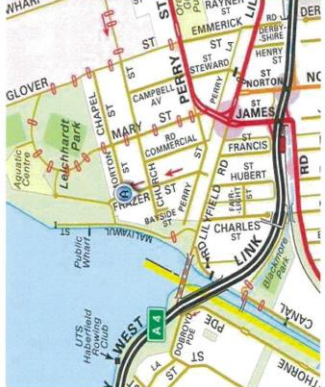
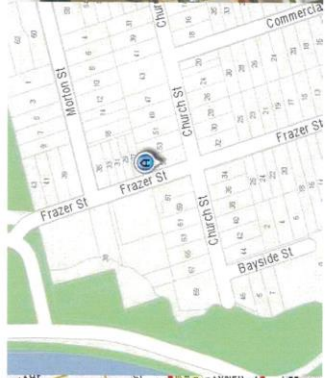
NOTES

- 1. This Determination Notice operates or becomes effective from the endorsed date of consent.
- 2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
- 3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
- 4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
- 5. Works or activities other than those approved by this Development Consent will require the submission of a new development application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.
- 6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
- 7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):
 - a) Application for any activity under that Act, including any erection of a hoarding.
 - b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.

- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
 - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
 - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
 - f) Development Application for demolition if demolition is not approved by this consent.
 - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
 - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

Attachment B – Plans of proposed development

RESIDENTIAL DEVELOPMENT
55 CHURCH STREET, LILYFIELD
LOT 18 / SECTION A / DP 975479



AERIAL PHOTOGRAPH (https://sat.rrw.gov.au)

AERIAL PHOTOGRAPH (https://sat.rrw.gov.au)

STREET DIRECTORY (www.streetdirectory.com.au)

STREET DIRECTORY (www.streetdirectory.com.au)

ARCHITECTURAL DRAWINGS

Project#	DWG#	TITLE	SCALE	ISSUE	DATE
D1815	00	COVER SHEET		6	02/19
	01	SITE ANALYSIS PLAN		3	08/18
	02	PROPOSED DEVELOPMENT		2	02/19
	03	GROUND FLOOR PLAN		6	02/19
	04	FIRST FLOOR PLAN		6	02/19
	05	ROOF PLAN		5	02/19
	06	ELEVATION SOUTH & EAST		7	02/19
	07	ELEVATION NORTH & WEST		6	02/19
	08	SECTIONS		6	02/19
	09	ARTIST IMPRESSION		3	10/18
	10	SHADOW/DIAGRAM (JUNE)		4	10/18
	11	SHADOW/DIAGRAM (JUNE)		4	10/18
	12	WINDOWS & DOORS SCHEDULE		3	10/18
	13	FINISHES SCHEDULE		3	10/18
	14	CALCULATION- LANDSCAPING AREA		3	10/18
	15	NOTIFICATION PLAN 1 OF 2		2	10/18
	16	NOTIFICATION PLAN 2 OF 2		2	10/18
	17	CALCULATION- FOS		1	02/19
	18	ACCESS STUDY - PROPOSED		2	02/19
	19	JUNE ACCESS STUDY - PROPOSED		2	02/19
	SV1	SUBMISSION PLAN		1	10/18

BANK NOTES:

- 1. ALL BATHROOM SHOWERS MUST BE MIN 3 STAR RATED.
- 2. TOILET FLUSHING SYSTEMS TO BE 4 STAR & ALL TAPS TO BE MIN 4 STAR RATED.
- 3. ALL BATHROOMS TO BE 4 STAR RATED.
- 4. ALTERNATIVE WATER SOURCE, (SUCH AS RAINWATER) TO BE INSTALLED IN EACH BATHROOM.
- 5. INDIVIDUAL PAN DUCTED TO FACE OR ROOF TO BE INSTALLED IN EACH BATHROOM, KITCHEN AND LAUNDRY FOR VENTILATION.
- 6. ALL BATHROOMS TO BE 4 STAR RATED.
- 7. ALL LIVING AND BEDROOM AREAS TO BE 4 STAR RATED.
- 8. PRIVATE OUTDOOR CLOTHES DINGS TO BE INSTALLED IN EACH BATHROOM.
- 9. PRIVATE OUTDOOR CLOTHES DINGS TO BE INSTALLED.



