



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/288
Address	3 & 3A Cary Street, LEICHHARDT NSW 2040
Proposal	Alterations and additions to existing building, remove and replace existing carport with new carport and fencing works.
Date of Lodgement	31 July 2019
Applicant	Mrs L M Wherry
Owner	Mrs L M Wherry
Number of Submissions	Nil
Value of works	\$93,500.00
Reason for determination at Planning Panel	Floor Space Ratio variation exceeds 10%
Main Issues	Floor Space Ratio
Recommendation	Approval
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		

1 Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing residence which is part of an approved dual occupancy development (under DA117/88), as well as removal and replacement of the existing carport with new carport and fencing work at the property known as 3 & 3A Cary Street, Leichhardt. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application include:

- Floor Space Ratio variation exceeds 10%

The non-compliance is acceptable given that the proposed increase in FSR will have no adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the application is recommended for approval.

2. Proposal

The application seeks consent for alterations and additions to the existing dwelling. The following works are proposed:

Ground Floor

- New carport;
- New rear deck area to residence at No. 3A Cary Street;
- New boundary fence to the eastern (Renwick Street) boundary;
- Internal alterations to the existing kitchen area of the residence at No. 3A Cary Street; and
- Render and paint over existing brickwork to the residence at No. 3A Cary Street.

First Floor

- New first floor bath and bedroom with associated internal works to the residence at No. 3A Cary Street.
- Infill the rear first floor balcony of the residence at No. 3A Cary Street;
- Infill of the existing handrails to the south, Cary Street facing balcony of the residence at No. 3A Cary Street; and
- Render and paint over existing brickwork of the residence at No. 3A Cary Street.

3. Site Description

The subject site is a corner lot that is located on the northern side of Cary Street, and on the western side of Renwick Street. The site consists of 1 allotment and is rectangular with a total area of 318sqm and is legally described as Lot 1 Sec. 11 DP612. The site has a frontage to Cary Street of 10.895m and a secondary frontage of 30.48m to Renwick Street.

The site supports a two storey building comprising two residences as part of a dual occupancy and a carport at the rear adjacent to the northern boundary. The adjoining property to the west at No. 5 Cary Street supports a single storey house.

The site is zoned R1 – General Residential and is not located in a Heritage Conservation Area. The property is not a flood prone lot.

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
CDCP/2018/153	Alterations and additions to existing two storey dwelling	Approved Private Certifier – 10/10/2018
DA117/88	Dual Occupancy Addition to existing house.	Approved – 24/5/1988

Surrounding properties

Application	Proposal	Decision & Date
CDCP/2013/63 – 7 Cary Street	Demolish part dwelling and workshop and construct a rear single storey addition to the existing dwelling. Remove arches and provide timber infill panels to the front boundary fence and replace hard paving with soft landscaping adjacent to the front porch.	Approved Private Certifier – 21/6/2013
D/2003/97 – 62 Renwick Street	Erection of a studio comprising study and water closet at rear of site and associated works.	Approved – 7.8.2003
DAREV/2016/13 – 95 Renwick Street	Review of D/2015/729 which refused alterations and additions to dwelling. Review entails amendments to the design of the alterations and additions which include a first floor addition.	Approved – 1.8.2016
D/2015/729 - 95 Renwick Street	Alterations and additions to existing dwelling including new first floor.	Refused – 6.4.2016
D/2019/256 – 99 Renwick Street	Alterations and additions at ground and first floor and construction of deck	Approved – 23.10.2019
PREDA/2018/230 – 99 Renwick Street	Alterations and additions to semi-detached dwelling including rear additions at ground and upper levels relocate carport and new rear deck.	Advice Letter Issued – 7.11.2018

4(b) Application history

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

Date	Discussion / Letter / Additional Information
3.10.2019	Applicant submitted additional information as per Council's request.
12.9.2019	Council forwarded the applicant a request for additional information letter which entailed the following: <ul style="list-style-type: none"> • Updated Survey plan with either the boundaries being surveyed or off-sets provided; • Additional shadow diagrams in plan and hourly intervals; • Updated architectural plans to correctly depict and annotate all the proposed works sought.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides 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 not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

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

5(a)(iii) *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 not contrary to the aims of the plan.

Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone Objectives and Land Use Table
- Clause 4.3A - Landscaped Areas for Residential Accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of Floor Space Ratio and Site Area
- Clause 4.6 - Exceptions to development standards
- Clause 6.4 - Stormwater Management
- Clause 6.8 - Development in Areas Subject to Aircraft Noise

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

The application proposes internal and external alterations and additions to an existing residence within an approved dual occupancy development, a new carport and fencing works, all of which are permissible with consent within the R1 – General Residential zone. The objectives of the zone are as follows:

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

The proposed development is considered to be consistent with the above objectives as it will provide a variety of housing types and densities for the community, improves opportunities to work from home while protecting and enhancing the amenity for the existing and potential future residents and to the surrounding neighbouring properties, and will have minimal adverse undue impact on the existing streetscape or character of the area.

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

Standard	Existing	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 0.6:1 or 190sqm	0.82:1 260.5sqm	0.84:1 266.7sqm	75.9sqm or 39.78%	No
Landscape Area Minimum permissible: 20% or 63.6sqm	14.75% 46.9sqm	13.02% 41.4sqm	22.2sqm or 34.91%	No
Site Coverage Maximum permissible: 60% or 190.8sqm	61.32% 195sqm	62.58% 199sqm	8.2sqm or 4.30%	No

Clause 4.6 Exceptions to Development Standards

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

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

The applicant seeks a variation to the Landscaped Area, Site Coverage and Floor Space Ratio development standards under Clauses 4.3A (3)(a), 4.3A (3)(b) and 4.4 of the applicable local environmental plan.

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 exceptions to the development standards have been assessed against the provisions of Clause 4.6 of the Leichhardt Local Environmental Plan, below.

Clause 4.3A (3)(a) - Landscaped areas for residential accommodation in Zone R1

As noted above, the applicant seeks a variation to the Landscaped Area development standard under Clause 4.3A of the LLEP 2013.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the LLEP 2013 justifying the contravention of the Landscaped Area development standard which is summarised as follows:

- The proposed development seeks to reduce the already non-compliance landscaped area by 4sqm, however it is still able to provide area for tree planting.
- The proposed alterations and additions results in a minor decrease in landscaping area and is not considered to result in an unacceptable site density.
- The proposed alterations and additions result in a minor reduction in the landscaping area and will not impede underground flow of water.
- The alterations have been designed to be visually appealing and unobtrusive to the locality.
- It is noted that the surrounding area does not provide a landscaped corridor between adjoining and the proposed development is minor in nature.

