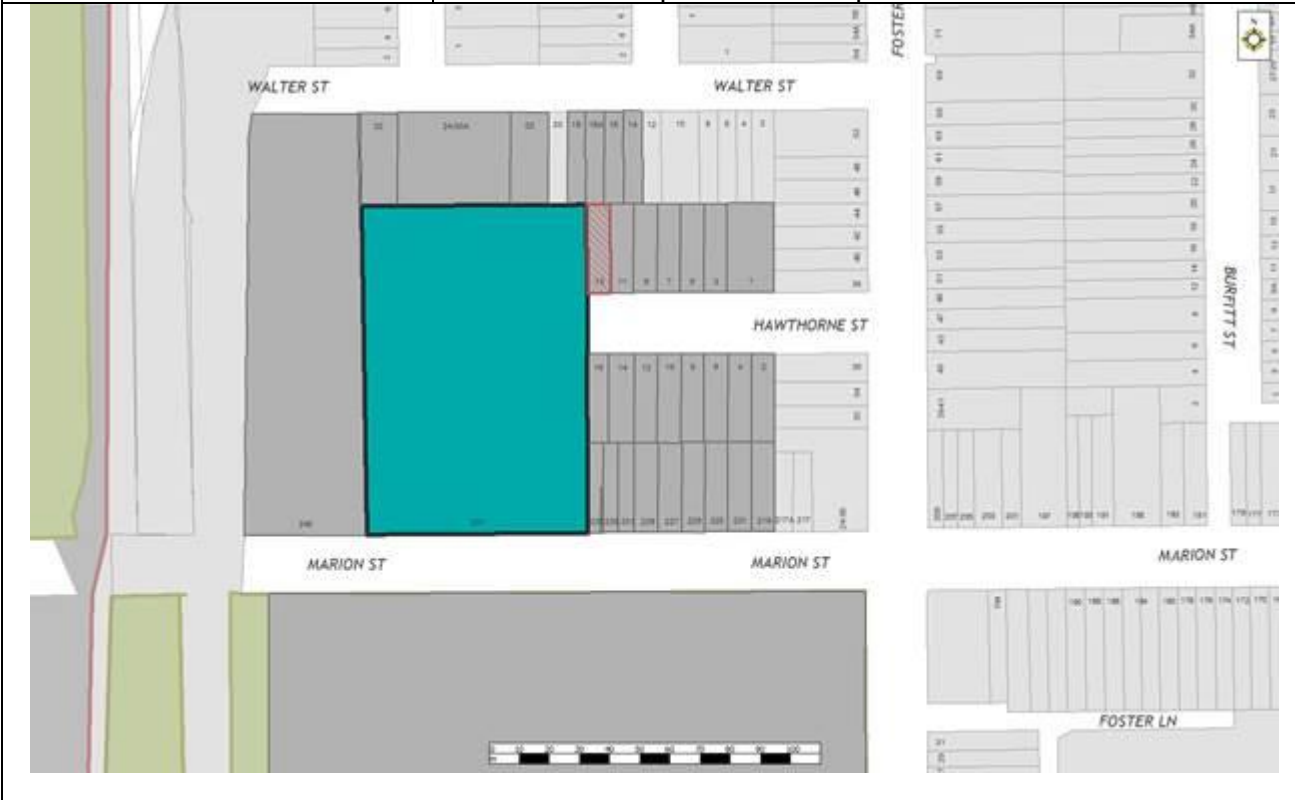




INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2018/675
Address	237 Marion Street, Leichhardt
Proposal	Alterations and additions to the existing residential Aged Care Facility known as "The Marion"
Date of Lodgement	20 December 2018
Applicant	JK Martin
Owner	The Uniting Church in Australia Property Trust NSW
Number of Submissions	2 submissions (including 1 petition with 24 signatories)
Value of works	\$8,131,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Floor Space Ratio Port cochere (awning) Ground level parking
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Petition received from residents of subject site.

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the existing residential Aged Care Facility known as "The Marion" at 237 Marion Street, Leichhardt. The application was notified to surrounding properties and 2 submissions were received.

The main issues that have arisen from the application include:

- Non-compliance with permissible floor space ratio
- Porte cochere encroaches within existing easements
- Proposed parking at ground level encroaches within driveway/carriageway

It is recommended that the porte cochere and two of the parking spaces are deleted from the proposal. The non-compliance with regard to floor space ratio is acceptable given there are not considered to be adverse impacts to surrounding properties and therefore the application is recommended for approval.

2. Proposal

The proposal is for alterations and additions to an existing Aged Care Facility known as "The Marion". The works include the following:

- Alterations and additions including repurposing some existing "lounge" areas to bedrooms, some external additions and some internal additions within the existing built form;
- Reconfiguration of the ground floor area that is adjacent to Marion Street to provide support services in one location, including a café, salon, sacred space, multi-purpose room;
- Changes to internal courtyard garden including removal of trees and new landscape design with new planting. A new inground pool and gym within the internal courtyard garden;
- 12 additional bedrooms in total, over ground, first and second floors;
- Amended signage and façade works to Marion Street;
- A new porte cochere (awning cover over driveway);
- Formalised waste storage and collection area;
- Remediation works.

3. Site Description

The subject site is located on the northern side of Marion Street, between Foster Street and Hawthorne Parade. The site consists of one allotment and is generally rectangular in shape with a total area of 7761 sqm and is legally described as Lot 121 DP 1106716.

The site has a frontage to Marion Street of 72.37 metres and a secondary frontage (vehicular egress) of approximately 20 metres to Hawthorne Street. The site is affected by the following:

- Easements for drainage;
- Easement for support
- Easement for landscaping
- Restrictions on the use of the land
- Easements for electricity purposes
- Right of carriageway

The site supports a part 2, part 3 storey building which presents as two storeys at Marion Street over a basement parking level. The existing building is a residential care facility (nursing home) known as “The Marion” which currently has 130 resident bedrooms, a café and a multi-purpose hall. The adjoining properties support, to the west, a single storey industrial type building operating as a car service centre for Mazda, to the north, are two storey terraces with a basement carpark. To the east, fronting Marion Street are single storey dwellings and to the east fronting Hawthorne Street are single storey dwelling houses. To the south, across the road is the APIA Leichhardt Tigers Football Club. It is noted that the football club and the adjacent park are a local Heritage Item I655 – Former House, including interiors.

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

There are some small trees within the site that are less than 6m in height and 5 trees in the front setback. There are also 4 street trees fronting Marion Street. Trees on surrounding properties are not considered to be in close proximity to the proposed works.



Figure 1 – Existing main entrance from Marion Street



Figure 2 – Existing driveway from Marion Street



Figure 3 – Existing internal courtyard/gardens within development



Figure 4: Internal courtyard/garden to the development where pool and gym proposed to be located

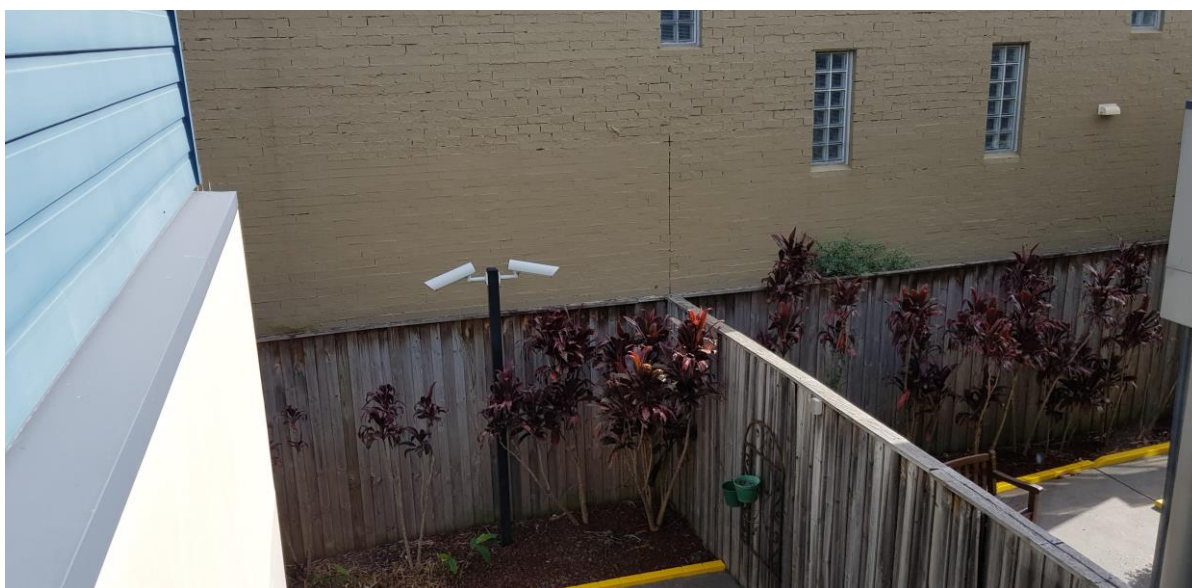


Figure 5: Part of the northern boundary of development adjacent to the rear of 24-30A Walter Street

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
D/1999/130	Demolition of existing building and erection of industrial warehouse complex comprising of 23 industrial units. NOTE - Strata subdivision withdrawn by applicant on 27 April 1999	Withdrawn 25.11.1999
D/2000/272	Change of use of existing commercial premises to a furniture warehouse and showroom.	Approved Deferred Commencement 13.2.2001.
D/2000/536	Change of use of an industrial premises to a motor mechanics.	Refused 23.4.2001.
M/2001/58	Modification of Development Consent D/2000/272 for change of use to furniture warehouse and showroom to vary conditions relating to hours of operation, loading facilities, fire upgrade of the building; and furthermore, alter deferred commencement conditions relating to car parking and ventilated and sound proofed preparation works area.	Approved 19.7.2001.
D/2001/207	The use of a portion of the building fronting Marion Street for the storage of motor vehicles with access provided via Marion Street.	Refused 1.2.2002.
D/2001/208	The use of an existing building in the north western corner of the site for warehousing of dry food with access from Hawthorne Street.	Refused 1.2.2002.

D/2001/209	The use of the rear portion of the building fronting Marion Street for wholesale warehousing of antique furniture, with access from Hawthorne Street.	Refused 1.2.2002.
D/2001/776	Amended plans: Demolition of existing industrial buildings and construction of aged care facility containing 120 rooms, basement carparking and associated facilities.	Approved 14.3.2003.
M/2003/128	Modification of development consent D/2001/776 which gave approval for demolition of existing industrial buildings and construction of aged care facility containing 120 rooms with ancillary community facilities and basement carpark. Modifications include minor internal and external re-configurations and alterations.	Approved 5.11.2003.
D/2003/645	Addition of six (6) aged care units to the eastern section of the approved building at second floor level and addition of six (6) aged care units to the western section of the approved building at second floor level.	Approved 15.9.2004.
D/2004/408	To carry out remediation works including on-site containment.	Approved 3.9.2004.
M/2004/174	Modification to development consent D/2001/776 for demolition of existing industrial buildings and construction of aged care facility containing 120 rooms with ancillary community facilities and basement carpark. Modifications include internal changes, additions and reconfiguration works, external changes including window and roof amendments and additions, to amend condition 14, 35 and 55 pertaining to ventilation and disposal of soil condition and to delete condition 22 pertaining to remediation.	Approved 15.12.2004.
M/2004/204	Section 96(1)- error to Condition 2 in D/2004/408	Approved 23.9.2004.
CDC/2016/9	Installation of a rooftop 99.84kW solar system including 384 solar panels and 4 solar inverters. Dealt with under the Infrastructure SEPP.	Approved 8.2.2016
D/2018/37	New and replacement signage to building.	Approved 28.3.2018
PreDA/2018/264	Alterations and additions to the existing RACF.	Advice letter issued 28.11.2018.

Surrounding properties

235 Marion Street

No recent relevant applications.

245 Marion Street

Application	Proposal	Decision & Date
D/2008/297	Signage to front of building and erect pylon sign.	Approved 8.10.2008
CDCP/2019/23	Complying Development Certificate - Office Fitout	Approved 15.2.2019

13 Hawthorne Street

Application	Proposal	Decision & Date
T/2000/152	Removal of Apple Gum tree leaning onto the side of the house.	Approved 16.3.2000

16 Hawthorne Street

Application	Proposal	Decision & Date
D/2002/336	Amended plans: remediation of site and erection of new dwelling.	Approved 15.1.2003.

18 Walter Street

No relevant recent applications.

20 Walter Street

Application	Proposal	Decision & Date
T/2014/38	Removal of 2 Cupressus sp. trees from the rear of the site.	Refused 24.4.2014
T/2016/27	Removal of two Cupressus sempervirens (Italian Cypress) at the rear of the property.	Approved 25.5.2016

22 Walter Street

No relevant recent applications.

24-30A Walter Street

Application	Proposal	Decision & Date
D/1998/575	Torrens subdivision of land into 2 residential lots.	Refused 13.7.1999.
D/1998/577	Subdivision of land into 2 lots	Refused 13.7.1999.
D/1999/105	Construction of a Residential Flat Building containing two dwellings adjoining a proposed RFB containing two dwellings over No.28 Walter Street.	Refused 13.7.1999.
D/1999/106	Erect 2 x 2 storey dwellings	Refused 13.7.1999.
D/1999/1041	Demolition of existing dwelling, subdivision of two (2) lots into four (4) lots and erection of four (4) new dwellings.	Approved 23.3.2000.
D/2000/253	Demolition of two (2) existing dwellings and erection of nine (9) townhouses with basement carparking and strata subdivision into 9 lots. NOTE: Amendments relate to the streetscape elevation to Walter street.	Approved on Appeal 4.12.2000.
M/2001/70	Modification to Development Consent D/2000/253 for nine (9) townhouses and basement car parking to alter the facade to provide parapet walls, enclosed roof structure to pergola and sheet metal roofing material.	Approved on Appeal 29.5.2001.
M/2001/246	Modification of Development Consent D/2000/253 for the reduction in size of the fire rated windows on the rear (southern) elevation.	Withdrawn 2.5.2002

32 Walter Street

Application	Proposal	Decision & Date
D/2010/133	Change of use and alterations to existing building for use as a ballet/dance academy.	Withdrawn 31.5.2010.

CDC/2011/30	change of use (industrial), workshop and storage event equipment, internal partitioning	Approved 4.7.2011.
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4(b) Application history

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

Date	Discussion / Letter / Additional Information
16.4.2019	<p>Council sent a letter to the applicant requesting the following:</p> <ul style="list-style-type: none"> • Additional plans including additional elevations; • Leichhardt LEP 2013 – Address clause 6.14; • Clause 4.6 Exception for FSR to be provided; • Additional shadow diagrams; • Parking – additional detail to be provided; • Engineering requirements in relation to flood risk, truck access and parking; • Waste – further details to be provided; • Stormwater drainage – amendments and further details required; • Community services requirements – managing residents during building works to be addressed. • Owners consent – to be provided on letterhead.
13.5.2019	<p>The applicant provided amended plans and additional documentation to address the issues raised in Council letter above dated 16.4.2019.</p> <p>Note: The additional details and amended plans were not required to be renotified as they were not substantial changes.</p>
1.7.2019	Council request specific details of easements on the site.
1.7.2019	Applicant provided details of easements on the site.
4.7.2019	Council phoned applicant's planner and advised that the waste storage area and porte cochere would impact on existing easements on the site and that amendments would be required.
19.7.2019	Applicant provided an amended ground floor plan which relocated waste storage area and provided justification for the porte cochere location.
16.10.2019	Applicant's planner made further representations to support retention of the porte cochere. (Refer to engineering referral under Section 6 of this report for further discussion).

