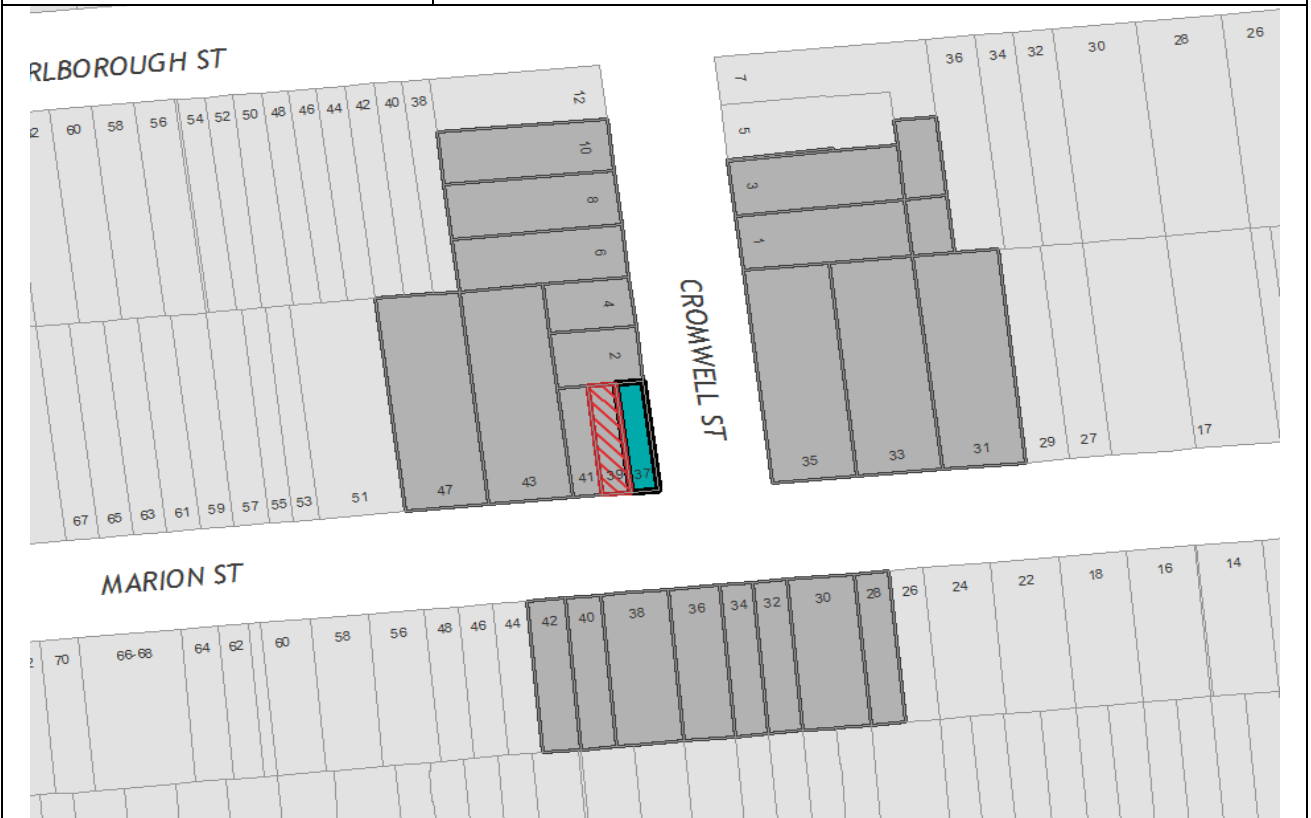








# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

|   |  |
|---|--|
| <b>Application No.</b>                            | D/2018/132   |
| <b>Address</b>                                    | 37 Marion Street, LEICHHARDT NSW 2040  |
| <b>Proposal</b>                                   | Alterations and additions to existing garage, including to provide a new first floor attic storage space.                    |
| <b>Date of Lodgement</b>                          | 21 March 2018  |
| <b>Applicant</b>                                  | Mr S Jovcevski   |
| <b>Owner</b>                                      | Mr S Jovcevski   |
| <b>Number of Submissions</b>                      | 1  |
| <b>Value of works</b>                             | \$22,550.00  |
| <b>Reason for determination at Planning Panel</b> | Clause 4.6 variation – breach exceeds officer delegation.  |
| <b>Main Issues</b>                                | Site Coverage and Floor Space Ratio Breaches<br>Height, Bulk & Scale<br>Overshadowing<br>Street tree and private tree issues |
| <b>Recommendation</b>                             | Refusal  |



**LOCALITY MAP**

|               |   |            |  |     |
|---------------|---|------------|--|-----|
| Subject Site  |  | Objectors  |  | ↑ N |
| Notified Area |  | Supporters |  |     |

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing garage, including to provide a new first floor attic storage space at No. 37 Marion Street, Leichhardt. The application was notified to surrounding properties and one (1) submission was received.

The main issues that have arisen from the application include:

- Clause 4.6 Variation to Site Coverage and Floor Space Ratio development standards,
- Height, Bulk and Scale.
- Overshadowing
- Street and private tree issues

The above non-compliances are not supported for the reasons outlined in this report, and therefore, the application is recommended for refusal

## 2. Proposal

The application seeks approval for alterations and additions to the existing garage which include the following;

- New attic level above the garage with a dormer window facing Cromwell Street;
- Extending the western wall of the garage by 0.320m towards the boundary shared with No. 39 Marion Street;
- Widen the garage roller door on the eastern side.
- Pruning of the Chinese Tallwood tree located on No. 2 Cromwell Street.

## 3. Site Description

The subject site is located on the northern side of Marion Street, at its intersection with Cromwell Street. The site consists of one allotment and is generally rectangular with a total area of 108.80m<sup>2</sup> and is legally described as Lot C DP 379099.

The site has a frontage to Marion Street of 4.85 metres and a secondary frontage of approximate 22.67 metres to Cromwell Street.

The site supports a two storey dwelling. The adjoining properties at No. 39 Marion Street and No. 2 Cromwell Street support a single storey dwelling.

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

- *Sapium sebiferum* (Chinese Tallowwood) located on No. 2 Cromwell Street.
- *Tristaniopsis laurina* (Water Gum) located in the nature reserve.

## 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       |
|--------------------------|---|-----------------------|
| D/2017/466 (CC approved) | Alterations and additions to existing dwelling. | Approved – 12/12/2017 |

**Surrounding properties****39 Marion Street**

| <b>Application</b> | <b>Proposal</b>   | <b>Decision &amp; Date</b>         |
|--------------------|---|------------------------------------|
| PREDA/2016/54      | Alterations and additions to the existing dwelling including construction of a first floor level. | Advice Letter Issued<br>11/05/2016 |
| PREDA/2016/180     | Change layout of existing living area and additional storey with bedroom and ensuite.             | Advice Letter Issued<br>17/10/2016 |

**4(b) Application history**

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

| <b>Date</b> | <b>Discussion / Letter/ Additional Information</b>              |
|-------------|---|
| 5/6/2018    | Council – wrote to the applicant to withdraw their application. |

**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
- Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

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

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

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

A BASIX Certificate is not applicable and was not submitted with the application as the cost of works calculated by the applicant is below the required \$50,000.00 threshold.

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

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

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

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- 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 5.9 – Preservation of trees or vegetation
- Clause 5.9AA – Trees or vegetation not prescribed by development control plan
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise

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

| Standard (maximum)  | Proposal                       | % of non compliance | Compliances |
|---|--------------------------------|---------------------|-------------|
| <b>Floor Space Ratio</b><br>(0.8:1 or 87.04m <sup>2</sup> ) | 1.03:1 or 111.95m <sup>2</sup> | 28.62%              | No          |
| <b>Landscape Area</b><br>(15% or 16.32m <sup>2</sup> )      | 15.35% or 16.7m <sup>2</sup>   | 0                   | Yes         |
| <b>Site Coverage</b><br>(60% or 65.28m <sup>2</sup> )       | 79.65% or 86.6m <sup>2</sup>   | 32.66%              | No          |

The following provides further discussion of the relevant issues:

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

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

1. *The objectives of this clause are as follows:*

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

Comment: In accordance with Clause 4.3A(3)(b) & Clause 4.4A of LLEP 2013, the site is subject to a maximum site coverage area of 60% (or 65.28m<sup>2</sup>) and a maximum FSR of 0.8:1 (or 87.04m<sup>2</sup>). The recently approved dwelling does not comply with Council's Site Coverage Area (SCA) & FSR development standards which currently stands at 77.6% (84.4m<sup>2</sup>) for SCA & 0.94:1 (102m<sup>2</sup>) for FSR. The current proposal seeks to further increase and breach the above two development standards to 111.95m<sup>2</sup> or 1.03:1 (FSR) and 86.6m<sup>2</sup> or 79.60% (SCA) which is non-compliant with the maximum permissible SCA & FSR standard. Having regard to this variation, an exception has been sought under clause 4.6 of the Leichhardt LEP 2013.

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

The applicant has submitted a written request outlining why compliance with the development standards is unnecessary and unreasonable in this case, and has provided environmental planning grounds to justify a variation to the development standards.

*Clause 4.3A(3)(b) – Landscaped Areas for residential development in Zone R1 (Site Coverage)*

The following justification has been provided in relation to Site Coverage development standard:

- *Despite the variation, the proposal is consistent and compatible with the character of the surrounding area.*
- *Despite the variation, the proposal does not cause any significant adverse amenity impacts on the site or adjoining properties.*
- *The broad application of site coverage provision does not recognise the prevalence of established corner sites. The application of site coverage controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad site coverage controls to all properties in conjunction with Council's DCP provisions.*
- *The site coverage provision does not consider the ability for a site to accommodate floor areas for reasonably sized dwellings on smaller lots. Unlike the FSR provision, the site coverage provision comprises a single rate of 60% applicable to all sites in Leichhardt.*

*Clause 4.4 – Floor Space Ratio*

The following justification has been provided in relation to the Floor Space Ratio development standard:

- *Despite the proposed variation to the floor space ratio, the proposal is consistent and compatible with the character of the surrounding area.*
  - *Despite the variation to the floor space ratio, the proposal does not cause any significant adverse amenity impacts on the site or adjoining properties.*
  - *The broad application of the floor space ratio provision does not recognise the prevalence of established corner sites. The application of floor space ratio controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad floor space ratio controls to all properties in conjunction with Council's DCP provisions.*
  - *The floor space ratio provision in addition to Council's DCP provisions do not consider the ability for a site to accommodate floor areas for reasonably sized dwellings on smaller lots.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, however it is not considered to be well founded in this instance for the reasons stated below.

The proposed garage works with a new attic addition above is excessive in height, bulk and scale. As a result the proposal results in unnecessary (particularly given its use as a storage space) and intrusive and adverse visual bulk and scale impacts when viewed from the rear courtyard of 39 Marion Street that is contrary to the relevant s controls applicable to the site pursuant to Clause 4.3A(3)(b) & Clause 4.4 the Leichhardt Local Environmental Plan 2013 (LLEP2013).

It is also noted that the calculations provided by the applicants in regards to the proposed FSR is incorrect, as they have not included the attic level in their calculations. The applicants reason for the attic level not being included in the proposed FSR calculations is the fact that the attic floor to ceiling heights proposed are for a non-habitable area. However, under Council's LEP2013 definition under Gross Floor Area it states that an attic with a height of 1.4m above the floor is to be included in the FSR calculation. The proposed attic has ceiling heights up to 2350mm.

Furthermore the proposed attic above the garage will generate additional shadows which will impact the lounge and bathroom windows located on the eastern end of No. 39 Marion Street which is considered unreasonable as the applicants have failed to address this impact in their application. See later in this report under C3.9 Solar Access for further details.

For the reasons mentioned above, the Clause 4.6 provided by the applicants is not well founded and is not supported in this instance as it will have adverse amenity impacts to the adjoining properties. As such the proposal is recommended for refusal.

