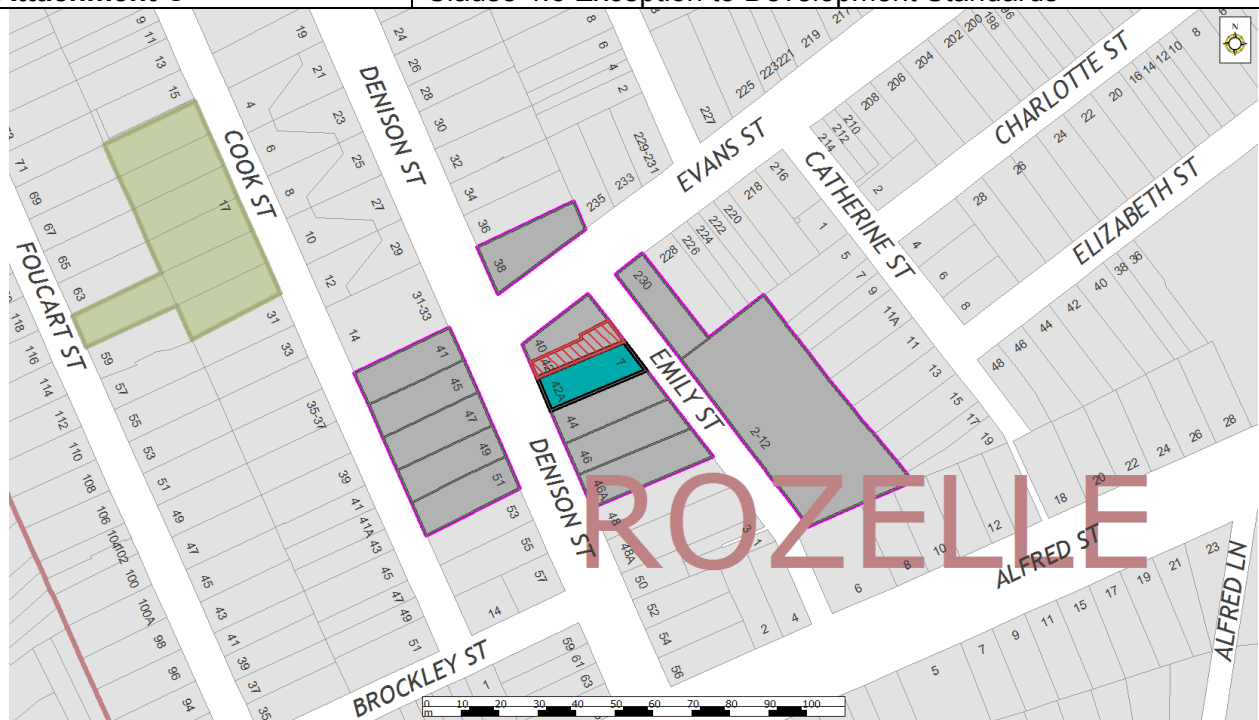




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

|   |  |
|---|--|
| <b>Application No.</b>                            | D/2018/375   |
| <b>Address</b>                                    | 7 Emily Street, ROZELLE NSW 2039   |
| <b>Proposal</b>                                   | Building works to existing residence, including ground floor internal renovations, and a first floor addition. |
| <b>Date of Lodgement</b>                          | 18 July 2018   |
| <b>Applicant</b>                                  | Precision Planning   |
| <b>Owner</b>                                      | Mrs L B Scott and Mr M F Scott   |
| <b>Number of Submissions</b>                      | One  |
| <b>Value of works</b>                             | \$120,000  |
| <b>Reason for determination at Planning Panel</b> | Clause 4.6 variation exceeds officer delegation  |
| <b>Main Issues</b>                                | Height/ bulk and scale / streetscape<br>Landscape area / site coverage / private open space                    |
| <b>Recommendation</b>                             | Deferred Commencement Consent  |
| <b>Attachment A</b>                               | Recommended conditions of consent  |
| <b>Attachment B</b>                               | Plans of proposed development  |
| <b>Attachment C</b>                               | Clause 4.6 Exception to Development Standards  |



LOCALITY MAP

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

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the existing dwelling at 7 Emily Street, Rozelle including a first floor addition. The application was notified to surrounding properties and one submission was received.

The main issues that have arisen from the application include:

- Non-compliance with development standards;
- Overshadowing of adjoining private open space;
- Streetscape impact of proposed first floor; and
- Adequacy of proposed private open space.

The non-compliances are acceptable as they can be minimised by proposed conditions of consent which reduce the height and bulk of the first floor and thus overshadowing impact on the neighbouring property, increase the size of the area of private open space and require the provision of on site landscaping. The application is recommended for 'Deferred Commencement' Consent.

## 2. Proposal

Alterations and additions to an existing dwelling including:

- Extended first floor to comprise one bedroom, robe and ensuite,
- Reduction of ground floor to include external courtyard and permit new floor plan,
- Addition of five skylights.

## 3. Site Description

The subject site is located on the western side of Emily Street, between Evans Street and Alfred Street and continues through to Denison Street at the rear. The site is generally rectangular with a total area of 121 sqm. The site consists of one allotment that has been strata subdivided into two allotments and is legally described as Lot 2 SP64255.

The site has a frontage to Emily Street of 8.8 metres.

The site supports a brick building which occupies the majority of the site and has been subdivided into two dwellings, with one dwelling facing Emily Street (7 Emily Street, Rozelle – the subject of this application) and the other fronting Denison Street, Rozelle (42A Denison Street, Rozelle). A party wall is located in the centre of the site which divides the two dwellings. A new fire-rated wall is proposed to be constructed adjacent to the party wall, thus the works do not rely on the party wall for vertical or lateral support.

The adjoining properties support dwellings which front Denison Street and have rear yards visible from Emily Street. Numbers 1 and 3 Emily Street also front the western side of Emily Street but are separated from the subject site by five lots.

The site is not located within a heritage conservation area however land on the opposite side of Emily Street from the site is part of a heritage conservation area. No trees are located on the site.



Figure 1: Front elevation of dwelling from Emily Street. Source: Google streetview.

## 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                          |
|--|---|--|
| BA/94/085                                    | Alterations to provide new kitchen and bathroom together with installation of new roof lights to existing roof framing. Approved three dormer windows in south-eastern roof plane and one louvre window in south-east elevation.  | 7 March 1994                             |
| DAREV/1999/2<br>(DA/312/1998)<br>S37/1999/25 | Alterations to a residence for the conversion of the building into 2 dwellings and the subdivision of the building into 2 strata titled allotments (being 7 Emily Street and 42A Denison Street, Rozelle).  | Approved<br>15 June 1999<br>12 July 2000 |
| PREDA/2017/360                               | Alterations and additions to the existing dwelling at 7 Emily Street, Rozelle including extended first floor. Height reductions and possibly location of the proposed first floor addition needs to be revisited to address solar access and bulk/scale issues as affecting neighbours. The following changes were discussed at the meeting:<br>a) Reduction of parapet R.L by no less than 400mm;<br>b) Metal cladding to the upper floor is to be light grey to be more recessive; and<br>c) Boundary wall to courtyard to be removed to allow for overland flow. | Issued<br>14 March 2018                  |

**Surrounding properties**

| <b>Application</b> | <b>Proposal</b>  | <b>Decision &amp; Date</b>   |
|--------------------|--|------------------------------|
| D/2016/380         | Lower ground floor addition of rumpus room and bathroom, reconstruction of rear veranda at 230 Evans Street, Rozelle (located opposite the subject site).            | Approved<br>6 December 2016  |
| CDCP/2016/120      | Construction of two storey dwelling at 46a Denison Street, Rozelle.  | Approved<br>15 August 2016   |
| D/2017/533         | Construction of a swimming pool, garage and fence at rear of site. Construction of front fence. New landscaping and associated works at 46a Denison Street, Rozelle. | Approved<br>30 November 2017 |

**5. Assessment**

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

**5(a) Environmental Planning Instruments**

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

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- 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 for a Statewide planning approach to the remediation of contaminated land. for a Statewide planning approach to the remediation of contaminated land. Clause 7 requires Council to consider whether land is contaminated and whether the site is suitable for the proposed development in its contaminated state or requires remediation.