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 1.15 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 (Housing for Seniors or People with a Disability) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The following provides further discussion of the relevant issues:

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

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

The site has been used in the past for activities which have contaminated the site and has been capped. The proposed works to the site will require remediation in accordance with *SEPP 55*.

The application was referred to Council’s Environmental Health Officer who reviewed the Remediation and Contamination Summary letter prepared by Consulting Earth Scientists dated 22 November 2018 which states:

The CMP (Contamination Management Plan) (CES031005-PD-05-CMP-FR2) presents the management controls required to maintain the site as suitable for use as a residential aged care facility. Remediation of the site for the continued use as a residential aged care facility is not required.

Council’s Environmental Health Officer advised the following:

In accordance with the RAP prepared by Consulting Earth Scientists, the site was remediated between February 2005 and October 2006. The remediation strategy consisted of capping contaminated fill material onsite and the preparation of a Contamination Management Plan (CMP).

The construction of the proposed swimming pool will penetrate the capping material and extend into the contaminated fill. Appropriate controls have been included in the CMP and the risk to site occupiers and workers from exposure to the contaminated soil is low. Following completion of the works, an updated CMP is required to be developed.

All excavated materials are to be disposed of in accordance with NSW EPA Waste Classification Guidelines.

Council’s Environmental Health Officer supports the application subject to conditions as detailed in the Recommended Conditions in Appendix A below.

It is considered that the proposed works subject to conditions are able to satisfy the requirements of SEPP 55.

5(a)(ii) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

In accordance with Clause 4(6)(b) of SEPP Housing for Seniors or People with a Disability, this policy does not apply to land that is zoned for industrial purposes.

5(a)(iii) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)

Division 5 Electricity transmission or distribution
Determination of development applications – other development (Clause 45)

The site contains a substation, easements for electricity and a right of carriageway for the substation. In accordance with clause 45 (1)(b) development carried out:

- (i) *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
- (ii) *Immediately adjacent to an electricity substation*

Written notice is required to be given to the electricity supply authority, accordingly the application was referred to Ausgrid. Ausgrid did not respond within the legislated timeframe or provide any comment subsequently.

Division 17 Roads and traffic

Development with frontage to classified road (Clause 101)

The site has a frontage to Marion Street, a classified road. Under Clause 101 (2) of *SEPP Infrastructure 2007*, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The existing driveway crossover to Marion Street and the existing parking provision is to be retained as is, therefore the application was not required to be referred to Roads and Maritime Services (RMS) for comment. The uses within the building fronting Marion Street are not residential. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

Impact of road noise or vibration on non-road development (Clause 102)

Clause 102 of the *SEPP Infrastructure 2007* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 20,000 vehicles based on the traffic volume data published on the website of RMS. Under this clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

The traffic volume maps for noise assessment for building on land adjacent to busy roads on the RMS website does not identify Marion Street as having a traffic volume of >20,000. The applicant has submitted appropriate acoustic reports which include construction requirements to minimise noise internally to the development.

The proposal is considered acceptable with regard to the relevant clauses of *SEPP Infrastructure*.

5(a)(iv) State Environmental Planning Policy No. 64 - Advertising and Signage

The application seeks consent for the erection of the business identification signage:

- 1 x flush wall sign on the Marion Street elevation at second floor level that is backlit illuminated measuring 1200mm in height x 2400mm in width.
- 1 x freestanding sign internally illuminated at ground level measuring 2100mm in height x 700mm in width located adjacent to the driveway
- 1 x sign affixed to ground floor balcony internally illuminated measuring 2100mm in height x 700mm in width located on the Marion Street frontage perpendicular to the street.

The following is an assessment of the proposed development under the relevant controls contained in *SEPP 64*.

SEPP 64 specifies aims, objectives, and assessment criteria for signage as addressed below. Schedule 1 of SEPP 64 specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64 subject to the sign adjacent to the driveway not being illuminated which is recommended as a condition in Attachment A.

The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64.

5(a)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

A review of the submitted Indicative Plant Schedule, DWG No. L301 and Internal Courtyard Landscape Plan, DWG No. L102, prepared by Xeriscapes, dated 17/12/18 is considered generally acceptable however, it does not specify the quantity of species proposed to revegetate the site in the Planting Schedule. It is requested that the plans are amended to address this detail before the issue of a Construction Certificate.

All trees proposed to be removed were assessed to be less than 6m in height with stem diameters of less than 200mm measured at 1400mm from ground level. These trees were considered to have low landscape value and should not be considered a constraint for the application.

It is considered that the removal and replacement of these specimens will better achieve the aims and objectives of Council's Tree Management Controls within a reasonable time frame.

Tree protection must be implemented in accordance with the submitted *Arboricultural Impact Assessment*, prepared by *Advanced Treescape Consulting*, dated 29/11/2018 for all trees to be retained on site.

There are no objections to the proposal and the application is supported subject to conditions.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and C1.14 Tree Management of the Leichhardt Development Control Plan 2013 subject to the imposition of conditions, which have been included in the recommendation of this report.

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

An assessment has been made of the matters set out in Division 2 Matters for Consideration 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 relevant matters for consideration 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)(vii) *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 Plan
Clause 2.3 - Zone objectives and Land Use Table
Clause 2.5 - Additional permitted uses for land
Clause 2.7 - Demolition
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 5.4 - Controls relating to miscellaneous permissible uses
Clause 5.10 - Heritage Conservation
Clause 6.1 - Acid Sulfate Soils
Clause 6.2 - Earthworks
Clause 6.3 - Flood Planning
Clause 6.4 - Stormwater management
Clause 6.14 – Development control plans for certain development

(i) Clause 1.2 – Aims of Plan

The proposed alterations and additions to the residential care facility are considered acceptable with regard to the relevant Aims of Plan. The proposal satisfies 2(h)(i) in that it provides and retains housing for seniors. The proposed alterations and additions are also considered to satisfy 2(l) in that the development is compatible with the character of surrounding buildings and will provide appropriate landscaping in the context of surrounding development. The proposal satisfies 2(s) in that it applies the principles of crime prevention through design to promote safer places and spaces.

(ii) Clause 2.3 - Land Use Table and Zone Objectives and Clause 2.5 – Additional permitted uses for land

The site is zoned IN2 Light Industrial under the *LLEP 2013*. The *LLEP 2013* defines the development as:

Residential care facility with ancillary **restaurant/café** and salon (hairdresser) which is a **business premises**

- **Residential care facility** means accommodation for seniors or people with a disability that includes:
 - (a) Meals and cleaning services, and
 - (b) Personal care or nursing care, or both, and
 - (c) Appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,But does not include a dwelling, hostel, hospital or psychiatric facility.

*Residential care facilities are a type of **seniors housing**. Seniors housing is a type of **residential accommodation**.*

- **Restaurant or café** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Restaurants or cafes are a type of **food and drink premises**. Food and drink premises are a type of **retail premises**.

- Salon (hairdresser) is a **business premises**.
Business premises means a building or place at or on which:
 (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
 (b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Business premises are a type of **commercial premises**.

The development, **Residential accommodation** and the ancillary use of restaurant or **café** is prohibited within the land use table. **Business premises** are permitted with consent. Accordingly, the development is not consistent with the objectives of the IN2 Light Industrial zone. However, Clause 2.5 allows additional permitted uses for particular land in Schedule 1 – item 6 Use of certain land at 237 Marion Street, Leichhardt states the following:

- (1) This clause applies to land identified as “D” on the Additional Permitted Uses Map, being Lot 121, DP 1106716.
- (2) Development for the purpose of seniors housing is permitted with development consent.

Subject to the café being ancillary to the use of the residential care facility and only being able to be used by residents, staff and their guests in the residential care facility it is considered acceptable as it is part of the services to residents in the Residential Care Facility. The Residential Care Facility is permissible as per the Additional permitted use. A condition is recommended requiring the café servery opening at the front entrance to Marion Street to be replaced by permanently fixed glazing so that members of the public are unable to purchase from the café. Likewise the salon use is to have the entrance off Marion Street replaced by permanently fixed glazing so that members of the public cannot access the salon which would potentially compromise the security of the premises and as it is an ancillary service to the use of the Residential care facility.

Accordingly, the proposed alterations and additions to the existing Residential Care Facility are considered permissible.

(iii) Clause 4.4 – Floor Space Ratio

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 1:1 or 7761 sqm	1.23:1 or 9573 sqm	1812 sqm or 23.35%	No

(iv) 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 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt Local Environmental Plan 2013 by 23.35% (1812 sqm).

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

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

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

- The existing building has an FSR of 1.17:1 with an existing variation of 17%, the proposed development seeks consent for an FSR of 1.21:1, with a proposed variation of 21%.
- The majority of the additional built form is either, contained within the footprint of the existing building, or additional built form internally within the site and not perceptible to the public domain or adjacent sites.
- The proposed alterations and additions results in a development that is compatible with the desired future character of the area
- A suitable balance between built form and landscaping is achieved on the site to meet the needs of the residents in a way that does not impact on any surrounding land.
- The proposed additional GFA is acceptable as it will not result in any adverse impact as a consequence of bulk and scale.
- Council has previously recognised that special circumstances apply to this site that warrant flexibility in the application of the FSR standard. The additional exceedance is considered to be supportable on the basis that it is delivering additional aged care beds for the catchment and seeking to improve the quality of service for existing and future residents on the site.
- The light industrial zoning of the site is inappropriate and that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the site. The nature of industrial developments is such that an equivalent building volume to that proposed will have a lower FSR because of the requirement for significantly higher ceiling heights.
- The proposal is consistent with the objectives of the development standard. The proposal is also consistent with the objectives of the zone where relevant. Many of the objectives are not relevant as the existing use is an additional permitted one under the LLEP and not one envisaged for the subject zone.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent, where relevant with the objectives (as listed below) of the IN2 Light Industrial zoning, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- *To provide a wide range of light industrial, warehouse and related land uses*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses*

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To retain existing employment uses and foster a range of new industrial uses to meet the needs of the community.*
- *To ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities.*
- *To retain and encourage waterfront industrial and maritime activities*
- *To provide for certain business and office premises and light industries in the arts, technology, production and design sectors.*
- The majority of the zone objectives are not applicable/relevant to the use as a residential care facility however the use is permissible as per Schedule 1 Additional permitted uses of the LEP.
- The use does provide employment opportunities.

It is considered the development is in the public interest because it is consistent with the objectives (as listed below) of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- (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,*
 - (iii) *Minimises the impact of the bulk and scale of buildings.*
- The proposal is compatible with the desired future character of the area as the majority of the additions are contained within the existing external built form or are not visible from the public domain or surrounding properties.
- Adequate landscaping is provided considering the use as a residential care facility.
- The impacts of the bulk and scale of the building have been minimised to surrounding properties and are acceptable within the streetscape.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

(v) Clause 5.10 – Heritage Conservation

The site is opposite a local heritage item I655 – Former house, including interiors with a street address of 20-22 Foster Street, Leichhardt. The application was referred to Council's Heritage Advisor who advised that the proposal was acceptable from a heritage perspective as it will not impact on the heritage significance of the item.

(vi) Clause 6.3 – Flood Planning

The site is flood affected, accordingly a Flood Risk Management Report prepared by Rhelm was submitted with the application. There is an easement for overland flow path which is principally located where the driveway within the site is located. The application was referred to Council's Engineer who advised that the proposed porte cochere would encroach within the overland flow path therefore it is recommended to be deleted from the proposal via condition. Overall, the proposal is acceptable with regard to Flood Planning subject to

recommended conditions which are included in Attachment A – Recommended Conditions of Consent.

(vii) Clause 6.4 – Stormwater management

The site has an easement for drainage 1.524m wide on the eastern side of the site adjacent to the boundary. There are existing meters, fire hydrant booster etc in this location. It is unclear whether they all have consent to be located within this area. The proposal includes a new structure to screen these service facilities. The application was referred to Council's Engineer who has advised that the proposal is acceptable subject to deletion of any new services or works within the easement for drainage as recommended by condition which is included in Attachment A – Recommended Conditions of Consent.

(viii) Clause 6.14 – Development control plans for certain development

The site is greater than 3,000m² therefore this clause applies to the site. A development control plan does not exist for the site and a development control plan is not proposed.

In accordance with 6.14(5) a development control plan is not required to be prepared if the consent authority is satisfied that such a plan would be unreasonable or unnecessary in the circumstances. The applicant has made a submission as to why this clause should not apply in this instance and has provided the following justification:

- *The proposal involves only alterations and additions to an existing building;*
- *Much of the increase in GFA is contained within the existing building. Any additional GFA beyond this will be contained within the site with no actual or perceived external impact;*
- *There will be no increase in the height of the development;*
- *Whilst the alterations will alter the building when viewed from a public place, the outcome is a better design outcome and provides a better interface with the streetscape (and enhanced opportunities for casual public surveillance from the development);*
- *Whilst the zone objectives don't strictly apply to the development (given it is an additional permitted use and clearly not one that was originally envisaged by the industrial zoning), the development is consistent with those objectives; and*
- *The purpose of a DCP is to set out specific controls for a site. As the site has already been developed and the alterations represent fairly minor ones (in the context of what has already been approved), a DCP is considered to be unreasonable and unnecessary.*

It is agreed that a site specific development control plan is unreasonable and unnecessary for the site given that the additions proposed are minor in the scheme of the overall development which is to maintain the same use.

5(b) Draft Environmental Planning Instruments

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

- **Draft amendments to State Environmental Planning Policy No. 55—Remediation of Land**

Public comment on an explanation of intended effect for a new Remediation of Land SEPP and draft planning guidelines has now closed.

It is proposed the new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land
- maintain the objectives and reinforce those aspects of the existing framework that have worked well
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land
- clearly list the remediation works that require development consent
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

The proposed remediation works are not considered to raise any issues with regard to the above proposed changes to the remediation SEPP.

- **Draft Environment State Environmental Planning Policy**

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018.