## 5(b) Draft Environmental Planning Instruments

### 5(b)(i) Draft State Environmental Planning Policy (Environment)

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The

Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

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

### 5(c) Development Control Plans

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

| Part  | Compliance |
|---|------------|
| <b>Part A: Introductions</b>  |            |
| Section 3 – Notification of Applications  | Yes        |
| <b>Part B: Connections</b>  |            |
| B1.1 Connections – Objectives   | Yes        |
| <b>Part C</b>   |            |
| C1.0 General Provisions   | No         |
| C1.1 Site and Context Analysis  | No         |
| C1.2 Demolition   | Yes        |
| C1.3 Alterations and additions  | No         |
| C1.4 Heritage Conservation Areas and Heritage Items                             | N/A        |
| C1.5 Corner Sites   | No         |
| C1.6 Subdivision  | N/A        |
| C1.7 Site Facilities  | N/A        |
| C1.8 Contamination  | Yes        |
| C1.9 Safety by Design   | N/A        |
| C1.10 Equity of Access and Mobility   | N/A        |
| C1.11 Parking   | Yes        |
| C1.12 Landscaping   | Yes        |
| C1.13 Open Space Design Within the Public Domain                                | N/A        |
| C1.14 Tree Management   | No         |
| C1.15 Signs and Outdoor Advertising   | N/A        |
| C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings | N/A        |
| C1.17 Minor Architectural Details   | N/A        |
| C1.18 Laneways  | N/A        |
| C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls      | N/A        |
| C1.20 Foreshore Land  | N/A        |
| C1.21 Green Roofs and Green Living Walls  | N/A        |
| <b>Part C: Place – Section 2 Urban Character</b>                                |            |
| Suburb Profile  |            |
| C2.2.3.2 West Leichhardt Distinctive Neighbourhood                              | Yes        |
| <b>Part C: Place – Section 3 – Residential Provisions</b>                       |            |
| C3.1 Residential General Provisions   | No         |

|   |            |
|---|------------|
| C3.2 Site Layout and Building Design                          | No         |
| C3.3 Elevation and Materials                                  | No         |
| C3.4 Dormer Windows   | No         |
| C3.5 Front Gardens and Dwelling Entries                       | N/A        |
| C3.6 Fences   | N/A        |
| C3.7 Environmental Performance                                | Yes        |
| C3.8 Private Open Space                                       | Yes        |
| C3.9 Solar Access   | No         |
| C3.10 Views   | Yes        |
| C3.11 Visual Privacy  | Yes        |
| C3.12 Acoustic Privacy  | Yes        |
| C3.13 Conversion of Existing Non-Residential Buildings        | N/A        |
| C3.14 Adaptable Housing                                       | N/A        |
| <b>Part C: Place – Section 4 – Non-Residential Provisions</b> | <b>N/A</b> |
| <b>Part D: Energy</b>   | <b>Yes</b> |
| <b>Part E: Water</b>  | <b>Yes</b> |
| <b>Part F: Food</b>   | <b>N/A</b> |
| <b>Part G: Site Specific Controls</b>                         | <b>N/A</b> |

The following provides discussion of the relevant issues:

C1.0 General Provisions

Concern is raised that the proposal will result in adverse amenity impacts to the surrounding neighbouring properties, specifically No. 39 Marion Street as result of proposed garage works and a new attic level above, which will not achieve objective *O4: Amenable: places and spaces provide and support reasonable amenity, including solar access, privacy in areas of private open space, visual and acoustic privacy, access to views and clean air.*

C1.1 Site and Context Analysis

The proposal is considered to have not taken into account the existing site constraints/conditions and to its adjoining nearby properties as per Objective O1(a) - *existing site conditions on the site and adjacent and nearby properties* and have not adequately addressed the impacts created by the new attic level above the garage to the surrounding properties which will not achieve Objective O1(d) - *potential for amenity impacts such as overshadowing, loss of privacy, views or solar access.*

C1.3 Alterations and Additions, C1.5 Corner Sites & C3.3 Elevation and Materials

The development proposal would not conform to the objectives and controls of Part C1.3 – Alterations and Additions which by their intrusive height, bulk, scale and form; would have an overbearing visual impact when viewed from the street/public domain and from the private open areas of neighbouring properties, additional overshadowing impacts to the rear living and bathroom windows located on the eastern end of No. 39 Marion Street.

- C1.3 O1 a. – the development does not *complement the scale, form and materials of the streetscape including wall height and roof form;*
- C1.3 O1 e. – the development does not *protect existing residential amenity, including the retention of adequate private open space and ensuring adequate sunlight, natural ventilation and privacy to the existing dwelling and surrounding dwellings;*

The proposed attic would also not comply with the following objectives and controls of the Clause C1.5 – Corner Sites which requires:

- O1 a. - *Development on corner sites respects the visually prominent role of corner sites;*



- O1 b. - *Compatible with the adjoining buildings;*
- C5 - *The development does not have an adverse impact on surrounding properties, the streetscape or public domain by way of:*
  - a. *amenity;*
  - b. *solar access;*

It is also noted that the submitted floor plans which indicate the widening of the existing garage roller door are not depicted or shown on the elevation plans submitted to Council. As such, the plans submitted are inconsistent.

#### C1.11 Parking & C1.14 Tree Management

As per the Engineering comments in regards to proposed garage works, the proposal will trigger the need to upgrade and rebuild the existing vehicular crossing to comply with the current standards. However it cannot be widened to the south as this will have an adverse impact on the adjacent street tree which is not supported.

Notwithstanding the above issue, the tree located on the neighbouring property at 2 Cromwell Street is in close proximity of the garage and will require pruning works if the proposed attic addition is to follow through. However no pruning schedule has been provided to determine the amount of pruning required for the proposed works to occur. If the pruning required is more than 10% of the canopy and or requires the pruning of branches more than 100mm in diameter then the owner's consent (in written form) from No. 2 Cromwell Street is required for any tree pruning works, which also has not been provided to Council. This is outlined in the request for withdrawal letter dated 8<sup>th</sup> June 2018 and the applicants have not provided the required written consent from No. 2 Cromwell Street nor a pruning schedule outlining the amount of pruning required to be carried out.

#### C3.1 Residential General Provisions

The proposal will result in unacceptable amenity, overbearing visual bulk and scale impacts to the adjoining property at No. 39 Marion Street which will not achieve the objectives set out in this Clause, specifically O4 which states that applicants are *"to ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings"* and O7 which implies that developments are *"to ensure that the amenity, including solar access and visual privacy, of the development and adjacent properties is not adversely impacted."*

#### C3.2 Site Layout and Building Design

##### *Side Setback*

The proposal does not comply with the side boundary setback graph specified in this Clause. Specifically, the eastern and northern boundaries of the subject site which would have a wall height of up to 5m where the graph permits a maximum height of 2.8 m on the boundary.

The proposed height and setback are considered to be unacceptable in this instance as:

- The bulk and scale of the proposed attic level, to be used as storage only has not be minimised.
- The excessive height, bulk and scale of the proposed attic level will have adverse amenity (solar) impacts on the existing living room windows located on the eastern end of No. 39 Marion Street along with overbearing visual bulk and scale impacts when viewed from rear yard of No. 39 Marion Street.

As per the above reasons, the proposal fails to meet the side setback test outlined under Control 8 of this Clause and is not supported.

### *Building envelope*

Notwithstanding the above, the proposed attic addition with the dormer window facing Cromwell Street does not comply with the Building envelope Figure C131 specified in this Clause. Furthermore the application does not comply with the following objectives:

*O4(d). - Creates a high level of residential amenity for the site and protects existing or enhances residential amenity of adjoining sites in terms of visual and acoustic privacy, air circulation, solar access, daylight, outlook and views.*

For the reasons mentioned above the proposal is not supported due to the undesirable impacts the new addition will have to the adjoining properties, especially No. 39 Marion Street.

### C3.4 Dormer Windows

The proposed attics purpose above the garage is as indicated in plan and in the Statement of Environmental Effects provided by the applicant mentions for storage use only. As such, the proposed dormer window is considered as an unnecessary element as it only further adds additional bulk and scale impacts to the adjoin properties when viewed from their private open space and public domain.

It is also noted that the dormer as mentioned in C3.2 Site Layout and Building Design will not comply with the building envelope figures.

### C3.9 Solar Access

The subject site has a north/south site orientation. As such the following controls apply to this site and to its adjoining neighbour at No. 39 Marion Street.

#### *Neighbouring Living Room Glazing*

- *C13 – Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice.*
- *C15 – Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

The shadow diagrams submitted to Council indicate that the new attic and garage extension will generate addition shadows to the adjoining property's (No. 39 Marion Street) existing rear (north facing) glazed door which is linked to the kitchen and dining area, and the lounge and bathroom windows located on the eastern end from 10am to 11am. However the applicants have not submitted any shadow diagrams in elevation to depict the extent of the shadow impacts on these windows and glazed doors of No. 39 Marion Street. As such, an accurate solar access assessment cannot be carried out by Council as the supplied survey plan does not provide any window or glazed door levels.

It is noted that the above windows serving the lounge and bathroom located to the east are not protected by the above solar access controls specified in this Clause, however for the reasons mentioned above the application cannot be supported in this instance.

#### *Neighbouring Private Open Space*

- *C17 – Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice.*
- *C19 – Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

The proposed garage modification and the attic extension will not generate any new additional shadows at any time of the day during the winter solstice to the rear yard of No. 39 Marion Street, as depicted in the shadow diagrams submitted to Council. As such the proposal will comply with the above Controls relating to the neighboring properties private open space.

#### 5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality as mentioned above under 5(c) of this report.

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

The site is zoned R1 – General Residential. It is considered that the proposal 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 Part A, Section 3 of LDCP 2013 for a period of 14 days to surrounding properties. A total of one (1) submission was received.

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

- The increase in visual bulk from the development – see Section 5(c) – C3.2
- Solar access implications from garage addition - see Section 5(c) – C3.9
- Removal of tree canopy located on No. 2 Cromwell Street – see Section 5(c) – C1.14

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

Issue: Privacy implications

Comment: The proposal will have no privacy impacts to the adjoining property at No. 39 Marion Street as no new windows are being proposed that will overlook into their windows or rear private open space.

Issue: *“Pushing the garage structure onto the boundary will only increase a towering effect onto our courtyard”.*

Comment: The proposed alteration and additions to the existing garage is not supported on planning grounds as it will have an adverse amenity and visual impact on the adjoining properties. However it is noted that the garage wall height on the western boundary will comply with Council’s side setback controls.

Issue : *“Blocking desirable winds to our courtyard and rooms through windows to the side of our property”*

Comment: Council currently has no planning controls to impose any conditions to address or protect neighbouring properties desirable winds.

Issue: *“Boundary retaining wall will likely require significant modification/extension between the properties and we do not agree to contribute to these costs as this will already likely decrease the value in property if the garage is pushed to the boundary.”*

Comment: The proposal does not involve the demolition or alterations to the existing boundary retaining wall on the western end. If the application is recommended for an

approval, conditions would have been imposed on any consent granted to ensure the structural integrity and measures to protect and minimise damages to the existing retaining wall. However, as the application is recommended for refusal for the reasons mentioned in this report, the above issue is noted and addressed in this report.

### 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.

#### Development Engineer

The existing garage does not comply with the length requirements of AS/NZS2890.1-2004 however the proposal improves the existing arrangement with an existing vehicular crossing.

The existing vehicular crossing will need to be rebuilt however it cannot be widened to the south as this will impact on the adjacent street tree.

Reference is made to the D/2017/466 dated 26 September 2017 in which a stormwater drainage concept plan P-1720-A12 by DAhouse dated 05/09/2017 was approved.

The stormwater drainage concept plan for D/2018/132 proposes connection this previously approved drainage system however an overland flow path to convey stormwater flows that exceed the system capacity to Cromwell Street has not been provided.

#### Landscape

The application is not supported in its current format as consent from the owner of the subject tree will be required in writing authorising tree pruning to facilitate the proposed development.

It is requested that the applicant engage the services of an AQF level 5 consulting Arborist to prepare a pruning specification in accordance with Council's Development Fact Sheet – Arborist Reports, section 2 and submit it for assessment along with the above mentioned owner's consent with any future application.

It is to be noted that any works which widens the existing driveway crossover to the south will not be supported as it would impact a *Tristaniopsis laurina* (Water Gum) located in the nature reserve.

### 6(b) External

The application was not required to be referred to external authorities.

## 7. Section 7.11 Contributions

Section 7.11 contributions are not payable for the proposal.

## 8. Conclusion

The proposal 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 significant impacts on the amenity of the adjoining property at No. 39 Marion Street and to the existing neighbouring private tree located on No. 2 Cromwell Street. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 9. Recommendation

That Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2018/132 for alterations and additions to existing garage, including to provide a new first floor attic storage space at 37 Marion Street, LEICHHARDT NSW 2040 for the following reasons.

- A. That the Inner West Local Planning Panel (IWLPP) not support a variation to Site Coverage & Floor Space Ratio prescribed by clause 4.3A(3)(b) & 4.4 in the Leichhardt Local Environmental Plan 2013, as it is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, the proposed development would not be in the public interest and is inconsistent with the objectives of that particular standard and objectives for development within the zone.
  
- B. That the Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2018/132 for alterations and additions to existing garage, including to provide a new first floor attic storage space for the following reasons:
  1. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
    - i) Clause 1.2 – Aims of Plan –in particular (d), (e) & (l)
    - ii) Clause 4.3A(3)(b) – Site Coverage Area
    - iii) Clause 4.4 – Floor Space Ratio
    - iv) Clause 4.6 – Variations to development standards
    - v) Clause 5.9 – Preservation of trees or vegetation
  
  2. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
    - i) Part C – Section 1 - C1.0 General Provisions
    - ii) Part C – Section 1 - C1.1 Site and Context Analysis
    - iii) Part C – Section 1 – C1.3 Alterations and additions
    - iv) Part C – Section 1 - C1.5 Corner Sites
    - v) Part C - Section 1 - C1.11 Parking
    - vi) Part C - Section 1 - C1.14 Tree Management
    - vii) Part C – Section 3 - C3.1 Residential General Provisions
    - viii) Part C – Section 3 - C3.3 Elevation and Materials
    - ix) Part C – Section 3 - C3.2 Site Layout and Building Design
    - x) Part C – Section 3 - C3.4 Dormer Windows

- xi) Part C – Section 3 - C3.9 Solar Access
- 3. The proposal will result in adverse built environment impacts pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
- 4. The proposal is not considered suitable for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- 5. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

## Attachment A – Conditions of consent in the circumstance the application is approved

### DEFERRED COMMENCEMENT

1. The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.
  - a) Owner/s consent of the subject Chinese Tallowwood tree (No. 2 Cromwell Street) will be required in writing authorising tree pruning to facilitate the proposed development.