The site has an established history of residential use since 1994. There is no evidence that the site is, or might be, contaminated or associated with activities that may generate contamination, other than typical building materials likely to be found in older buildings (e.g. lead paint and bonded asbestos).

Given the nature of the proposed works where that there are no substantial excavation works, it is considered it is satisfactory subject to standard conditions recommended in Attachment A of the report.

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

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

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

An assessment has been made in relation to SREP Sydney Harbour Catchment 2005. It is considered that the carrying out of the development is not contrary to the aims of the plan and is satisfactory with regard to the matters for consideration. The proposal is considered acceptable with regard to the SREP.

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

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

| Standard (maximum)  | Proposal                       | non compliance                | Compliance   |
|---|--------------------------------|-------------------------------|--------------|
| <b>Floor Space Ratio</b><br>Maximum permitted: 0.8:1  | 251.7 sqm or 1.07:1            | 41.1 sqm or 34.46%            | No           |
| <b>Landscape Area</b><br>Minimum permissible: 15%<br>(as conditioned)   | Nil or 0%<br><br>3 sqm or 1.3% | 100%<br><br>32.1 sqm or 91.5% | No<br><br>No |
| <b>Site Coverage</b><br>Maximum permissible: 60%  | 200.89 sqm or 85.9%            | 60.46 sqm or 43.1%            | No           |
| Note: The proposal reduces site coverage below the existing level by the introduction of an open courtyard at the rear of the strata lot. |                                |                               |              |

42a Denison and 7 Emily Street Rozelle comprise two strata titled lots; however the development standards must be calculated against the entire physical lot (i.e. both properties). The figures in this report were obtained from the preDA advice and submitted Clause 4.6 Exception which is discussed later in this report.

The following provides further discussion of the relevant issues:

#### Clause 1.2 – Aims of the Plan / Clause 2.3 – Zone objectives and Land Use Table

The proposal does not comply with the aims and objectives relating to streetscape compatibility, however this can be addressed by recommended conditions of consent as advised elsewhere in this report.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment: As detailed in the table above, the proposal will result in non-compliant landscaped area, site coverage and floor space ratio. It is considered that given the site and existing development, flexibility in this instance will result in improved amenity.

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

Comment: The applicant has provided the following justifications for the non-compliances:

*When utilising the total site area, the proposed development exceeds the three development standards for landscaped area, site cover and floor space ratio. In using the Lot 2 site area of 121.00 square meters, the proposed development achieves the maximum floor space ratio, but does not comply with landscaped area or site cover controls.*

Additional Notes:Landscaped Area

- *There is no existing landscaping on the site;*
- *Current provision of landscaping does not comply with current development standards*
- *The proposed development does not increase landscaping and is retained at 0.0% of both the total site area and 'Lot 2' site area*

Comment: A condition requires the provision of 3.5 sqm of landscaped area within the proposed courtyard. While this will not comply with the development standard it will improve the provision of landscaped area on the site.]

Site Cover

*... The history of development for the site indicates that at a minimum, there has been no landscaping on the site for over two decades. Given the extent of existing and historical development of the site, there is no opportunity to improve upon the permeability or*

landscaping of the site. Additionally, the proposed development seeks to improve upon the private open space of the site by opening up the existing structure in part to allow side-access, drainage and natural sunlight and ventilation.

In terms of environmental planning, the proposed development essentially results in the same existing environmental impacts as:

- The building footprint and extent of permeability is retained;
- The first floor is articulated to provide visual interest to a streetscape (Emily Street) that is predominately garages and rear vehicle access for the dwellings of Denison Street;
- Provisions for overland flow have been incorporated in to the design, with an opening to the northern side boundary

Comment: The introduction of a courtyard provides an opportunity for on site landscaping.

Compliance with the standard is unreasonable and unnecessary in the circumstance of the case due to the site's history of development, existing extent of built-upon area and existing provision of landscaping (i.e. the site currently does not provide any landscaped area). Reducing the existing building footprint to achieve site cover is not a reasonable solution to meet current numerical standards.

...Given that the existing site and dwelling(s) exceed the current controls for FSR and Site Cover to the ground floor level, and therefore have limited provision of landscaped area and private open space, reduction to the proposed first floor addition would not result in an improvement to environmental performance. Furthermore, the shadow diagrams indicate compliance with the provision of solar access to the southern neighbour; high-level windows maintain privacy; and the location of the first floor within the context of the locality and within site restrictions indicates no impact to shared views or potential view corridors. The submitted BASIX Certificate for the additions ensures that despite non-compliance with FSR, the residence meets energy efficiency requirements under NSW State Legislation,

[Note: Council's assessment of against the solar access controls indicate that the proposal does not meet the applicable standards, see assessment against C3.9 – Solar Access of Leichhardt Development Control Plan 2013 in Part 5(c) of this report below.]

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and the submissions regarding site coverage and floor space ratio are considered to be well founded in this instance. The submission justifying the provision of no on site landscaping is not supported. A condition of development consent requires the provision of 3.5 sqm of landscaped area on site. This amount of landscaping is still below the level required by the development standard but is acceptable as it increases the amount of landscaped area on the site above existing levels. Subject to the recommended conditions the proposal will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standards and General Residential zoning as demonstrated below:

- The proposal does not result in any adverse amenity impacts to the surrounding properties.
- The proposed first floor (as conditioned) will not have a significant adverse impact on the streetscape or desired future character of the area.

The Secretary has provided concurrence.

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

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

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

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

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

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

### 5(b) Draft Environmental Planning Instruments

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

- Draft State Environmental Planning Policy (Environment)

The proposed alterations and additions raise no issues with regard to the Draft State Environmental Planning Policy (Environment)

### 5(c) Development Control Plans

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

| Part   | Compliance     |
|--|----------------|
| <b>Part A: Introductions</b>                                     |                |
| Section 3 – Notification of Applications                         | Yes            |
| <b>Part B: Connections</b>                                       |                |
| B1.1 Connections – Objectives                                    | Yes            |
| B2.1 Planning for Active Living                                  | Not applicable |
| B3.1 Social Impact Assessment                                    | Not applicable |
| B3.2 Events and Activities in the Public Domain (Special Events) | Not applicable |
| <b>Part C</b>  |                |
| C1.0 General Provisions  | No             |
| C1.1 Site and Context Analysis                                   | No             |
| C1.2 Demolition  | Not applicable |
| C1.3 Alterations and additions                                   | No             |