This consolidated SEPP proposes to provide a single set of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The proposal is consistent with the provisions of 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.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes – see discussion
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A

C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes – see discussion
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	Yes – see discussion
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	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood and Industrial/Business Areas sub area (C2.2.3.2(a))	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	N/A
C3.9 Solar Access	Yes - see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes – see discussion
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes – see discussion
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	No – see discussion
C4.6 Shopfronts	N/A
C4.7 Bulky Goods Premises	N/A
C4.8 Child Care Centres	N/A
C4.9 Home Based Business	N/A
C4.10 Industrial Development	N/A
C4.11 Licensed Premises and Small Bars	N/A
C4.12 B7 Business Park Zone	N/A
C4.13 Markets	N/A
C4.14 Medical Centres	N/A
C4.15 Mixed Use	N/A
C4.16 Recreational Facility	N/A

C4.17 Sex Services Premises	N/A
C4.18 Vehicle Sales or Hire Premises And Service Stations	N/A
C4.19 Vehicle Repair Station	N/A
C4.20 Outdoor Dining Areas	N/A
C4.21 Creative Industries	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	See discussion
D2.4 Non-Residential Development	
D2.5 Mixed Use Development	
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	No – see discussion
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	No – see discussion
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	
	N/A
Part G: Site Specific Controls	
	N/A

The following provides discussion of the relevant issues:

B3.1 Social Impact Assessment

A Social Impact Comment, a Resident Management Plan During Construction and a Concept Construction Staging Plan were provided by the applicant. The application was referred to Council’s Community and Cultural Planning Coordinator for comment who advised that they endorse the proposal given that the benefits of the renovation include heightened activation and interface with the public domain and social enhancements which will be conducive to the social needs of current and future residents. Additional beds will offset the decrease in number of beds provided by other local nearby providers as they upgrade their facilities.

It is noted that Uniting accepts concessional residents (i.e provision of subsidised accommodation for seniors on a pension). The applicant has advised that currently 30% of

the residents at The Marion are classified as “concessional living”. The applicant has advised that a minimum of 30% concessional living residents will therefore generally be maintained at all times, consistent with current practice.

C1.3 Alterations and additions

The proposed alterations and additions are considered to meet the objectives in that the majority of the additions are not visible from the public domain and those that are visible are sympathetic to the existing building. The proposed alterations and additions protect residential amenity of surrounding properties and are considered to be suitable within the streetscape. The majority of the controls are not relevant to the subject site as they are dwelling house specific. Overall the proposed alterations and additions are considered acceptable with regard to the requirements of C1.3 – Alterations and additions.

C1.9 Safety by Design

Crime Prevention through Environmental Design (CPTED) has been addressed by the applicant in their Statement of Environmental Effects. Overall, the proposal is considered to satisfy the objectives and controls of Safety by Design. The main entrance is visible from Marion Street, the main building frontage is orientated towards Marion Street and casual surveillance of Marion Street through windows at ground and first floor levels is provided. It is noted that the café and salon are proposed to be accessible to the general public through a doorway and servery at the main entrance. A condition is recommended to require these openings to be permanently closed with fixed windows to maintain appropriate security of the residents and staff.

C1.11 Parking

The site provides 37 parking spaces in the basement including 1 disabled space. At ground level a covered drop off area, an ambulance bay, a 15 minute parking area and a delivery space are proposed.

It is noted that there is no specific parking rate required within C1.11 – Parking. In the absence of any parking rates it is considered appropriate to consider the parking provision in association with the SEPP (Housing for Seniors or People with a Disability) 2004 minimum requirements for parking for Residential care facilities being:

- 1 parking space for each 10 beds
- 1 parking space for each 2 persons to be employed and on duty at any one time
- 1 parking space for an ambulance

Accordingly, with 142 beds (14.2 spaces) and a maximum of 38 staff at any one time (19 spaces) the proposal would require a total of 33.2 parking spaces which is met.

The application was referred to Council’s engineers who have advised that the porte cochere (awning) over the driveway entrance cannot be supported and is to be deleted from the proposal due to encroachments within existing easements. In addition, the covered drop off area space and delivery space cannot be supported as they encroach within the driveway/carriageway within the site. Accordingly, a condition is recommended to replace the 15 min parking area with a delivery space and for this space to be widened as necessary by reducing the width of the garden bed adjacent to the ambulance bay. A condition is recommended requiring all drop off to be within the basement and a parking space to be marked 15 minute parking in the basement. The number of parking spaces within the basement is considered sufficient to cater for the additions and increase in intensity of use of the site.

C1.15 Signs and Outdoor Advertising

The proposal includes 3 signs as detailed above under SEPP 64 within section 5(a)(iv) of this report. The proposed signs are considered appropriate for the site with the exception of not having the sign adjacent to the driveway illuminated given its close proximity to an adjoining dwelling which has side windows. A condition is recommended in Attachment A requiring this sign not to be illuminated. Subject to the condition requiring one sign not to be illuminated, the proposed signage is considered acceptable with regard to the number, size and location of signs within an industrial zone and hence satisfies the objectives and controls of C1.15 Signs and Outdoor Advertising.

C3.2 Site Layout and Building Design

The main controls within C3.2 relate to building envelope, building location zone and side setbacks. There is no change to the building envelope as there is only infill of the existing roofed balcony to create a staffroom at the Marion Street elevation. There is no change to the existing front and rear building setbacks noting that there is essentially no building location zone given that adjoining lots are of varying sizes. With regard to side setbacks, the only additions to the side are the extension to the multi-purpose room and the proposed porte cochere. The extension to the multi-purpose room and porte cochere complies with the side setback control. Overall, the proposal is considered acceptable with regard to the objectives and controls of C3.2 – Site Layout and Building Design.

C3.9 Solar Access

The proposal complies with the solar access controls in relation to adjoining properties given the north south orientation of the site. There are no specific controls for solar access for aged care facilities however it is noted that there is some solar access to the outdoor communal space. Given the use of the site, the proposal is considered acceptable with regard to C3.9 – Solar Access.

C3.11 Visual Privacy

Proposed additional rooms facing the boundaries are not considered to result in any privacy concerns as the building to the rear at 24-30A Walter Street is principally a brick wall with narrow glass brick windows as shown in the photo – Figure 5 above. The glass bricks are obscured therefore there are no privacy impacts to either property.

The proposal also includes enclosing an existing first floor balcony into a staff room at the front of the site. The staff room has windows facing Marion Street and the side boundary of 235 Marion Street. The staffroom windows will be setback 11m from the boundary with 235 Marion Street and is not considered to result in any privacy issues.

Overall the proposal is considered acceptable with regard to the objective and controls of C3.11 – Visual Privacy.

C3.12 Acoustic Privacy

No additional bedrooms are proposed adjacent to Marion Street. The applicant has provided a Noise Intrusion Report from an acoustic engineer which has advised that subject to recommended noise controls being implemented in accordance with the report the external road traffic, rail and aircraft noise levels will be within acceptable indoor noise levels.

The applicant also provided an Environmental Noise Impact Assessment prepared by an acoustic engineer with regard to noise impacts to nearby residences. The report advised that subject to recommendations in the report being implemented the noise level emitted will be acceptable. Appropriate conditions are recommended accordingly.

The proposal is considered acceptable with regard to the objective and controls of C3.12 – Acoustic Privacy.

C4.2 Site Layout and Building Design

The proposed alterations and additions are mainly internal changes with some infill within the existing main building setbacks and therefore the overall site layout and building design remains principally the same as existing. The proposal is accordingly considered to satisfy the objectives and controls of C4.2 – Site Layout and Building Design.

C4.5 Interface Amenity

The alterations and additions include infill development to the northern elevation which aligns with existing rear setbacks. The proposed infill has a rear setback of 3.8m which does not comply with control C2b which requires a 6m rear setback for first floor levels. The non-compliance is considered acceptable in this instance as it is infill of space that does not extend beyond the existing rear setback. There are also no privacy or amenity impacts to the residential property to the rear which is built to the boundary and is mainly a brick wall with some glass brick windows which are obscured. The remainder of the proposed alterations and additions are considered to be compliant with the objectives and controls of C4.5 Interface Amenity and are not considered to result in further impacts in relation to noise, solar access, light spill, views and privacy for surrounding residential properties.

Part D Energy - D2.3 Residential Development; D2.4 Non-Residential Development and D2.5 Mixed Use Development

The use as residential care facility with ancillary café and other facilities does not specifically fit within any of the above categories. The application was referred to Council's Waste section who advised that they were satisfied with the existing and proposed waste management. The waste officer noted that the site is currently privately serviced by a waste contractor and is limited in its capacity to a medium rigid vehicle due to existing vehicular access within the site. Accordingly the proposal is considered acceptable with regard to Part D Energy with regard to ongoing waste management.

Part E Water - E1.2.2 Managing Stormwater within the Site

There is an easement for overland flow path which is principally located where the driveway within the site is located. The proposed porte cochere would encroach within existing easements on the site therefore it is recommended to be deleted from the proposal via condition as detailed in Attachment A.

The proposed stormwater drainage plan for the site is considered acceptable subject to recommended conditions as detailed in Attachment A.

E1.2.6 Building in the vicinity of a Public Drainage System

The site has an easement for drainage 1.524m wide on the eastern side of the site adjacent to the boundary. There are existing meters, fire hydrant booster etc in this location. It is unclear whether they all have consent to be located within this area. The proposal includes a new structure to screen these service facilities. A condition is recommended to not allow any new/relocated services and no structures in this location as it could impact on Council's stormwater pipe beneath as detailed in Attachment A.

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

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. A total of 2 submissions were received comprising one request to be kept informed of all development applications for the site and one petition signed by 24 people.

Issue: The petition requested that the trees in front of “The Marion” not be mutilated or cut down.

Comment: It is unclear if the trees referred to are the street trees or the trees on the subject site or both. Regardless, the street trees are required to be protected and the landscape plans shows the existing on site trees in the front setback to Marion Street being retained.

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 – Acceptable subject to recommended conditions as previously discussed.

The applicant made further representations to Council on 16 October requesting retention of the porte cochere which is recommended to be deleted from the proposal. Council’s engineer has advised as follows:

I have reviewed the attached report relating to the Proposed Porte Cochere at The Marion Uniting Aged Care Facility.

The proposed Porte Cochere is not supported for the following reasons:

- *The stated purpose of the Proposed Porte Cochere structure is to provide a clear and sheltered drop-off/pickup area however this area is not suitable for pick-up drop off*

given the proposed pickup drop off space encroaches into the driveway entry which restricts/blocks vehicular access to and from the site from Marion Road and is unsafe.

- *Given Proposed conditions of consent 4(c) requires to pick-up drop off under the Proposed Porte Cochere to be deleted, the Porte Cochere is no longer necessary and therefore required to be deleted.*
 - *Regardless of any designated the pick-up drop off area, the construction of the proposed Porte Cochere structure at the site entrance will encourage the pickup/drop off in this area which restricts/blocks vehicular access to and from the site from Marion Road and is unsafe.*
 - *The supports for the Porte Cochere are adjacent a Council stormwater pipe and easement. It appears the proposal restricts access to the pipe for maintenance/replacement purposes and it is unclear if the footings will adversely impact the pipe.*
- Landscaping – No objection subject to recommended conditions.
 - Environmental Health – No objection subject to recommended conditions.
 - Heritage Advisor – No objection.
 - Building Surveyor – No objection.
 - Community Development – No objection
 - Waste – No objection

6(b) External

The application was referred to Ausgrid in accordance with the requirements of SEPP Infrastructure however Ausgrid did not provide any response within the designated timeframe.

7. Section 7.11 Contributions

Uniting is a registered Community Housing Provider under the National Regulatory System for Community Housing. The Seniors Housing SEPP defines Community Housing Providers as a type of Social Housing Provider. The consent authority does not have authority to require a contribution in respect of the development as per *The Minister for Planning issued Direction under Section 94E of the EP&A Act which took effect on 14 September 2007. The Direction provides exemptions to contribution payments for registered social housing providers.*

Accordingly, 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*.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.4 Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2018/675 for alterations and additions to the existing residential Aged Care Facility known as "The Marion" at 237 Marion Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Fees

1. Long Service Levy

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

2. Security Deposit - Standard

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

Security Deposit:	\$21,500.00
Inspection Fee:	\$230.65

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

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

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

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

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

General Conditions

3. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA0100 Issue F	Site Plan	20/12/18	Integrated Design Group
DA0200 Issue C	Existing basement plan	1/5/19	Integrated Design Group
DA0201 Issue D	Demolition plan ground floor	20/12/18	Integrated Design Group
DA0202 Issue D	Demolition plan level 1	20/12/18	Integrated Design Group
DA0203 Issue D	Demolition plan level 2	20/12/18	Integrated Design Group
DA0204 Issue C	Demolition plan upper roof	20/12/18	Integrated Design Group
DA1100 Issue N	Proposed ground floor plan	8/7/19	Integrated Design Group
DA1101 Issue I	Proposed level 1 plan	20/12/18	Integrated Design Group
DA1102 Issue H	Proposed level 2 plan	20/12/18	Integrated Design Group
DA1103 Issue E	Proposed roof plan	20/12/18	Integrated Design Group

DA2000 Issue B	Elevations 1 & Finishes Schedule	13/12/18	Integrated Design Group
DA2001 Issue A	Elevations 2 & Finishes	13/12/18	Integrated Design Group
DA2002 Issue A	Internal and pool/gym elevations	1/5/19	Integrated Design Group
DA3000 Issue C	Sections	1/5/19	Integrated Design Group
DA9200 Issue A	Signage Details	2/5/19	Integrated Design Group
Update 18-267	Arboricultural Impact Assessment	29/11/2018	Advanced Treescape Consulting
Report Issue 3	Access Review	18/12/18	Funktion
-	Waste management report	November 2018	Integrated Design Group
-	Operational Waste Management Plan	May 2019	WasteAudit
Dwg No. 180058-C01.01, C03.01, C05.01, C18.01, C20.01 Rev 3	Stormwater plans	6.12.2018	Enspire Solutions Pty Ltd
J1611_R02_Rev2	Integrated Water Cycle Plan	18 December 2018	Rhelm
CES Document Reference: CES180712-MID-AD	Geotechnical Investigation Report	15 November 2018	Consulting Earth Scientists
J1611_R01_Rev2	Flood Risk Management Report	18 December 2018	Rhelm

Report No.6591-1.3R Rev A	Internal Acoustical Recommendations	18 December 2018	Day Design Pty Ltd
Report No.6591-1.1R Rev A	Environmental Noise Impact Assessment	18 December 2018	Day Design Pty Ltd
Report Number 6591-1.2R Rev A	Noise Intrusion Report	18 December 2018	Day Design Pty Ltd
CES180712-MID-AB Rev 2	237 Marion St, Leichhardt Remediation and Contamination Summary	22 November 2018	Consulting Earth Scientists
Dwg No. L000, L001, L101, L102, L103, L201, L301 Rev E	Landscape Plans	17.12.18	Xeriscapes

As amended by the conditions of consent.

4. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a) The porte –cochere is to be deleted from the proposal.
- b) No new/altered services are to be installed over Council’s drainage conduit along the eastern boundary of the property. No additional structures/screening is to be installed within this area.
- c) The “drop off” area near the front driveway entrance is to be deleted from the plans. All parking and drop off shall occur within the basement. A “15 minute parking” space shall be marked within the basement parking close to the lift.
- d) The “15 minute parking” area adjacent to the ambulance bay shall be replaced with a “delivery” space. The “delivery” space adjacent to the main switch room is to be deleted from the plans. No deliveries are to take place within the driveway/carriageway of the site.

- e) If the width of the ambulance bay and adjacent delivery space are required to be made wider to satisfy Australian Standards the width of the garden bed adjacent to the ambulance bay may be reduced.
- f) All existing “The Marion” signage is to be removed. The proposed freestanding sign adjacent to the driveway is not to be illuminated.
- g) The café servery opening adjacent to the entrance to the building on Marion Street is to be closed with fixed windows. The café is only to be used by residents, staff and their guests. Security arrangements to the building are to be maintained for the café as well.
- h) The salon entrance adjacent to the entrance to the building on Marion Street is to be closed with fixed windows. The salon is to only to be used by residents and staff. Security arrangements to the building are to be maintained for the salon as well.