The relevant objectives of the R1 – General Residential zone are outlined below:

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

The objectives of the Landscaped Area development standard, as set out in the LLEP 2013, are outlined below:

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

Whilst a written request has been received from the applicant that seeks to justify the contravention of the Landscaped Area development standard in question (see above), the extent of Landscaped Area breach is not supported. In this regard, the proposal will be

conditioned to provide an additional 5.5sqm of landscaped area (garden and / or lawn with a minimum dimension of 1m) that is currently being removed to accommodate the rear decking for 3A Cary Street. Through this condition, the existing landscaped area will be unaltered which will improve on-site amenity and achieve an acceptable site density/coverage and that better respects the pattern of development in the street and wider area.

It is considered the development, subject to the recommended condition to provide additional Landscaped Area to ensure that it is not reduced below existing, is in the public interest because it is consistent with the objectives of the R1 – General Residential zone and the objectives of Landscaped Area development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The objective of the control and the R1 Residential Zoning is to control site density and to maintain a landscape corridor and promote the desired future character of the neighbourhood.
- The proposal, as conditioned, will not result in a reduction to the existing Landscaped Area and will result in an improved connection between indoor and outdoor private open space.
- The proposal, as conditioned, does not result in any unacceptable adverse amenity impacts to the surrounding properties.

The concurrence of the Secretary of the Department of Planning may be assumed for matters dealt with by Local Planning Panels.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013 if the recommended conditions are adopted.

For the reasons outlined above, there are insufficient planning grounds to justify the departure from the Landscaped Area and it is recommended that the Clause 4.6 exception not be granted.

Clause 4.3A (3)(b) – Site Coverage for residential accommodation in Zone R1

The applicant seeks a variation to the existing Site Coverage development standard under Clause 4.3A of the LLEP 2013.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the LLEP 2013 justifying the existing/proposed contravention of the Site Coverage development standard which is summarised as follows:

- The site has a required maximum site coverage of 60%. This proposal will have a ratio of 62.58%, and although this exceeds the required maximum, it is a small increase in the existing ratio of 61.3%. The total increase is 4 square metres.
- The vast majority of properties in the area all exceed the site coverage and landscape ratios.
- The development, adding only to the rear and non-neighbour side of the residence, will ensure there will be no impact on shadows or visual obstruction.
- With the proposed works only replacing existing structure and enclosing a balcony, it seems highly acceptable to have the works approved above this existing hard surface area.
- The new proposal is small in nature and has been kept to a minimum, is replacing an existing carport and creates a small addition to the existing residence, there is a small, less than 3%, breach of the required site coverage.

The applicant's written rationale adequately demonstrates that compliance with the Site Coverage development standard is unreasonable in the circumstances of the case, and that

there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant objectives of the R1 – General Residential zone are outlined in the section above.

The objectives of the Site Coverage development standard, as set out in the LLEP 2013, are outlined below:

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

It is considered the development, subject to conditions, is in the public interest because it is not inconsistent with the relevant objectives of the R1 – General Residential zone and the objectives of the Site Coverage development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The proposal provides suitable landscaped areas for tree planting to be used and enjoyed by the residents (subject to the landscape conditions discussed above);
- The proposed development is compatible with surrounding development and the desired future character of the neighbourhood in relation to building bulk, form and scale as viewed from the street;
- The proposed carport works and enclosure of the existing rear first floor balcony will have minimal impacts to the existing site density,
- The proposal does not result in any unacceptable adverse amenity impacts to the surrounding properties.

The concurrence of the Secretary of the Department of Planning may be assumed for matters dealt with by Local Planning Panels.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Site Coverage development standard and it is recommended the Clause 4.6 exception be granted.

Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the FSR development standard under Clause 4.4 of the LLEP 2013 by 39.78% (75.9sqm) of this, only 6.2sqm or 3.25% is “new”/proposed GFA.

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

- The subject site has a lot size of 318sqm and the development results in a gross floor area of 260.4sqm which results in a FSR of 0.82:1. It is noted that the existing FSR is 0.79:1 and the proposed development only increases the GFA of the site by 8sqm.

- The proposed development...has minimal impact on the character of the locality. The alterations have been designed to be visually appealing and unobtrusive to the locality.
- The proposed alterations and additions to the existing dwelling at the subject site will result in a built form that does not obscure important landscape or townscape features as the additional floor space is situated where the existing balcony is located.
- The proposed alterations and additions have been designed to minimise the bulk and scale of the development with the proposed additions being minor in nature.
- The proposed development is general alterations and additions to an existing dual occupancy dwelling that will allow the owners of the dwelling to provide for a new bathroom within the existing dwelling.
- It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone as well as the outcomes of the FSR Development Standard.

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

The relevant objectives of the R1 – General Residential zone are outlined below:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities*
- *The provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The objectives of the FSR development standard, as set out in the LLEP 2013, are outlined below:

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

Having regard to these objectives, the following is noted:

- The objective of the Floor Space Ratio standard is to ensure residential accommodation is compatible with the desired future character of the area in relation to building bulk, form and scale.
- The additional GFA is to infill the existing rear first floor balcony with a slight increase in length / BLZ of 1.45m that is considered to have minimal undue adverse privacy and streetscape impacts.
- The proposed dwelling provides a suitable balance between the built form and landscaped areas.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone and the objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The proposed development is compatible with the desired future character of the area in relation to building bulk, form;
- The proposal maintains a suitable balance between the existing landscaped areas and the built form and provides sufficient private open space on the site;
- The additional floor space will comply with the Building Location Zone where it can be reasonably assumed that development can occur;
- The proposal does not result in any adverse unacceptable amenity impacts to the surrounding properties.

The concurrence of the Secretary of the Department of Planning may be assumed for matters dealt with by Local Planning Panels.

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 the Landscaped Area, Site Coverage and FSR development standard and it is recommended the Clause 4.6 exception be granted.

Clause 6.8 - Development in areas subject to aircraft noise

An Acoustic Report has been submitted to Council and is referenced in the recommended consent conditions.

5(b) Draft Environmental Planning Instruments

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

- Draft SEPP – Environment

The proposal does not contravene the provisions in the Draft SEPP – Environment.

5(c) Development Control Plans

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

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	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes – see discussion
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A

C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.1 Excelsior Estate Distinctive Neighbourhood	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	Yes, as conditioned – see discussion
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	Yes – see discussion
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	No
D2.5 Mixed Use Development	No
Part E: Water	
Section 1 – Sustainable Water and Risk Management	N/A
E1.1 Approvals Process and Reports Required With Development Applications	N/A
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A

E1.1.3 Stormwater Drainage Concept Plan	N/A
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
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:

C1.3 Alterations and additions

The streetscape controls prescribed in this part of the LDCP2013 seek to ensure first floor additions are of a scale and are to be located in a manner which:

- Maintains visual separation between the existing building and adjoining residential development; and
- Maintains setback patterns of surrounding development; and
- Will ensure that the addition does not dominate, but is sub-ordinate to the existing dwelling when viewed from the street.

Further, the site is located in the Excelsior Estate Distinctive Neighbourhood where a maximum wall height of 3.6m applies.