|   |                |
|---|----------------|
| C1.4 Heritage Conservation Areas and Heritage Items                             | Not applicable |
| C1.5 Corner Sites   | Not applicable |
| C1.6 Subdivision  | Not applicable |
| C1.7 Site Facilities  | Yes            |
| C1.8 Contamination  | Not applicable |
| C1.9 Safety by Design   | Yes            |
| C1.10 Equity of Access and Mobility   | Not applicable |
| C1.11 Parking   | Not applicable |
| C1.12 Landscaping   | No             |
| C1.13 Open Space Design Within the Public Domain                                | Not applicable |
| C1.14 Tree Management   | Not applicable |
| C1.15 Signs and Outdoor Advertising   | Not applicable |
| C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings | Not applicable |
| C1.17 Minor Architectural Details   | Not applicable |
| C1.18 Laneways  | Not applicable |
| C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls      | Not applicable |
| C1.20 Foreshore Land  | Not applicable |
| C1.21 Green Roofs and Green Living Walls  | Not applicable |
| <b>Part C: Place – Section 2 Urban Character</b>                                |                |
| Suburb Profile  |                |
| C2.2.5.2 Easton Park distinctive neighbourhood, Rozelle                         | No             |
| <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   | Not applicable |
| C3.5 Front Gardens and Dwelling Entries   | No             |
| C3.6 Fences   | Not applicable |
| C3.7 Environmental Performance  | Not applicable |
| C3.8 Private Open Space   | No             |
| 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                          | Not applicable |
| C3.14 Adaptable Housing   | Not applicable |
| <b>Part C: Place – Section 4 – Non-Residential Provisions</b>                   |                |
| Not applicable  |                |
| <b>Part D: Energy</b>   |                |
| Section 1 – Energy Management   |                |
| Not applicable  |                |
| Section 2 – Resource Recovery and Waste Management                              |                |
| D2.1 General Requirements   | Yes            |
| D2.2 Demolition and Construction of All Development                             | Yes            |
| D2.3 Residential Development  | Yes            |
| D2.4 Non-Residential Development  | Not applicable |
| D2.5 Mixed Use Development  | Not applicable |
| <b>Part E: Water</b>  |                |
| Section 1 – Sustainable Water and Risk Management                               |                |
| E1.1 Approvals Process and Reports Required With Development                    |                |

|   |                |
|---|----------------|
| Applications  |                |
| E1.1.1 Water Management Statement                           | Yes            |
| E1.1.2 Integrated Water Cycle Plan                          | Not applicable |
| E1.1.3 Stormwater Drainage Concept Plan                     | Yes            |
| E1.1.4 Flood Risk Management Report                         | Not applicable |
| E1.1.5 Foreshore Risk Management Report                     | Not applicable |
| E1.2 Water Management                                       |                |
| E1.2.1 Water Conservation                                   | Not applicable |
| E1.2.2 Managing Stormwater within the Site                  | Yes            |
| E1.2.3 On-Site Detention of Stormwater                      | Not applicable |
| E1.2.4 Stormwater Treatment                                 | Not applicable |
| E1.2.5 Water Disposal                                       | Yes            |
| E1.2.6 Building in the vicinity of a Public Drainage System | Not applicable |
| E1.2.7 Wastewater Management                                | Yes            |
| E1.3 Hazard Management                                      | Not applicable |
| E1.3.1 Flood Risk Management                                | Not applicable |
| E1.3.2 Foreshore Risk Management                            | Not applicable |
|   |                |
| <b>Part F: Food</b>   | Not applicable |
|   |                |
| <b>Part G: Site Specific Controls</b>                       | Not applicable |

The following provides discussion of the relevant issues:

C1.0 General Provisions / C1.1 Site and Context Analysis / C1.3 Alterations and additions / C3.1 Residential General Provisions / C3.3 Elevation and Materials / C3.5 Front Gardens and Dwelling Entries

The proposal generally does not comply with these controls which aim to keep alterations and additional compatible with the streetscape and existing dwellings. The existing dwelling is out of character in the area and while the use of a box form first floor will exacerbate this, the box form has the advantage of minimising the bulk of the addition and resultant overshadowing.

A condition is proposed requiring the following amendments to the plans to minimise the bulk of the proposed addition and subsequent overshadowing:

- c) *That portion of the proposed first floor located to the south-east of the existing ridge is to be reduced in height by 300 mm to RL 20.3.*
- d) *The proposed first floor is to be set back 350 mm from south-eastern boundary. The internal floor plan and the location of W2 in the north-eastern window may be adjusted accordingly. Note: the first floor must not be relocated 350 mm closer to the north-western boundary but must be reduced in width by 350 mm.*

Accordingly, the proposal is recommended for approval despite this non-compliance.

C1.12 Landscaping

The existing site has no landscaped area and it is proposed to maintain that situation; this approach is not supported. As advised in the preDA advice, a condition of development consent will require the provision of a landscaped bed with a minimum depth of 1 m along the external unroofed areas of the courtyard to ensure that the site is provided with some site landscaping.

C2.2.5.2 Easton Park distinctive neighbourhood / C3.2 Site Layout and Building Design

### Building wall height

A 3.6 m building wall height applies to the Easton Park distinctive neighbourhood, Rozelle. The top section of the proposed first floor extension encroaches the building envelope created using a 3.6 m building wall height and a plane inclined at 45°. The use of a roof pitched away from the street would be incongruous in this context as the buildings fronting Emily Street have gabled roofs, thus the encroachment into the building envelope is considered warranted in this instance.

### Building location zone

Only 1, 3 and 7 Emily Street front onto the western side of Emily Street with the five intervening properties being the rear yards of Denison Street properties; only the subject property currently contains a first floor. .

*The preDA advice states that a new upper floor BLZ is being established to Western side of Emily Street and the applicant will have to demonstrate why the additions should be supported. As suggested at the meeting, the R.L for the new parapets must be reduced by no less than 400mm to reduce bulk.*

Subject to the proposed conditions including reducing the height of the parapet on the southern side of the ridge by 300mm and setting the first floor back an additional 350 mm from the southern boundary, the proposal is considered to meet the criteria for establishing a new building location zone in that:

- Amenity to adjacent properties in terms of sunlight and privacy is protected;
- The proposed development will not have a significant adverse impact on the existing streetscape which primarily comprises garages and the back yards of dwellings on the western side of Emily Street;
- The proposal introduces private open space to a property that currently has none through the transfer of floor space from ground floor to first floor level; and
- The height of the development has been kept to a minimum.

### Side setback

The proposed first floor complies with the side boundary setback graph on the northern but not the southern side. The control requires a setback of 1.82 m for the southern wall of the proposed first floor given its height of 5.7 metres. The proposal entails a setback of 1.48 metres and therefore does not comply with the numerical requirements. A condition of development consent will result the southern elevation of the proposed first floor to be setback 350 mm from its current position to ensure compliance with the side set back control. This is considered warranted in this instance given the overshadowing impacts on the adjacent private open space that result from the proposal and the beneficial impact the reduction in the proposed first floor will have on the streetscape.

### C3.8 Private Open Space

The site currently contains no area of private open space and it is proposed to demolish part of the roof in the north-western corner to create an open courtyard in this area to provide an area of private open space for the dwelling.



Figure 2: Perspective of proposed courtyard from preDA documentation.

The private open space area generally meets the objectives of the control being a private area with access to sunlight, located off the dwellings main living area. However, the controls specify a minimum area for private open space of 16 sqm with a minimum dimension of 3m for semi-detached dwellings. The courtyard will not meet the minimum dimensions or area specified, being 2.7 x 2.7 m. While the introduction of an area of private open space is applauded, it is recommended that the dimensions be increased to 3 m x 3 m to increase its usability and permitting the insertion of a landscaped bed in the courtyard.