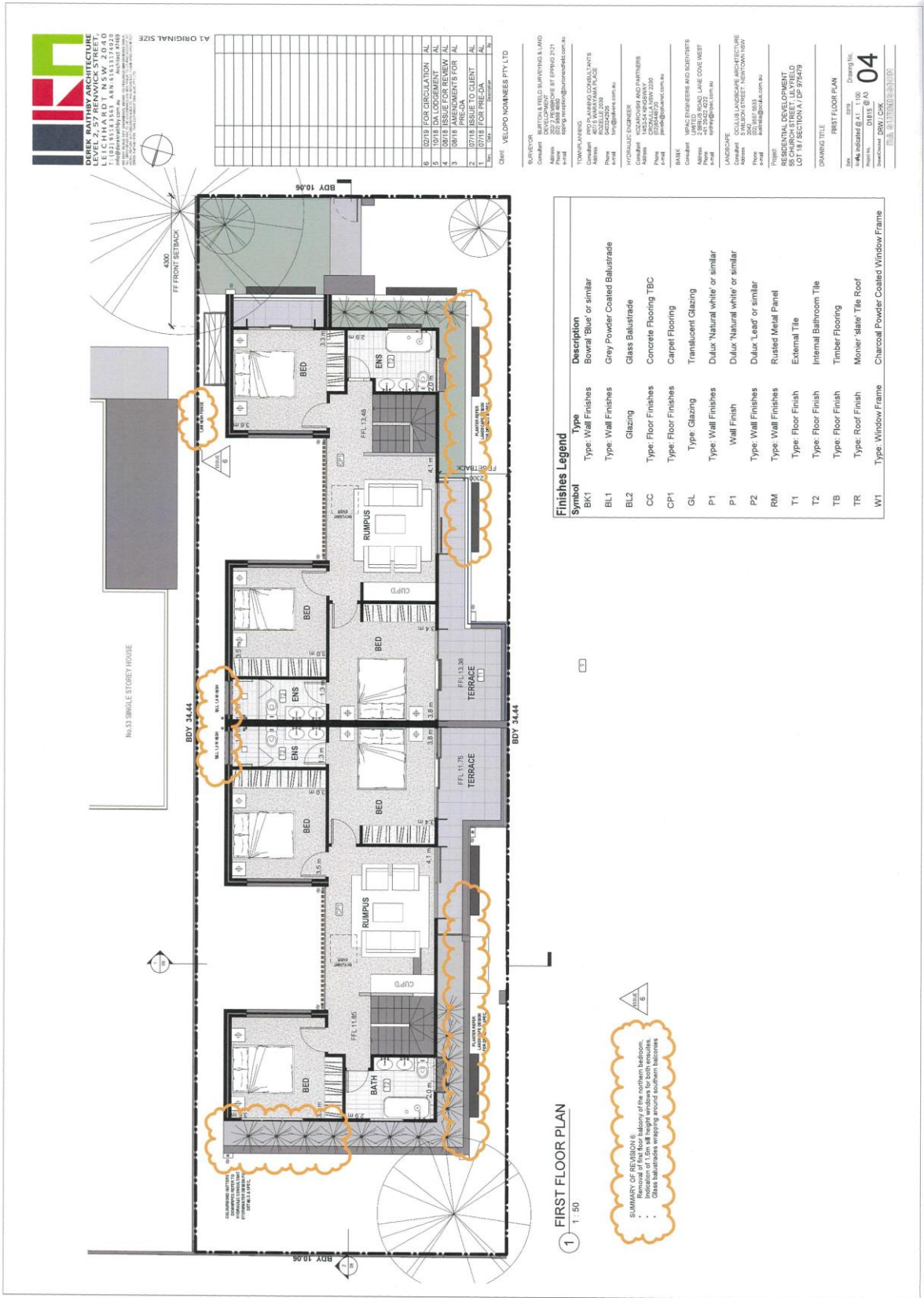
ARTIST IMPRESSION

5.0
NATIONWIDE HOUSE ENERGY RATING

65.7
NATIONWIDE HOUSE ENERGY RATING

ADDRESS DETAILS		OWNER	
Name	55 Church Street	Name	BMV
Address	55 Church Street, Lilyfield NSW 1570	Address	55 Church Street, Lilyfield NSW 1570
Lot	18	Lot	18
Section	A	Section	A
DP	975479	DP	975479
State	NSW	State	NSW
Postcode	1570	Postcode	1570
Local Government Area	Inner West Council	Local Government Area	Inner West Council
Planning Zone	R15 (Residential Medium Density)	Planning Zone	R15 (Residential Medium Density)
Current Use	Residential Medium Density	Current Use	Residential Medium Density
Proposed Use	Residential Medium Density	Proposed Use	Residential Medium Density
Site Area	1,200 sqm	Site Area	1,200 sqm
Proposed Floor Area	1,200 sqm	Proposed Floor Area	1,200 sqm
Proposed Height	4 storeys	Proposed Height	4 storeys
Proposed Density	100% coverage	Proposed Density	100% coverage
Proposed Parking	10 spaces	Proposed Parking	10 spaces
Proposed Landscaping	10% coverage	Proposed Landscaping	10% coverage
Proposed Greening	10% coverage	Proposed Greening	10% coverage
Proposed Water	10% coverage	Proposed Water	10% coverage
Proposed Energy	10% coverage	Proposed Energy	10% coverage
Proposed Sustainability	10% coverage	Proposed Sustainability	10% coverage





DEREK RATHBY ARCHITECTURE
 10/100 WILSON ROAD, WILSON PROMENADE
 LEICHHARDT NSW 2040
 T: (02) 9538 3563 A/N: 6 613 17 9029
 F: (02) 9538 3564 E: derek@rathby.com.au
 www.rathby.com.au

AT ORIGINAL SIZE

6	02/18 FOR CIRCULATION	AL
5	10/18 DA LOUVERMENT	AL
4	03/18 FOR CIRCULATION	AL
3	10/18 INSULATION SIGN	AL
2	07/18 ISSUE TO CLIENT	AL
1	02/18 FOR CIRCULATION	AL

Client: VELOPO HOMES PTY LTD

STRUCTURE
 Consultant: BURTOL & FIELD SURVEYING & LAND
 Address: 202/137 WILSON ST EPPING NSW 2121
 Phone: (02) 9618 1111
 E-mail: info@burtol.com.au

TOWNSHIP
 Consultant: PRO-PLANNING CONSULTANTS
 Address: 10/100 WILSON ROAD
 E-mail: info@proplanning.com.au

HYDRAULIC ENGINEER
 Consultant: RZS ARCHITECTS AND PARTNERS
 Address: 2/202 WILSON ROAD
 E-mail: info@rzs.com.au

BANK
 Consultant: WANG ENGINEERS AND ARCHITECTS
 Address: 2/180 WILSON ROAD, WILSON PROMENADE
 E-mail: info@wang.com.au

LANDSCAPE
 Consultant: COLLIER LANDSCAPE ARCHITECTURE
 Address: 202/137 WILSON ST EPPING NSW 2121
 E-mail: info@collier.com.au