A pruning specification in accordance with Council's *Development Fact Sheet – Arborist Reports*, section 2 is to be prepared by an AQF level 5 consulting Arborist and is to be submitted to Council.

The operational Development Consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement consent.

If the applicant fails to satisfy Council as to the above matters within 2 years from the date of determination this consent will lapse.

### CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No. D/2018/132 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

| Plan Reference                | Drawn By    | Dated     |
|-------------------------------|-------------|-----------|
| Floor Plans P-1803-A02        | DAhouse     | 15.3.2018 |
| Floor Plan Section P-1803-A03 | DAhouse     | 15.3.2018 |
| Garage Elevations P-1803-A05  | DAhouse     | 15.3.2018 |
| Sections P-1803-A06           | DAhouse     | 15.3.2018 |
| Document Title                | Prepared By | Dated     |
| Stormwater Concept P-1720-A12 | DAhouse     | 15.3.2018 |
| Colours + Finishes Schedule   | DAhouse     | Un-dated  |

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.

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

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

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

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



Council against the demolisher and/or owner for failure to comply with this condition.

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

**PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE**

4. 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.

5. 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.
6. 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.

7. 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.

8. 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.
9. 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.

10. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
  - The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.
  - The building is to be provided with a system of emergency lighting to assist evacuation of occupants in the event of a fire in accordance with Part 3.7.2.5 of the Building Code of Australia

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the

application prior to the issuing of a for a Construction Certificate.

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

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

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. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:

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

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

13. 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.

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

- d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

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

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

- 15. 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 (m<sup>3</sup>) or weight (t) of materials that are reused, recycled or removed from site.
  - b) On site material storage areas during construction.
  - c) Material and methods used during construction to minimise waste.
  - d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
  - e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

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

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

- 16. The design of the vehicular access and off street parking facilities must be amended to address the following specific issues:
  - a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent.
  - b) The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

- c) 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.
- d) Longitudinal sections along both sides of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- e) The access to the attic store must not encroach on the parking envelope of the parked vehicle, as detailed in Figure 2.2 of AS/NZS 2890.1-2004.
- f) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

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

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

- 17. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary.
- 18. A stormwater drainage design prepared by a Licensed Plumber or qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/ amended to make provision for the following:
  - a) Stormwater runoff from all roof and paved areas within the property must 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 or directly into Council's piped drainage system.
  - b) Charged or pump-out stormwater drainage systems are not permitted.
  - c) 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.
  - d) A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings

- e) As there is no overland flow/flood path available from the rear courtyards to the Cromwell Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
- i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
  - ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
  - iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- f) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS 3500.3-2015 Plumbing and Drainage – Stormwater Drainage*
- g) 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.
- h) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- i) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- j) 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.
- k) New kerb outlets in stone kerb shall be carefully cored through the existing kerb stone such that the kerb outlet is perpendicular (a 90° angle) with the gutter. The pipe under the footpath shall end 30mm within the kerb stone with mass concrete around the pipe connection to the kerb stone.
- Purpose made pipe fittings and bends and welded joints shall be used where necessary to align the discharge pipe with the kerb outlet.
- l) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

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.

19. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee 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 and as surety for the proper completion of any road, footpath and drainage works required by this consent.

|                         |             |
|-------------------------|-------------|
| Security Deposit (FOOT) | \$ 4,730.00 |
| Inspection fee (FOOT)   | \$230.65    |

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

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

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

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

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

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.

- 20. 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.
- 21. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
  - a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
  - b) A concrete pump across the roadway/footpath

- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the 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 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.
- 23. 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;

- 24. 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.

25. 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.

26. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
27. 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.
28. 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.
29. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
- a) Unauthorised entry to the work site is prohibited.
  - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.

- c) The name, address and telephone number of the Principal Certifying Authority for the work.

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

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

#### **DURING WORKS**

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:
- 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - 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:
- 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. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

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

If any component of the existing system is not in good condition and /or not operating satisfactorily, it must be upgraded.

40. 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.

41. 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**

42. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate.
43. Light duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council. This will require the reconstruction of the existing crossing.
44. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

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

45. 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.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

46. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
47. 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.
48. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
49. 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.

50. 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.
51. 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.

52. 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.

#### **ONGOING CONDITIONS OF CONSENT**

53. 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.
54. 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.
55. 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. Building Code of Australia**

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



**B. 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.

**C. 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.

**NOTES**

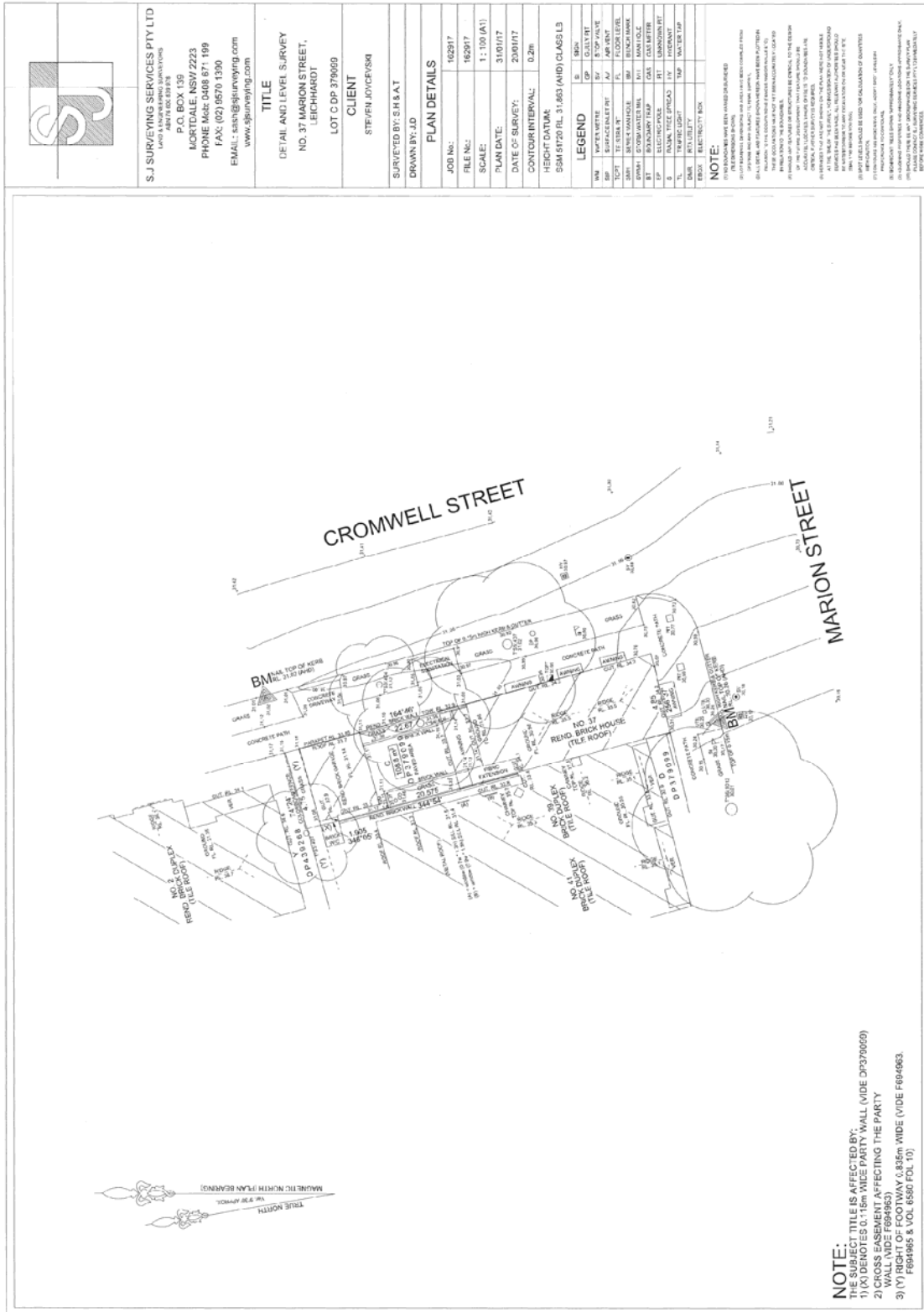
1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, 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.

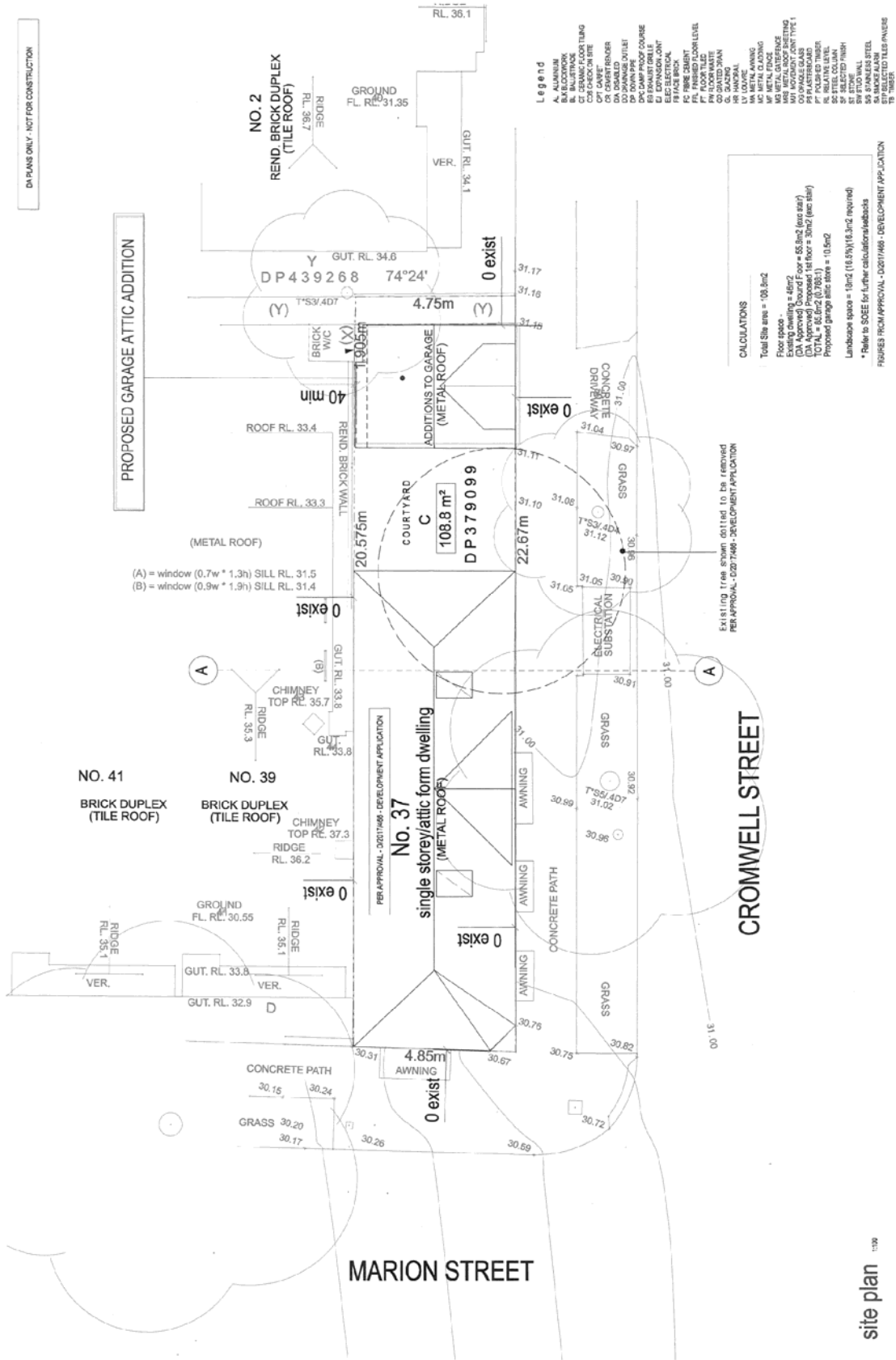
4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
5. Works or activities other than those approved by this Development Consent will require the submission 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.