C3.9 Solar Access

The relevant solar access controls state:

*C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*

*C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

The following table outlines the impact of the proposal on the private open space of the adjoining dwelling at 44 Denison Street, Rozelle.

| Time    | POS size (sqm) | Existing Solar Access to POS (sqm) | Existing Solar Access to POS (%) | Proposed Solar Access to POS (sqm) | Proposed Solar Access to POS (%) | Change (sqm) | Existing Solar Access Retained (%) |
|---------|----------------|------------------------------------|----------------------------------|------------------------------------|----------------------------------|--------------|------------------------------------|
| 9:00am  | 69.9           | 54.6                               | 78.11%                           | 53                                 | 75.82%                           | -1.6         | 97.07%                             |
| 12:00pm | 69.9           | 26.6                               | 38.05%                           | 17.7                               | 25.32%                           | -8.9         | 66.54%                             |
| 15:00pm | 69.9           | 1.1                                | 1.57%                            | 1                                  | 1.43%                            | -0.1         | 90.91%                             |

Note: Part of the rear yard of 44 Denison Street contains a hard stand car parking space, thus does not constitute private open space, as demonstrated in the photo below.



Figure 3: Aerial photograph of site and neighbouring property. Source: Latitude

The proposal does not comply with the control and is contrary to the preDA advice which states: *a new upper floor BLZ is being established to the western side of Emily Street, and the applicant will have to demonstrate why the additions should be supported and demonstrate compliance with objectives and controls to the C3.9 - solar access to the rear of No. 44 Denison Street. In the event that solar compliance is not achieved the first floor will need to be revisited to reduce height.*

A condition of development consent is proposed to reduce the height of that part of the first floor roof to the south of the existing ridge by 300 mm which should reduce the overshadowing of the neighbouring private open space to acceptable levels.

It is noted that the preDA advised a reduction of parapet R.L by no less than 400mm (i.e. from 20.42 to 20.02) whereas the height of the parapet was actually increased in this proposal to RL 20.6. The reduction in height by 300 mm would require no changes to the floor plan, as involves a reduction in the ensuite and robe ceiling height from 2.4 m to 2.1 m.

### C3.11 Visual Privacy

An objection was received from 42 Denison Street, Rozelle to the adjoining property to the north-west *on the grounds of loss of privacy to our property next door at 42 Denison St. In particular the loss of privacy to the backyard and rear of house where our living area and bedrooms are located.*

No privacy impacts are considered to result from the proposal which includes the following openings in the north-western elevation with faces 42 Denison Street, Rozelle:

- First floor bedroom window with a sill height of 1.6 m;
- Two skylights to the kitchen;
- Demolition of a portion of the existing roof in the north-western corner of the existing dwelling to form a courtyard with access gate; and
- Highlight windows with a sill height of 3.3 m to ground floor living room.

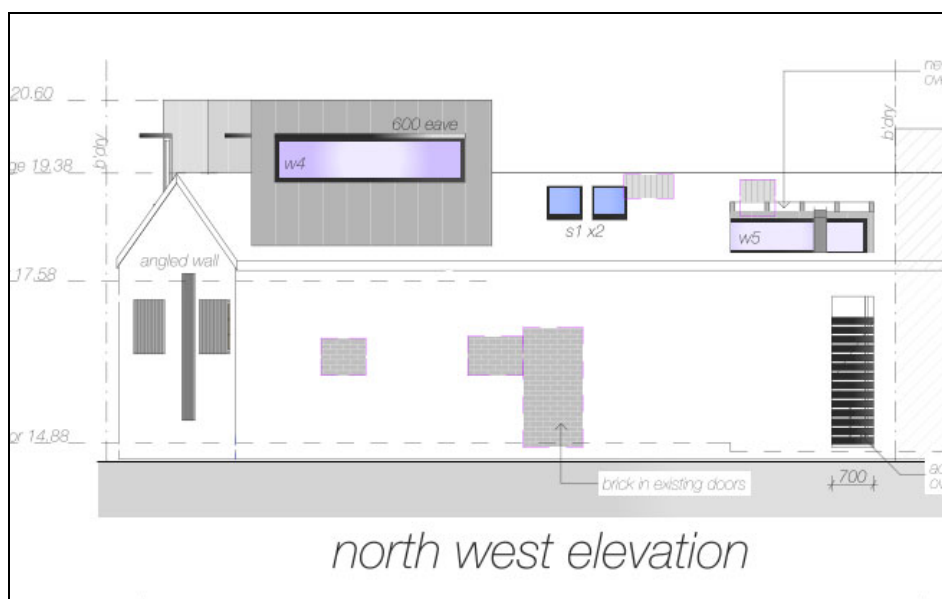


Figure 4: North-western elevation showing proposed openings.

None of the above openings would require screening.

#### 5(d) The Likely Impacts

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

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

The site is zoned R1 – General Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

#### 5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. One submission was received. The following issue raised in the submission has been discussed in this report:

- Privacy implications from the extended first floor – see Section 5(c).

#### 5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Development Engineer – No objection subject to standard conditions.

## 6(b) External

The proposal was not referred to any external bodies.

## 7. Section 7.11 Contributions

Section 7.11 contributions are not payable for the proposal.

## 8. Conclusion

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6(3) of the LEP in support of the contravention of the development standard for 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 and Clause 4.4 – Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds, the proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent on a deferred commencement basis to Development Application No: D/2018/375 for Building works to existing residence, including ground floor internal renovations, and a first floor addition at 7 Emily Street, Rozelle subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### DEFERRED COMMENCEMENT

1. The following condition is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979 and this Consent will not operate and it may not be acted upon until the Council is satisfied as to the following matter(s):
  - a) The proposed courtyard is to be increased in size from 2640 mm x 2700 mm to 3m x 3m internally.
  - b) An area of 3.5 sqm that meets the definition of landscaped area under Leichhardt Local Environmental Plan 2013 and has a minimum dimension of 1 m is to be provided within the proposed courtyard.
  - c) That portion of the proposed first floor located to the south-east of the existing ridge is to be reduced in height by 300 mm to RL 20.3.
  - d) The proposed first floor is to be set back 350 mm from south-eastern boundary. The internal floor plan and the location of W2 in the north-eastern window may be adjusted accordingly. Note: the first floor must not be relocated 350 mm closer to the north-western boundary but must be reduced in width by 350 mm.

Evidence of the above matter(s) must be produced to Council or its delegate within 2 years of the date of determination of this consent otherwise the Consent will not operate.

### CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No. D/2018/375 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

| Plan Reference     | Drawn By           | Dated     |
|--------------------|--------------------|-----------|
| Roof Plan #174-1   | Precision Planning | 17/7/2018 |
| Floor plans #174-3 | Precision Planning | 17/7/2018 |
| Elevations #174-4  | Precision Planning | 17/7/2018 |
| Sections #174-6    | Precision Planning | 17/7/2018 |

| Document Title                                   | Prepared By   | Dated     |
|--|---|-----------|
| BASIX Certificate A310513                        | Precision Planning Pty Ltd  | 11/7/2018 |
| Stormwater Drainage Concept Plan 2018-071-H1-A   | Burgess, Arnott & Grava Pty Ltd<br>Consulting Structural, Civil and Hydraulic Engineers | 2/5/2018  |
| Site Waste Minimisation and Management Plan      | Krystal Narbey  | 22.6.18   |
| Schedule of External Colours and Materials       | Precision Planning  | 19/3/18   |
| Cover Page / BASIX requirements Drawing Set #174 | Precision Planning  | 11/7/18   |

and details submitted to Council with the application for development consent as amended by the matters referred to in Part A of this Determination and the following conditions.