5. Tree Removal

Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
Trees numbered 1-17 in accordance with the submitted <i>Arboricultural Impact Assessment</i> , prepared by <i>Advanced Treescape Consulting</i> , dated 29/11/2018.	Remove.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

The approved works shall not be carried out unless this letter, or copy of it, is kept on the site. It shall be shown to any authorised Council Officer upon request.

All tree work shall be undertaken by an experienced Arborist with a minimum qualification of Level 3 under the Australian Qualification Framework (AQF). The work shall be undertaken in accordance with AS4373 – 2007 ‘Pruning of amenity trees’ and in compliance with the Safe Work Australia Code of Practice ‘Guide to Managing Risks of Tree Trimming and Removal Work’.

6. Tree Retention

The trees identified below are to be retained:

Tree/location
Trees numbered 18-26 in accordance with the submitted

Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting, dated 29/11/2018.

Details of the trees to be retained must be included on the Construction Certificate plans

7. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2008.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

8. Waste Management Plan

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

9. Erosion and Sediment Control

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

10. Standard Street Tree Protection

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

11. Verification of Levels and Location

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

12. Works Outside the Property Boundary

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

13. Dry-weather flows

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater.

Prior to any Demolition**14. Hoardings**

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

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

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

15. Construction Traffic Management Plan – Detailed

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with RMS accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a) Description of the demolition, excavation and construction works;
- b) Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;

- c) Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d) Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e) Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f) Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g) Proposed hours of construction related activities and vehicular movements to and from the site;
- h) Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i) Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j) Measures to maintain public safety and convenience;
- k) Any proposed road and/or footpath closures;
- l) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m) 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;
- n) Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q) On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r) 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; and
- s) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t) Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

16. Tree Preservation

To preserve the following tree/s, no work shall commence until their Protection Zone (in accordance with AS4970-*Protection of trees on development sites*) is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials

within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/location	Radius in metres
Trees numbered 18, 19, 21 and 22 in accordance with the submitted <i>Arboricultural Impact Assessment</i> , prepared by <i>Advanced Treescape Consulting</i> , dated 29/11/2018.	As per <i>Arboricultural Impact Assessment</i> .

A minimum 1.8m high barrier (Chain wire mesh panels, plywood or wooden paling fence panels: refer to AS4687-*Temporary fencing and hoardings* for fencing requirements) shall be erected around the perimeter of the stated Protection Zone as measured from the base of the tree (or where practical). Shade cloth or similar should be attached to reduce the transport of dust, other particulate matter and liquids into the protected area. Fence posts and supports should have a diameter greater than 20mm and be located clear of roots. The barrier shall be constructed so as to prevent pedestrian and vehicular entry into the protection zone. The barrier shall not project beyond the kerb onto the roadway or any adjacent footpath.

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 by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

17. Tree Protection Measures

Upon installation of the required tree protection measures, an inspection of the site by the Project Arborist is required to verify that tree protection measures comply with all relevant conditions.

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.

18. Tree Protection Signage

Prior to works commencing or release of a Construction Certificate (whichever occurs first), tree protection signage is to be attached to each tree protection zone and displayed in a prominent position. Each sign shall contain in a clearly legible form (lettering should comply with AS 1319-*Safety signs for the occupational environment*), the following information:

- a) Tree protection zone;
 - b) This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted;
 - c) Any encroachment not previously approved within the tree protection zone shall be the subject to advice from the Project Arborist in report form and must include the following:
 - Proof shall be provided that no other alternative is available;
 - On completion, the Project Arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council;
 - d) The name, address and telephone number of the builder and Project Arborist.
- 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 by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

19. Tree Protection Measures

To preserve the following tree/s no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the trunk/s/branches are protected (in accordance with AS4970-*Protection of trees on development sites*) by the placement of 2 metres lengths of 50 x 100mm timbers spaced at 150mm centres and secured by wire/hoop strap over suitable protective padding material (i.e. underlay or carpet). The trunk/branch protection shall be maintained intact until the completion of all work on site.

Tree/Location
Trees numbered 20, 23, 24, 25 and 27 in accordance with the submitted <i>Arboricultural Impact Assessment</i> , prepared by <i>Advanced Treescape Consulting</i> , dated 29/11/2018.

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 by the Project Arborist to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

20. Advising Neighbors Prior to Excavation

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

21. Construction Fencing

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

Prior to Construction Certificate**22. Dilapidation Report – Pre-Development – Major**

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

- a) Full width of Marion Street, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, along the frontage of the development site.
- b) Council drainage pipe along the frontage of the site in Marion Street and within the development site, including CCTV inspection in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia.

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

23. Parking Facilities – Major

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a Chartered/Registered Civil Engineer demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas at ground level (excluding existing basement parking) comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a) The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that;
- b) The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles; and
- c) All loading docks and parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction.
- d) Loading / unloading facilities must be provided on-site in accordance with the requirements of AS2890.2 – 2002.
- e) The parking spaces allocated to the development for pick-up / drop-off must be sized in accordance with the requirements of AS/NZS 2890.1-2004 for [User Class 3A]. The

spaces must be located in close proximity to the entry with a minimum width of 2700mm and a corresponding aisle width of 6200mm.

24. Overland Flow path

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably experienced Chartered/Registered Civil Engineer detailing hydrologic and hydraulic calculations for the overland flow path and the capacity of the existing system and measures necessary to protect the premises in a 1 in 100 year ARI storm event and the requirements of Council's Flood Planning Policy.

25. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Chartered/Registered Civil Engineer that the design of the site drainage system complies with the following specific requirements:

The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 180058-C03.01 revision (3) prepared by Enspire Solutions Pty and dated 6 December 2018.

- a) All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- b) No pumps or charged systems (including roof drainage) must be included in the design.
- c) To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.
- d) 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.
- e) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- f) The volume of the OSD can be reduced where On-site Stormwater Retention facilities ((OSR) for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.

- g) The overflow from the rainwater tank is to be connected to existing site drainage system. Surface flows from pervious and impervious areas shall be collected and discharged separately to existing drainage system.
- h) 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.
- i) A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets. For sites with a GFA greater than 2000sqm a MUSIC model (including .sqz file) must be included with the report;
- j) A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken; and
- k) Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement must be fully "tanked" so as not to allow the ingress of seepage or groundwater.
- l) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- m) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).
- n) Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:

Pollutant	Baseline Annual Pollution Load (kg/ha/yr)	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500	90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less than 5mm	900	85% reduction of average annual load
Total Phosphorous	2	65% reduction of average annual load
Total Nitrogen	15	45% reduction of average annual load
Hydrocarbons (Oil and Grease)		90% reduction of average annual load – no visible discharge
Toxicants		100% containment of toxicants

26. Council Stormwater Pipe - Physical Location

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended site plans to accurately show the location of the Council's stormwater pipe. The

stormwater pipe must be located by the use of test pits and must be inspected by a suitably experienced Chartered/Registered Civil Engineer. The location of Council's stormwater pipe must be pegged out across the site, and the actual location and depth of the pipe must be used in the design of the footings of the proposed building.

27. Works adjacent to Council's Stormwater Pipeline

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

- a) All footings and excavation must be located outside of the easement boundaries.
- b) All footings and excavation must be located a minimum of 1000mm from the centreline of the pipeline or 500mm from the outside of the pipeline, whichever is the greater distance from the centreline.
- c) All footings adjacent to Council's stormwater pipe must be taken to a depth 500mm below a line of influence measured at 45° from a point 1m from the invert of the stormwater pipe in the direction of the footing unless the footings are to be placed on competent bedrock.
- d) If permanent excavation is proposed beneath the invert of the pipeline, suitable means to protect the excavation and proposed retaining structures from seepage or other water flow from the pipeline and surrounding subsoil must be provided.

28. External Catchment

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared by a suitably qualified Civil Engineer that demonstrate adequate site drainage for all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

29. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the basement, prepared certified as compliant with the terms of this condition by a qualified practising Chartered/Registered Structural and Geotechnical Engineer(s). The report and plans must be prepared/ amended to make provision for the following:

- a) The basement must be fully tanked to prevent the ingress of subsurface flows.

- b) Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.
- c) Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.
- d) All components of the basement, including footings, must be located entirely within the property boundary.
- e) No adverse impact on surrounding properties including Council's footpath and road.
- f) The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
- g) Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.
- h) Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

30. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a suitably experienced Chartered/Registered Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a) The unsatisfactory or damaged public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;

31. Food Certification

The premises are to be designed, constructed and operated in accordance with the:

- Food Act 2003
- Food Regulation 2010
- Australia and New Zealand Food Standards Code
- Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)
- Australian Standard AS 1668 Part 1 – 1998
- Australian Standard AS 1668 Part 2 – 2012; and
- Building Code of Australia

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

32. Landscape Plan

A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant must be provided prior to the issue of a Construction Certificate. The plan must include:

- a) Location of all proposed and existing planting delineating existing trees to be retained, removed or transplanted.
- b) A detailed planting schedule including species by botanical and common names, quantities, pot sizes and estimated size at maturity.
- c) At least 85% of the plantings must be native species from the Sydney locale.
- d) If the property is greater than 300m², at least two canopy trees or if less than 300m² only one canopy tree capable of achieving a mature height of at least six (6) metres.
- f) Details of planting procedure including available soil depth.
- g) Details of earthworks including mounding, retaining walls, and planter boxes (consistent with the approved architectural plans).
- h) A landscape maintenance strategy for the owner / occupier to administer over a twelve (12) month establishment period.
- i) Details of drainage and watering systems.

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

33. Green Roof

The green roof over the pool must demonstrate the following:

- i) A maintenance report is to be submitted, prepared by a suitably qualified person, outlining the care and maintenance strategy for the first (2) years of the green roof and is to include the following detail:
 - a) Strategy for any leaks or weaknesses in the membrane;
 - b) Watering in dry periods (if an irrigation system has not been connected to a water supply);
 - c) Removal of weeds;
 - d) Light fertilisation with slow release complete fertilisers; and
 - e) Replacement of dead plants
- ii) Installers of the green roof must have experience with green roof systems
- iii) The green roof must be structurally sound and able to appropriately waterproofed.

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.

34. Tree Protection from underground services

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

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

35. Tree Planting

The following trees must be planted:

A minimum of 2 x 75 litre size additional tree, which will attain a minimum mature height of 15 metres, shall be planted in a more suitable location within the property at a minimum of 1.5m from any boundary or structure. The tree is to conform to AS2303—*Tree stock for landscape use*.

Details of the species and planting locations of the replacement plants must be included on the landscape plan and site plan prior to the issue of a Construction Certificate. Note: any replacement tree species must not be a palm tree species or tree species listed as an exempt species under Council's Tree Management Controls.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

36. Structural Certificate for retained elements of the building

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

37. Sydney Water – Tap In

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

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

During Demolition and Construction**38. New Contamination Evidence**

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.

39. Construction Hours – Class 2-9

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

- a) 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

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

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

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

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

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

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

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

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

40. Survey Prior to Footings

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

41. Protection of Council Stormwater Drainage Infrastructure

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

The location of the pipeline shall be assumed to be in accordance with the location as outlined on the Deposited Plan 1106716 unless determined otherwise on site.

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

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

42. Tree Monitoring

The trees to be retained shall be inspected, monitored and treated by Project Arborist during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the Project Arborist to the Principal Certifying Authority are required at the following times or phases of work:

Schedule	
Tree/location	Time of Inspection

<p>Trees numbered 18-26 as per <i>Arboricultural Impact Assessment</i>.</p>	<ul style="list-style-type: none"> • Directly following installation of protective fencing, • During excavation within the <i>Tree Protection Zone</i>, • At any time fencing is required to be altered, • At project completion to verify that protection measures have been undertaken. <p>All tree protection measures must be implemented in accordance with the approved Tree Protection Plan referred to in section 6 of the submitted <i>Arboricultural Impact Assessment</i>, prepared by <i>Advanced Treescape Consulting</i>, dated 29/11/2018 and section 4 of AS4970—<i>Protection of trees on development sites</i>.</p>
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Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

Project Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

43. Canopy and/or Root Pruning

Canopy and/or root pruning of the following tree(s) which is necessary to accommodate the approved building works shall be undertaken by, or directly supervised by, the project Arborist – for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Schedule	
Tree/location	Approved works
<p><i>Pyrus calleryana</i> (Capital Pear) located in front setback of the site and listed as T27 within the submitted <i>Arboricultural Impact Assessment</i>, prepared by <i>Advanced Treescape Consulting</i>, dated 29/11/2018.</p>	<p>Minor canopy pruning.</p>

The person acting on this consent has approval under Council's Tree Management Controls to; prune the branches to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 40 mm. All pruning shall be carried out to sections 5, 6 and 7.3.3 of the Australian Standard AS4373—*Pruning of amenity trees*.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

44. Public tree protection

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

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

Prior to Occupation Certificate

45. Acoustic report demonstrating compliance

A report prepared by a suitably qualified and experienced acoustic consultant shall be submitted to Council prior to an Occupation Certificate being issued for the development which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

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

46. Contamination Management Plan

Prior to the issue of any interim / final Occupation Certificate, certification from an appropriately qualified environmental consultant is to be provided stipulating that the requirements of the following contamination reports:

Title	Prepared by	Date
Contamination Management Plan – 237 Marion Street Leichhardt (2006), CES Document Reference: CES031005-PD-05-CMP-FR2	Consulting Earth Scientists	5 September 2009

have been complied with throughout excavation, demolition & development work stages. The certification shall also include:

- a) A validation and site monitoring report prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.
- b) A detailed survey of all sites used for landfill disposal must be prepared within one month from completion of the remediation work, and submitted to Council.
- c) Identification of the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all site used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any interim / final occupation certificate.

47. Disposal of Soil

Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environmental Operations Act 1997*.

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 Occupation Certificate.

48. Food Premises Notification and Registration

Prior to the commencement of business operations/issue of an Occupation Certificate the owner of the business is to complete and submit Council's food business registration form which can be obtained from Council's website at www.innerwest.nsw.gov.au. Evidence of registration must be submitted to the Principal Certifying Authority.

Should Council be the nominated Principal Certifying Authority, then the applicant shall notify Council not less than forty-eight (48) hours prior to the proposed occupation of the premises to arrange for a final compliance inspection.

The applicant shall not operate the food premises until an Occupation Certificate has been issued.

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

49. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with written evidence from Council that works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a) Reinstatement works on damaged public domain subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

50. No Encroachments

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

51. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any damaged stone kerb has been replaced including all kerb outlets in stone kerb must be carefully core drilled.