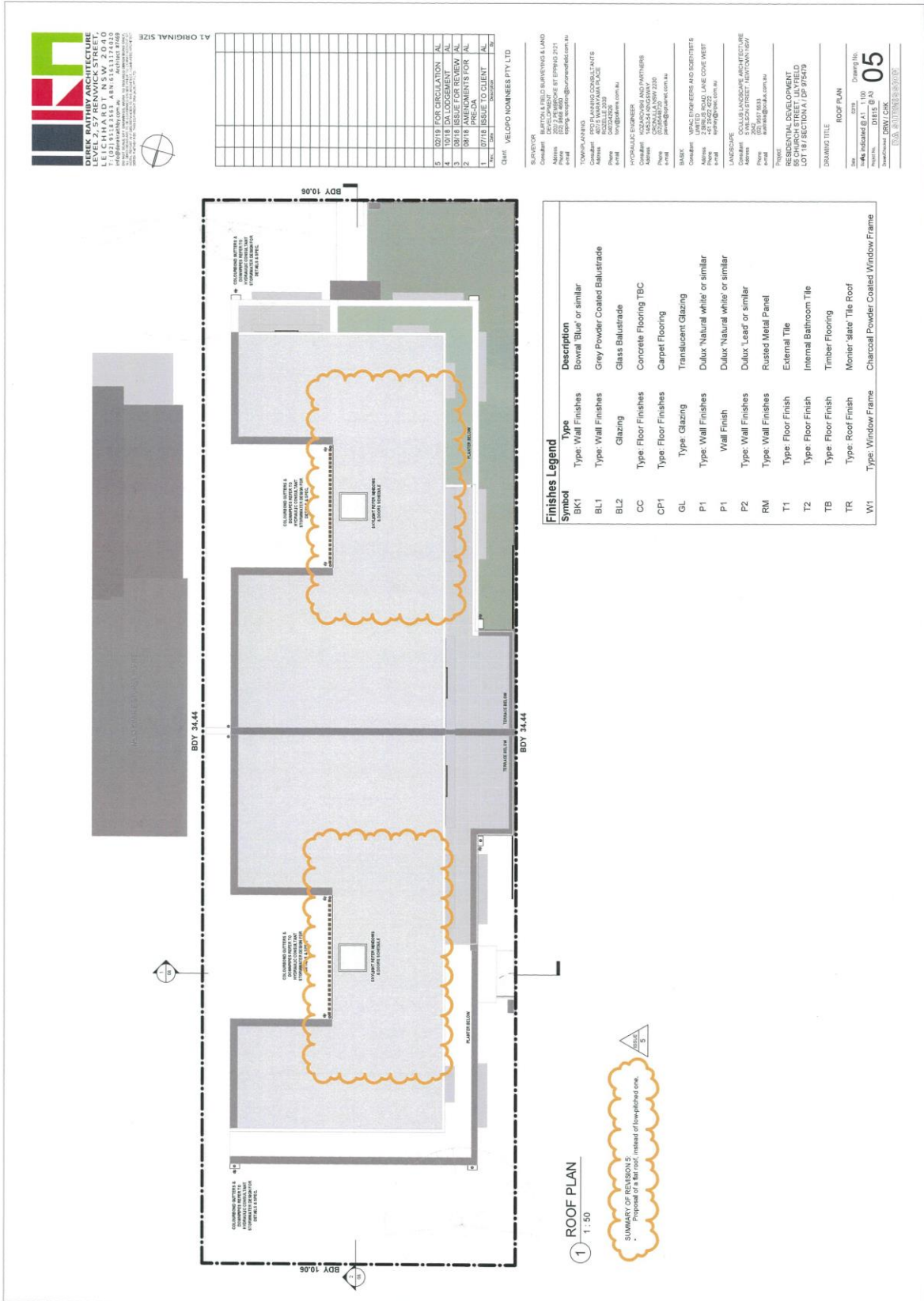
PROJECT
 RESIDENTIAL DEVELOPMENT
 LOT 18/ SECTION A / DP 975479

DRAWING TITLE: FIRST FLOOR PLAN
 Date: 20/02/2024
 Scale: As indicated on plan
 Drawing No: 04
 Project No: 2024/00000000000000000000
 Architect: DEREK RATHBY ARCHITECTURE
 E-mail: derek@rathby.com.au

Symbol	Type	Description
BK1	Type: Wall Finishes	Bowral 'Blue' or similar
BL1	Type: Wall Finishes	Grey Powder Coated Balustrade
BL2	Glazing	Glass Balustrade
CC	Type: Floor Finishes	Concrete Flooring TBC
CP1	Type: Floor Finishes	Carpet Flooring
GL	Type: Glazing	Translucent Glazing
P1	Type: Wall Finishes	Dulux 'Natural white' or similar
P1	Wall Finish	Dulux 'Natural white' or similar
P2	Type: Wall Finishes	Dulux 'Lead' or similar
RM	Type: Wall Finishes	Rusted Metal Panel
T1	Type: Floor Finish	External Tile
T2	Type: Floor Finish	Internal Bathroom Tile
TB	Type: Floor Finish	Timber Flooring
TR	Type: Roof Finish	Monier 'slate' Tile Roof
W1	Type: Window Frame	Charcoal Powder Coated Window Frames

1 FIRST FLOOR PLAN
 1:50

WINDOWS OF 1.5m x 2.0m high in the northern bedrooms, 1.5m x 1.5m high windows for both ensuite, and 1.5m x 1.5m high windows for both ensuite and bathroom.



DEREK RAITHERY ARCHITECTURE
11/1111 LEICHHARDT NSW 2040
P (02) 9538 3553 A/RN 65131179029
www.derekrithery.com.au

A1 ORIGINAL SIZE

5	02/19 FOR CIRCULATION	AL
4	01/19 FOR CIRCULATION	AL
3	01/19 ISSUED FOR REVIEW	AL
2	01/19 AMENDMENTS FOR AL	AL
1	02/18 PRELIMINARY CLIENT	AL
0	02/18 PRELIMINARY CLIENT	AL

CLIENT: VELODO HOMES PTY LTD

STRUCTURE
Consultant: BURTON & FIELD SURVEYING & LAND
Address: 202 JANE STREET, ST ILLYRIA NSW 2171
Phone: (02) 9538 3553
Email: info@burtonandfield.com.au

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ENGINEER
Consultant: VPLAC ENGINEERS AND ARCHITECTS
Address: 2 JERVIS ROAD, LAKE COVE WEST
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LANDSCAPE
Consultant: COLLIER LANDSCAPE ARCHITECTURE
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Email: info@collier.com.au

PROJECT
RESIDENTIAL DEVELOPMENT
LOT 18/ SECTION A / CP 9/5479

FINISHES LEGEND

Symbol	Type	Description
BK1	Type: Wall Finishes	Boverl 'Blue' or similar
BL1	Type: Wall Finishes	Grey Powder Coated Balustrade
BL2	Glazing	Glass Balustrade
CC	Type: Floor Finishes	Concrete Flooring TBC
CP1	Type: Floor Finishes	Carpet Flooring
GL	Type: Glazing	Translucent Glazing
P1	Type: Wall Finishes	Dulux 'Natural White' or similar
P2	Type: Wall Finishes	Dulux 'Lead' or similar
RM	Type: Wall Finishes	Rusted Metal Panel
T1	Type: Floor Finish	External Tile
T2	Type: Floor Finish	Internal Bathroom Tile
TB	Type: Floor Finish	Timber Flooring
TR	Type: Roof Finish	Monier 'Slate' Tile Roof
W1	Type: Window Frame	Charcoal Powder Coated Window Frame

DRAWING TITLE: ROOF PLAN
DATE: 05/11/2019
DRAWING NO: 05
PROJECT: RESIDENTIAL DEVELOPMENT LOT 18/ SECTION A / CP 9/5479



DKR KATHBY ARCHITECTURE
 LEVEL 5, 200 RUSSELL STREET, SYDNEY NSW 2010
 T: (02) 9558 5183 A: (02) 9558 5184
 www.dkrkathby.com.au