**DEMOLITION CONDITIONS**

The following conditions are imposed to ensure compliance with relevant legislation and Australian Standards, and to ensure that the amenity of the neighbourhood is protected. A Construction Certificate is not required for Demolition.

3. At least 7 days before any demolition work commences:
  - a. the Council must be notified of the following particulars:
    - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
    - ii. the date the work is due to commence and the expected completion date; and
  - b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.
4. Unless otherwise approved by Council, demolition works shall only be permitted between the hours of 7:00am to 5:00pm, Mondays to Fridays (inclusive) with no demolition permitted on Saturdays, Sundays or Public Holidays.
5. All demolition work is to be carried out in accordance with the requirements of the relevant Australian Standard(s).
6. Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by Safework NSW.
7. All asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal docket must be retained by the person performing the work for at least 3 years and be submitted to Council on request.
8. All demolition waste must be transported to a facility or place that can lawfully be used as a waste facility for those wastes.
9. Council and the Principal Certifying Authority (if Council is not the PCA) must be notified as soon as practicable if any information is discovered during demolition or construction work that has the potential to alter previous conclusions about site contamination.
10. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and is to be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to the property owner of the identified property, before work commences (including demolition), on the buildings on the adjoining property at 42A Denison Street, Rozelle, if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.

**BEFORE COMMENCING EXCAVATION AND/OR BUILDING WORK**

11. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign is to be maintained at all times until all work has been completed. The sign must include:
  - a) The name, address and telephone number of the PCA;

- b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
12. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
13. The following facilities must be provided on the site:
- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.
- Facilities must be located so that they will not cause a nuisance.
14. Sediment control devices must be installed before the commencement of any work and must be maintained in proper working order to prevent sediment discharge from the construction site.
15. All street trees adjacent to the site must be protected at all times during demolition and construction. Details of the method(s) of protection of such trees must be submitted to and be approved by Council before commencing works.
16. All approved street tree protection measures must be installed prior to commencing any work and must be maintained for the duration of construction.
17. 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.

#### Protection of Adjoining and Public Land

18. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land (including a public road or other public place), the person causing the excavation to be made:
- a) must preserve and protect the adjoining building from damage, and
  - b) if necessary, must underpin and support the adjoining building in accordance with relevant Australian Standards, and
  - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
19. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before any work commences (including demolition).

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

20. 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) | Min \$2,152.50 |
| Inspection fee (FOOTI)  | \$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.

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

21. Stormwater Drainage Concept Plans (SDCP) submitted with the development application must be amended to address the following issues:
- a) All pipe diameter and invert levels, pits surface and invert levels and proposed finished surface ground levels shall be shown on the drainage plans.
  - b) 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.
  - c) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
  - d) A minimum 150mm step up must be provided between all new 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

22. Before the issue of any Construction Certificate amended plans must be submitted to the Certifying Authority's satisfaction indicating that the new "access gate" in the north-western elevation complies with the following:

- a) Comprises suitable fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level.
- b) Provides suitably sized openings to convey runoff away from the dwelling in the event that the site drainage system becomes blocked or its capacity is exceeded.

The boundary fence is to be increased in height to 1.8 m above the adjacent ground level adjacent to the proposed access gate.

23. 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.

24. 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.

25. Stormwater runoff from all pervious and impervious surfaces of the development site must be collected and discharged by means of a gravity pipe system to the kerb and gutter in Denison Street. The plans must show the site predevelopment and post-development pervious and impervious areas. The design must be prepared by a qualified practicing Civil Engineer and submitted for Council's approval before the issue of a construction certificate.

26. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the person acting on this consent 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 must be paid before to the issue of a Construction Certificate.
27. The existing building must be upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke detection systems in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
28. Before the issue of a Construction Certificate, Architectural Plans accompanied by a Structural Certificate must be provided to the Principal Certifying Authority. The Certificate must verify that the architectural plans that are the subject of the Construction Certificate application do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.
29. 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 to the satisfaction of the Principal Certifying Authority before the issue of a Construction Certificate. 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.
30. The approved plans must be checked online with Sydney Water Tap In 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. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

The Certifying Authority must ensure that the appropriate approval has been provided before the issue of a Construction Certificate.

31. Sediment control devices must be constructed and maintained in proper working order to prevent sediment discharge from the construction site. Sediment control plans and specifications must be submitted to the Principal Certifying Authority before the issue of a Construction Certificate.

#### DURING WORKS

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

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

In the case that a standing plant or special 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:

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

The person acting on this consent 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.

33. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
34. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council.
35. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority.
36. The person acting on this consent must comply with the requirements of the Dividing Fences Act in respect to the alterations and additions to the boundary fences.

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

37. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
  - a) A copy of the determination;
  - b) Copies of any documents that were lodged with the Occupation Certificate application;
  - c) A copy of Occupation Certificate, if it was issued;
  - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
  - e) A copy of any missed inspections;
  - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.

38. The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved plan, and must be maintained at all times to Council's satisfaction.
39. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
40. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).
41. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
42. A second Dilapidation Report including colour photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:
  - Compare the post construction report with the pre-construction report required by these conditions,
  - Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with the Principal Certifying Authority prior to the issue of an Occupation Certificate.

43. Before the issue of an Interim or Final Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of council before being displayed.
44. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. It is responsibility of applicant's contractor to verify location of the utility services with the relevant service authority. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
45. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".

#### **PRESCRIBED CONDITIONS**

##### **A. BASIX Commitments**

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

In this condition:

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

**B. Building Code of Australia**

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

**C. Home Building Act**

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

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

**D. Site Sign**

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



- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
  - 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.
- E. Condition relating to shoring and adequacy of adjoining property**
- 1) For the purposes of section 4.17(11) of [the Act](#), it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - a) protect and support the adjoining premises from possible damage from the excavation, and
    - b) where necessary, underpin the adjoining premises to prevent any such damage.
  - 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

#### NOTES

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

- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
  - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
  - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
  - f) Development Application for demolition if demolition is not approved by this consent.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.
9. Footpath and kerb and gutter damaged during demolition/construction works are required to be reconstructed by your own contractor at no cost to Council. You or your contractor must complete an application for 'Construction of Vehicle Crossing and Public Domain Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability

**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.





**Precision Planning Pty Ltd 2018**  
 Suite 36/401 Pacific Highway, Artarmon  
 email: [info@precisionplanning.com.au](mailto:info@precisionplanning.com.au)  
 Principal Building Designer - Daniel Sutton  
 Contact: 0419 110 281

**Current Notable Spec:**  
 This Plan is intended for Council's Consideration only.  
 It is not to be used as a basis for any other construction or for any other purpose.  
 The Plan is intended for Council's Consideration only.  
 It is not to be used as a basis for any other construction or for any other purpose.  
 The Plan is intended for Council's Consideration only.  
 It is not to be used as a basis for any other construction or for any other purpose.

|          |      |
|----------|------|
| By       | date |
| revision |      |

**DA issued for construction**  
 Alterations and Additions  
 7 Emily Street,  
 Rozelle, 2039  
 1 of 2, SIP 242955  
 for Maurice and Linda Scoll

Date: 17/07/2018  
 Drawn: MS  
 Checked: MS  
 Scale: 1:100 @ A3  
 Drawing No. A174 - 6

**Glazing Schedule**

Legend - Glazing

| reference          | glass type                           | Panel in Conjunction With BASIX Certificate #A173C-3 |
|--------------------|--------------------------------------|--|
| improved aluminium | single clear (4mm or 7.62) SHCO 0.78 |  |
| improved aluminium | single clear (4mm or 7.62) SHCO 0.78 |  |
| improved aluminium | single clear (4mm or 7.62) SHCO 0.78 |  |