**Have you made a political donation?**

If you (or an associate) have made a political donation or given a gift to a Councillor, political party or candidate at the local government elections during the last two (2) years you may need to include with your application a full disclosure of this matter. For information go to Council's website at [www.leichhardt.nsw.gov.au/Political-Donations.html](http://www.leichhardt.nsw.gov.au/Political-Donations.html). If you have made a reportable donation, failure to provide a completed declaration with your application is an offence under the Environmental Planning and Assessment Act, 1979 for which you may be prosecuted.

Attachment B – Plans of proposed development





site plan

proposed alterations and additions to garage @  
37 MARION ST LEICHHARDT

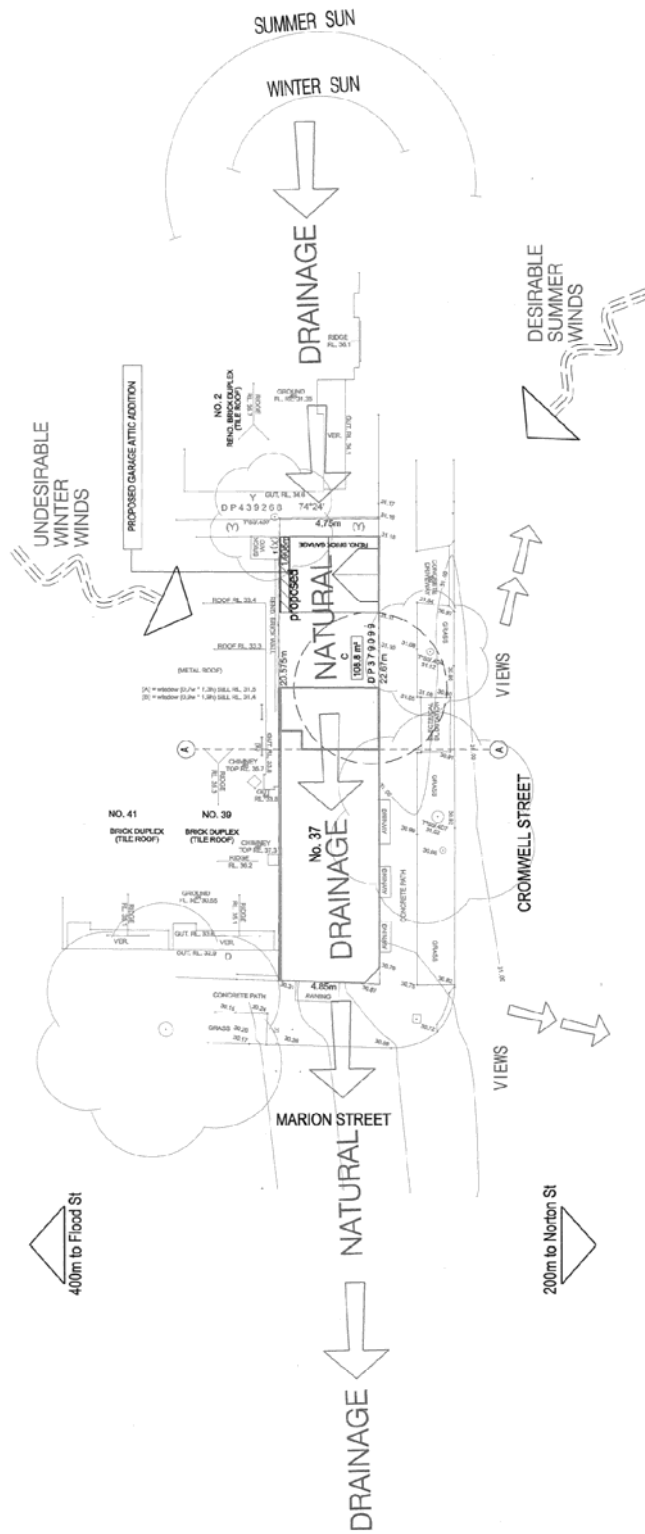
SITE PLAN



Office 1 - 55 Presley Ave Kingsmead NSW 1585  
Office 2 - 100/102 Kingsmead NSW 1585  
Office 3 - 100/102 Kingsmead NSW 1585

DEVELOPMENT APPLICATION - 15852118

P-1803-A01



site analysis plan .com

proposed alterations and additions to garage @  
37 MARION ST LEICHHARDT

SITE ANALYSIS PLAN

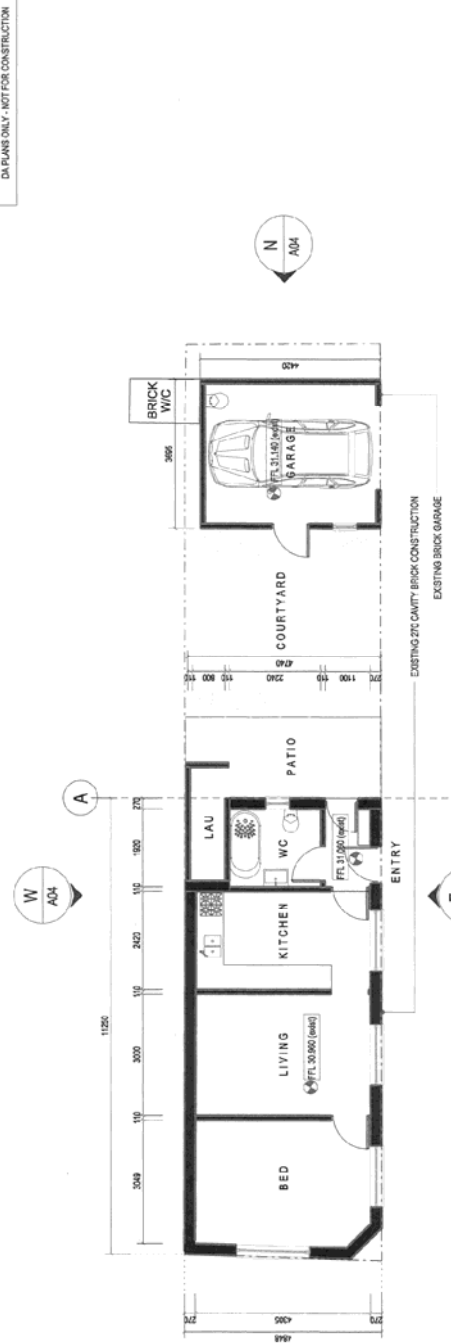


Office 2 - 155 Princes Hwy Sydney NSW 1512  
P. 02 9550 2000  
F. 02 9550 2001

DEVELOPMENT APPLICATION - 1500278

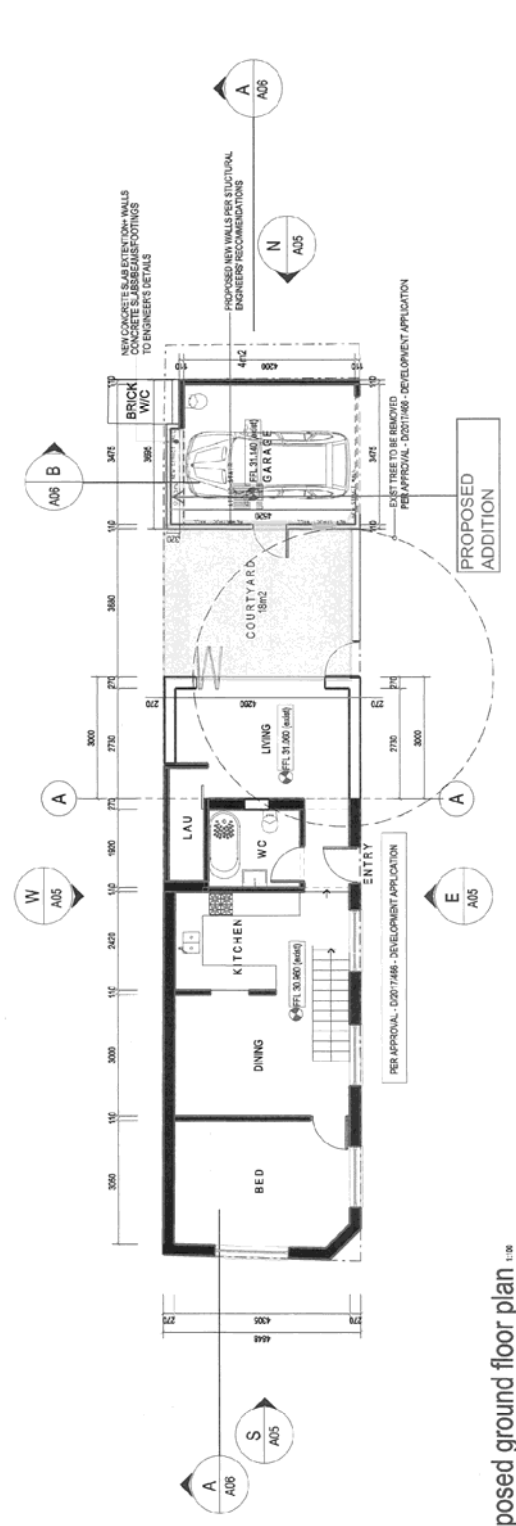
P-1720-A13

CL PLANS ONLY - NOT FOR CONSTRUCTION



existing ground floor plan 1:100

- Legend**
- A. ALUMINIUM
  - B. BALCONY
  - C. CONCRETE
  - D. DRAIN
  - E. EXPANSION JOINT
  - F. FLOOR/PAINT
  - G. GLAZING
  - H. HARDWARE
  - I. IRON
  - J. JOIST
  - K. KITCHEN
  - L. LAUNDRY
  - M. METAL AWNING
  - N. METAL SHUTTERING
  - O. OPERABLE WINDOW
  - P. POLISHED TIMBER
  - Q. QUARTZ
  - R. RALUMINIUM
  - S. SCHEDULED FINISH
  - T. TIMBER
  - U. UNFINISHED FLOOR
  - V. VENEER
  - W. WOOD
  - X. X-RAY CEMENT
  - Y. YACHTING
  - Z. ZEBRA
  - AA. ALUMINIUM
  - AB. BALCONY
  - AC. CONCRETE
  - AD. DRAIN
  - AE. EXPANSION JOINT
  - AF. FLOOR/PAINT
  - AG. GLAZING
  - AH. HARDWARE
  - AI. IRON
  - AJ. JOIST
  - AK. KITCHEN
  - AL. LAUNDRY
  - AM. METAL AWNING
  - AN. METAL SHUTTERING
  - AO. OPERABLE WINDOW
  - AP. POLISHED TIMBER
  - AQ. QUARTZ
  - AR. RALUMINIUM
  - AS. SCHEDULED FINISH
  - AT. TIMBER
  - AU. UNFINISHED FLOOR
  - AV. VENEER
  - AW. WOOD
  - AX. X-RAY CEMENT
  - AY. YACHTING
  - AZ. ZEBRA



proposed ground floor plan 1:100

CL PLANS ONLY - NOT FOR CONSTRUCTION

- NEW CONCRETE SLAB EXTENSION - WALLS CONCRETE SLABS REINFORCEMENTS TO ENGINEERS DETAILS
- PROPOSED NEW WALLS PER STRUCTURAL ENGINEERS RECOMMENDATIONS
- EXIST TREE TO BE REMOVED PER APPROVAL - D0071468 - DEVELOPMENT APPLICATION
- EXISTING 27% CAVITY BRICK CONSTRUCTION
- EXISTING BRICK GARAGE
- BRICK W/C
- COURTYARD
- PATIO
- LAU
- KITCHEN
- LIVING
- DINING
- BED
- WC
- ENTRY
- EXISTING 27% CAVITY BRICK CONSTRUCTION
- EXISTING BRICK GARAGE
- BRICK W/C
- COURTYARD
- PATIO
- LAU
- KITCHEN
- LIVING
- DINING
- BED
- WC
- ENTRY
- PROPOSED ADDITION

P-1803-A02



FLOOR PLANS

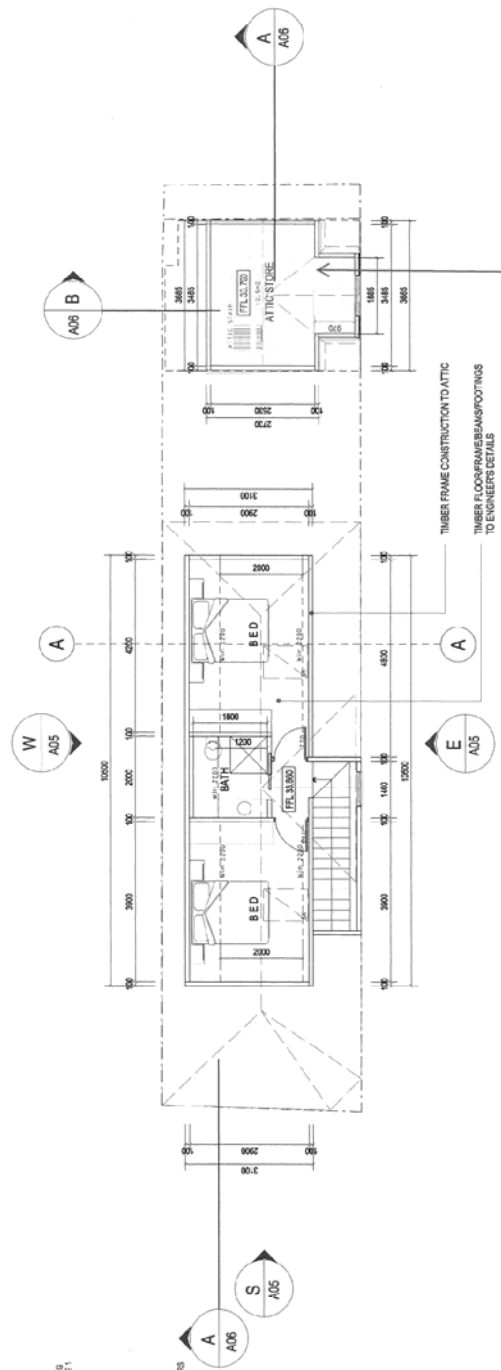
proposed alterations and additions to garage @ 37 MARION ST LEICHHARDT