AT ORIGINAL SIZE

7	10719	FOR CIRCULATION	AL
8	10719	AMENITIES	AL
5	10718	DA LODGEMENT	AL
4	10718	ISSUE FOR REVIEW	AL
3	10719	PERMIT TO CON	AL
2	10718	ISSUE TO CLIENT	AL
1	10719	FOR PRELIMINARY	AL

Client: VELOPO HOMES PTY LTD

STRUCTURE
 Consultant: BUNTON FIELD SUPERVISING & LAND
 Address: 20/15 GLENVIEW ST (SPRING) 2121
 Phone: (02) 9558 5183
 Email: info@buntonfield.com.au

TONGEE JANING
 Consultant: PRO-PLANNING CONSULTANTS
 Address: 10/22 RUSSELL ST
 Phone: (02) 9558 5183
 Email: info@pro-planning.com.au

HYDRAULIC ENGINEER
 Consultant: KOCACAKOCHI AND PARTNERS
 Address: 20/15 GLENVIEW ST
 Phone: (02) 9558 5183
 Email: info@kocacakochi.com.au

BAKER
 Consultant: WANG ENGINEERS AND ARCHITECTS
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 Phone: (02) 9558 5183
 Email: info@wang.com.au

LANDSCAPE
 Consultant: COLLIER LANDSCAPE ARCHITECTURE
 Address: 20/15 GLENVIEW ST (SPRING) 2121
 Phone: (02) 9558 5183
 Email: info@collier.com.au

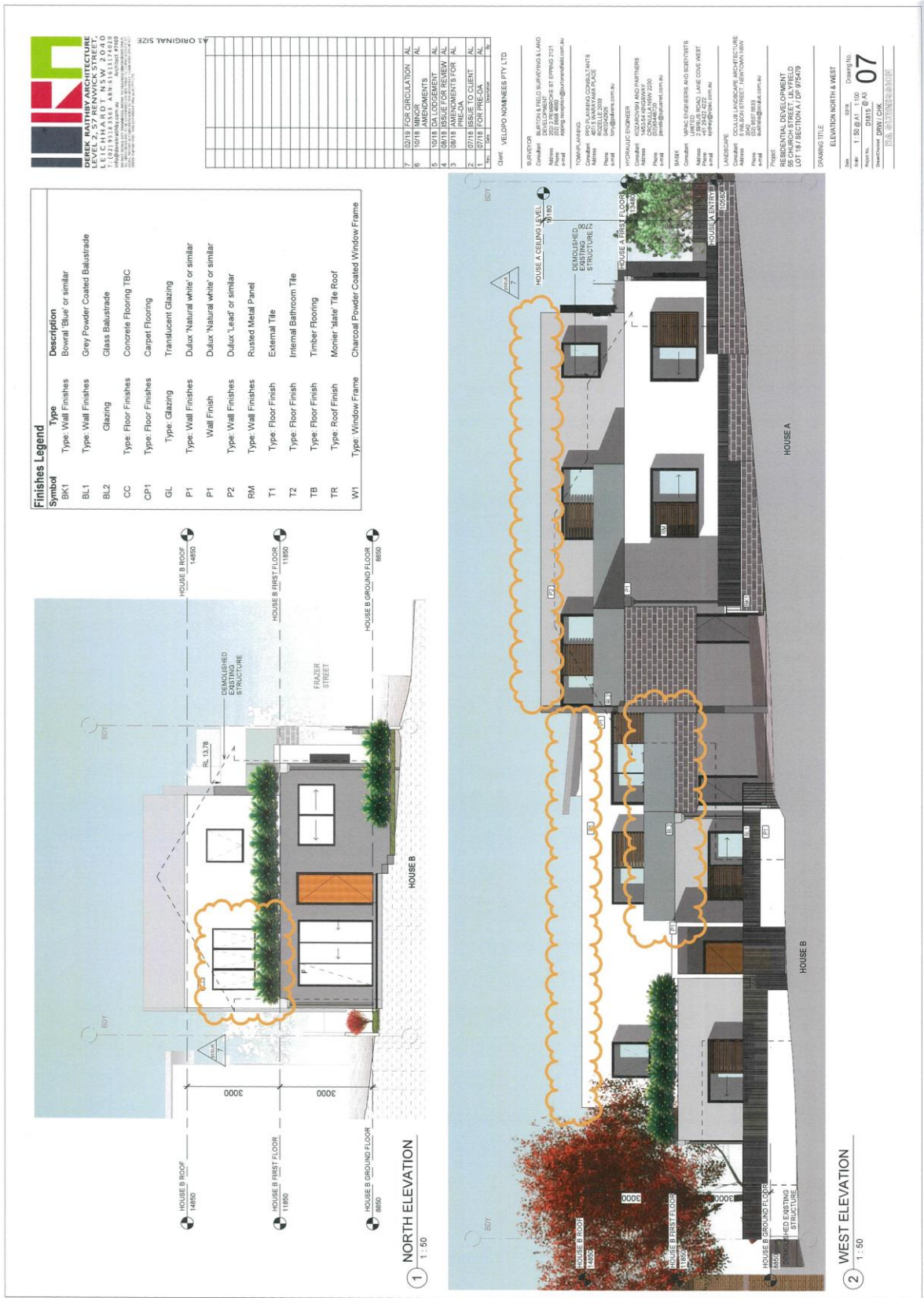
Project: RESIDENTIAL DEVELOPMENT
 20/15 GLENVIEW ST (SPRING) 2121
 LOT 19 / SECTION A / DP 975479

DRAWING TITLE: ELEVATION SOUTH & EAST
 Date: 1-20-2021 Drawing No: 06
 Author: DKR KATHBY ARCHITECTURE
 Check: DKR KATHBY ARCHITECTURE
 Title: ARCHITECT