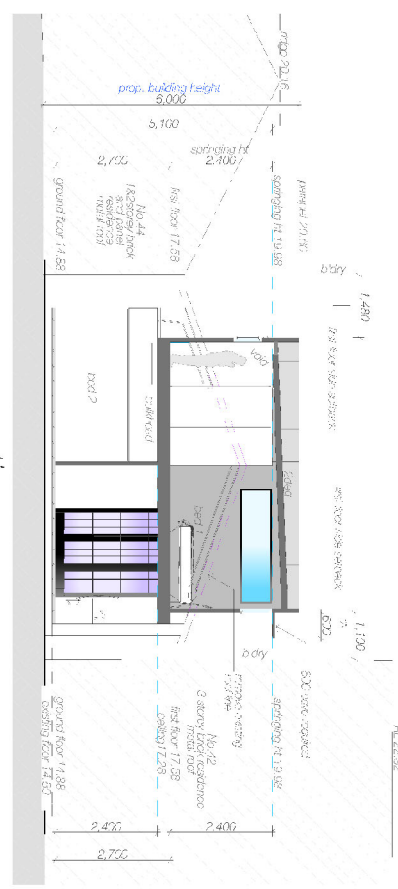
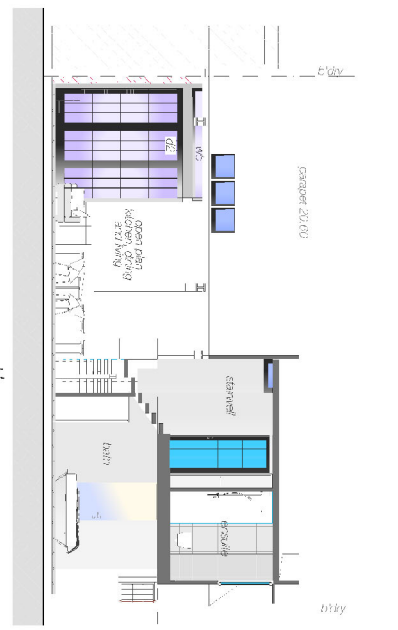
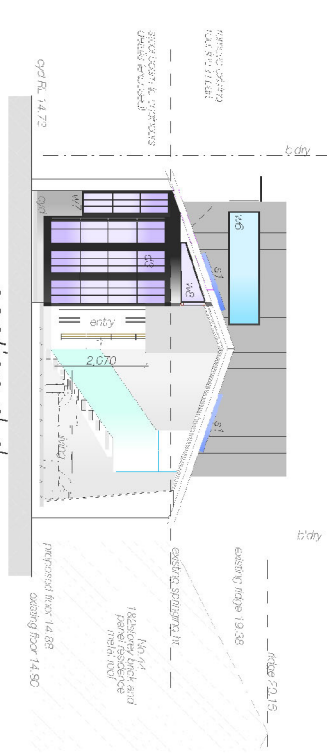
builder to confirm sizes on-site prior to order

basix table

| glazing            | area | u-value | shgc | shco |
|--------------------|------|---------|------|------|
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |

basix table

| glazing            | area | u-value | shgc | shco |
|--------------------|------|---------|------|------|
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |
| improved aluminium | 1.20 | 0.78    | 0.78 | 0.78 |





existing



proposed

The 3D perspectives, including when 3D profiles are a visual representation only for a general sense of the frame work and/or the color of walls, lights and site has been provided for general effect and is not indication of final finishes, colours, fixtures or materials.  
 Consult with the owner of the property for final design, materials, colours and finishes.



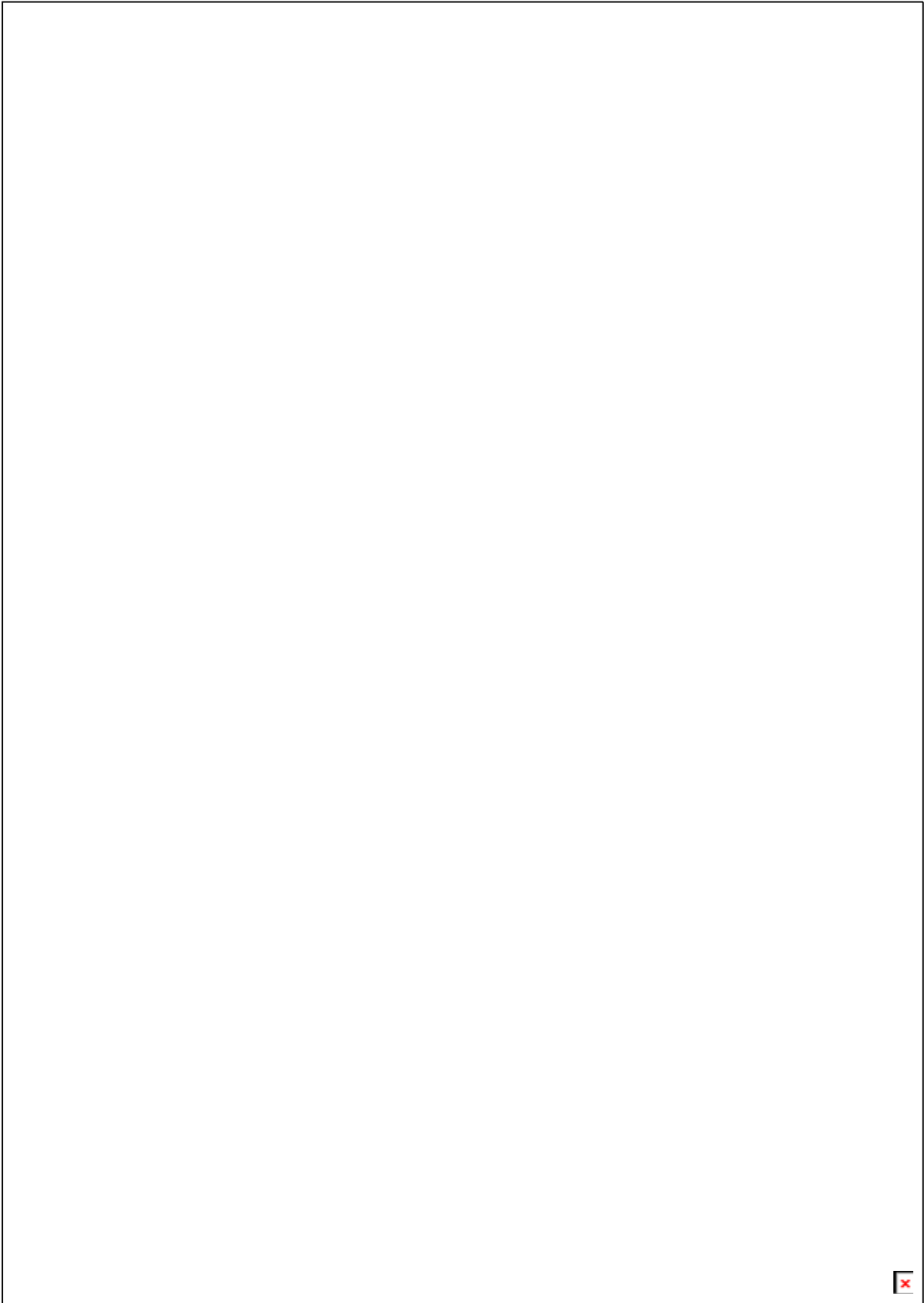
**Precision Planning Pty Ltd 2018**  
 Suite 36/401 Pacific Highway Artarmon  
 email: info@precisionplanning.com.au  
 Principal Building Designer - Daniel Sutton  
 Contact: 0416 110 281