18/05/2018 10:54 AM

DEVELOPMENT APPLICATION - 15522418

DA PLANS ONLY - NOT FOR CONSTRUCTION

- Legend**
- AL ALUMINIUM
  - AS ASPHALT
  - BL BALUSTRADE
  - CT CERAMIC FLOOR TILING
  - CS CONCRETE SLAB
  - CP CORRUGATED POLYESTER
  - CR CURB
  - CS CURB FINISH
  - DO DOWN PIPE
  - DS DOWN PIPE COURSE
  - DO DRAINAGE OUTLET
  - ED EXTERNAL DOOR
  - EW EXTERNAL WINDOW
  - EM EMERALD JOINT
  - FR FACE BRICK
  - FC FERRE CURTAIN
  - FL FLOOR
  - FW FLOOR FINISH
  - FT FLOOR TILES
  - GL GLAZING
  - HS HANDRAIL
  - MA METAL ANCHOR
  - MS METAL SKINNING
  - MR METAL RAILING
  - MT METAL TILING
  - MS METAL SILLING
  - MT METAL TILING
  - MO MOUNTAIN JOINT
  - OC OROLOGIC CLASS
  - PO PORTLAND CEMENT
  - PT PORTLAND CEMENT
  - RF SELECTED FINISH
  - SI STAINLESS STEEL
  - ST STAINLESS STEEL
  - STP SELECTED TILES PAVERS
  - TS TIMBER



PER APPROVAL - D2017468 - DEVELOPMENT APPLICATION

PROPOSED ROOF/STORE-ATTIC ADDITION

proposed 1st floor attic plan 1:100

proposed alterations and additions to house @ 37 MARION ST LEICHHARDT

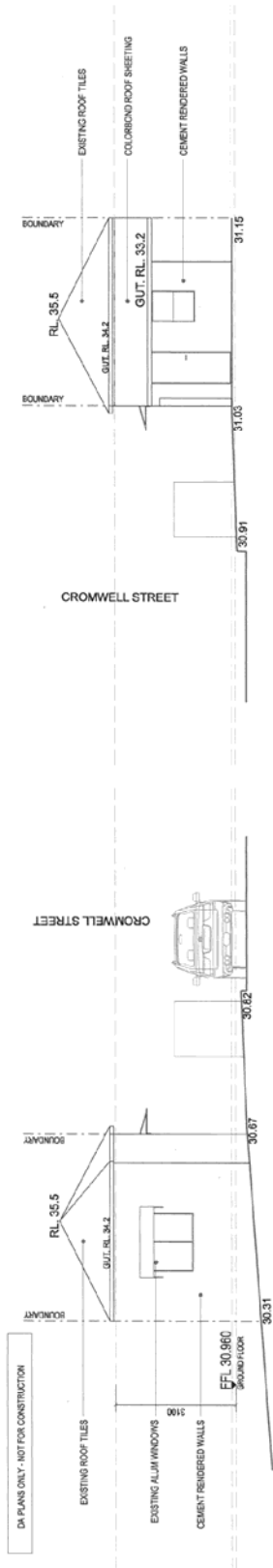
FLOOR PLAN - SECTION



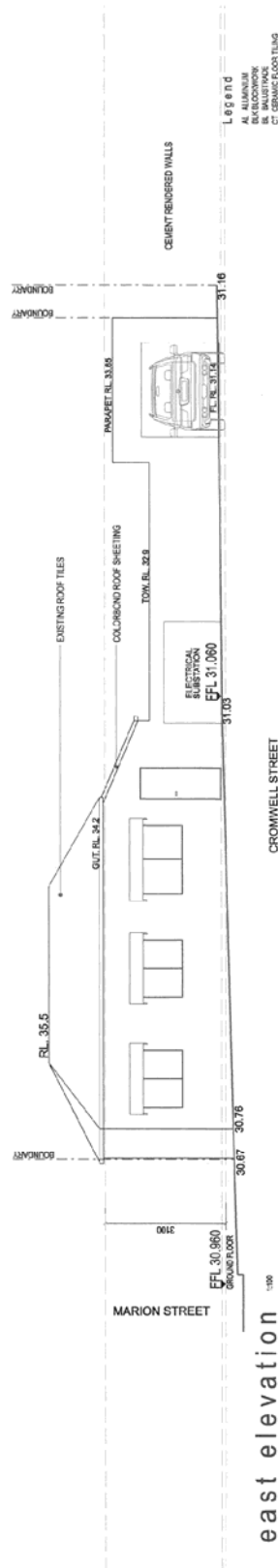
Office 2, 48 Princes Ave, Sydney NSW 2017  
 P 02 9439 4672  
 www.daihouse.com.au

DEVELOPMENT APPLICATION - 1532918

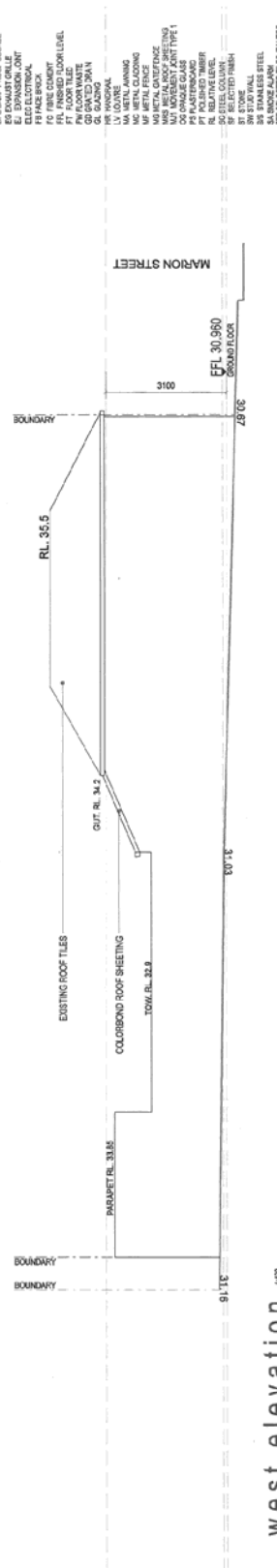
P-1803-A03



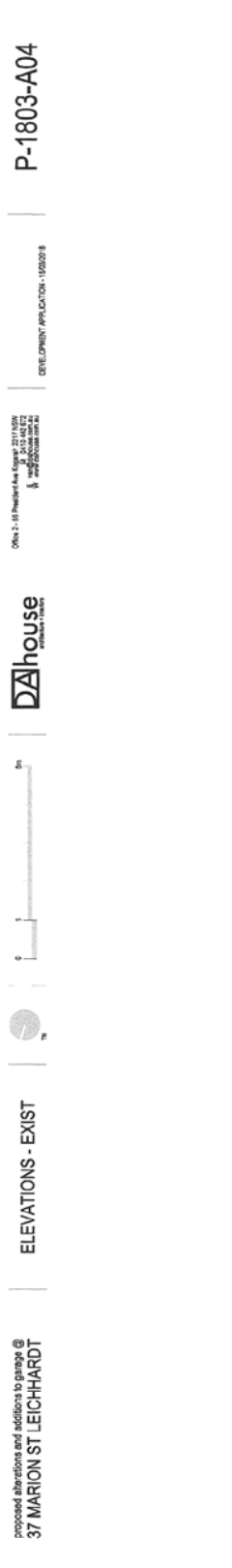
south elevation MARION STREET



north elevation CROMWELL STREET



east elevation CROMWELL STREET



west elevation CROMWELL STREET

- LEGEND
- A. ALUMINIUM
  - B. BRICK
  - C. CERAMIC FLOOR TILING
  - D. CONCRETE
  - E. CORRUGATED GALV. STEEL
  - F. GYP. BOARD
  - G. GYP. BOARD
  - H. HOLLOW CORE CONCRETE
  - I. INSULATION
  - J. IRON
  - K. KEEL
  - L. LUMBER
  - M. METAL CLADDING
  - N. METAL FENCE
  - O. METAL ROOF SHEETING
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  - Q. METAL ROOF SHEETING
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P-1803-A04

DEVELOPMENT APPLICATION - 1902078

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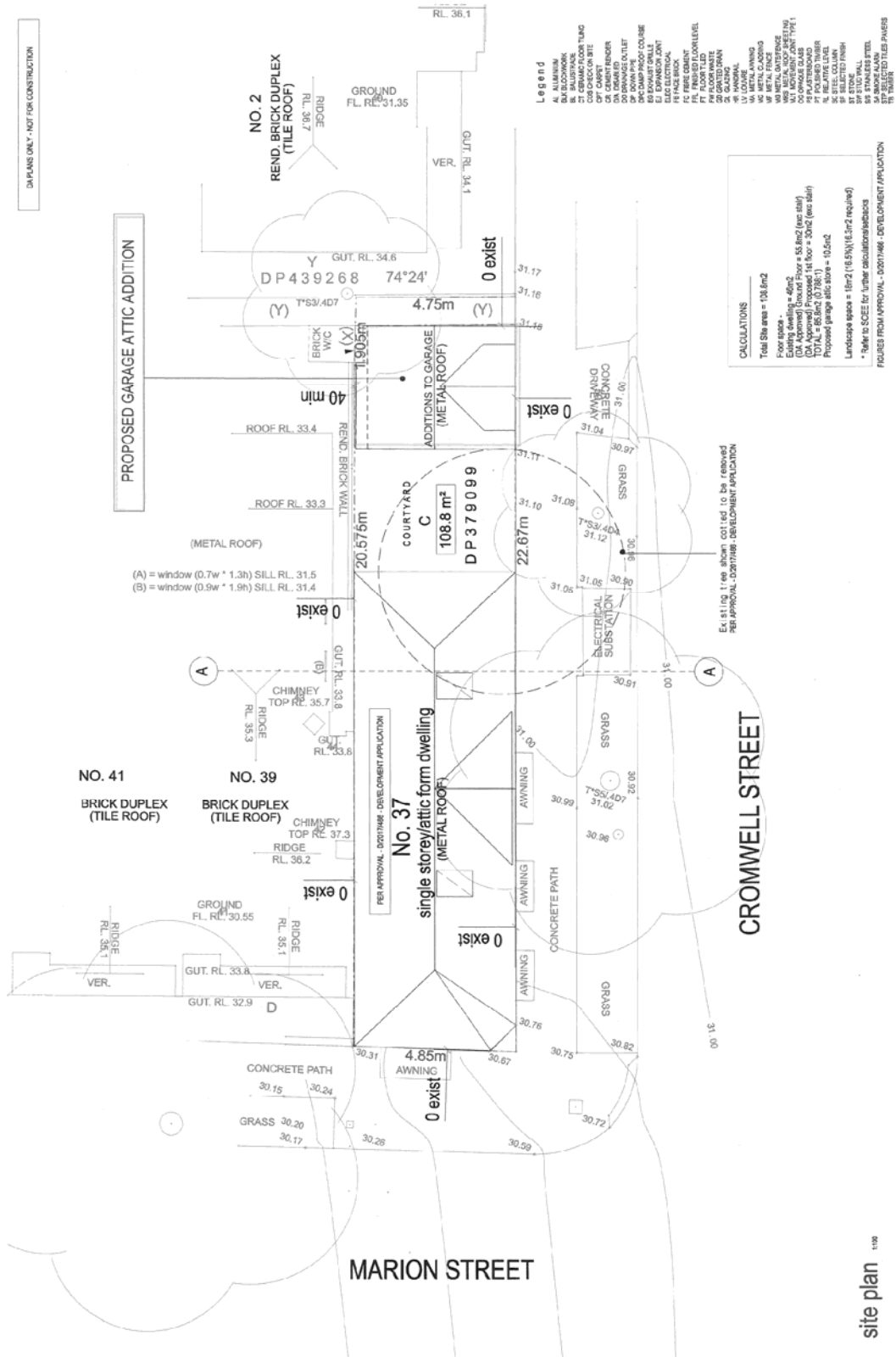
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37 MARION ST LEICHHARDT









P-1803-A01

0904 2 - 18 President Ave, Croydon 3113 NSW  
0114 40 472  
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SITE PLAN