Symbol	Type	Description
BK1	Type: Wall Finishes	Bevelled Glass or similar
BL1	Type: Wall Finishes	Grey Powder Coated Balustrade
BL2	Glazing	Glass Balustrade
CC	Type: Floor Finishes	Concrete Flooring TBC
CP1	Type: Floor Finishes	Carpet Flooring
GL	Type: Glazing	Translucent Glazing
P1	Type: Wall Finishes	Dulux 'Natural White' or similar
P2	Type: Wall Finishes	Dulux 'Lead' or similar
RM	Type: Wall Finishes	Rusted Metal Panel
T1	Type: Floor Finish	External Tile
T2	Type: Floor Finish	Internal Bathroom Tile
TB	Type: Floor Finish	Timber Flooring
TR	Type: Roof Finish	Monter 'Male' Tile Roof
W1	Type: Window Frame	Charcoal Powder Coated Window Frame

1 SOUTH ELEVATION
1:50

2 EAST ELEVATION
1:50



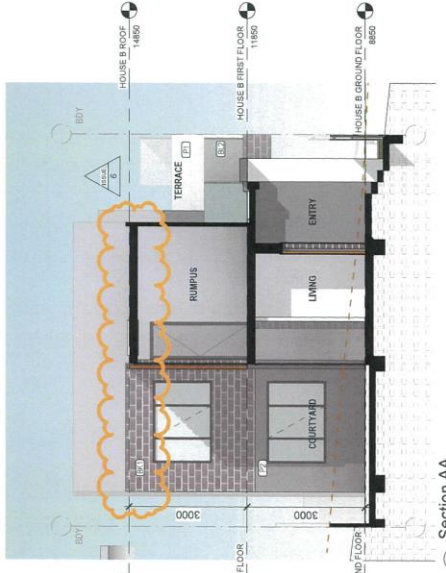


DEREK MATHY ARCHITECTURE
 1/100 WILSON ROAD, WILSON
 LEICHHARDT NSW 2040
 T: (02) 9533 8888 A: (02) 9533 9400
 www.derekmathy.com.au

6	02/18 FOR CIRCULATION	AL
5	10/18 DA LOUDEMONT	AL
4	11/18 FOR CIRCULATION	AL
3	12/18 AMENAGEMENTS FOR	AL
2	13/18 ISSUE TO CLIENT	AL
1	14/18 FOR CIRCULATION	AL
0	15/18 FOR CIRCULATION	AL

Client: VELOPO HOMMES PTY LTD

Symbol	Type	Description
BK1	Type: Wall Finishes	Brown 'Blue' or similar
BL1	Type: Wall Finishes	Grey Powder Coated Balustrade
BL2	Glazing	Glass Balustrade
CC	Type: Floor Finishes	Concrete Flooring TBC
CP1	Type: Floor Finishes	Carpet Flooring
GL	Type: Glazing	Translucent Glazing
P1	Type: Wall Finishes	Dulux 'Natural White' or similar
P2	Type: Wall Finishes	Dulux 'Lead' or similar
RM	Type: Wall Finishes	Rusted Metal Panel
T1	Type: Floor Finish	External Tile
T2	Type: Floor Finish	Internal Bathroom Tile
TB	Type: Floor Finish	Timber Flooring
TR	Type: Roof Finish	Monier 'slate' Tile Roof
W1	Type: Window Frame	Charcoal Powder Coated Window Frame



1 Section AA
1:1.50



2 Section BB
1:1.50

STRUCTOR
 BURTON & FIELD SURVEYING & LAND
 CONSULTANTS
 Address: 2027 LANE COVE WEST EPPING 2127
 Phone: 02 9607 1000
 Email: info@burtonandfield.com.au

TOWN PLANNING
 CONSULTANT: PRO PLANNING CONSULTANTS
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MARKET
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LANDSCAPE
 CONSULTANT: COLLIER LANDSCAPE ARCHITECTURE
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PROJECT
 ARCHITECT: DEREK MATHY ARCHITECTURE
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 Phone: 02 9533 8888
 Email: info@derekmathy.com.au

SECTIONS	
Scale:	1:50 (EAT) 1:100 (R&D)
Drawing No.:	08
Project Name:	VELOPO HOMMES PTY LTD
Project Address:	1/100 WILSON ROAD, WILSON LEICHHARDT NSW 2040



AT ORIGINAL SIZE

NO.	DATE FOR CIRCULATION	BY
1	10/10/2024	DR

CHWIL VELOPO NOMINEES PTY LTD

SURVEYOR
 Consultant BURTON & FIELD SURVEYING & LAND
 Address 222 LANE STREET ST IFFRIND 2171
 Phone (02) 9338 3561
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TOWN PLANNING
 Consultant PRO PLANNING CONSULTANTS
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BANK
 Consultant VING ENGINEERS AND SCIENTISTS
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 Phone (02) 9338 3561
 Email info@ving.com.au

LANDSCAPE
 Consultant COLLIER LANDSCAPE ARCHITECTURE
 Address 202/204 LANE 2220
 Phone (02) 9338 3561
 Email info@collier.com.au

PROJECT
 RESIDENTIAL DEVELOPMENT
 LOT 18 SECTION A / DP 875479

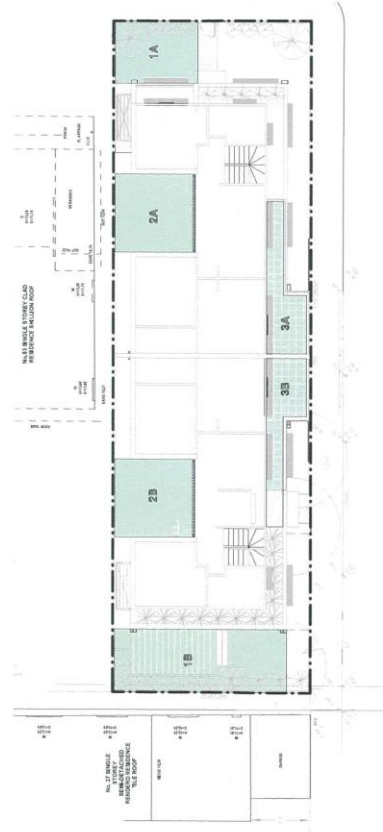
DRAWING TITLE

NO.	DATE	DESCRIPTION
1	10/10/2024	FOR CIRCULATION

CALCULATION NOS

NO.	DATE	DESCRIPTION
1	10/10/2024	FOR CIRCULATION

DRAWING NO. **18**



DCP Controls

Private Open Space

For Dwelling Houses, as set out in the attached dwelling, dual occupancies C1 Private open space should be:

- a. located at ground level consistent with the location of private open space on the surrounding properties and the sitting, outside within the Development Control Plan;
- b. not less than 10% of the gross floor area of the lot.