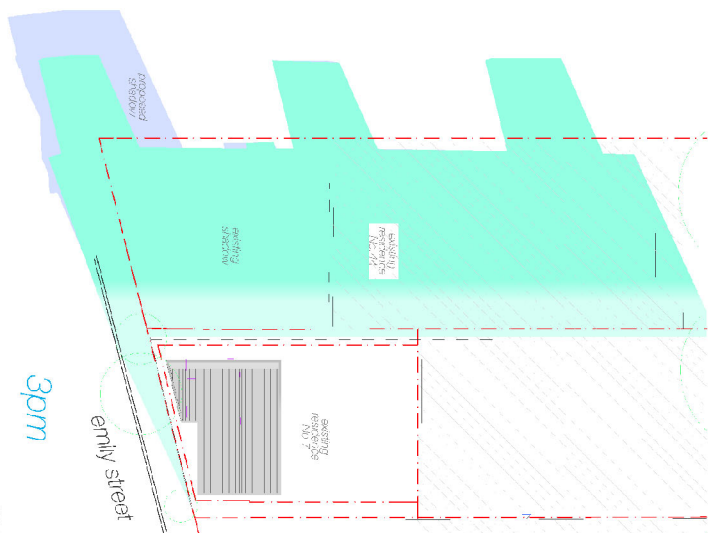
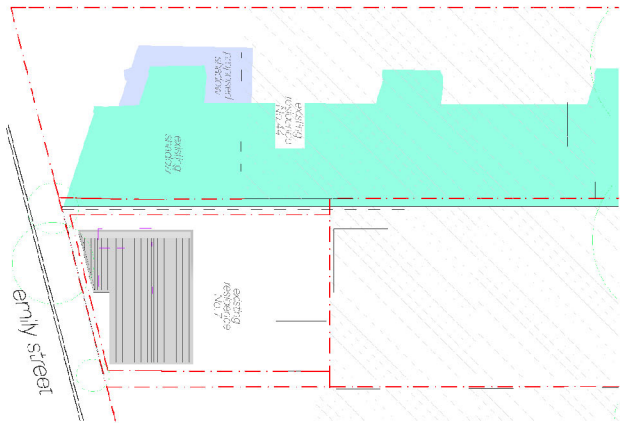
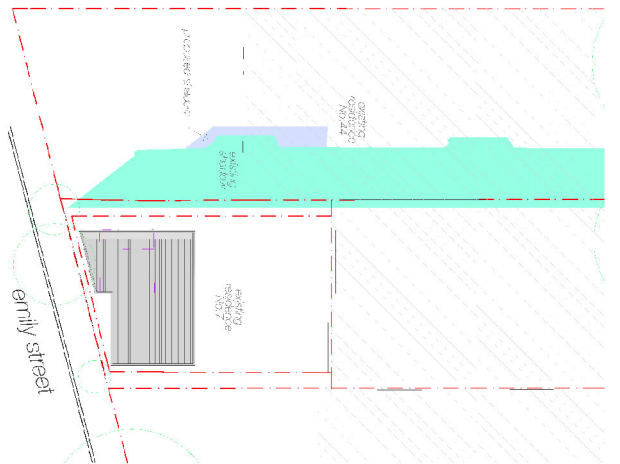
**General Note: Spec**  
 This Plan is intended for Council/Contra Submission only.  
 All other technical requirements for the project will be provided from the relevant authority. The client is responsible for ensuring that all relevant technical requirements are met. The client is responsible for ensuring that all relevant technical requirements are met. The client is responsible for ensuring that all relevant technical requirements are met.  
**Technical Requirements:**  
 For further information please contact the relevant authority. The client is responsible for ensuring that all relevant technical requirements are met. The client is responsible for ensuring that all relevant technical requirements are met. The client is responsible for ensuring that all relevant technical requirements are met.

|     |       |            |
|-----|-------|------------|
| Typ | 19/10 | 19/10/2018 |
|-----|-------|------------|

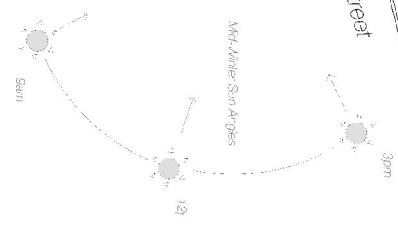
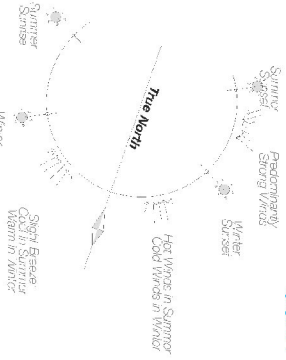
**DA Issue: not for construction**  
 Alterations and Additions  
 7 Emily Street  
 Rozelle 2039  
 Lot 2, SP 64/255  
 for Mauro and Linda Scott

|            |            |
|------------|------------|
| Date       | 12/07/2015 |
| Drawn      | DS         |
| Checked    | KN         |
| Scale      |            |
| Drawing No | 41/1 - 5   |





shadow diagrams plan on June 21: winter solstice



10 Precision Planning Pty Ltd 2018  
 Suite 35/401 Pacific Highway Ararman  
 Email: info@precisionplanning.com.au  
 Principal Building Designer - Daniel Sullivan  
 Contact: 0416 110 281

General Notes:  
 This Plan is prepared for Council. Council supervision only.  
 All other notes and dimensions on this plan shall prevail over any dimensions or notes on this plan.  
 The client is responsible for obtaining all necessary approvals.  
 The client is responsible for obtaining all necessary approvals.  
 The client is responsible for obtaining all necessary approvals.

|    |      |          |
|----|------|----------|
| by | date | revision |
|    |      |          |

DA Issue: not for construction  
 Alterations and Additions  
 7 Emily Street,  
 Rozelle 2039  
 Lot 2, SP 64265  
 for Maure and Linda Scott

|             |            |
|-------------|------------|
| Date        | 17/07/2018 |
| Drawn       | J/S        |
| Checked     | PN         |
| Scale       | 1:500 @ A3 |
| Drawing No. | 4174 - 9   |

## Attachment C – Exceptions to Development Standards



Inner West Council  
7-15 Wetherill Street  
Leichhardt NSW 2040

Re: Clause 4.6 Variation — 7 Emily Street, Rozelle

### Leichhardt Local Environmental Plan 2013

#### Part 4: Principal Development Standards

#### 4.6: Exceptions to Development Standards

Clause 4.6 of the Leichhardt LEP 2013 has the following objectives:

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

Clause 4.6(3) states that:

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 following statement provides the written request and justification for contravening the numerical standard within **Clause 4.3A and Clause 4.4** of the Leichhardt LEP 2013.