52. Parking Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced Chartered/Registered Civil Engineer that the vehicle access and off street parking facilities at ground level only (excluding existing basement parking) have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a) The car park has been completed, line marked and all signage relating to car parking erected.
- b) A notice has been clearly displayed at the Marion Street frontage to indicate that visitor parking is available within the property with access from Marion Street.
- c) Sign(s) have been erected that clearly indicate(s) to the drivers of vehicles both on and off the property which driveway they are to use to enter or leave the subject land.
- d) Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

53. Public Domain - Major Developments

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

54. Dilapidation Report – Post-Development

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

55. Stormwater Drainage and Road Works – Certification

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with Certification by a suitably experienced Chartered/Registered Civil Engineer that:

- a) All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans.
- b) Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council by an accredited operator.
- c) Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.
- d) Certification by a Registered Surveyor that the as-built Council Stormwater pipeline is located totally within the drainage easement.

56. Works as Executed – Site Stormwater Drainage System

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

- a) The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.
- b) Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

57. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

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

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a) Easement for drainage of water;
- b) Restrictions on the Use of Land to prevent the erection of any structures or fencing;
- c) Restrictions on the Use of Land related to on Site Stormwater Detention System or stormwater quality improvement devices;
- d) Restrictions on the Use of Land related to Stormwater Surface Flow Paths;
- e) Positive Covenant related to on-site stormwater detention and/or retention system;
- f) Positive Covenant related to stormwater quality improvement devices; and
- g) Positive Covenant related to Stormwater Surface Flow Paths.

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

59. No Weep Holes

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with evidence that any weep holes to Council road or footpath resulting from the building works have been removed.

60. Civil Engineer Verification

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with written verification from a suitably experienced Civil Engineer, stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.

61. Landscape works undertaken

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.

62. Smoke Alarms - Certification of upgrade to NCC requirements

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

63. Section 73 Certificate

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

On-going**64. Basement Parking**

The existing 37 basement parking spaces are to remain accessible as parking spaces and not be caged off or used to store equipment.

65. Acoustic Impacts

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15\text{min}}$ 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 $L_{Aeq, 15\text{min}}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

66. Environmental Health

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

67. Vehicles Leaving the Site

All vehicles must enter and exit the site in a forward direction.

68. Loading/unloading on site

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

69. Commercial Waste Collection Time

To ensure minimal impacts on surrounding properties commercial waste and recyclable material generated by the premises must not be collected between the hours 9pm and 8am.

70. Canopy replenishment trees

The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.

71. Salon Use

The salon shall only be used by residents and staff. Security arrangements to the building are to be maintained for the salon as well.

72. Café Use

The café shall only be used by the residents, staff and their guests. Security arrangements to the building are to be maintained for the café as well.

Advisory notes*Prescribed Conditions*

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services

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including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

Easement and Covenant Process

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

a) Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

b) Engineer's Certificate

- i. A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:
- ii. the soundness of the storage structure;
- iii. the capacity of the detention storage;
- iv. the emergency overflow system being in place;
- v. the works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- vi. the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- vii. basement car park pumps are class one zone two;
- viii. OSR pumps and SQIDS have been installed and commissioned.

c) Restriction-As-To-User

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council. A typical document is available from Council's Development Assessment Engineer

d) A Maintenance Schedule.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's

determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a) The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b) Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to

collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.

- c) A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d) Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e) A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f) Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

Permits from Council under Other Acts

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

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

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

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

Public Domain and Vehicular Crossings

The vehicular crossing and/or public domain works are required to be constructed by your contractor. You or your contractor must complete an application for 'Design of Vehicle Crossing and Public Domain Works – Step 1' form and/or '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.

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 must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to 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.

Noise

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

Amenity Impacts General

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

Fire Safety Certificate

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

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

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

Boarding House - Registration with Fair Trading

Boarding houses with two or more residents who have additional needs or five or more residents who do not have additional needs are required to register with the Department of Fair Trading.

Construction of Vehicular Crossing

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 'Construction of a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

Chartered/Registered Engineer

An engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

Lead-based Paint

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

Asbestos Removal

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

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

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

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

Dial before you dig

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

Useful Contacts

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

www.basix.nsw.gov.au

Department of Fair Trading 13 32 20

www.fairtrading.nsw.gov.au

Enquiries relating to Owner Builder Permits
and Home Warranty Insurance.

Dial Prior to You Dig 1100

www.dialprior toyoudig.com.au

Landcom 9841 8660

To purchase copies of Volume One of
"Soils and Construction"

Long Service Payments 131441

Corporation

www.lspc.nsw.gov.au

NSW Food Authority 1300 552 406

www.foodnotify.nsw.gov.au

NSW Government

www.nsw.gov.au/fibro

www.diyasafe.nsw.gov.au

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555

www.environment.nsw.gov.au

Sydney Water 13 20 92

www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions

www.wasteservice.nsw.gov.au

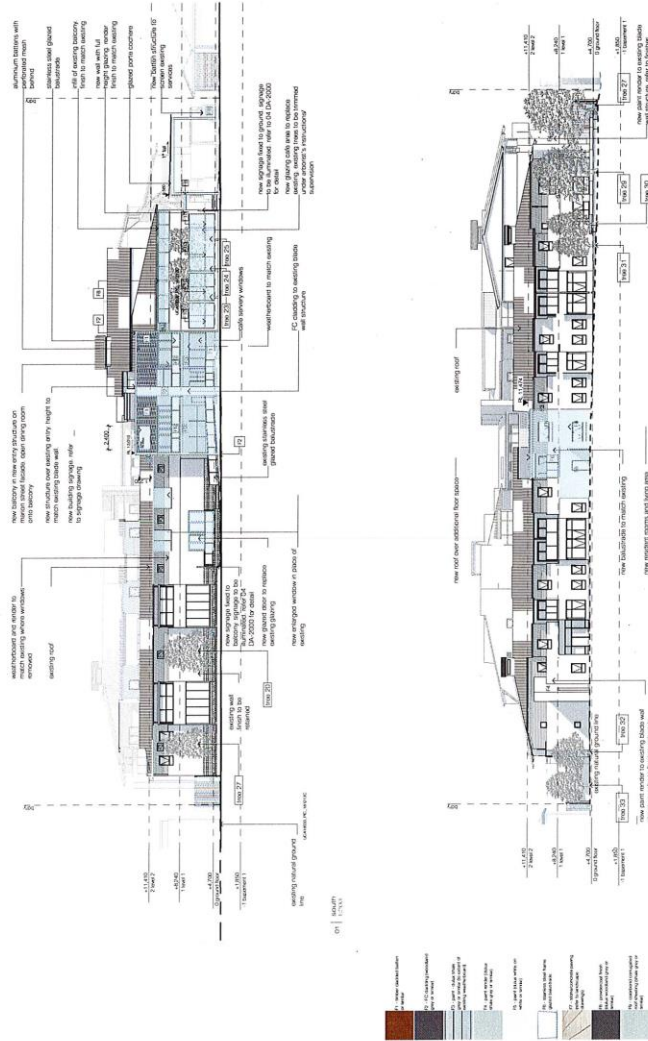
Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

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View 20 proposed to support for the distribution and protection measures

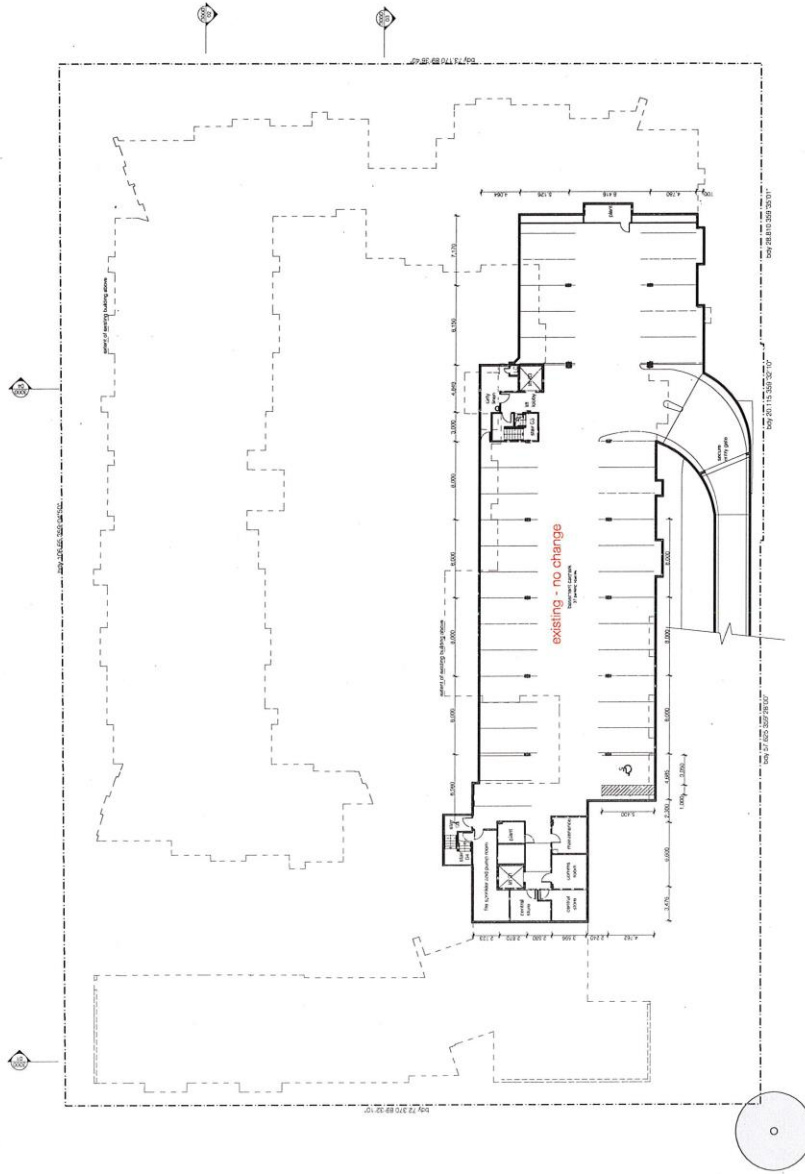
Integrated DESIGN group
 2/10 HICKS | HICKS PARTNERS ARCHITECTURE
 10/100 WILSON STREET | SYDNEY NSW 1588
 TEL: 02 9550 1234
 WWW: INTEGRATEDDESIGN.COM.AU

1. All drawings are the property of the client and are not to be used for any other purpose without the written consent of the client.
 2. The client agrees to indemnify and hold the architect harmless from all claims, damages, losses and expenses, including reasonable legal costs, arising from the use of the drawings for any purpose other than that for which they were prepared.
 3. The architect does not warrant that the drawings are free from errors or omissions, and the client acknowledges that it is its responsibility to check the drawings for accuracy and completeness.

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 Unit 10/100 Wilson Street
 Sydney NSW 1588
 Tel: 02 9550 1234
 Fax: 02 9550 1235

Drawings
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Notes: All drawings are produced by the basement but drawings provided for information on construction

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integrated DESIGN group
 architects | interior designers | landscape architects
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1:1000 site analysis (24/02/2025) for new works diagrams

integrated DESIGN group
 architects | interior design | landscape architects

11/11/2024
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- 5. All rooms are to be finished to the same standard.

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- new ground
- new ground

uniting

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	11/11/2024	...
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4
5

proposed level 1 plan
 11/11/2024 (24/02/2025) for new works diagrams

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integrated DESIGN group
 architects | interior designers | landscape architects
 10/100 Market Street, Sydney NSW 2000
 phone: +61 2 9242 2233
 www.integrateddesigngroup.com.au

proposed level 2 plan
 10/100 Market Street, Sydney NSW
 1:100 scale
 28/11/2024
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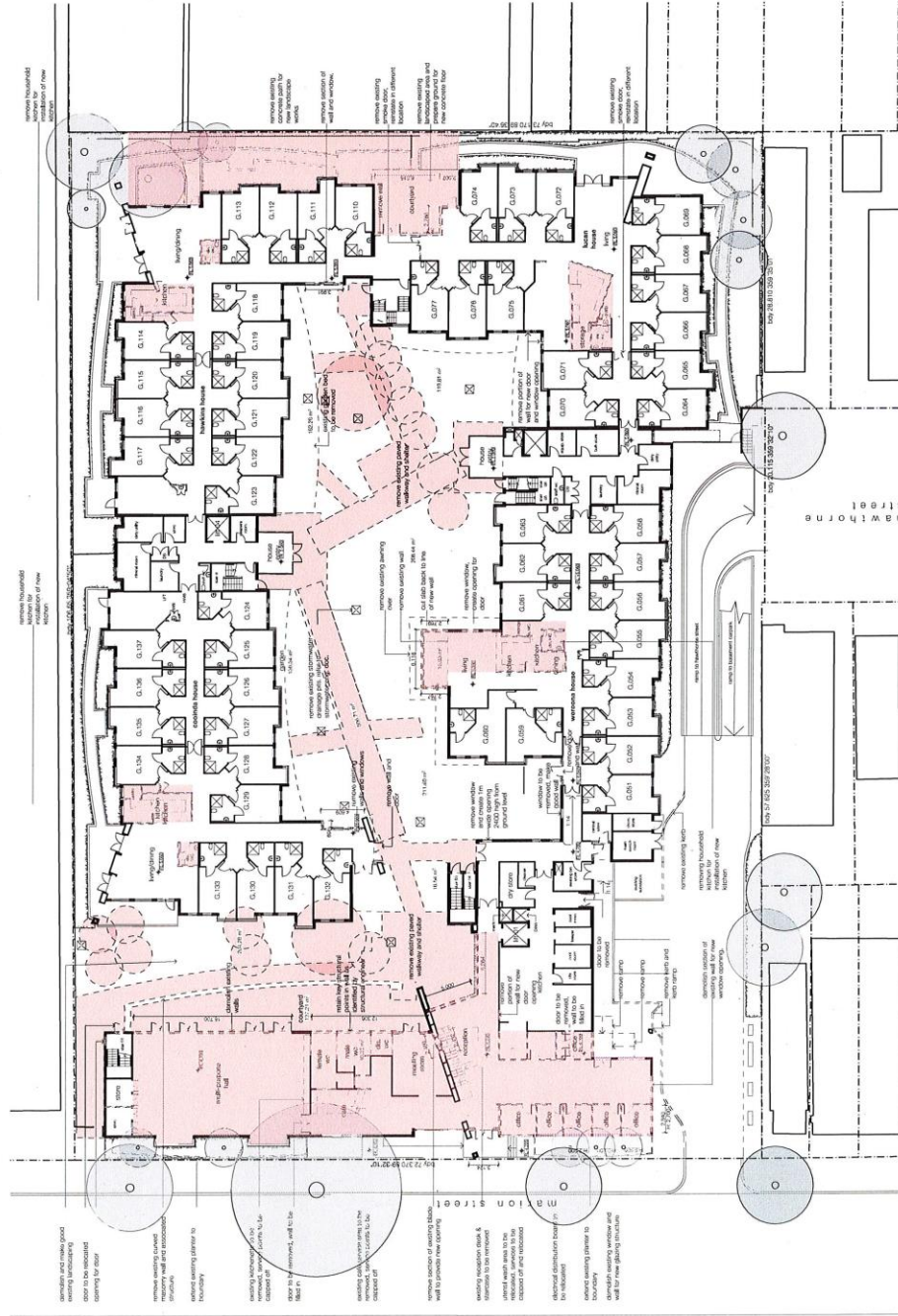
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proposed level 2 plan
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 28/11/2024