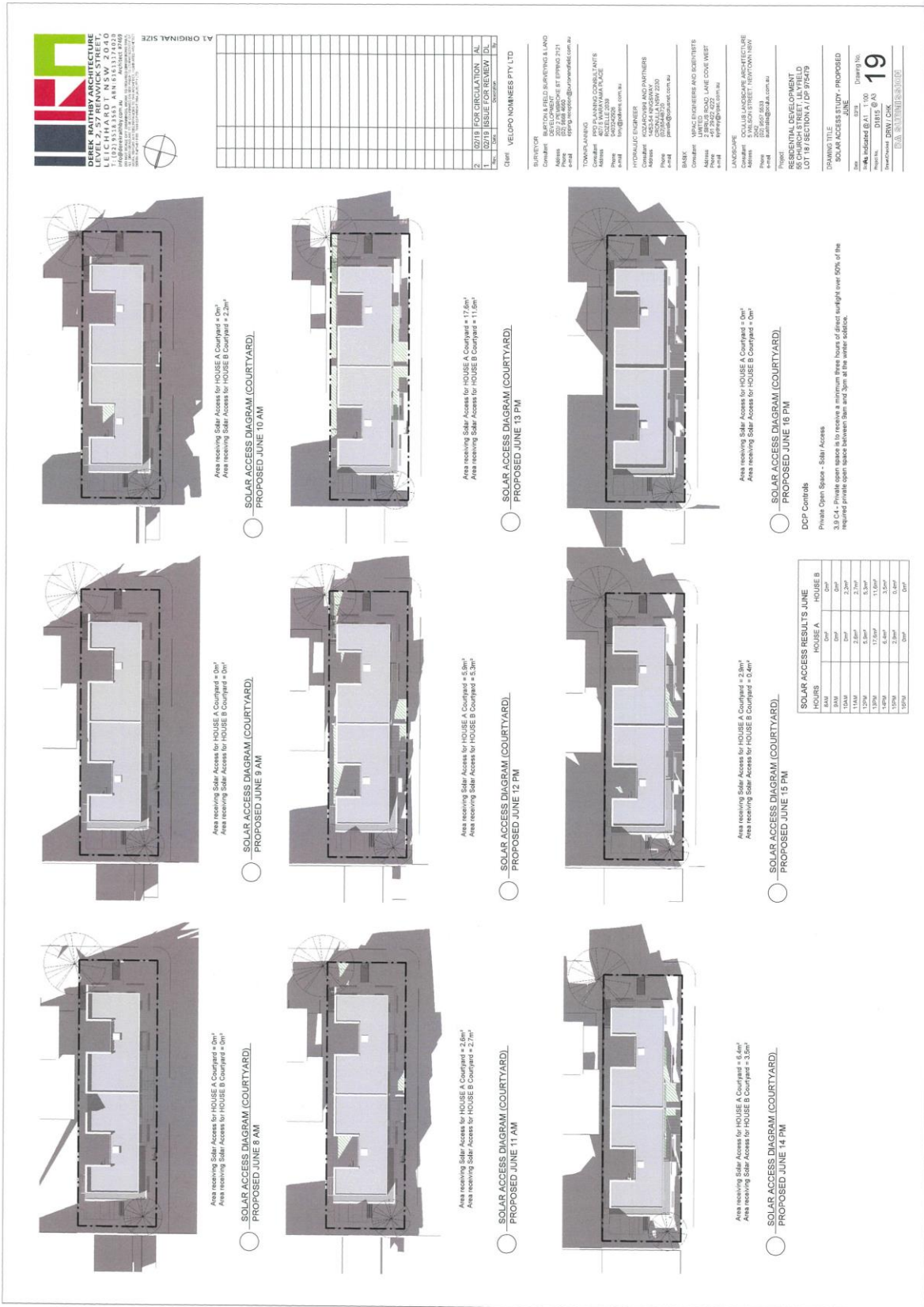
Note: the front setback will not be accepted as private open space.

- a. is connected directly to the principal refuse living areas; and
- b. is not used for any other purpose, other than the purposes of the site and/or existing development, above ground private open space will be considered.

HOUSE	1	2	3	SUB-TOTAL
HOUSE A	13.4m ²	10.2m ²	10.2m ²	33.8m ²
HOUSE B	16.0m ²	10.2m ²	10.2m ²	43.6m ²

LEGEND:

- 1. FRONT YARD
- 2. PRIVATE OPEN SPACE
- 3. PRIVATE OPEN SPACE



Client: VELPO HOMES PTY LTD
 1/271 BIRCHWOOD ROAD, BIRCHWOOD NSW 1585
 2/1071/1078 FOR CIRCULATION AL
 3/1071/1078 FOR REVIEW DR

NO.	DATE	DESCRIPTION	BY	CHK
1	10/06/2021	ISSUED FOR REVIEW	DR	
2	10/06/2021	FOR CIRCULATION	AL	

LANDSCAPE CONSULTANT: MPAZ ENGINEERS AND ARCHITECTS
 Address: 2 BRULUS ROAD, LAKE COVE WEST NSW 1585
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 Email: info@mpaz.com.au

LANDSCAPE CONSULTANT: COLLIER LANDSCAPE ARCHITECTURE
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 Phone: 02 9534 5533
 Email: info@collier.com.au

RESIDENTIAL DEVELOPER: VELPO HOMES PTY LTD
 Lot 19 Section A1 DP 975479

DRAWING TITLE: SOLAR ACCESS STUDY - PROPOSED HOUSE A AND HOUSE B COURTYARDS

Scale: As Indicated @ 1:100
 Drawing No: DB15 @ A1
 Date: 10/06/2021

Attachment C – Clause 4.6 – Floor Space Ratio



4 April 2019

General Manager
Inner West Council
PO Box 14
Petersham NSW 2049

Request for exception to a development standard for proposed semi-detached dwellings at 55 Church Street, Lilyfield

A request is made to vary the maximum Floor Space Ratio (FSR) development standard in relation to a development application for semi-detached dwellings at 55 Church Street, Lilyfield.

This request is made having regard to:

1. The provisions of Clause 4.6 *Leichhardt Local Environmental Plan (LLEP) 2013*; and
2. *Varying development standards: A Guide* (August 2011) prepared by the Department of Planning and Infrastructure.

The Guide "*contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard.*" The following addresses the information detailed in the Guide.

1. Background

The subject site is zoned *R1 General Residential*.