**Property:** 7 Emily Street, Rozelle  
SP64255 ("Lot 2")

**Zone:** R1 – General Residential

**Drawing Ref:** #174 -1, 2, 3, 4, 5, 6, 7, 8, 9 and 10

**Extent of Variation(s)**

**Total Site Area:** 234.0 m<sup>2</sup> (approx. per PreDA)  
**7 Emily St (Lot 2) Area:** 121.00 m<sup>2</sup>

| Control   | Proposed  | Compliance | Non-Compliance       |
|---|---|------------|----------------------|
| <b>FSR</b><br>(Total Site) 0.80:1<br>(Lot 2) 0.90:1   | (Total Site) 1.07:1 (252sqm)<br>(Lot 2) 0.90:1(109.31sqm) | No<br>Yes  | 64.8sqm<br>NA        |
| <b>Landscaped Area</b><br>(Total Site) 15% - 35.1m <sup>2</sup><br>(Lot 2) 15% - 18.15 m <sup>2</sup> | (Total Site) 0.0<br>(Lot 2) 0.0                           | No<br>No   | 35.1sqm<br>18.15sqm  |
| <b>Site Cover</b><br>(Total Site) 60% - 140.4m <sup>2</sup><br>(Lot 2) 60% - 72.6m <sup>2</sup>       | (Total Site) 86% (200.89sqm)<br>(Lot 2) 80% (96.40sqm)    | No<br>No   | 60.29sqm<br>23.80sqm |



Clause 4.6 Variation to: Floor Space Ratio, Landscaping and Site Coverage  
 7 Emily Street, Rozelle  
 Dated: 22.6.18

When utilising the total site area, the proposed development exceeds the three development standards for landscaped area, site cover and floor space ratio. In using the Lot 2 site area of 121.00 square meters, the proposed development achieves the maximum floor space ratio, but does not comply with landscaped area or site cover controls.

**Additional Notes:**

**Landscaped Area**

- There is no existing landscaping on the site;
- Current provision of landscaping does not comply with current development standards
- The proposed development does not increase landscaping and is retained at 0.0% of both the total site area and 'Lot 2' site area

**Site Cover**

- The existing building footprint exceeds the current numerical standard for site cover

**Floor Area**

- The two residences combined currently exceed current controls for maximum floor area and FSR
- The proposed development when viewed as development on "Lot 2" only achieves compliance with the maximum FSR

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**Variations to LLEP2013**

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**Clause 4.3A: Landscaped Areas for Residential Accommodation in Zone R1**

**Objectives:**

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

**Control:** Development to include landscape area of at least 15% of the site area  
**Proposed:** 0%

**Control:** Site Coverage not to Exceed 60%  
**Proposed:** 86% (Total) and 80% (Lot 2)

**What are the environmental planning grounds that justify contravening the development standard?**

The total site area of SP64255 is 234.00 square meters (approx. following from the PreDA), with 7 Emily Street (Lot 2) having a site area of 121 square meters. The history of development for the site indicates that at a minimum, there has been no landscaping on the site for over two decades.

Clause 4.6 Variation to: Floor Space Ratio, Landscaping and Site Coverage  
 7 Emily Street, Rozelle  
 Dated: 22.6.18

Given the extent of existing and historical development of the site, there is no opportunity to improve upon the permeability or landscaping of the site. Additionally, the proposed development seeks to improve upon the private open space of the site by opening up the existing structure in part to allow side-access, drainage and natural sunlight and ventilation.

In terms of environmental planning, the proposed development essentially results in the same existing environmental impacts as:

- The building footprint and extent of permeability is retained;
- The first floor is articulated to provide visual interest to a streetscape (Emily Street) that is predominately garages and rear vehicle access for the dwellings of Denison Street;
- Provisions for overland flow have been incorporated in to the design, with an opening to the northern side boundary

**Is the proposed development consistent with the objectives of the standard, and of the relevant zone?**

The density of the site and building footprint is not modified by the proposed development. The first floor addition is the primary element of the proposed development, and this addition does not affect landscaping to the existing ground floor. Additionally, adequate provisions for overland stormwater flow have been provided for within the design with an opening to the existing northern side boundary wall.

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

Compliance with the standard is unreasonable and unnecessary in the circumstance of the case due to the site's history of development, existing extent of built-upon area and existing provision of landscaping (i.e. the site currently does not provide any landscaped area). Reducing the existing building footprint to achieve site cover is not a reasonable solution to meet current numerical standards.

7 Emily Street, Rozelle is also within a unique circumstance, as it is the only dwelling that has primary frontage upon Emily Street on the western side of the streetscape.

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

There are sufficient environmental planning grounds to justify contravening the landscaped area and site coverage standards, as the proposed development does not modify the existing building footprint, or provision of landscaping.

**Clause 4.4: Floor Space Ratio**

**Objectives:**

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

|                  |                       |                                   |
|------------------|-----------------------|-----------------------------------|
| <b>Control:</b>  | 0.8:1 for total site* | 0.9:1 for Lot 2 (7 Emily Street)* |
| <b>Proposed:</b> | 1.07:1 for total site | 0.9:1 for Lot 2 (7 Emily Street)  |
|                  | *based on site area   |                                   |

Clause 4.6 Variation to: Floor Space Ratio, Landscaping and Site Coverage  
7 Emily Street, Rozelle  
Dated: 22.6.18

**What are the environmental planning grounds that justify contravening the development standard?**

The total site area of SP64255 compared to that of just "Lot 2" for 7 Emily Street, Rozelle results in different numerical standards and compliances for the proposed gross floor area and consequently the proposed Floor Space Ratio. Given that the existing site and dwelling(s) exceed the current controls for FSR and Site Cover to the ground floor level, and therefore have limited provision of landscaped area and private open space, reduction to the proposed first floor addition would not result in an improvement to environmental performance. Furthermore, the shadow diagrams indicate compliance with the provision of solar access to the southern neighbour; high-level windows maintain privacy; and the location of the first floor within the context of the locality and within site restrictions indicates no impact to shared views or potential view corridors. The submitted BASIX Certificate for the additions ensures that despite non-compliance with FSR, the residence meets energy efficiency requirements under NSW State Legislation.

**Is the proposed development consistent with the objectives of the standard, and of the relevant zone?**

The proposed development is consistent with the objectives of the standard and R1 General Residential zone by:

- Expanding upon the housing needs of the community;
- Improving the land use of the site and expanding upon the amenities of the dwelling's occupants;
- Improving upon the built context and streetscape of the dwelling;
- Protecting and enhancing the amenity of existing and future residents by providing a reasonable floor area that can be utilised without affecting public or neighbouring amenity;
- Utilising reasonable external colours and materials to recess the impact of the first floor addition;
- Improving upon the streetscape amenity of Emily Street, particularly as 7 Emily Street is the only dwelling with frontage on the western side of Emily Street;

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

Compliance with the development standard (FSR) is unreasonable or unnecessary in the circumstance of the case as the subject site "Lot 2" is a small allotment with numerical restrictions that negatively impact the potential of the site when compared to the controls/objectives of the Leichhardt LEP, DCP and R1 General Residential Zone. Additionally, inclusion of the entire site for SP64255 implicates that the existing FSR for the site does not comply and greatly limits opportunities for development at either of the two dwellings on the site. In combination with the above discussion of justifications, it is considered that there is no apparent benefit from reducing the proposed gross floor area/FSR on the site. On this basis, compliance with the development standard is unreasonable and unnecessary in the circumstance of the proposed development at 7 Emily Street, Rozelle.

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

As discussed in the above justifications for contravening the FSR development standard, the proposed development has an acceptable level of impact with regard to neighbouring property amenity and impact on the primary Emily Street streetscape. The proposed development will transform the site into a high quality built form with a bulk and scale suitable for the context of the site; and is therefore in the public's interest.

In this regard, it is considered that compliance with the Landscaped Area, Site Cover (Clause 4.3A) and FSR (Clause 4.4) development standards do not result in any added environmental or planning benefit, and the exception to the numerical standard is well founded and commendable for Inner West Council's support.