The proposed rear first floor extension/balcony enclosure will not further breach the envelope control due to its siting, being located to the rear with a lower overall wall height compared to existing. However, given the property’s corner location where two storey building forms are not usual, and the existing mixed pattern of development on Cary and Renwick Street where two storey forms (which breach the envelope control) are characteristic, the siting of the addition is acceptable and the proposal will not be out of character with the mixed pattern of development in the street. Further:

- The proposal provides a low wall height of 2.4m to minimise visual bulk and scale of the first floor extension;
- The proposal will comprise of roof forms, proportions to openings and finishes and materials that will complement, and that will not detract from, the existing and adjoining buildings; and
- The siting of the addition ensures that potential amenity on adjoining properties, including in terms of visual bulk and scale impacts, particularly when viewed from rear private open areas, are minimised.

As a result of all the above factors and considerations, the proposed rear first floor addition / balcony enclosure and associated works are considered acceptable.

C3.2 Site Layout and Building Design

Siting and Building Envelope

See assessment above under Clause C1.3 of the LDGP2013 – for reasons discussed above, the proposed rear first floor extension/balcony is acceptable.

Building Location Zone (BLZ)

The proposed rear first floor extension/balcony enclosure is set behind the rear first floor building alignment of No. 3 Cary Street by approximately 9.2m. As a result, the proposal complies with the BLZ controls.

Side Setbacks

The proposal will not result in any breach of the side setback control adjacent to a boundary shared with an adjoining property.

C3.6 Fence

The proposed amended fence height (2m) to the Renwick Street frontage will exceed the maximum allowed fence height of 1.8m as stated under Control 8 which states the following:

“Where the site is a corner allotment, consideration will be given to fences above 1.2m, to a maximum of 1.8m, to ensure privacy to the private open space area where such fencing will not have an adverse impact on the streetscape”.

As a result, a design amendment condition is recommended to lower the fence height from 2m to 1.8m. See Attachment A for the recommended design amendment condition.

C3.8 – Private Open Space

The private open space controls applicable to dual occupancies are as follows:

C1 Private open space should be:

- a. located at ground level consistent with the location of private open space on the surrounding properties and the siting controls within this Development Control Plan;*
- b. has a minimum area of 16sqm and minimum dimension of 3m;*
Note: the front setback will not be accepted as private open space.
- c. is connected directly to the principal indoor living areas; and*
- d. where ground level is not accessible due to the existing constraints of the site and/or existing development, above ground private open space will be considered.*

It is noted that the existing development (as per the approved dual occupancy at the site) currently shares the rear and central private open space (approximately 84sqm) between the residences Nos. 3 and 3A Cary Street and No. 3A currently does not have a direct connection between its living area and the common private open space.

The proposal seeks to alter the residence at 3A Cary Street to provide a direct connection between the living area and an open deck area that will be the primary private open space of the residence, the deck area providing a form of delineation to the common private open space shared between the dwellings. While not technically compliant with the minimum dimension and area requirements of Control C1, the proposal is considered acceptable from a Planning perspective as it will (together with the required increase in landscaped area) provide adequate and improved private open space amenity to the residence and the site.

C3.9 – Solar Access

No additional overshadowing impacts to the rear private open space areas or living areas of adjoining properties, including Nos. 3 & 5 Cary Street. The proposal as conditioned to reduce the proposed 2m high eastern boundary fence to 1.8m will not create any new overshadowing impacts to the subject site at 3A and 3 Cary Street.

C3.11 Visual Privacy

The proposal to enclose the existing rear first floor balcony to accommodate the rear first floor bedroom and bathroom will result in an overall reduction to the existing visual privacy conflicts between the subject residences on the site and will not result in any adverse amenity impacts on adjoining properties.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. No submissions were received.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer – No objections to proposal, subject to standard engineering conditions being imposed.

6(b) External

The application was not required to be referred to any external bodies.

7. Section 7.11 Contributions/7.12 Levy

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 4.6 of the Leichhardt Local Environmental Plan 2013 to contravene Clauses 4.3A (3)(a) Landscaped Area, Clause 4.3A (3)(b) Site Coverage and vary Clause 4.4 Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*.

After considering the requests, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards 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 proposed variations are not inconsistent with the objectives of the standards and the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2019/288 for alterations and additions to the existing dwelling, remove and replace existing carport with new carport and fencing work at 3 & 3A Cary Street subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

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

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

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

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

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

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

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

General Conditions

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
A1 Rev A	Site Plan/Site Analysis Plan	3.10.2019	Right Angle Design & Drafting Pty Ltd
A3 Rev A	Proposed Ground Floor Plan	3.10.2019	Right Angle Design & Drafting Pty Ltd
A4	Proposed First Floor Plan	April 2019	Right Angle Design & Drafting Pty Ltd
A5 Rev A	East and North Elevation South Elevation at Carport	3.10.2019	Right Angle Design & Drafting Pty Ltd
A6 Rev A	Western and Southern Elevation	3.10.2019	Right Angle Design & Drafting Pty Ltd
A7	Sections	April 2019	Right Angle Design & Drafting Pty Ltd
A8 Rev A	Roof Plans	3.10.2019	Right Angle Design & Drafting Pty Ltd
MB1 Rev A	Materials Board	3.10.2019	Right Angle Design & Drafting Pty Ltd
A353138	BASIX Certificate	23.7.2019	Right Angle Design & Drafting Pty Ltd
NSS 23070	Aircraft Noise Assessment	July 2019	Noise and Sound Services

As amended by the conditions of consent.

4. Design Change

4 of 13

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

- a) The maximum fence height to the eastern boundary is not to exceed 1.8m measure from the ground level.
- b) Provision of additional 5.5sqm of soft landscaped area on the site (comprising garden or lawn with a minimum dimension of 1m).

5. Waste Management Plan

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

6. Erosion and Sediment Control

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

7. Works Outside the Property Boundary

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

8. Boundary Alignment Levels

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

9. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road. Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

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

5 of 13

Prior to any Demolition

10. 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

11. Dilapidation Report – Pre-Development

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

12. 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.

13. Sydney Water

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.

14. Acoustic Report – Aircraft Noise

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

15. Concealment of Plumbing and Ductwork

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

During Demolition and Construction

16. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

17. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

18. Survey Prior to Footings

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

Prior to Occupation Certificate

19. Aircraft Noise

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

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

7 of 13

20. 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.

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 including Gas, Water, Sewer,

8 of 13

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.

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:

9 of 13

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

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.