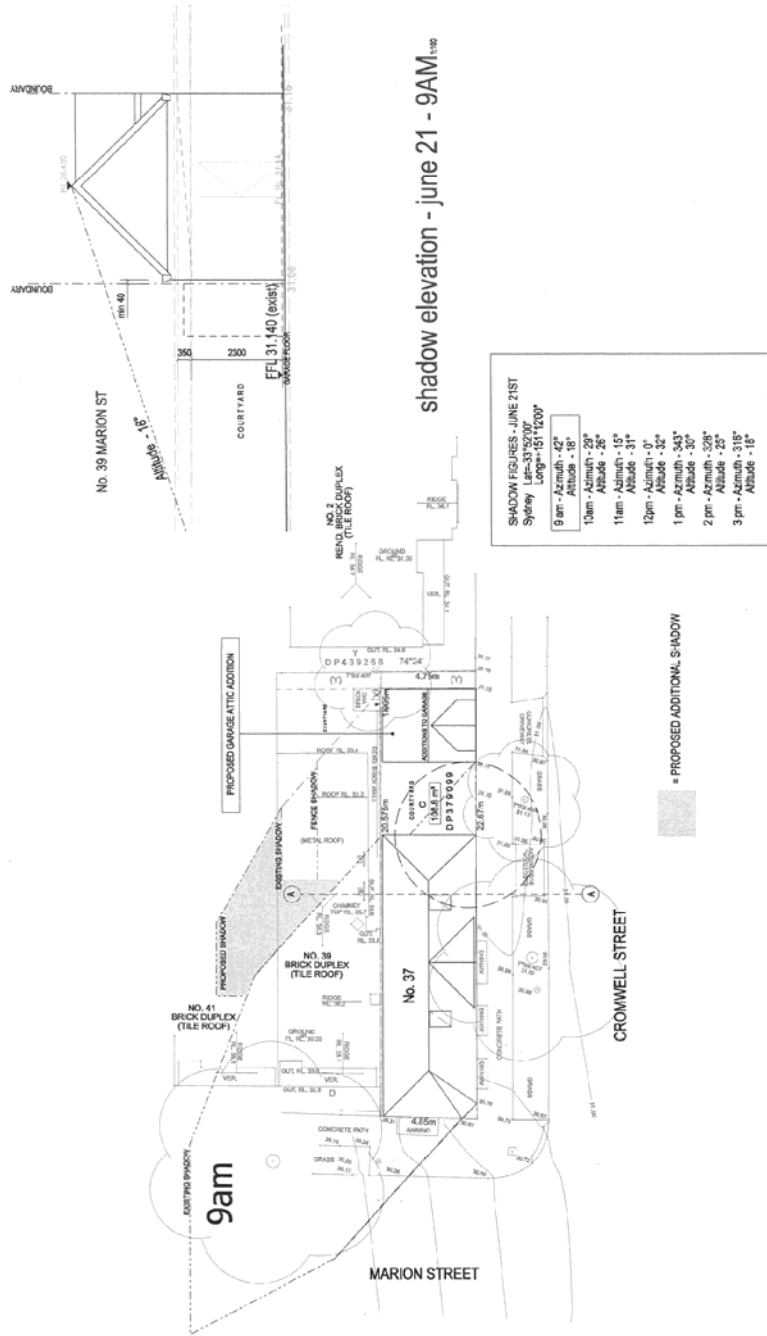
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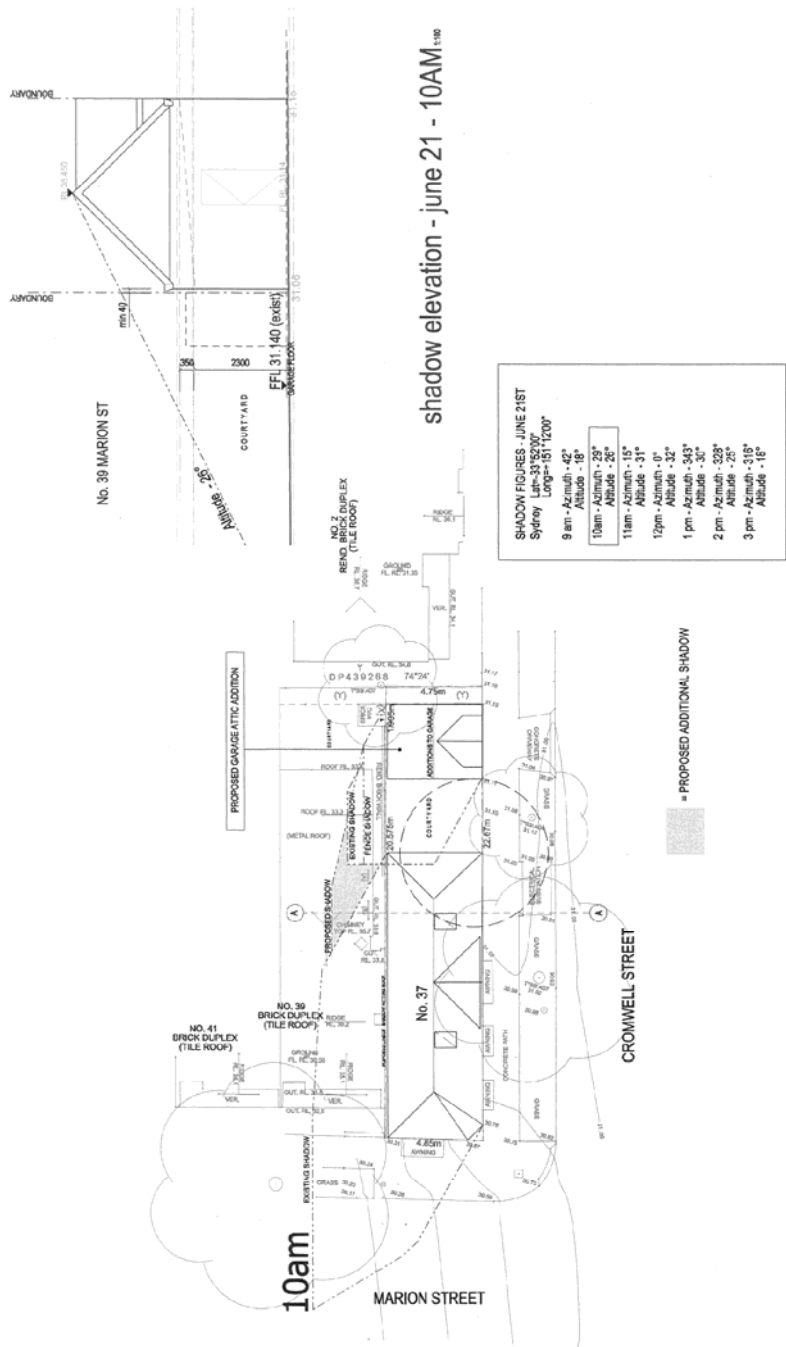
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SHADOWS - JUNE



Case 2 - 35 Princes Ave Sydney 2117 NSW  
 Date: 20/06/2024  
 File: P1720-A10-10001818  
 Development Maps Sydney - 10001818

P-1720-A10



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proposed alterations and additions to garage @  
 37 MARION ST LEITCHHARDT

SHADOWS - JUNE

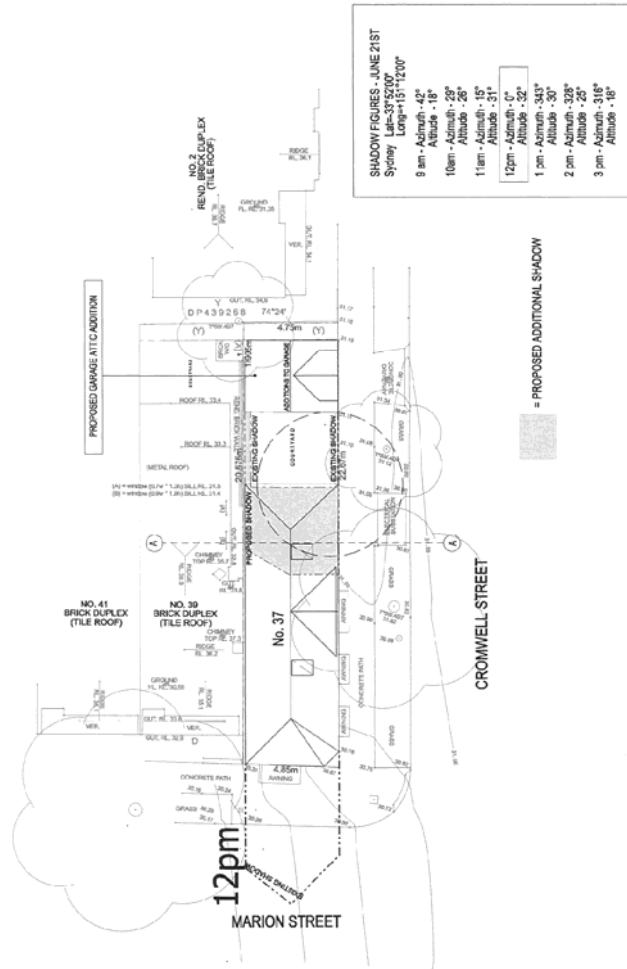


DEVELOPMENT APPLICATION - 502294

P-1720-A10A







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 37 MARION ST LEICHHARDT

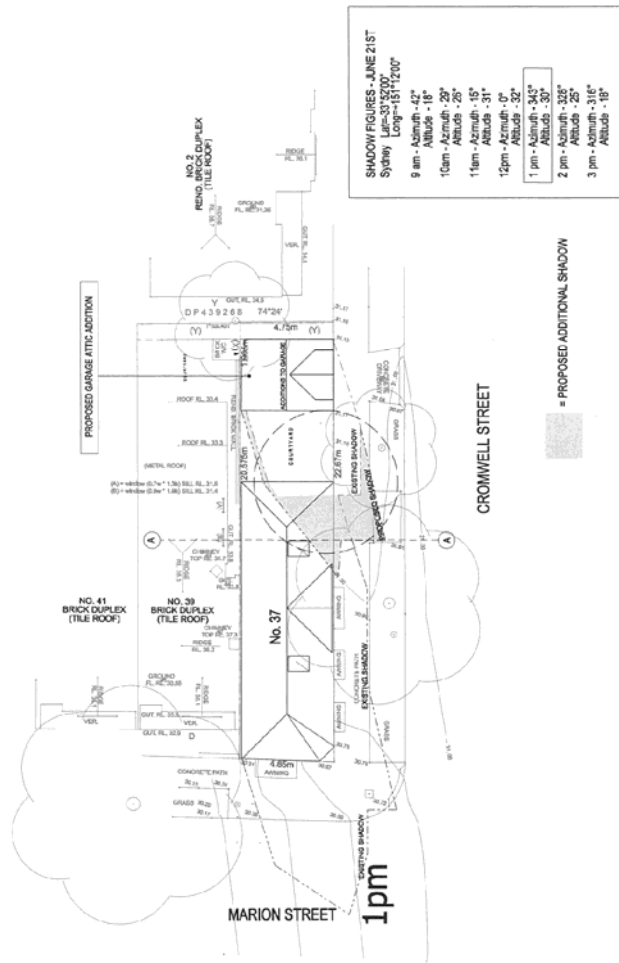
SHADOWS - JUNE



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 T 61 2 9550 2222  
 F 61 2 9550 2222

DEVELOPMENT APPLICATION: 16052/14

P-1720-A10C



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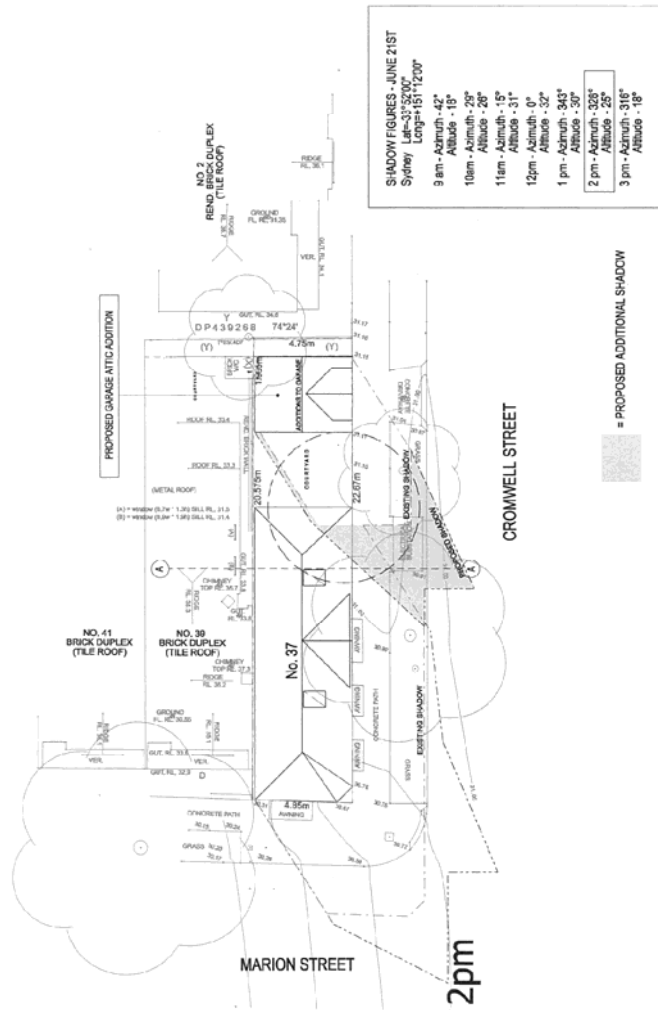
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SHADOWS - JUNE