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 1:100 scale
 28/11/2024

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units

demolition plan ground floor
for history 227 main street bushland NSW

DATE: 10/11/2017
SCALE: 1:100 A4
DRAWN: [Name]
CHECKED: [Name]
APPROVED: [Name]

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UNIT 200

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 architects | interior spaces | signage
 11/11-11/12/12
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demolition plan level 2
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uniting
ARCHITECTS
1000 000 000
1000 000 000
1000 000 000

demarcation plan upper roof
for the project 207 Hudson Street, Chesham NSW
DATE: 10/10/2023
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: 1:100

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/10/2023
2	REVISED	
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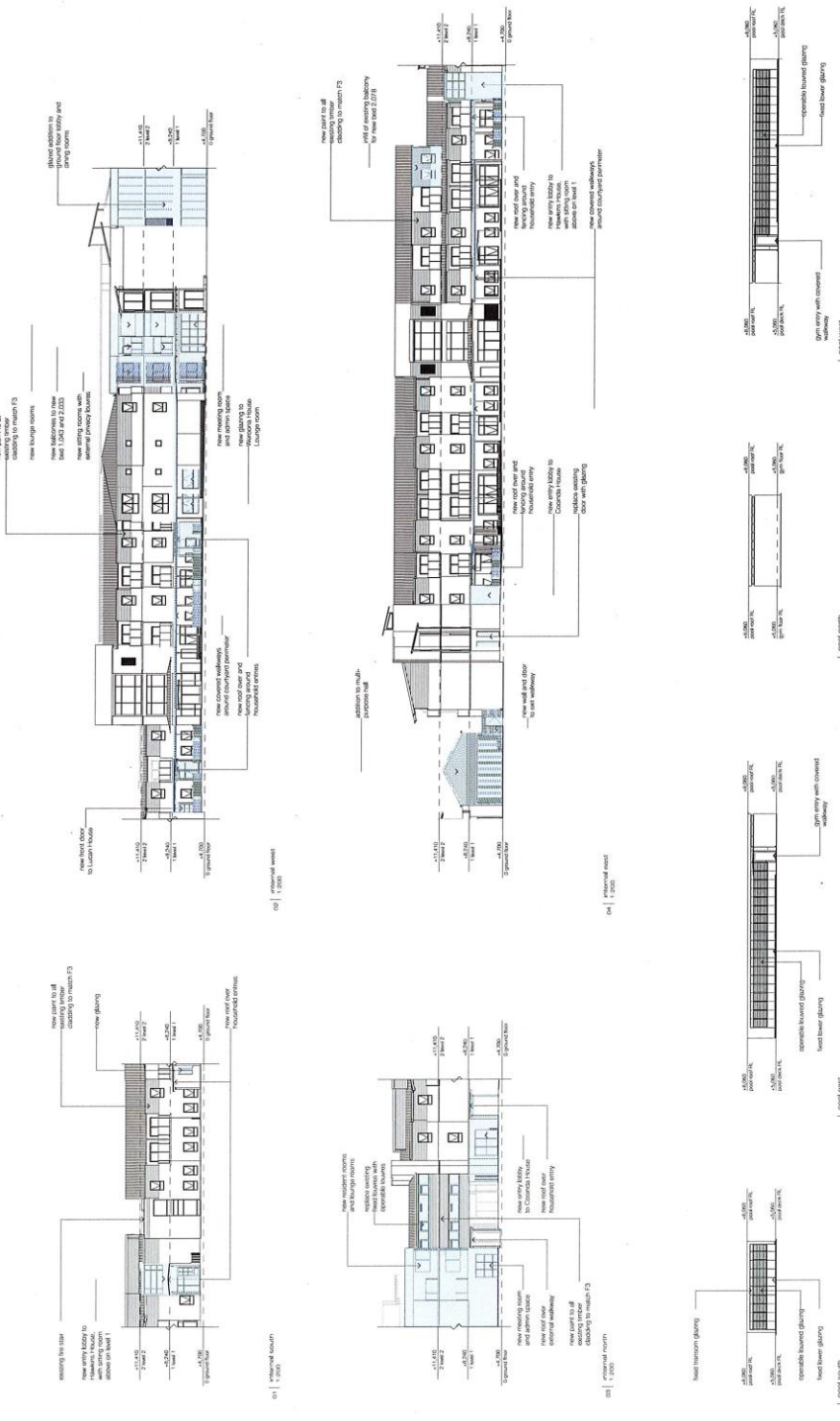
Legend

- Existing Structure Roof
- New Structure Roof
- Existing Structure Floor
- Demarcation Line

Notes

1. This plan shows the proposed demarcation for the upper roof.
2. All dimensions are in millimeters unless otherwise stated.
3. All work must be completed in accordance with the Building Code of Australia.
4. All work must be completed in accordance with the relevant council requirements.
5. All work must be completed in accordance with the relevant council requirements.
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9. All work must be completed in accordance with the relevant council requirements.
10. All work must be completed in accordance with the relevant council requirements.

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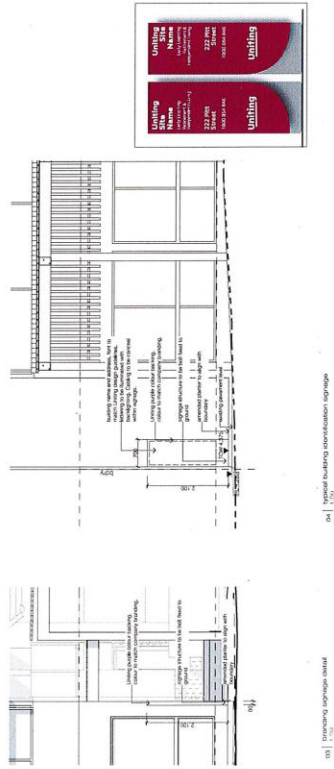
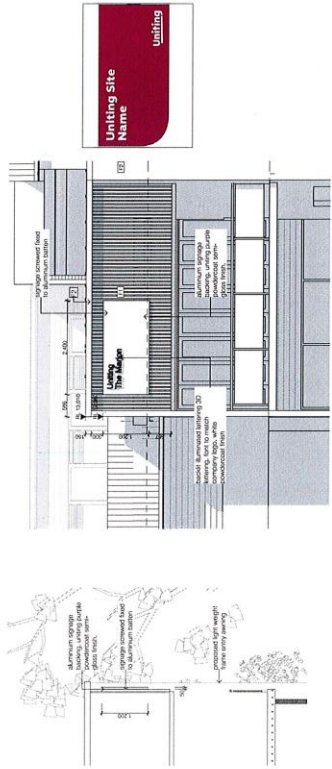
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 10/15-17/21 GERRARD ST SOUTH, SYDNEY NSW 1512
 TEL: (61) 2 9550 6600
 WWW.IDGDESIGN.COM

units
 Unit 1: 120sqm
 Unit 2: 120sqm
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 Unit 6: 120sqm
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internal and pool/gym elevations
 5/0 NORTH 1/2/7 NORTH STREET, SYDNEY NSW
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DATE: 10/10/2023
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: 1:500
 SHEET: 1 OF 1

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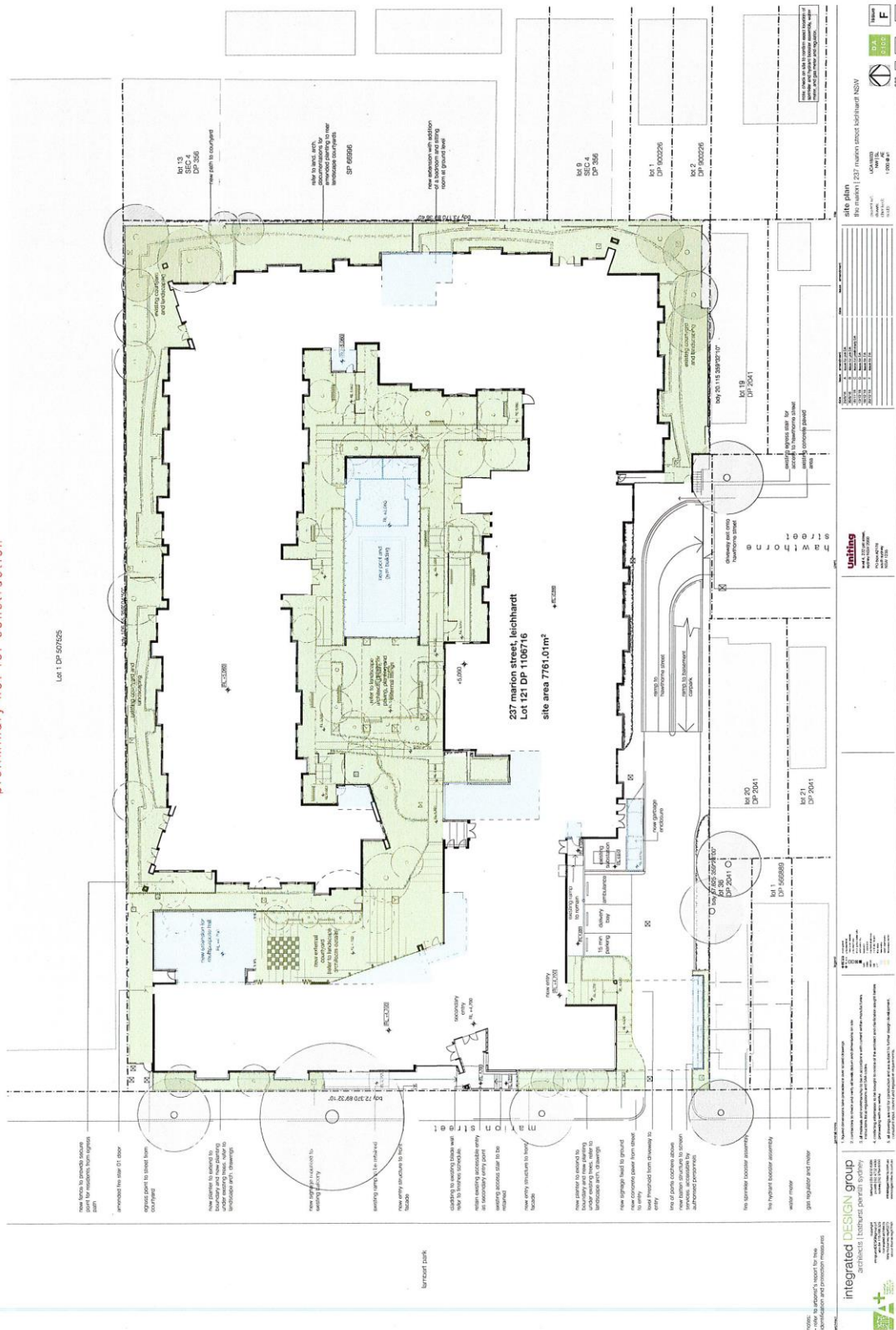
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 architects | interior design | landscape architecture

signage details
 for project 1237, main street, inner west NSW

DATE: 10/10/2017
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: 1:50

UNITING
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preliminary not for construction



site plan
 237 marion street, leichhardt NSW
 LOT 121 DP 1168716
 LOT 19 DP 2541
 1:100 A3/P
 DATE 11/11/2019

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	11/11/2019
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3	ISSUED FOR PERMIT	11/11/2019
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uniting
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integrated DESIGN group
 architects | landscape architects
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integrated DESIGN group
 architects | landscape architects
 1/100 A3/P
 11/11/2019

Attachment C- Clause 4.6 Exception to Development Standards



**Clause 4.6
Variation Request**

Floor Space Ratio

Clause 4.4 of Leichhardt LEP
2013

“The Marion”, 237 Marion Street, Leichhardt







Submitted to Inner West Council
On Behalf of Uniting

18 DECEMBER 2018



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
 December 2018

REPORT REVISION HISTORY

Revision	Date Issued	Revision Description						
01 – Draft	14/12/18	Revision tracking notes						
		<table border="0"> <tr> <td>Prepared by</td> <td>Verified by</td> </tr> <tr> <td>Mel Krzus <i>Director</i></td> <td>Stephen Kerr <i>Executive Director</i></td> </tr> </table>	Prepared by	Verified by	Mel Krzus <i>Director</i>	Stephen Kerr <i>Executive Director</i>		
Prepared by	Verified by							
Mel Krzus <i>Director</i>	Stephen Kerr <i>Executive Director</i>							
02 - Final	18/12/18	Revision tracking notes						
		<table border="0"> <tr> <td>Prepared by</td> <td>Verified by</td> </tr> <tr> <td>Mel Krzus <i>Director</i></td> <td>Stephen Kerr <i>Executive Director</i></td> </tr> <tr> <td></td> <td></td> </tr> </table>	Prepared by	Verified by	Mel Krzus <i>Director</i>	Stephen Kerr <i>Executive Director</i>		
Prepared by	Verified by							
Mel Krzus <i>Director</i>	Stephen Kerr <i>Executive Director</i>							
								

Certification

This report has been authorised by City Plan Strategy & Development P/L, with input from a number of other expert consultants. To the best of our knowledge the accuracy of the information contained herein is neither false nor misleading. The comments have been based upon information and facts that were correct at the time of writing.

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CITYPLAN.COM.AU

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4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
 December 2018

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4.6 Request
"The Marion"
237 Marion Street, Leichhardt
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4.6 Request
"The Marion"
237 Marion Street, Leichhardt
Project 18-130
December 2018

1. INTRODUCTION

This is a formal written request that has been prepared in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013 (LLEP) to support a development application submitted to Inner West Council for alterations and additions to an existing residential aged care facility (RACF) known as "The Marion", located at 237 Marion Street, Leichhardt ("the site").

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

We note the following:

- The LLEP is the relevant environmental planning instrument that applies to the land and that is the subject of this variation request; Pursuant to the LLEP, the site is zoned IN2 Light Industrial. Seniors housing is prohibited in the zone but is listed as an additional permitted use in Schedule 1(6) of the LLEP.
- As the site is located in an industrial zone, notwithstanding the additional permitted use provisions, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 does not apply.
- The site is subject to a maximum floor space ratio (FSR) pursuant to Clause 4.4 of the LLEP (and the relevant mapping) of 1:1.
- The development standard is not specifically excluded from the operation of Clause 4.6 of the LLEP.
- As the development, the subject of the current DA, seeks consent for an FSR of 1.21:1, the FSR development standard in Clause 4.4 of the LLEP is required to be varied.
- The proposed variation is 0.21:1, noting that the existing development has an approved FSR of 1.17:1. The proposal represents a 21% variation, but only a 4% increase from the existing approved FSR.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal¹.

In Sections 4 and 5 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6, 7 and 8 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

2. THE SITE

The site that is the subject of this variation is located at 237 Marion Street, Leichhardt and is known as "The Marion". It is located within the suburb of Leichhardt and is in the Local Government Area of the Inner West Council (IWC). The site is located approximately 5km west of the Central Business District (CBD) of Sydney.

¹ Relevant decisions include: *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46; *Wehbe v Pittwater Council* [2007] NSWLEC 827; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248; and *Moskovich v Waverley Council* [2016] NSWLEC 1015



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
 December 2018

Figure 1 demonstrates the location of the site within the immediate locality. The following figures provide a location plan and an aerial view of the site.