Lead-based Paint

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

Asbestos Removal

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

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

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

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

Dial before you dig

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

Useful Contacts

BASIX Information 1300 650 908 weekdays 2:00pm - 5:00pm
www.basix.nsw.gov.au

Department of Fair Trading 13 32 20
www.fairtrading.nsw.gov.au
 Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig 1100
www.dialprior toyoudig.com.au

Landcom 9841 8660
 To purchase copies of Volume One of "Soils and Construction"

Long Service Payments Corporation 131441
www.lspc.nsw.gov.au

NSW Food Authority 1300 552 406
www.foodnotify.nsw.gov.au

NSW Government www.nsw.gov.au/fibro
www.diysafe.nsw.gov.au
Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555
www.environment.nsw.gov.au

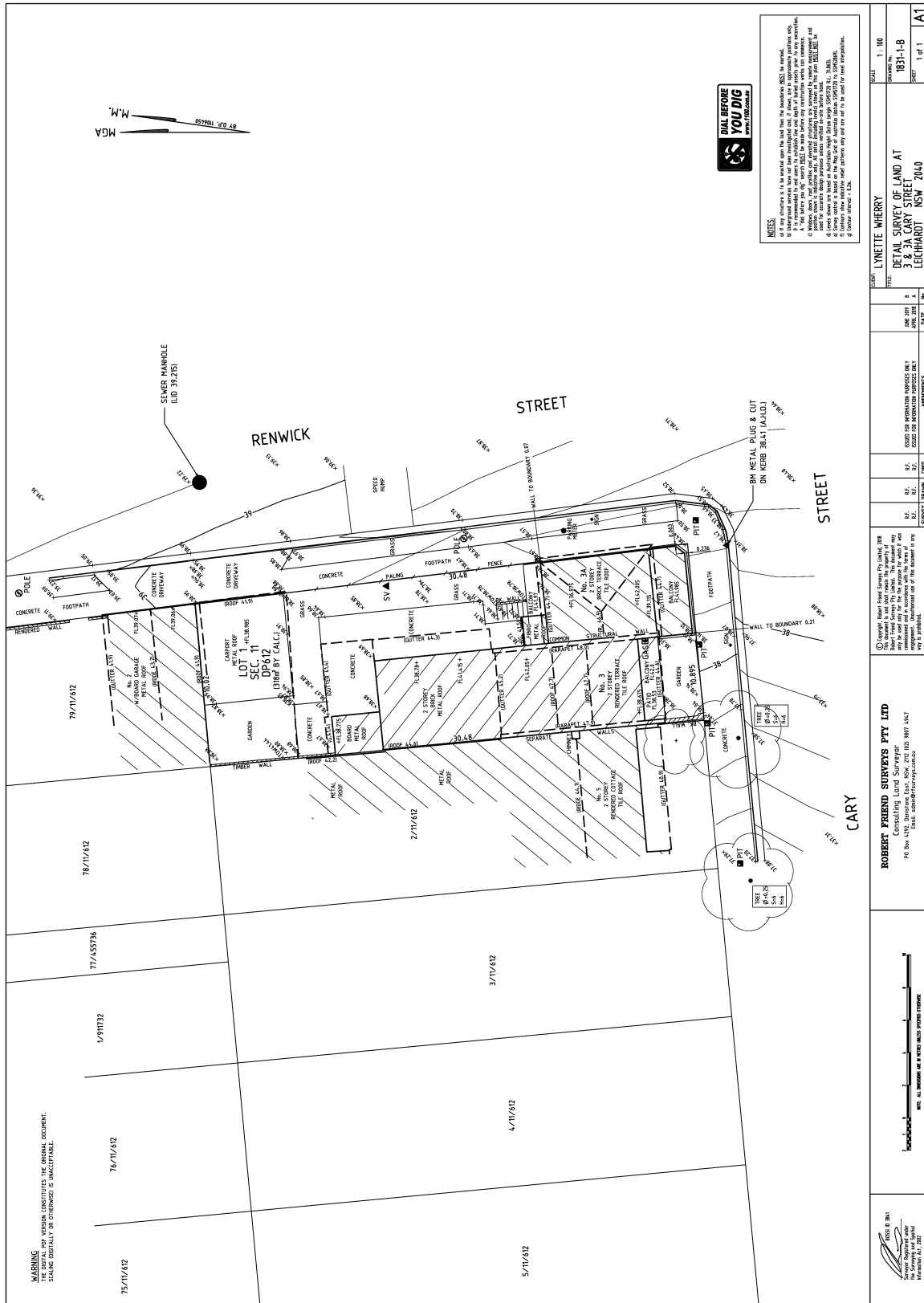
Sydney Water 13 20 92
www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions www.wasteservice.nsw.gov.au

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

SafeWork NSW 13 10 50
contact@safework.nsw.gov.au
Enquiries relating to work safety and asbestos removal and disposal.

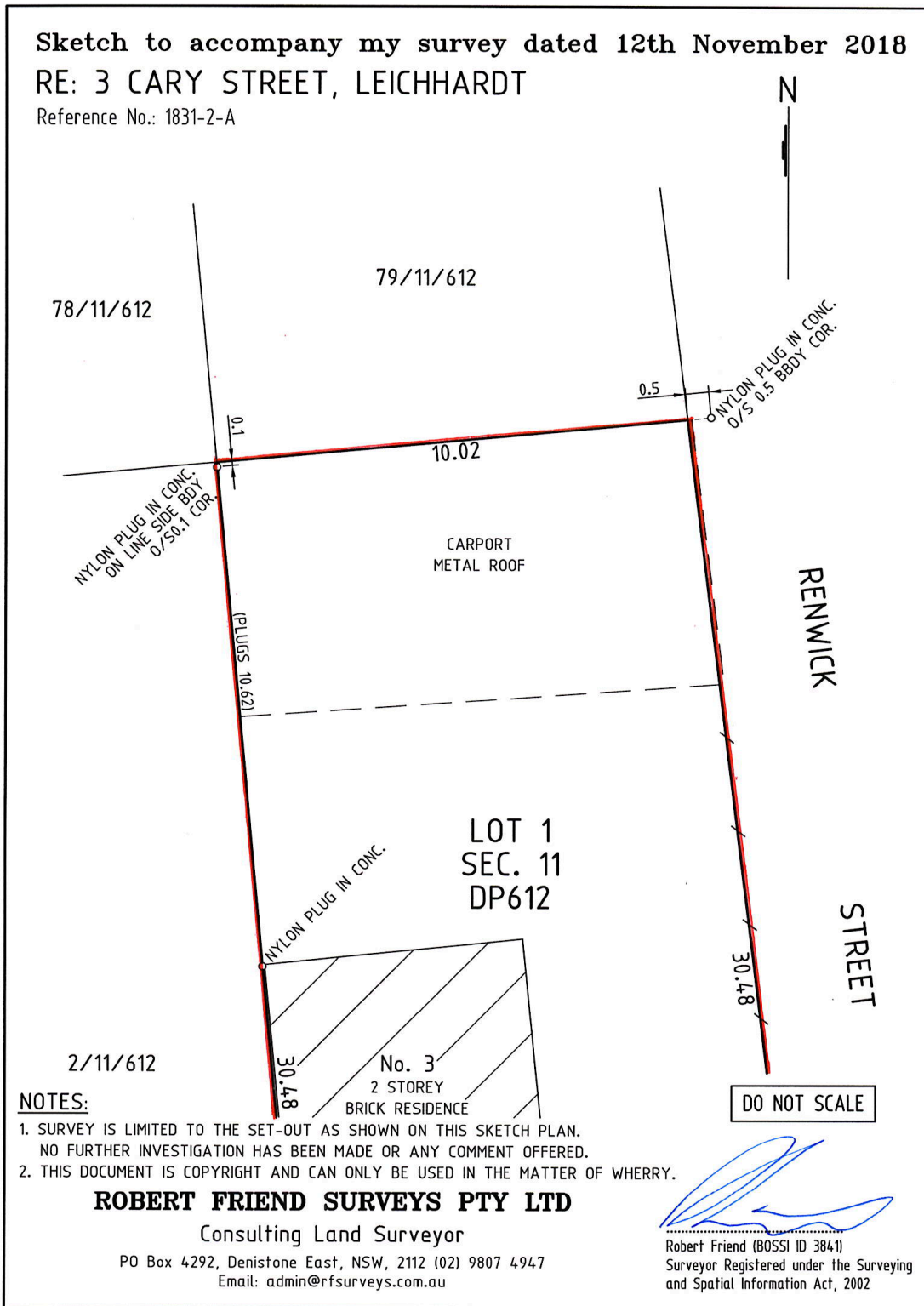
Attachment B – Plans of proposed development