The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*

Polvere Planning & Development Pty Ltd
Unit 407, 5 Warayama Place, Rozelle
NSW 2039 Australia
Mobile 0403 242 926
ABN 90 735 894 744

- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

On 19 October 2018 a Development Application (DA) was lodged with Council for demolition of existing dwelling-house and construction of 2X2 storey semi-detached dwellings with garages and associated works, including landscaping and tree removal, fencing works, and Torrens title subdivision into 2 lots. The development proposes two (2) identical lots with site areas of 173.15m².

Following initial assessment of the DA by Council, a request for additional information/amendments was made to address certain issues with the DA identified in the assessment. Amended plans were submitted with Council on 8 March 2019 (i.e. Rev. 4, dated 2/19).

Pursuant to Clause 4.4(2B)(a)(ii) of LLEP 2013, the maximum Floor Space Ratio (FSR) of a dwelling on a lot with an area of 150m² or more but less than 300m² is not to exceed 0.8:1. The FSR for the proposed development, as amended, is 0.85:1 and exceeds the maximum FSR for the site by 0.05:1 (or 6.25%).

The objectives of the FSR clause in LLEP 2013 are:

- a) *to ensure that residential accommodation:*
 - (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) *provides a suitable balance between landscaped areas and the built form, and*
 - (iii) *minimises the impact of the bulk and scale of buildings,*
- 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.*

2. Justification for Clause 4.6 Request

The objectives of Clause 4.6 of LLEP 2013 are:

- (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.*

Clause 4.6 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a)

and cl 4.6(4)(a)(i).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The preconditions are addressed as follows:

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

Strict compliance with the FSR is considered unreasonable or unnecessary in the circumstances of this case because strict adherence to the standard will not result in a development that is anymore consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The table below provides an assessment of the matters in the 'five part test'.

Five Part Test	Comments
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	The proposed development achieves the objectives of the standard notwithstanding non-compliance with the standard because: <ul style="list-style-type: none"> • The building bulk, form and scale is compatible with the diverse character of the locality that includes a significant number of dwellings that have similar bulk, form and scale characteristics to the proposed development, particularly on similar corner locations such as 44 Church Street. Corner allotments in inner city urban environments are traditionally the sites that accommodate an increased density expressed by building bulk, form and scale. • the provision of open space and landscaped areas is in compliance with the requirements of Council's DCP

	<p>indicating a suitable balance is provided between landscaped areas and built form.</p> <ul style="list-style-type: none"> • There is no adverse impact on the neighbourhood from the bulk and scale of the proposed building because: <ul style="list-style-type: none"> - There are no overshadowing impacts. - There are no unacceptable overlooking impacts. - There is no unacceptable loss of views. - It is compatible with existing development on similar corner allotments. - The development is 2 storeys in height. - The non-compliance with the FSR is minimal (17.3m² of GFA or 6.25% increase in FSR).
<p>2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>N/A</p>
<p>3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>N/A</p>
<p>4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable</p>	<p>The FSR standard appears to have been abandoned when it comes to being applied consistently to residential development in the locality. There are many examples of developments that have been granted consent with FSRs that exceed the maximum FSR applying to the site because:</p> <ul style="list-style-type: none"> • The generally smaller size of allotments is a unreasonable or unnecessary constraint on the size of new dwellings; and • Gentrification has resulted in extensive additions to existing aged dwelling stock to make them more suitable for modern day family living and improved amenity.

<p>5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.</p>	<p>N/A</p>
---	------------

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

Based on a merit assessment, there are sufficient environmental planning grounds to justify contravening the FSR development standard because:

- 39.4% of the site is landscaped open space that provides for the amenity of the residents and adjoining properties as well as maintaining the existing streetscape;
- The proposed development has a site coverage of 58.3% that is less than the 60% maximum required by Council;
- Dwellings have been designed to maximise direct sunlight to the main living room;
- All habitable rooms have access to natural daylight;
- There are no unacceptable overshadowing impacts on adjoining properties;
- There are no unacceptable overlooking impacts;
- There are no unacceptable view loss impacts;
- Adequate on-site parking is provided at a rate of 1 space per dwelling; and
- Site is considered suitable for the proposed development.

The development does not provide for the main area of private open space to receive a minimum three hours of direct sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice. As a result, a number of alternative design options have been investigated including relocating the areas of private open space at ground level, reducing the scale and bulk of the building and/or providing additional private open space above ground level.

Because of the orientation of the site and the location of adjoining dwellings on both the eastern and western boundaries, it was found that relocating the area of private open space at ground level and/or reducing the scale and bulk of the building did not provide for improved solar access to the private open space to a degree that warranted further amendments to the building.

Consequently, additional private open space has been proposed as a roof terrace that will receive significant amount of solar access, particularly during the winter months. This open space will complement both the open space at ground level that has direct access to living areas and the private open space at first floor level above the garage that provides views over to Iron Cove and the Parramatta River. The roof terrace will be setback and screened to ensure there are no overlooking issues and is of a size that will ensure there are no large gatherings of people creating possible noise issues.

There are a number of examples where roof terraces have been approved and Council's DCP recognises that while the front setback will not be accepted as private open space, above ground private open space can be considered as an alternative design option where ground level is not accessible. The DCP does not expressly indicate that above ground open space should only be considered where ground level is not accessible and nor does it expressly preclude above ground open space being considered due to other constraints, such as solar access etc.

Approval of the proposed development with an increased FSR will not impact on the proposals ability to:

- achieve an appropriate balance between development and management of the environment that will be ecologically sustainable, socially equitable and economically viable;
- minimising adverse impacts of development;
- protect and enhance the amenity of residents;
- protect and enhance the natural environment and scenic quality of the Shire; and
- meet the future housing needs of the population in the LGA.

2.3 Is the proposed development consistent with zone objectives?

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

With this in mind, the proposed development is considered to be consistent with the relevant R1 zone objectives because the proposed development will provide for:

- the housing needs of the community by increasing the number of dwellings on the site.
- a variety of housing types and densities in the form of semi-detached dwellings that will compliment the existing detached dwellings in the locality.
- opportunities to work from home with provision of space for a home office.

- housing that has been designed to be compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- landscaped areas for the use and enjoyment of future residents.
- subdivision that creates lots that have street frontages complementary to, and compatible with, the streetscape and character of the local area.
- Improved amenity for future residents and protection of the existing amenity enjoyed by local residents.