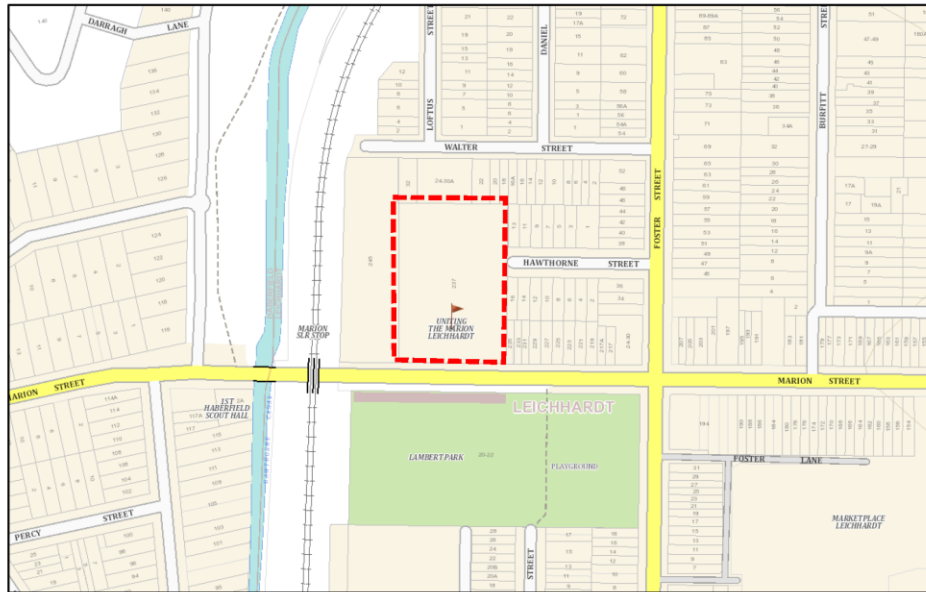


Figure 1: Site plan, site outlined in red (Source: SIX Maps)

The site comprises a single allotment and is legally described as Lot 121 in Deposited Plan 1106716. The site has an area of 7,761.01m².

3. EXTENT OF VARIATION

The subject site has a maximum floor space ratio standard of 1:1 pursuant to Clause 4.4 of the LLEP. The FSR standard is prescribed on the relevant Floor Space Ratio Map, as shown in the figure below.



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
 December 2018

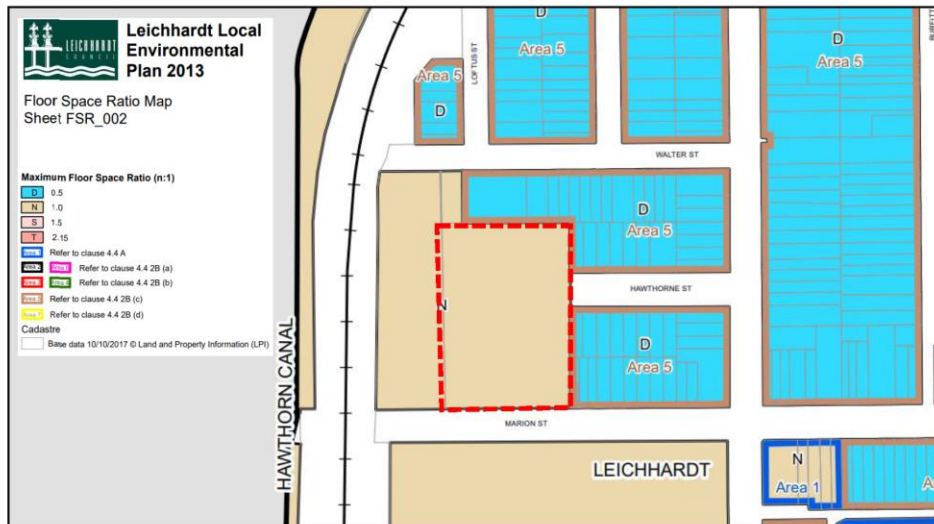


Figure 2 FSR Map_002 Extract, site outlined in red (Source: LLEP)

The existing RACF on the site has an FSR of 1.17:1, with an existing variation of 0.17:1 or 17%.

The proposed development seeks consent for an FSR of 1.21:1, with a proposed variation of 0.21:1 or 21%.

The following figure, prepared by Integrated Design Group (IDG), shows the location of the additional gross floor area (GFA) within the RACF.

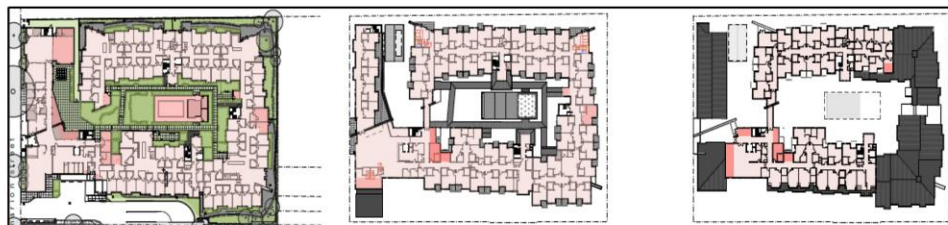


Figure 3 Additional GFA Plans – additional GFA shown in dark pink (Source: IDG)

As can be seen above, the majority of the additional built form is either contained within the footprint of the existing RACF, or additional built form internally within the site and not perceptible to the public domain or adjacent sites.



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
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The appropriateness of the proposed variation to the FSR development standard is addressed in the following sections of this written request.

4. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [cl.4.6 (3)(a)]

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
3. *The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;*
 or
5. *The zoning of the land is unreasonable or inappropriate.*

Three (3) of the ways noted above apply to the development, which are addressed below.

4.1. Achieves the objectives of the standard

Compliance with the FSR standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard. Refer to the table below for a detailed consideration of the objectives of the FSR standard.

Table 1: Achievement of Development Standard Objectives.

Objective	Discussion
(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	The desired future character of the area is prescribed in the LDCP. In accordance with Part C, the site is located within the "West Leichhardt Distinctive Neighbourhood" (refer Cl. C2.2.3.2) and within that, the "Industrial/Business" sub-area (refer Cl. C2.2.3.2(a)). The DCP prescribes a series of objectives and controls for the "neighbourhood" and the sub-area, related to the desired future character. These are addressed below: <i>West Leichhardt Distinctive Neighbourhood</i>



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
 December 2018

Objective	Discussion
	<ul style="list-style-type: none"> ▪ <i>O1 To facilitate development that is consistent with the Desired Future Character and Controls for the Distinctive Neighbourhood</i> <ul style="list-style-type: none"> ▫ Response: Where relevant, the character and controls are satisfied. Refer to discussion below. ▪ <i>C1 Maintain and encourage the predominant use of hipped and gabled roof forms.</i> <ul style="list-style-type: none"> ▫ Response: Whilst the predominant use of hipped and gabled roof forms may be encouraged, the existing roof form on the site, which is mostly shallow hipped and flat roof, will remain unchanged as a result of the proposed development. The variation to the FSR standard does not result in any inconsistency with this objective. ▪ <i>C2 Promote land uses and urban design that enhance and contribute to the character and identity of the neighbourhood whilst protecting Heritage Items and Heritage Conservation Areas that combine to help create that character.</i> <ul style="list-style-type: none"> ▫ Response: The existing use will remain unchanged. The proposed additional GFA/FSR will be largely contained internally within the site and will not affect the presentation of the building when viewed from the surrounding area. The only works that will materially change the design of the development relate to the façade and signage works (and the inclusion of a covered "awning"/porte cochere structure over the new drop off zone. These changes are considered to result in an improved presentation of the building to Marion Street, enhanced activation and passive surveillance. The external changes have been assessed by Urbis, confirming the changes will not result in any adverse heritage impact on the significance of the heritage item opposite the site. <div data-bbox="703 1249 1038 1451" style="text-align: center;"> </div> <p data-bbox="671 1458 1070 1480" style="text-align: center;"><i>Figure 4: Existing front elevation (Source: Google Maps)</i></p>



4.6 Request
 "The Marion"
 237 Marion Street, Leichhardt
 Project 18-130
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Figure 5: Perspective of proposed front elevation (Source: IDG)

- *C3 Preserve and enhance the predominant scale and character of dwellings in this precinct, consisting of mostly single storey Victorian and Federation-style dwellings, with more dense development in appropriate areas.*

 - **Response:** This site is straddled between light industrial and low to medium density residential uses. This objective is not directly relevant to the site given the mixed context. Notwithstanding this, we note that the additional GFA is largely contained within the existing footprint of the building on the site or internally within the site (and not visible from the surrounds). For this reason, we conclude that the additional GFA does not affect the scale or character of any development surrounding the site.
- *C4 Provide for more significant development along Marion Street.*

 - **Response:** The proposal relates to a site/development on Marion Street. Whilst this control promotes more "significant" development on Marion Street, we note that the alterations and additions, and particularly, the additional GFA, are minor in the context of the existing development on site.
- *C5 Conserve and enhance the weatherboard cottages & the brick cottages found throughout the West Leichhardt Distinctive Neighbourhood.*

 - **Response:** There are single storey dwellings to the east of the site. The additional GFA is proposed in locations that will not impact on these dwellings. The majority of the additional GFA is located internally within the site, with a very small addition proposed to the north and a very small addition proposed in the south-eastern corner of the first-floor level. The latter is the only addition that is perceptible from the dwellings to the east, noting that it is attributed to the increase of a staff room at this level. Refer to the figure below.



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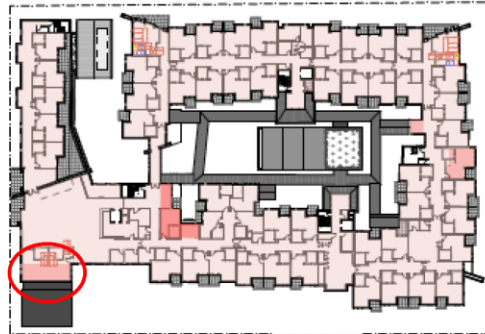


Figure 6 Additional GFA at first floor level, staff room addition circled in red (Source: IDG)

As can be seen above, the addition is well setback from the site's eastern boundary (11.5 metres) and does not increase the bulk and scale of the building to anything more than a minor extent. For this reason, we consider that the additional GFA does not undermine the requirement "conserve and enhance" the "cottages" to the east of the site.

- C6 Allow for contemporary development, which is complementary to the existing streetscape.
 - **Response:** The proposed development seeks to contemporize the dated services facilities within the existing RACF. The external works will result in an improved outcome for the presentation of the building to the street and enhanced opportunities for activation and passive surveillance. The additional GFA in itself is largely contained within the site and will not result in any impact on the streetscape and therefore, does not undermine this control.
- C7 Preserve the consistency of the subdivision pattern in this area.
 - **Response:** Not applicable to the proposed development.
- C8 Maintain existing views by stepping dwellings down contours along east/west streets.
 - **Response:** Not applicable to the proposed development.
- C9 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.
 - **Response:** Not applicable to the proposed development.



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Objective	Discussion
	<ul style="list-style-type: none"> ▪ <i>C10 Building wall height is to be a maximum of 3.6m, unless an alternative maximum building wall height is prescribed in the applicable Sub Area.</i> <ul style="list-style-type: none"> ▫ Response: Not applicable to the proposed development as the height of the development and any associated wall heights will remain unchanged. ▪ <i>C11 Development is to be consistent with any relevant Sub Area objective(s) and condition(s).</i> <ul style="list-style-type: none"> ▫ Response: Where relevant, as noted below, the development is consistent with the relevant sub area objective and controls. <p>Industrial/Business Sub-Area</p> <ul style="list-style-type: none"> ▪ <i>C1 To facilitate development that is consistent with the Desired Future Character and Controls for the Distinctive Neighbourhood.</i> <ul style="list-style-type: none"> ▫ Response: Where relevant, the character and controls are satisfied. Refer to discussion above and below. ▪ <i>C1 Ensure the ongoing viability of industrial and commercial uses, where they occur.</i> <ul style="list-style-type: none"> ▫ Response: The proposed development will not result in any change of use or any impact on the ongoing viability of the adjacent light industrial use. ▪ <i>C2 Encourage developments which have higher vehicle and noise impacts along Parramatta Road.</i> <ul style="list-style-type: none"> ▫ Response: Not relevant to the subject proposal as the site is not located on Parramatta Road. Furthermore, the proposed alterations and additions do not result in any increased traffic generation or noise impacts. ▪ <i>C3 Promote industrial businesses suitable to residential areas, which have a low noise and vehicle impact.</i> <ul style="list-style-type: none"> ▫ Response: The proposed development will not result in any change of use. Therefore, this control is not relevant. ▪ <i>C4 Encourage appropriate signage consistent with the predominant signage type for the industrial and business areas.</i> <ul style="list-style-type: none"> ▫ Response: It is considered that the proposed signage is consistent with the existing outdoor advertising in the area. Marion Street exhibits similar business identification signage, particularly at business and retail premises to the east of the site and at the industrial premises to the west of the site. That proposed is streamlined and would be consistent with other signage in the area.