Sketch to accompany my survey dated 12th November 2018

RE: 3 CARY STREET, LEICHHARDT

Reference No.: 1831-2-A



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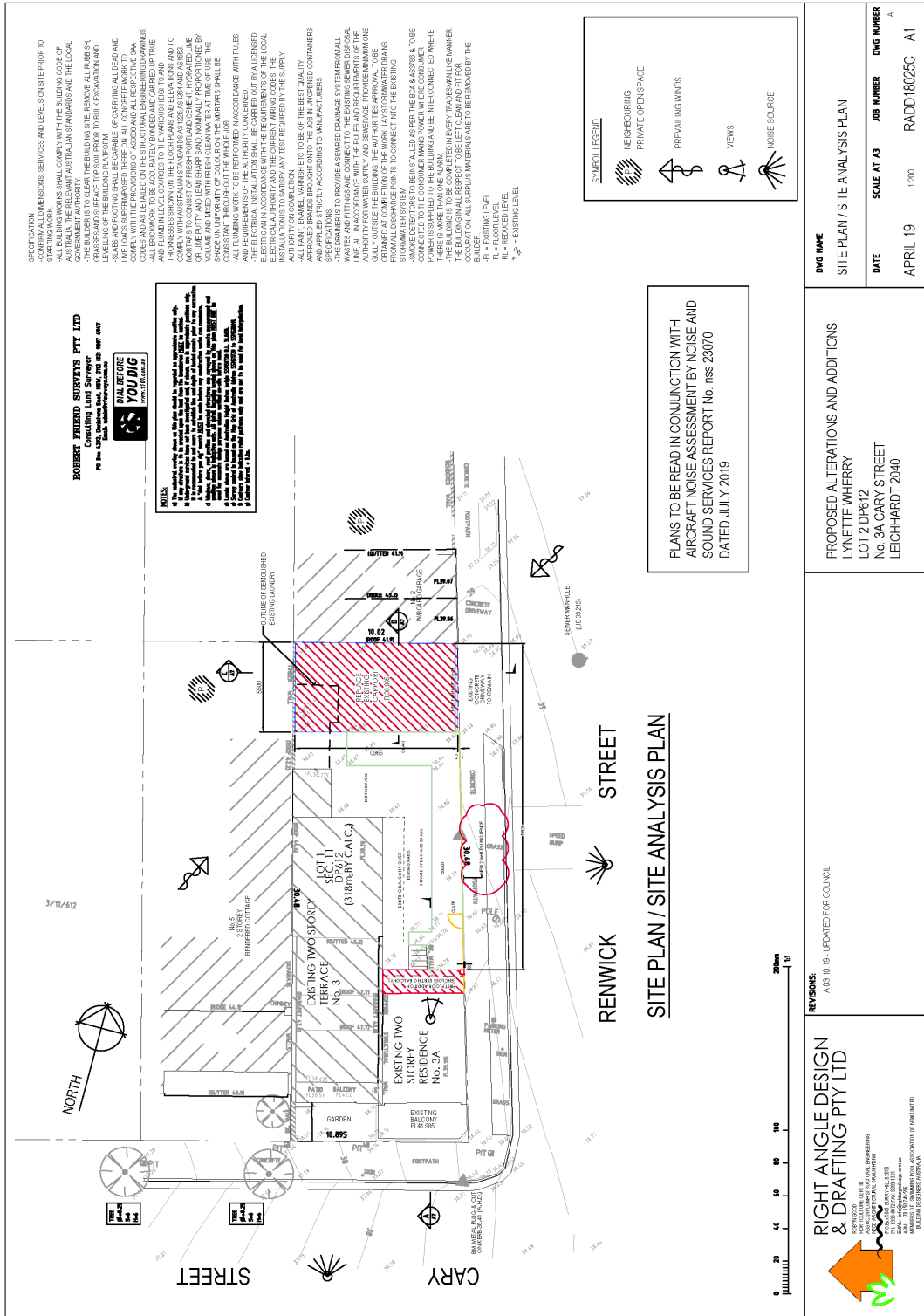
ROBERT FRIEND SURVEYS PTY LTD