DEVELOPMENT APPLICATION - 8888888

P-1720-A10D



shadow diagrams - june 21 - 2PM 1:20

proposed alterations and additions to garage @  
 37 MARION ST LEICHHARDT

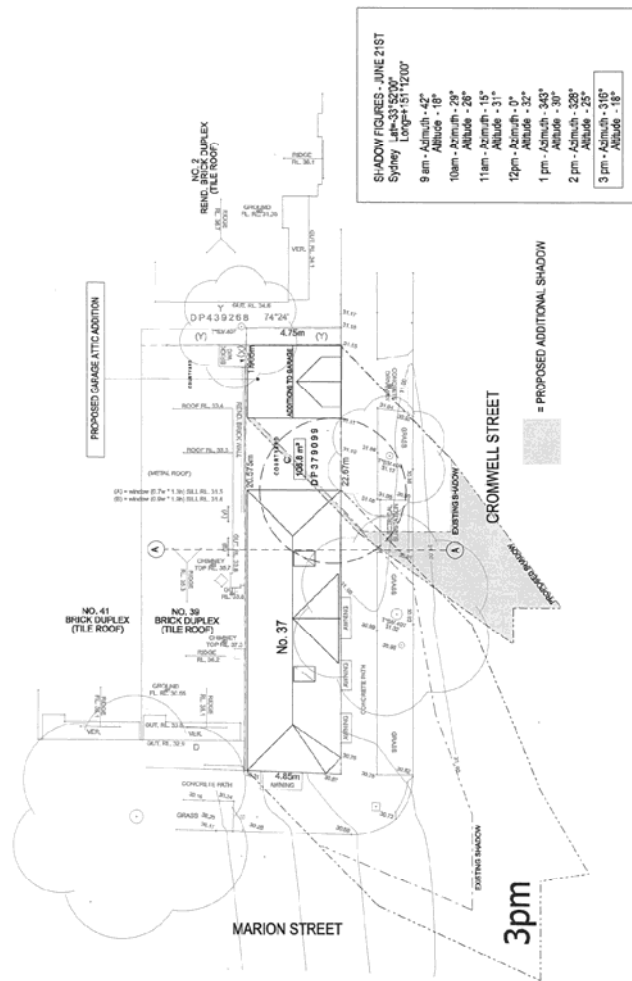
SHADOWS - JUNE



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DEVELOPMENT APPLICATION - 1502818

P-1720-A10E



shadow diagrams - june 21 3PM 1:00

proposed alterations and additions to garage @  
 37 MARION ST LEICHHARDT

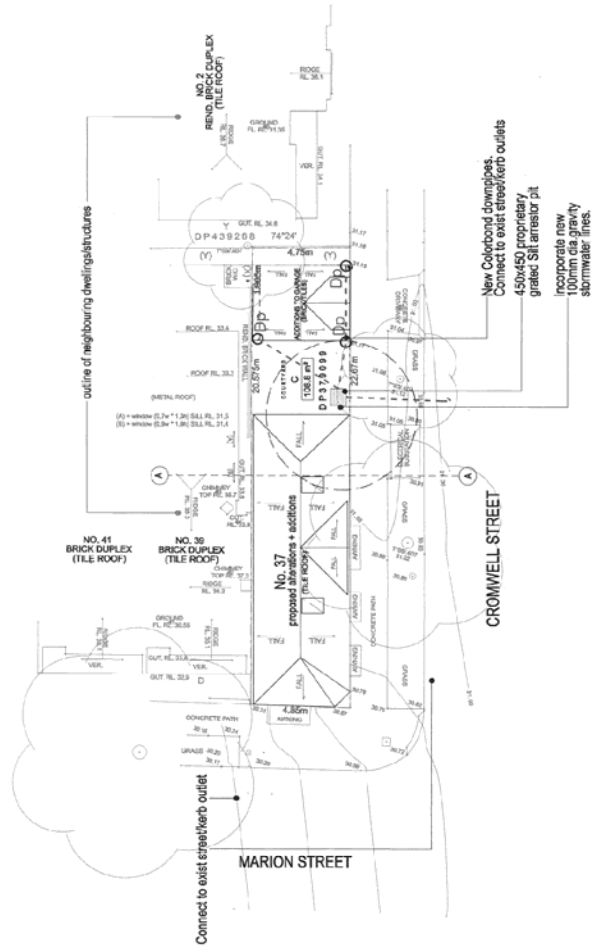
SHADOWS - JUNE



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DEVELOPMENT APPLICATION: 90002018

P-1720-A10F



stormwater concept plan 126

proposed alterations and additions to garage @ 37 MARION ST LEIGHARDT

STORMWATER CONCEPT



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DEVELOPMENT APPLICATION - 1522014

P-1720-A12

Attachment C – Clause 4.6 – Exceptions to Development Standards



**Request to Vary Floor Space Ratio Under Clause 4.4 of  
Leichhardt Local Environmental Plan 2013**

**Garage Alterations and Additions at  
37 Marion Street, Leichhardt**

**March 2018**



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## Introduction

This request made under Clause 4.6 of the Leichhardt Local Environmental Plan 2013 accompanies a proposal for a garage alterations and additions at 37 Marion Street, Leichhardt. The proposal includes a minor extension to the garage and a gabled roof above the existing garage structure located along Cromwell Street with a dormer component. The proposed roof above the garage comprises attic storage area. This request should be read in conjunction with the Statement of Environmental Effects prepared by Navon Solutions. This variation request relates to Clause 4.4 for floor space ratio. This request is considered appropriate for the proposal as will be discussed below. The relevant provisions of Clause 4.4 under the Leichhardt LEP 2013 reads as follows:

### **4.4 Floor space ratio**

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

The Floor Space Ratio Map shows a maximum floor space ratio of 0.8:1 applicable to the site.

## The Development Context

The site is a rectangular allotment with an area of 108.8sqm. It is 4.85m wide by 22.67m deep. The lot is located on the corner of Marion Street and Cromwell Street. A single storey dwelling is currently on the site and a detached garage located to the rear with access off Cromwell Street. Both structures have been built to the property boundaries.



Figure 1: The site and surrounding area



The adjoining properties on both Marion and Cromwell Street include attached single storey terrace dwellings with hipped and gabled roofs. In contrast, the properties directly across the street include a 4 storey residential flat building and a 3 storey mixed use building. Marion Street and Norton Street commercial centres are located 400-500m away.

Development Application No. D/2017/466 for alterations and additions to the existing dwelling was approved by Inner West Council's Development Assessment on 12 December 2017. This proposal relates to the same site but does not modify the approval or consent conditions.

### The Proposed Variation

The Leichhardt LEP 2013 includes provisions for exception to development standards as follows:

#### **4.6 Exceptions to development standards**

*(1) The objectives of this clause are as follows:*

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

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for*



*development within the zone in which the development is proposed to be carried out, and*  
 (b) *the concurrence of the Secretary has been obtained.*

In accordance with Clause 4.6 (4)(a)(i), this written request addresses the matters required to be demonstrated by Clause 4.6 (3) relating to the proposed variation to floor space ratio. The following figures summarise the proposed variation.

|                                  |         |           |
|----------------------------------|---------|-----------|
| <b>Site Area:</b>                |         | 108.8sqm  |
| <b>Maximum FSR:</b>              | 0.8:1   | 87sqm     |
| <b>Approved FSR:</b>             | 0.94:1  | 102.1sqm  |
| <b>Approved Total Variation:</b> | 17.5%   | 15.1sqm   |
| <b>Additional GFA:</b>           |         | 0.75sqm   |
| <b>Proposed FSR:</b>             | 0.945:1 | 102.85sqm |
| <b>Proposed Total Variation:</b> | 18.2%   | 15.85sqm  |

As summarised above, the proposed variation seeks an additional 0.75sqm or an additional 0.7% variation in FSR.

According to the Leichhardt LEP 2013, 'floor space ratio' *of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

According to Clause 4.4(3) of the Leichhardt LEP 2013, 'site area' *is taken to be, if the proposed development is to be carried out on only one lot, the area of that lot.*

According to the Leichhardt LEP 2013, 'gross floor area' *means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

*but excludes:*

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*



- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

This Clause 4.6 variation request addresses the following criteria and demonstrates that the proposed variation is:

- Consistent with the objectives of the floor space ratio development standard
- Consistent with the objectives of the R1 General Residential zone
- Consistent with State and regional policies
- Considered to result in a better planning outcome
- Justified on environmental grounds
- In the public interests

### **Consistent with the Floor Space Ratio Objectives**

This Clause 4.6 report addresses the proposed variation in relation to the floor space ratio objectives as follows.

- (a) (i) To ensure that residential accommodation is compatible with the desired future character of the area in relation to building bulk, form and scale,*

Comments: As detailed in the accompanying Statement of Environmental Effects, the proposal is consistent with the character of the neighbourhood particularly defined by the adjoining properties. The proposed garage roof addition is pitched with gabled components. This roof form matches the prevailing pitched roof forms of the neighbouring dwellings at 2-4 Cromwell Street. The proposed addition to the garage along the western boundary comprises an increase in floor area. This addition is not visible from the streetscape and is compatible with the desired future character of the area.

The proposed garage addition is built to the boundary of the neighbouring property. This built form is characteristic of the area and consistent with Council's DCP side setback provisions. The proposed addition to the boundary does not comprise any unreasonable impacts of amenity. Specifically, the proposal complies with all of Council's amenity indicators to adjoining properties, including solar access, privacy, and bulk and scale.



- (a) (ii) To ensure that residential accommodation provides a suitable balance between landscaped areas and the built form,*

Comments: The proposal comprises 0.75sqm of area located in an underutilised area between the existing garage and boundary 320mm wide. This space does not constitute space for landscaping or private open space area. The proposed extension of the garage in this area therefore does not compromise any landscaping opportunities or open space for the enjoyment of residents. Both landscaping and private open space on the site maintains compliance with Council's provisions.

- (a) (iii) To ensure that residential accommodation minimises the impact of the bulk and scale of buildings*

Comments: The proposed garage addition is built to the boundary of the neighbouring property. This built form is characteristic of the area and consistent with Council's DCP side setback provisions. In the proposed addition to the boundary, the proposal does not comprise any associated amenity impacts including overshadowing or privacy.

- 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*

Comments: The proposal comprises residential alterations and additions compatible with the character of the area in relation to building bulk, form and scale.

### **Consistent with the R1 General Residential Zone Objectives**

This Clause 4.6 report addresses the proposed variation in relation to the relevant R1 General Residential zone objectives as follows.

- 1) To provide for the housing needs of the community.*

Comments: The proposal including variations addresses the need for housing with improved and appropriate amenity. The proposal provides storage area to better reflect the needs of a modern household and comprises a pragmatic improvement to the existing garage and established garage.

- 2) To provide for a variety of housing types and densities.*

Comments: The proposed alterations and additions to the garage are sought in response to the housing type and densities demanded in the area.



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

Comments: The proposal and variation do not hinder the provision of other land uses that provide facilities or services in the zone.

- 4) *To improve opportunities to work from home.*

Comments: The proposed alterations and variations encourage opportunities for residents to be able to perform an increased range of activities including working from home.

- 5) *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Comments: The proposal and associated variation maintain the appearance and scale of a residential dwelling consistent with the surrounding area including pitched and gabled roof forms, and buildings built to the boundary consistent with Council's provisions. Further, the proposal is compatible with the approved dwelling and alterations.

- 6) *To provide landscaped areas for the use and enjoyment of existing and future residents.*

Comments: The proposal comprises 0.75sqm of area located in an underutilised area between the existing garage and boundary 320mm wide. This space does not constitute space for landscaping or private open space area. The proposed extension of the garage in this area therefore does not compromise any landscaping opportunities or open space for the enjoyment of residents. The proposal complies with Council's landscaped area and private open space provisions.

- 7) *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.*

Comments: The proposal does not seek to alter the existing subdivision.

- 8) *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

Comments: The proposal and associated variation addresses the need for housing with improved and appropriate amenity. The proposal provides storage area to better reflect the needs of a modern household and comprises a pragmatic improvement to the existing and established garage.

The proposed garage addition is built to the boundary of the neighbouring property consistent with existing structures located at this boundary including a portion of the garage and W/C. The proposed built form is characteristic of the area and is also consistent with Council's side setback



provisions. The proposed addition to the boundary does not comprise any unreasonable impacts of amenity. Specifically, the proposal complies with all of Council's amenity indicators to adjoining properties, including solar access, privacy, and bulk and scale.