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Objective	Discussion
	<ul style="list-style-type: none"> ▪ <i>C5 A maximum building wall height of 6.0m applies to industrial uses within the Industrial/Business Areas.</i> <ul style="list-style-type: none"> ▫ Response: Not applicable to the proposed development as the height of the development (and external wall heights) will remain unchanged. ▪ <i>C6 Signage for business and industry must be consistent with the established character of the streetscape; which comprises under-awning signs, fascia signs, flush wall signs, painted or top hamper or window signs.</i> <ul style="list-style-type: none"> ▫ Response: The signage comprises a backlit fascia sign and two freestanding illuminated signs to the Marion Street elevation of the building. The signage would be consistent with the existing outdoor advertising in the area and would be small in scale when viewed in the context of the site. While the site is surrounded by residential properties to the east and west of the site are business and industrial uses and the signage proposed would be consistent with that displayed on these premises. ▪ <i>C7 Development is to be consistent with any relevant objectives and controls within West Leichhardt Distinctive Neighbourhood.</i> <ul style="list-style-type: none"> ▫ Response: Consistency is achieved, where relevant. Refer above. <p>With regard to the above, we are satisfied that the proposed alterations and additions results in a development that is compatible with the desired future character of the area. The additional GFA, which results in an increased variation to the LLEP FSR standard, is largely contained within the site and will therefore not alter the bulk form and scale of the building when viewed from the surrounds. The external changes that <i>are</i> visible are not attributed to additional GFA and result in a marked improvement of the presentation of the building to the streetscape.</p> <p>(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and</p>
(ii) provides a suitable balance between landscaped areas and the built form, and	<p>In the first instance, we note that there are no landscaped area requirements under the LLEP or LDCP that apply to the site. Therefore, it is appropriate to undertake a merit-based assessment regarding the appropriateness of the additional GFA within the context of the landscaped area provision for residents of the RACF. In this regard, we note the following:</p> <ul style="list-style-type: none"> ▪ Much of the additional GFA proposed under this DA (4%) is contained to areas within the footprint of the existing building, therefore not resulting in any reduced landscaped area. Some of this additional GFA results in additional beds, but the majority




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Objective	Discussion
	<p>results in enhanced services and on-site facilities for residents and improved amenity for staff.</p> <ul style="list-style-type: none"> ▪ The reduced landscaped area provision on the site is primarily as a consequence of the proposed extension to the multi-purpose room, the gym, the swimming pool, improved "house" entries, an additional meeting room/administration and store room. We note the following: <ul style="list-style-type: none"> ▫ The additional GFA from the latter items, including the entries, store, administration and meeting room comprises only very minor additions to the existing built form and no material impact on the provision, quality of usability of landscaped area on the site. ▫ The multipurpose room reduces landscaped area in the south-western part of the site, but an area that is underutilised as it is "tucked away" and separated from the primary outdoor communal/landscaped area. The extension of the multi-purpose room is considered to be acceptable as it provides an enhancement of an existing indoor space which is used as an alternative venue for recreation/social gathering to the outdoor communal space. ▫ Strictly speaking, the proposed swimming pool comprises GFA but has been designed (fully glazed with operable roof and walls) to minimise visual impact and overshadowing to the residual landscaped open space to the south. The intent of replacing part of the underutilised communal open space with a swimming pool is to respond to requests by residents of the RACF and to provide an alternative form of recreation (and rehabilitation) that can be utilised year-round. Therefore, whilst the swimming pool technically comprises "built form", it also serves a purpose that is similar (and arguably more beneficial for residents) to landscaped open space but in an alternative and more development-appropriate form. A large area of landscaped open space is being retained to the south of the proposed pool to ensure that a balance is achieved between built form and landscaped open space on the site. ▪ The reduced landscaped area within the northern part of the site as a result of a minor extension of additional beds at the ground and first floor levels is minor, only equating to approximately 53m². This area of landscape is underutilised, not providing any function in terms of recreation for residents. The minor extension in this location is considered to be appropriate as boundary landscaping will be retained adjacent to the northern boundary, ensuring that a landscaped outlook for residents in the northern "wing" will be retained. A



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	<p>landscaped "buffer" to the northern side boundary will also be retained.</p>  <p>Figure 7: Extract of proposed ground floor plan showing reduced landscaped area to northern part of the site (shaded red).</p> <ul style="list-style-type: none"> Uniting has advised that the quantum of landscape proposed on-site is sufficient to satisfy the demands of the residents (existing and future) RACF. As noted earlier there is a demand for less "traditional" forms of recreation on-site, that are multi-purpose (such as the multi-purpose room and the pool and gym which also offer rehabilitation services) and particularly, to permit year-round use. The "balance" of built form and landscaped area in this case, relevant to the specific circumstances of this development, is considered to be an appropriate outcome. <p>For the reasons set out above, we are satisfied that a suitable balance between built form and landscaping is achieved on the site to meet the needs of the residents in a way that does not impact on any surrounding land (private or public domain).</p>
<p>(iii) minimises the impact of the bulk and scale of buildings,</p>	<p>In the context of the additional GFA and variation to the FSR standard, we note the following:</p> <ul style="list-style-type: none"> As noted above, much of the additional GFA proposed under this DA (4%) is contained to areas within the footprint of the existing building, therefore not resulting in <i>any</i> impact in terms of bulk and scale; The additional GFA at the ground floor and first floor level of the northern section of the building is a small "infill" of articulation within the northern elevation of the existing building. This "infill" is considered to be appropriate for reasons



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	<p>articulated earlier in this report, and notably, the fact that sufficient landscaping will be retained along the northern site boundary to assist in mitigating the visual impact of the minor extension. Furthermore, we note that the southern façade of the building directly opposite the site (to the north) is generally blank, with only narrow vertical windows and no full-size windows or balconies. To this end, there will be no adverse impact in terms of outlook from the residential building to the north as the key living and habitable areas including any balconies are clearly orientated to the north and not within the southern façade (directly opposite the RACF on the subject site). Refer to the figure below.</p>  <p><i>Figure 8 View along the northern site boundary with the existing RACF to the left of the picture and the adjacent residential building to the right (Source: Midson)</i></p> <p>The minor extension in the northern façade is considered to be appropriate in this context.</p> <ul style="list-style-type: none"> ▪ The additional GFA attributed to the staff room extension in the south-eastern corner of the existing building is acceptable as it results in only a very minor increase in bulk and scale in the context of the existing built form when viewed from the surrounds. This part of the building remains well setback from the eastern site boundary which is shared with low density residential dwellings. This setback ensures that there will be no adverse visual impact resulting from the addition and no overshadowing of private open space or habitable rooms.



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	<p>Despite its minor extent, the intent is for this extension to comprise glazed components to reduce perceived bulk and scale, to enhance amenity through daylight filtration and to promote passive surveillance to the street. Refer to the figure below for a visual representation of the proposed extension when viewed from Marion Street (looking north-west).</p>  <p>Figure 9 Perspective of development, staff room addition circled in red (Source: IDG)</p> <ul style="list-style-type: none"> ▪ The GFA attributed to the internal additions, including the multi-purpose room extension, the swimming pool and the gym (and other minor amendments within the internal courtyard/open space) are considered to be appropriate for the following reasons: <ul style="list-style-type: none"> ▫ All of this additional GFA is located internally within the site, resulting in no bulk and scale impact on the street or surrounding uses. ▫ As noted earlier, the swimming pool has been designed to be fully glazed, with openable louvres for the walls and roof. The purpose of this design is to enable year-round use but to also minimise visual bulk and scale when viewed internally within the site and to minimise the additional shadows cast from the structure internally within the site (noting there is no external shadow impact). ▫ The gym represents a small, single storey building at the northern end of the existing central communal space. The scale of this structure minor in terms of visual bulk and scale. <p>With regard to the above, we consider that the proposed additional GFA is acceptable as it will not result in any adverse impact as a consequence of bulk and scale.</p>
(b) to ensure that non-residential development is compatible with the	This objective is not applicable to the proposed development.



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Objective	Discussion
desired future character of the area in relation to building bulk, form and scale.	

4.2. The development standard has been virtually abandoned or destroyed

While we would not say the development standard has been abandoned or destroyed in all cases, we note that in relation to the existing RACF this reason applies, noting that the existing RACF has been approved by Council with an FSR that exceeds the maximum permitted under the LLEP. This includes:

DA Consent	Description	Floor Space Ratio Approved
D/2001/776	119 bed aged care facility.	1.1:1.
D/2003/645 s96 to D/2001/776	118 bed aged care facility.	1.11:1.
D/2001/776	Twelve (12) additional aged care units.	1.17:1.

Council has previously recognised that special circumstances apply to this site that warrant flexibility in the application of the FSR standard. The additional exceedance is considered to be supportable on the basis that it is delivering additional aged care beds for the catchment and seeking to improve the quality of service for existing and future residents on the site. Moreover, a significant proportion of the additional GFA is created by the enclosed recreation facilities (communal gym, enlarged multi-purpose room and swimming pool), which are not visible from surrounding properties or the public domain and which improve the services available and amenity for residents of the facility.

4.3. The zoning is unreasonable or inappropriate

The light industrial zone applicable to this site appears to have been applied on a "generic" rather than site specific basis. Whilst the zone is consistent with the form of surrounding light industrial scale development (to the west), it does not take into account the existing development on the site which has been in existence for some 15 years. Development standards that may be appropriate to light industrial (whether they be height or FSR) are often manifestly inappropriate for other uses that are also permitted within the zone, such as additional uses like seniors housing. There is nothing to indicate that the approved existing scale of development on the site is not appropriate, despite the fact that it exceeds the scale of its surrounds. Therefore, if a site-specific approach to zoning and development standards were to be taken, the relevant development standards applied would be more consistent with the existing development on the site rather than that on adjoining sites. Whilst the FSR is proposed to increase beyond what has previously been approved, as demonstrated in this request, on a merit basis, the additional GFA is not of any consequence and will actually deliver positive outcomes for the residents and staff on-site and to a degree, the wider



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community through the delivery of additional care beds and a range of services that may provide opportunities for use by the wider community.

As a consequence, we contend that the light industrial zoning of the site is inappropriate and that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the site. The 'base' FSR in the LLEP is implied to be appropriate in terms of the physical intensity and scale of development for the site for an industrial-based development. The nature of industrial developments is such that an equivalent building volume to that proposed will have a lower FSR because of the requirement for significantly higher ceiling heights. The minor increase in FSR (4%) in this case, will envisage a scale of development that is appropriate for the site and surrounds and will deliver social benefits by providing an improved aged care facility that serves the community.

5. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [cl. 4.6(3)(b)]

The SEE prepared for this DA by CPSD provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds. A summary is provided below within the context of the additional GFA proposed:

- The additional GFA is largely contained internally within the site. Any additional GFA that is visible from surrounding land (such as the staff room extension or the "in fill" of additional beds in the northern part of the site) has been sited/designed to reduce any visual or other (such as overshadowing or privacy) impact. The GFA internally within the site that displaces existing landscaped communal space is considered to be acceptable as it has been designed to:
 - Ensure there is sufficient residual landscaped open space remaining on the site;
 - Minimise any impacts internally within the development in terms of visual impact, outlook for residents and overshadowing; and
 - In the case of the swimming pool, gym and extended multi-purpose room, whilst these facilities will reduce the quantum of landscaped open space, they will provide for an alternative form of recreation for residents. The provision of a partial "green roof" over the pool/gym structure will assist in offsetting some of the loss of green open space, providing landscaped relief and a pleasant outlook for residents with a view from their rooms at the upper levels internally within the site. Importantly, the existing communal open space is open and underutilised as it is exposed to the elements. These new facilities, combined with the proposed lawn bowls green, provide a wide range of options for residents on-site to meet, gather and recreate. The pool and gym also provide a secondary role of providing enhanced rehabilitation opportunities for less mobile residents.
- The additional GFA does not result in any impact on the heritage significance of the heritage item opposite the site on Marion Street;
- The additional GFA does not result in any demand for additional parking or servicing requirements. To this end, there will be no adverse traffic or parking impacts as a result of the proposed variation to the FSR standard; and
- The additional GFA does not result in any other environmental impact by way of accessibility, heritage, drainage, etc.



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Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

- The breach of the standard would allow for a development which provides additional aged care beds for the catchment and support services on-site (communal gym, enlarged multi-purpose room, new meeting/staff rooms and additional seating area) to serve the residents, who form part of the wider Leichhardt community;
- The breach of the standard would allow for a development that is consistent with the existing and desired future character of the area as demonstrated earlier in this statement;
- There would be no adverse environmental impacts as a result of the proposed breach of the standard;
- The additional rooms will benefit the community by enabling 12 new residents to be accommodated at the RACF (noting that only 5 of these are actually attributed to additional GFA). Reconfiguration of the existing floor levels to accommodate the beds will result in a more efficient use of the building and will not create any adverse external impacts to surrounding land/uses, particularly in terms of bulk, scale, privacy or overshadowing;
- The proposal would result in the provision of enclosed recreation (communal gym and pool (but noting that the pool is only partly enclosed with fixed open louvres for the majority of the facades) in conjunction with traditional landscaped communal open space. As noted above, this balance between open and enclosed recreation will permit a better utilisation of the central communal area and enhanced opportunities for year-round recreation. We understand that residents are fully supportive of this approach and many of the proposed amendments to the facility have arisen from consultation with staff and residents; and
- The circumstances of the site and development are unique. The existing development has been approved in stages over the years with variations to the LLEP standard at every stage (hence the current exceedance). Importantly, whilst the use is identified as being an additional permitted one, it is clear that the zoning is not appropriate for the site. We consider that the FSR standard that applies to other IN2 zoned land in the area (i.e. directly adjacent to the site), has been applied as a "blanket" approach and does not take into consideration the unique characteristics of the site and certainly not the existing development on it. Therefore, Council granting consent to a further variation, in our view, does not undermine the intention of the application of this FSR standard as it responds to the unique circumstances of the site and history of development approval.

6. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [cl.4.6(4)(a)(ii)]

In Section 4.1 (above), it was demonstrated that the proposal is consistent² with the objectives of the development standard. The proposal is also consistent with the objectives of the zone, where relevant, as explained in Table 2 (below). It is important to note that many of these objectives are not relevant as the existing use is an additional permitted one under the LLEP and not one envisaged for the subject zone.

² In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woolahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'



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Table 2: Consistency with Zone Objectives.

Objective	Discussion
<ul style="list-style-type: none"> To provide a wide range of light industrial, warehouse and related land uses. 	Not relevant.
<ul style="list-style-type: none"> To encourage employment opportunities and to support the viability of centres. 	Not directly relevant as the site is not located in a "centre", but the alterations and additions will enhance the long-term viability of the RACF which will in turn support the ongoing employment opportunities on the site.
<ul style="list-style-type: none"> To minimise any adverse effect of industry on other land uses. 	Not relevant as the existing use does not involve any "industry" use.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area. 	Not relevant as the site comprises an existing seniors' development.
<ul style="list-style-type: none"> To support and protect industrial land for industrial uses. 	Not relevant as the site comprises an existing seniors' development.
<ul style="list-style-type: none"> To retain existing employment uses and foster a range of new industrial uses to meet the needs of the community. 	The development will retain the existing employment base associated with the RACF. The second part of this objective is not relevant.
<ul style="list-style-type: none"> To ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities. 	Not relevant.
<ul style="list-style-type: none"> To retain and encourage waterfront industrial and maritime activities. 	Not relevant to the site/proposal.
<ul style="list-style-type: none"> To provide for certain business and office premises and light industries in the arts, technology, production and design sectors. 	Not relevant to the site/proposal.

As can be seen from Table 1 and Table 2, the proposal is consistent with the objectives of the standard and where relevant, the objectives of the zone and is therefore considered to be in the public interest.

7. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.



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8. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [cl. 4.6(5)(b)]

As discussed previously, the proposed breach of the FSR standard facilitates an enhanced quality of accommodation, facilities and care for staff and residents of the existing RACF. Whilst the proposal includes 12 additional RACF beds, the majority of these (8 of 12) are contained within the existing built form and not as a consequence of additional GFA. The provision of a wide range of services and facilities on-site, such as through inclusion of an enhanced multi-purpose room for residents, a swimming pool and a gymnasium (the latter two (2) for recreation and rehabilitation purposes), is considered to be a positive outcome for the wellbeing of residents and of no consequence to the surrounding area given the additional GFA attributed to these facilities is not externally visible. Additional GFA in the form of administration, staff amenities and the provision of dedicated household "entries" for residents is considered to further improve the wellbeing of "The Marion" community without having any external impact.

The breach of the standard is considered to be acceptable and minor in the context of the variations previously approved on-site for the existing RACF. The breach of the standard does not result in any adverse environmental impacts to the public domain, surrounding properties or internally within the site.

Accordingly, there is no public benefit³ in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the FSR standard and hence there are very minor disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

9. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Leichhardt Local Environmental Plan 2013, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and where relevant, the objectives of the IN2 zone;
- The development standard has virtually been abandoned for the site given previous Development Applications have been approved with variations to the same FSR standard;
- The light industrial zoning of the site is inappropriate and the FSR development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the site;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

³ *Ex Gratia P/L v Dungog Council* (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"