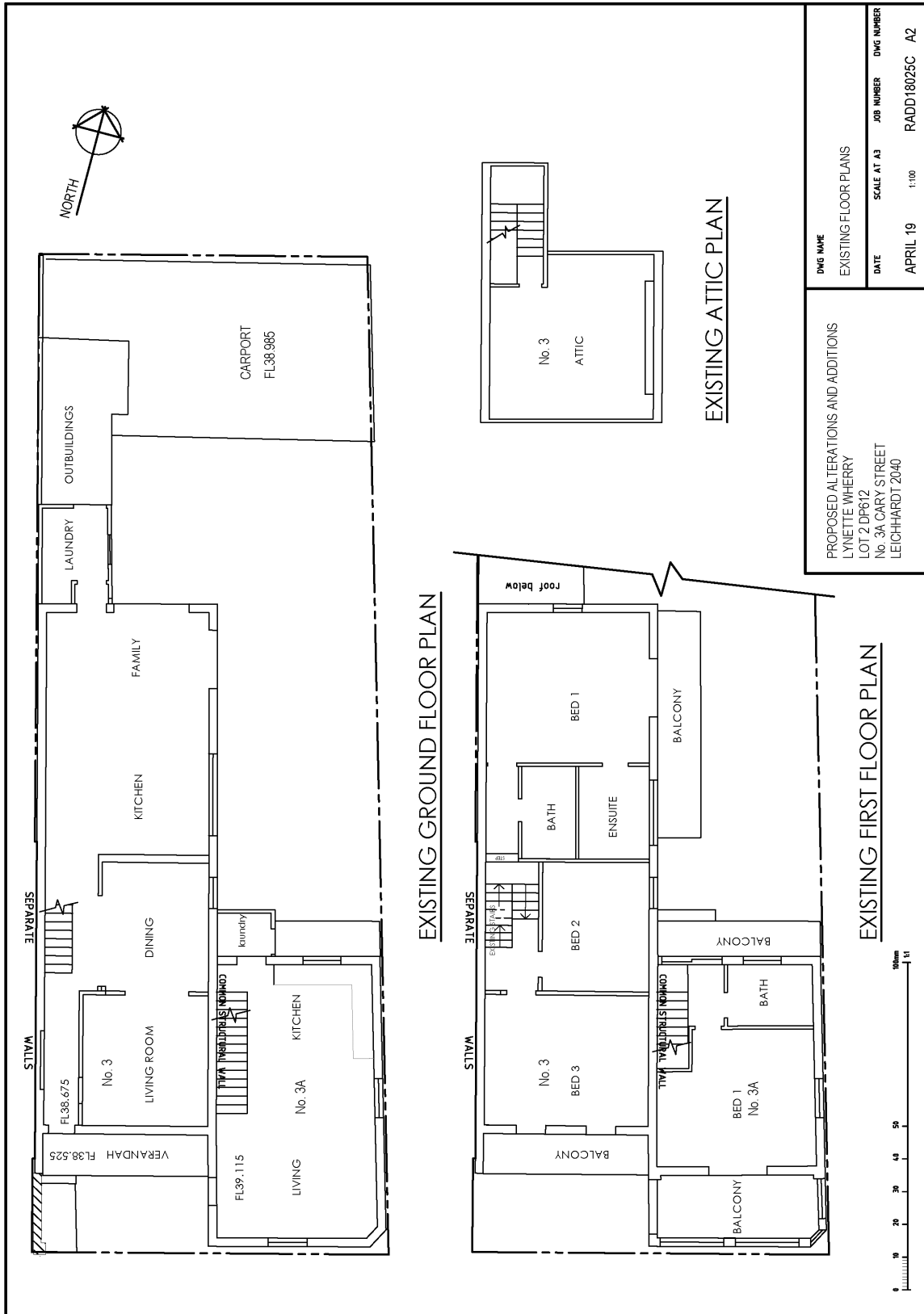
Consulting Land Surveyor

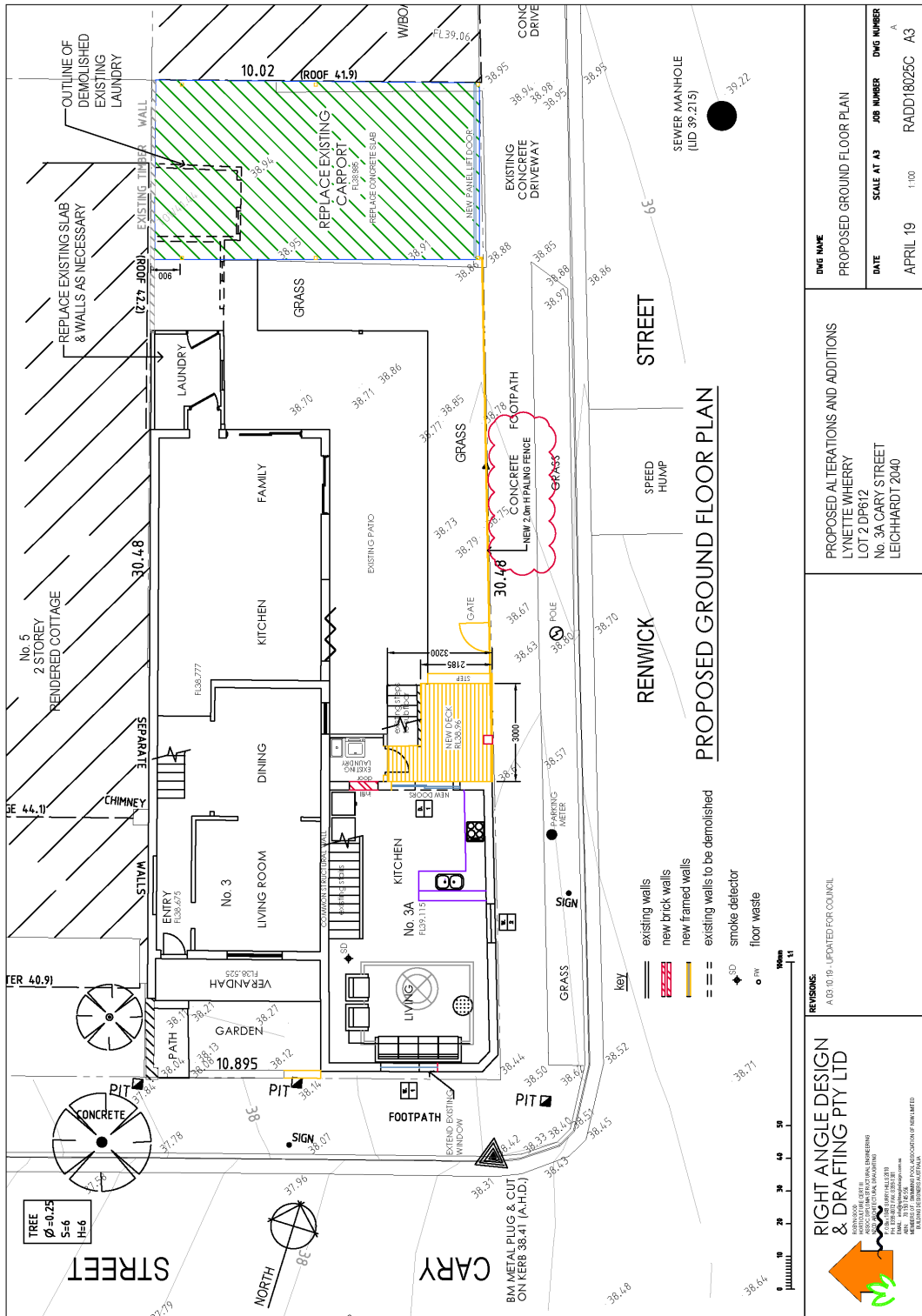
PO Box 4292, Denistone East, NSW, 2112 (02) 9807 4947
Email: admin@rfsurveys.com.au