### **Consistent with State and Regional Policies**

The proposed variation ensures the site can achieve a high quality outcome as envisaged by the Environmental Planning and Assessment Act 1979. The proposal does not compromise the desired future character of the area and is consistent with the relevant policies.

### **Results in a Better Planning Outcome**

The proposed garage alterations and additions are expected to generate a better planning outcome for the following reasons:

- The proposal includes additional storage area located in the roof above the garage. This proposed arrangement provides storage area in an inconspicuous manner that does not impact on the amenity of any adjoining properties. The provision of storage on a limited site in this manner is appropriate, and better reflects the needs of modern households.
- The existing garage comprises an established car parking space that varies from the contemporary provisions of AS2890.1. Nevertheless, the existing garage and the function of the car space remains. The proposal seeks the pragmatic improvement an existing matter of compliance with an increased depth of 320mm to the existing car parking space.
- The proposal comprises 0.75sqm of area located in an underutilised area between the existing garage and boundary 320mm wide. This space does not constitute space for landscaping or private open space area. The proposed extension of the garage in this area therefore does not compromise any landscaping opportunities or open space for the enjoyment of residents.

### **Justification on Environmental Grounds**

The variation to the proposed floor space ratio is justified on the following environmental grounds:

- The proposed variation comprising the garage addition is appropriately scaled and located as to avoid and mitigate any significant amenity impacts.
- The proposal will not significantly impact the amenity of the public domain.
- The proposal is consistent with the existing and desired built form and future character of the area.



### **Is in the Public Interest**

The proposal improves the amenity of the dwelling without compromising the character of the surrounding area, or amenity of nearby and adjoining properties. The proposal and variation are not adverse to the public interest.

### **Unreasonable and Unnecessary Development Standard**

The application of the FSR provision to the proposal is considered unreasonable and unnecessary for the following reasons:

- Despite the proposed variation to the floor space ratio, the proposal is consistent and compatible with the character of the surrounding area.
- Despite the variation to the floor space ratio, the proposal does not cause any significant adverse amenity impacts on the site or adjoining properties.
- The broad application of the floor space ratio provision does not recognise the prevalence of established corner sites. The application of floor space ratio controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad floor space ratio controls to all properties in conjunction with Council's DCP provisions.
- The floor space provision in addition to Council's DCP provisions do not consider the ability for a site to accommodate floor areas for reasonably sized dwellings on smaller lots.

### **Conclusion**

Based on the above assessment, the proposal at 37 Marion Street, Leichhardt can achieve full compliance with the objectives and intentions of Clause 4.4 Floor space ratio under the Leichhardt LEP 2013. It has also been demonstrated that the proposal can comply with the relevant R1 General Residential zoning objectives. The proposal provides a better planning outcome and the FSR standards are unreasonable and unnecessary. The proposal has been designed to improve the dwelling's amenity for the residents and will not bear any significant impact to the amenity of the adjoining and nearby dwellings. The proposed variations should therefore be considered favourably by Council.





**Request to Vary Site Coverage Under Clause 4.3A of  
Leichhardt Local Environmental Plan 2013**

**Garage Alterations and Additions at  
37 Marion Street, Leichhardt**

**March 2018**



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## Introduction

This request made under Clause 4.6 of the Leichhardt Local Environmental Plan 2013 accompanies a proposal for a garage alterations and addition at 37 Marion Street, Leichhardt. The proposal includes a minor extension to the garage and a gabled roof above the existing garage structure located along Cromwell Street with a dormer component. The proposed roof above the garage comprises attic storage area. This request should be read in conjunction with the Statement of Environmental Effects prepared by Navon Solutions. This variation request relates to Clause 4.3A(3)(b) for site coverage. This request is considered appropriate for the proposal as will be discussed below. The relevant provisions of Clause 4.3A(3)(b) under the Leichhardt LEP 2013 reads as follows:

### **4.3A Landscaped areas for residential accommodation in Zone R1**

- (3) Development consent must not be granted to development to which this clause applies unless:
- b) the site coverage does not exceed 60% of the site area.

## The Development Context

The site is a rectangular allotment with an area of 108.8sqm. It is 4.85m wide by 22.67m deep. The lot is located on the corner of Marion Street and Cromwell Street. A single storey dwelling is currently on the site and a detached garage located to the rear with access off Cromwell Street. Both structures have been built to the property boundaries.



Figure 1: The site and surrounding area

The adjoining properties on both Marion and Cromwell Street include attached single storey terrace dwellings with hipped and gabled roofs. In contrast, the properties directly across the street include a



4 storey residential flat building and a 3 storey mixed use building. Marion Street and Norton Street commercial centres are located 400-500m away.

Development Application No. D/2017/466 for alterations and additions to the existing dwelling was approved by Inner West Council's Development Assessment on 12 December 2017. This proposal relates to the same site but does not modify the approval or consent conditions.

### The Proposed Variation

The Leichhardt LEP 2013 includes provisions for exception to development standards as follows:

#### **4.6 Exceptions to development standards**

*(1) The objectives of this clause are as follows:*

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

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- (b) the concurrence of the Secretary has been obtained.*



In accordance with Clause 4.6 (4)(a)(i), this written request addresses the matters required to be demonstrated by Clause 4.6 (3) relating to the proposed variation to site coverage. The following figures summarise the proposed variation.

|                                  |       |          |
|----------------------------------|-------|----------|
| <b>Site Area:</b>                |       | 108.8sqm |
| <b>Maximum Site Coverage:</b>    | 60%   | 65.3sqm  |
| <b>Approved Site Coverage:</b>   | 79%   | 86sqm    |
| <b>Approved Total Variation</b>  | 31.7% | 20.7sqm  |
| <b>Additional Site Coverage:</b> |       | 0.75sqm  |
| <b>Proposed Site Coverage:</b>   | 79.7% | 86.75sqm |
| <b>Proposed Total Variation:</b> | 32.8% | 21.45sqm |

As summarised above, the proposed variation seeks an additional 0.75sqm or an additional 0.7% of site coverage.

According to the Leichhardt LEP 2013, 'site coverage' means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage:

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

This Clause 4.6 variation request addresses the following criteria and demonstrates that the proposed variation is:

- Consistent with the objectives of the site coverage development standard
- Consistent with the objectives of the R1 General Residential zone
- Consistent with State and regional policies
- Considered to result in a better planning outcome
- Justified on environmental grounds
- In the public interest



### Consistent with the Site Coverage Objectives

This Clause 4.6 report addresses the proposed variation in relation to the site coverage objectives as follows.

- a) *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*

Comments: The proposal comprises 0.75sqm of area located in a 320mm wide area between the existing garage and boundary. This space does not constitute substantial space for the purposes of tree planting or enjoyment of residents. The extension of the garage in this area does not comprise the landscaping and private open space area. Both landscaping and private open space on the site maintains compliance with Council's provisions.

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

Comments: The proposed garage addition is built to the boundary of the neighbouring property. This built form is characteristic of the area and consistent with Council's side setback provisions. In the proposed addition to the boundary, the proposal does not comprise any associated amenity impacts including overshadowing or privacy.

- c) *to ensure that development promotes the desired future character of the neighbourhood,*

Comments: As detailed in the accompanying Statement of Environmental Effects, the proposal is consistent with the character of the neighbourhood particularly defined by the adjoining properties. The proposed garage roof addition is pitched with gabled components. This roof form matches the prevailing pitched roof forms of the neighbouring dwellings at 2-4 Cromwell Street and the streetscape.

The proposed addition to the garage along the western boundary comprises an increase in site coverage. This addition is not visible and does not impact the streetscape.

- d) *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*

Comments: The proposal comprises a minor increase in impervious area of 0.75sqm. The site is able to be drained in accordance with the submitted stormwater concept plans.



e) *to control site density,*

Comments: Aside from the associated variation to FSR, the proposal complies with all indicators of appropriate site density including the proposed character, private open space, landscaping, setbacks, and amenity. The proposal does not alter the density of the site. The density remains at 1 dwelling on the 108.8sqm site with improved amenity.

f) *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

Comments: The proposed variation to site coverage does not compromise the landscaped or private open space areas. The proposal complies with the minimum landscaped area and private open space area provisions.

### **Consistent with the R1 General Residential Zone Objectives**

This Clause 4.6 report addresses the proposed variation in relation to the relevant R1 General Residential zone objectives as follows.

1) *To provide for the housing needs of the community.*

Comments: The proposal including variations addresses the need for housing with improved and appropriate amenity. The proposal provides storage area to better reflect the needs of a modern household and comprises a pragmatic improvement to the existing garage and established garage.

2) *To provide for a variety of housing types and densities.*

Comments: The proposed alterations and additions to the garage are sought in response to the housing type and densities demanded in the area.

3) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments: The proposal and variation do not hinder the provision of other land uses that provide facilities or services in the zone.



- 4) *To improve opportunities to work from home.*

Comments: The proposed alterations and variations encourage opportunities for residents to be able to perform an increased range of activities including working from home.

- 5) *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Comments: The proposal and associated variation maintain the appearance and scale of a residential dwelling consistent with the surrounding area including pitched and gabled roof forms, and buildings in the area built to the boundary consistent with Council's provisions.

- 6) *To provide landscaped areas for the use and enjoyment of existing and future residents.*

Comments: The proposal comprises 0.75sqm of area located in a 320mm wide area between the existing garage and boundary. This space does not constitute substantial space for the purposes of tree planting or enjoyment of residents. The extension of the garage in this area does not comprise the landscaping and private open space area. Both landscaping and private open space on the site maintains compliance with Council's provisions.

- 7) *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.*

Comments: The proposal does not seek to alter the existing subdivision.

- 8) *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

Comments: The proposal including variations addresses the need for housing with improved and appropriate amenity. The proposal provides storage area to better reflect the needs of a modern household and comprises a pragmatic improvement to the existing garage.

The proposed garage addition is built to the boundary of the neighbouring property. This built form is characteristic of the area and consistent with Council's side setback provisions. The proposed addition to the boundary does not comprise any unreasonable impacts of amenity. Specifically, the proposal complies with all of Council's amenity indicators to adjoining properties, including solar access, privacy and side setbacks





### Consistent with State and Regional Policies

The proposed variation ensures the site can achieve a high quality outcome as envisaged by the Environmental Planning and Assessment Act 1979. The proposal does not compromise the desired future character of the area and is consistent with the relevant policies.

### Results in a Better Planning Outcome

The proposed garage alterations and additions are expected to generate a better planning outcome for the following reasons:

- The proposal includes additional storage area located in the roof above the garage. This proposed arrangement provides storage area in an inconspicuous manner that does not impact on the amenity of any adjoining properties. The provision of storage on a limited site in this manner is appropriate, and better reflects the needs of modern households.
- The existing garage comprises an established car parking space that varies from the contemporary provisions of AS2890.1. Nevertheless, the existing garage and the function of the car space remains. The proposal seeks the pragmatic improvement an existing matter of compliance with an increased depth of 320mm to the existing car parking space.
- The proposed provision of storage area and utilisation of the existing 320mm side setback does not compromise the existing landscaping or private open space area available on the site. Residential recreation and landscaping opportunities are maintained.

### Justification on Environmental Grounds

The following reasons justify the variation to the proposed site coverage:

- The proposed variation comprising the garage addition is appropriately scaled and located as to avoid and mitigate any significant amenity impacts.
- The proposal will not significantly impact the amenity of the public domain.
- The proposal is consistent with the existing and desired built form and future character of the area.

### Is in the Public Interest

The proposal improves the amenity of the dwelling without compromising the character of the surrounding area, or amenity of nearby and adjoining properties. The proposal and variation are not adverse to the public interest.



### **Unreasonable and Unnecessary Development Standard**

The application of the site coverage provision to the proposal is considered unreasonable and unnecessary for the following reasons:

- Despite the variation, the proposal is consistent and compatible with the character of the surrounding area.
- Despite the variation, the proposal does not cause any significant adverse amenity impacts on the site or adjoining properties.
- The broad application of site coverage provision does not recognise the prevalence of established corner sites. The application of site coverage controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad site coverage controls to all properties in conjunction with Council's DCP provisions.
- The site coverage provision does not consider the ability for a site to accommodate floor areas for reasonably sized dwellings on smaller lots. Unlike the FSR provision, the site coverage provision comprises a single rate of 60% applicable to all sites in Leichhardt.

### **Conclusion**

Based on the above assessment, the proposal at 37 Marion Street, Leichhardt can achieve full compliance with the objectives and intentions of Clause 4.3A Landscaped areas for residential accommodation in Zone R1 under the Leichhardt LEP 2013. It has also been demonstrated that the proposal can comply with the relevant R1 General Residential zoning objectives. The proposal provides a better planning outcome and the site coverage standards are unreasonable and unnecessary. The proposal has been designed to improve the dwelling's amenity for the residents and will not bear any significant impact to the amenity of the adjoining and nearby dwellings. The proposed variations should therefore be considered favourably by Council.