2.4 Is the proposed development consistent with the objectives of the FSR standard?

The proposed development is consistent with the objectives of the FSR standard as detailed in Point 1 of the Five Part Test in Section 2.1 of this submission.

3. Conclusion

Clause 4.6 of *Leichhardt Local Environmental Plan 2013* aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- The development standard is unreasonable and unnecessary in the circumstances of the subject case;
- there are sufficient environmental planning grounds to justify contravening the development standard; and
- The proposed development will be in the public interest because the objectives of the standard and the objectives of the zone are achieved despite non-compliance with the maximum FSR standard.

In conclusion, the request is well founded and granting consent is consistent with the requirements of Clause 4.6 of *Leichhardt Local Environmental Plan 2013*.

Regards



Anthony Polvere
Director

Attachment D -Clause 4.6 – Minimum subdivision lot size

APPENDIX 2 – Application for Exception to a
Development Standard (Minimum Subdivision Lot size))

Request for exception to a development standard
Proposed semi-detached dwellings
55 Church Street, Lilyfield

A request is made to vary the minimum subdivision lot size development standard in relation to a development application for semi-detached dwellings at 55 Church Street, Lilyfield.

This request is made having regard to:

1. The provisions of Clause 4.6 *Leichhardt Local Environmental Plan 2013*; and
2. *Varying development standards: A Guide (August 2011)* prepared by the Department of Planning and Infrastructure.

The Guide "*contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard.*" The following addresses the information detailed in the Guide.

1. Background

The subject site is zoned *R1 General Residential*.

The objectives of the R1 zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

The development proposes two (2) identical lots with dimensions of 10.06m x 17.22m and site areas of 173.15m². The lots are below the minimum 200m² subdivision lot size identified in the Lot Size Map that forms part of Leichhardt LEP 2013.

The objectives of the minimum lot size standard are:

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

2. Clause 4.6

The objectives of Clause 4.6 of *Leichhardt Local Environmental Plan 2013* are:

- (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.

Clause 4.6 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3) (a) and cl 4.6(4) (a) (i)).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3) (b) and cl 4.6(4) (a) (i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4) (a) (ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4) (a) (iii)).

3. Justification for exception to standard

The preconditions to vary the minimum subdivision lot size development standard are addressed as follows:

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

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The table below provides an assessment of the matters in the 'five part test'.

Five Part Test	Comments
<p>1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>The proposal achieves the relevant objectives of the minimum subdivision lot standard because the lot sizes are able to accommodate development that is consistent with the following relevant development controls:</p> <p><u>FSR:</u></p> <p>The maximum permissible Floor Space Ratio (FSR) is 0.80:1 subject to Council approval of the proposed lot sizes. The proposed FSR is 0.79:1.</p> <p><u>Site Coverage:</u></p> <p>The proposed development has site coverage of 58.3% that is less than the 60% maximum required by Council.</p> <p><u>Solar Access:</u></p> <p>Shadow diagrams accompany this application and provide detail on how the proposed development provides adequate solar access to both the neighbours and the development.</p> <p><u>Open Space:</u></p> <p>The proposed development provides for:</p> <ul style="list-style-type: none"> • 39.4% of the site as landscaped open space that provides for the amenity of the residents and adjoining properties as well as maintaining the streetscape; and • Private open space that is in accordance with the provisions of the DCP (ie has a minimum area of 16m² and minimum dimension of 3m);
<p>2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>N/A</p>
<p>3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>N/A</p>
<p>4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from</p>	<p>Clause 4.4 of Leichhardt LEP 2013 has provisions for FSR in the case of development on a lot with areas ranging from less than 150m² to over 450m². This would suggest that the locality of the subject land has lots less than 200m² and/or council expects to approve lots that are less than 200m². Given</p>

<p>the standard and hence compliance with the standard is unnecessary and unreasonable</p>	<p>Council's LEP has provisions that accommodate and recognise the existence of lots that depart from the standard it can be assumed that Council's own actions indicate that strict compliance with the subdivision standard can be considered unnecessary and unreasonable.</p>
<p>5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.</p>	<p>N/A</p>

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

There are sufficient environmental planning grounds to justify contravening the minimum subdivision lot size standard.

As discussed at the pre-DA meeting with Council on Tuesday 21 August 2018 the lots proposed will be subject to merit assessment on solar access, open space, parking and other amenity impacts and key numerical compliance with FSR, Site Coverage and soft landscaping will need to be met to support the subdivision.

Assessment of the proposed development has concluded the following:

- The proposal achieves adequate solar access;
- The proposal meets the requirements for private open space;
- The proposal provides adequate parking; and
- The proposal meets the key numerical compliance with FSR, Site Coverage and soft landscaping.

Approval of the proposed subdivision lot sizes will not impact on the proposals ability to;

- achieve an appropriate balance between development and management of the environment that will be ecologically sustainable, socially equitable and economically viable;
- minimising adverse impacts of development;
- protect and enhance the amenity of residents;
- protect and enhance the natural and built environment; and
- meet the future housing needs of the population in the LGA.

3.3 Is the proposed development consistent with zone objectives?

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

With this in mind, the proposed development is considered to be consistent with the relevant R1 zone objectives because the proposed development will provide for:

- the housing needs of the community by increasing the number of dwellings on the site.
- a variety of housing types and densities in the form of semi-detached dwellings that will compliment the existing detached dwellings in the locality.
- opportunities to work from home with provision of space for a home office.
- housing that has been designed to be compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- landscaped areas for the use and enjoyment of future residents.
- subdivision that creates lots that have street frontages complementary to, and compatible with, the streetscape and character of the local area.
- Improved amenity for future residents and protection of the existing amenity enjoyed by local residents.

3.4 Is the proposed development consistent with the objectives of the minimum subdivision lot size standard?

As discussed in the 'Five Part Test', the proposal achieves the relevant objectives of the 'minimum subdivision lot size' standard.

4. Conclusion

Clause 4.6 of *Leichhardt Local Environmental Plan 2013* aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- Council's LEP recognises the existence of lots that depart from the standard and strict compliance with the subdivision standard is unnecessary and unreasonable; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The objectives for the provision of residential development are best served with development proposals such as the proposed development that are designed to improve overall amenity without detrimentally impacting on the amenity of the neighbours.

In conclusion, the request is well founded and granting consent is considered consistent with the requirements of Clause 4.6 of *Leichhardt Local Environmental Plan 2013*.