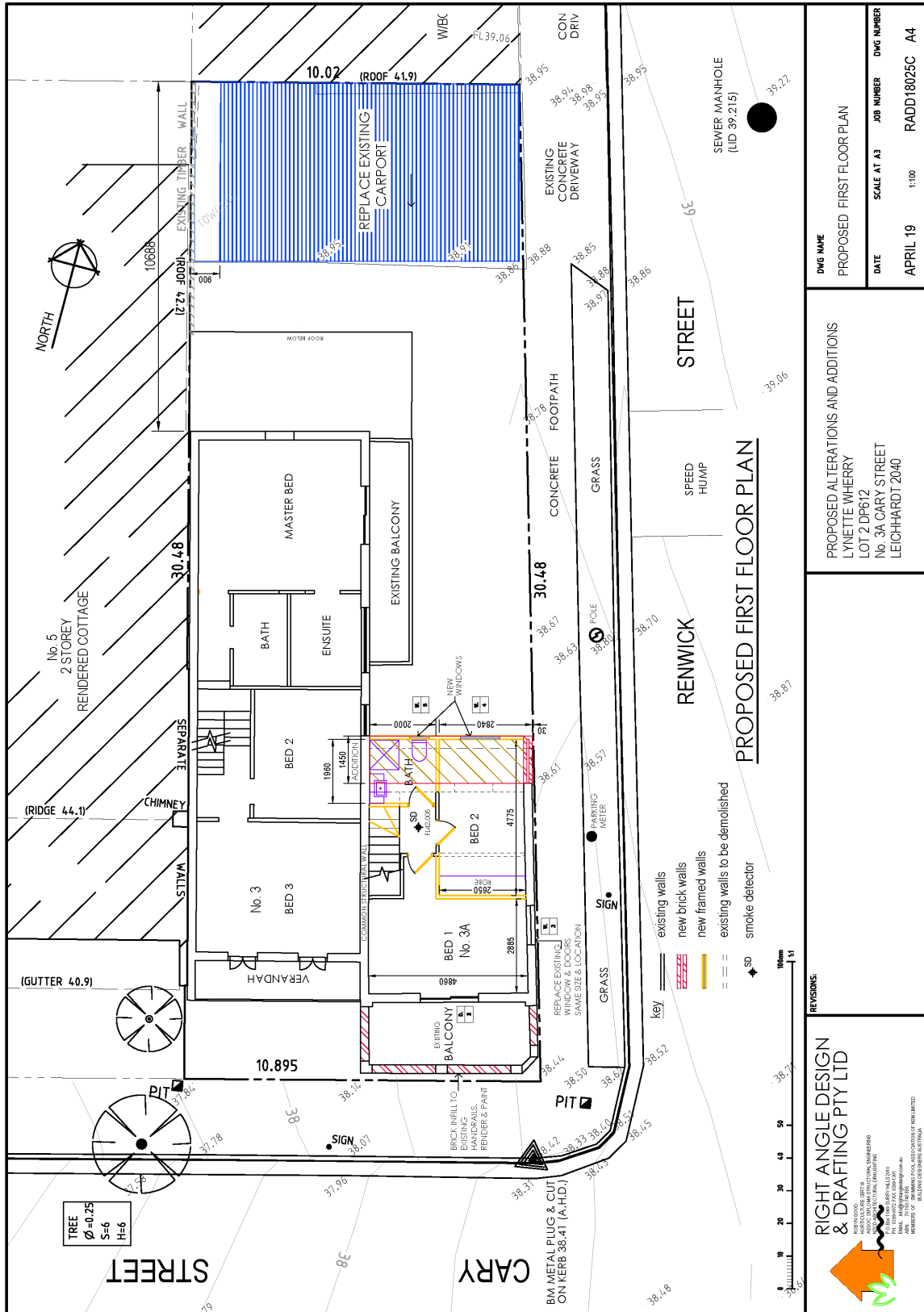
Robert Friend (BOSSI ID 3841)
Surveyor Registered under the Surveying and Spatial Information Act, 2002

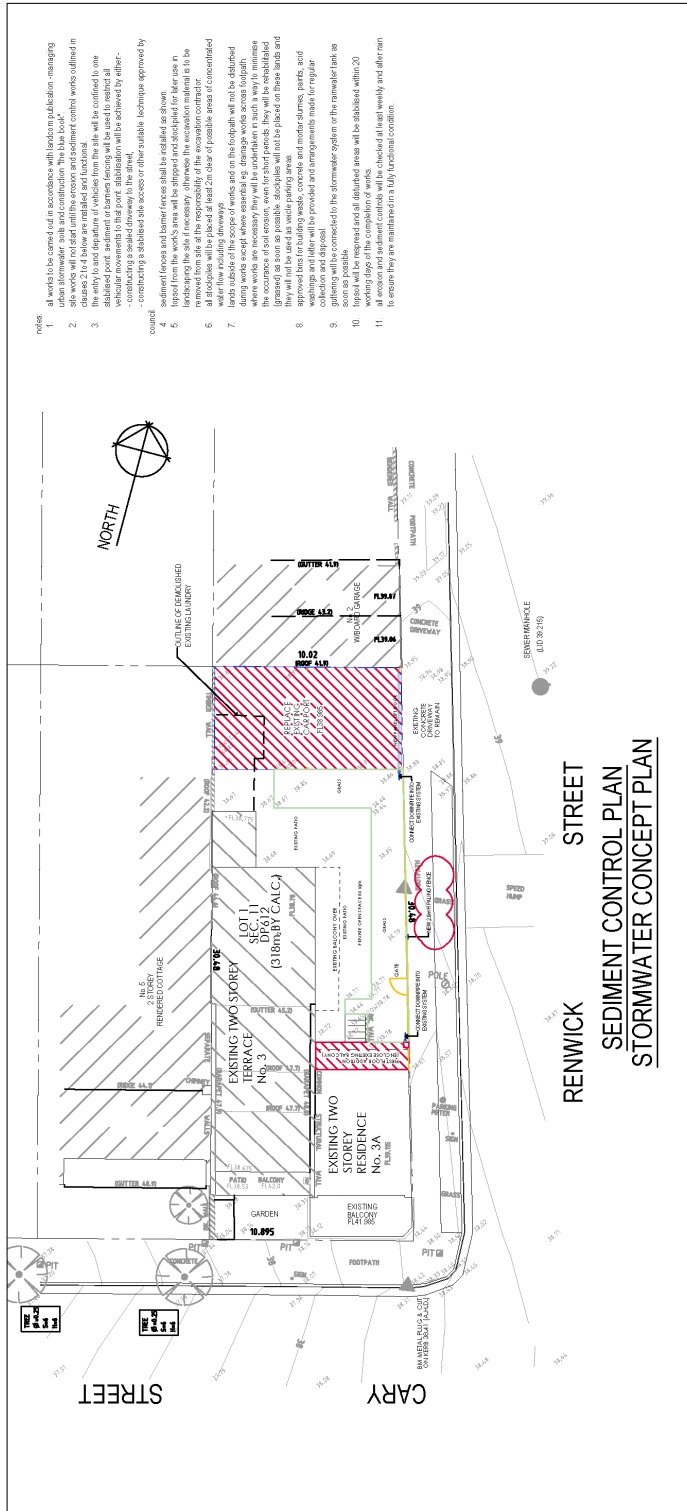
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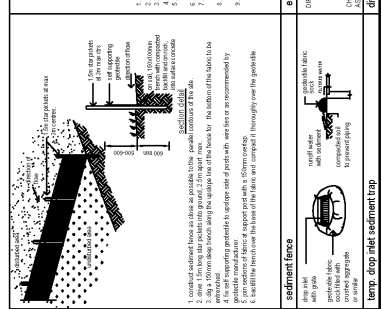
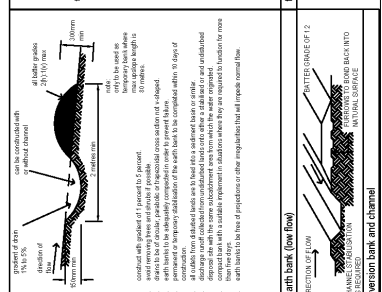
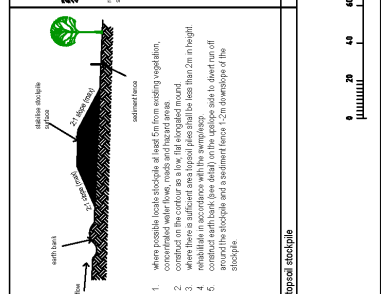
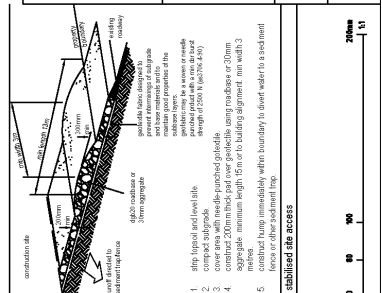






NOTES

1. all works to be carried out in accordance with typical publication - managing site works and sediment control works outlined in clauses 2 to 4 below are detailed and functional.
2. the entry to and departure or vehicles from the site, will be confined to one vehicular movements to that point. Stabilisation will be achieved by either -
3. - constructing a sealed driveway to the street,
4. - constructing stabilised site access or other suitable - for temporary access by council
5. sediment fences and barrier fences shall be installed, as shown.
6. material from the works area will be stored and stockpiled for later use in the site. The material will be stored in a designated area, to be removed from site at the responsibility of the excavator/contractor.
7. all stockpiles will be placed at least 2m clear of possible areas of concentrated runoff.
8. during works on site, where establishing drainage works across footpath (grass) as soon as possible. Stockpiles will not be placed on these areas and they will not be used as vehicle parking area.
9. appropriate signage and notices, signs, safety and exclusion and site walls - provided and arranged around the perimeter of the site.
10. gully/wells to connect to the stormwater system or the rainwater tank as shown.
11. types will be replaced and all disturbed areas will be stabilised within 20 working days of the completion of works.
12. all works to be completed by the time the site is handed back to the owner weekly and after that time.
13. all works to be completed by the time the site is handed back to the owner weekly and after that time.

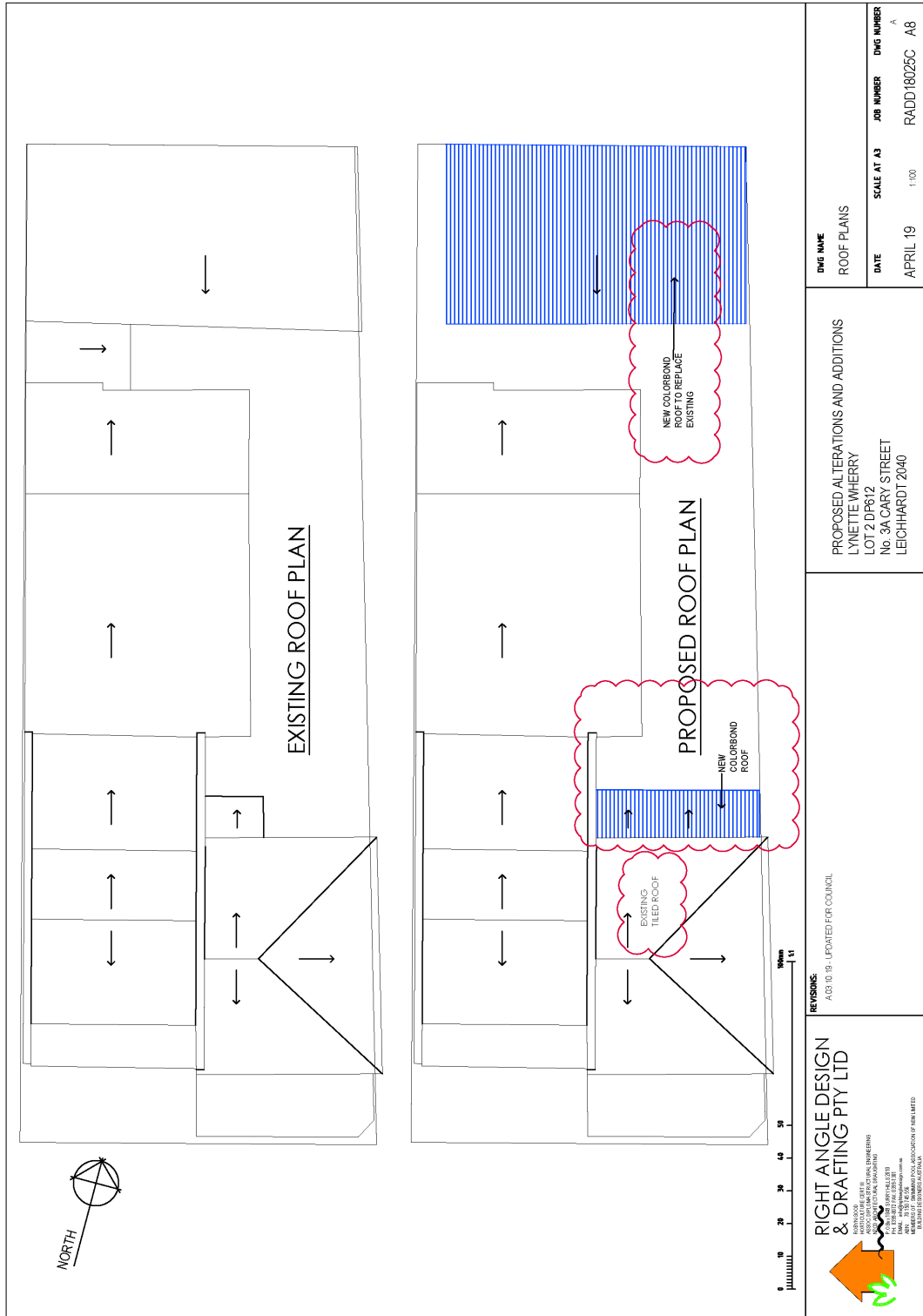


RIGHT ANGLE DESIGN & DRAFTING PTY LTD
 10/100 ROSS STREET
 LEICHHARDT NSW 1585
 PH: (02) 9750 3000
 WWW.RIGHTANGLEDESIGN.COM.AU

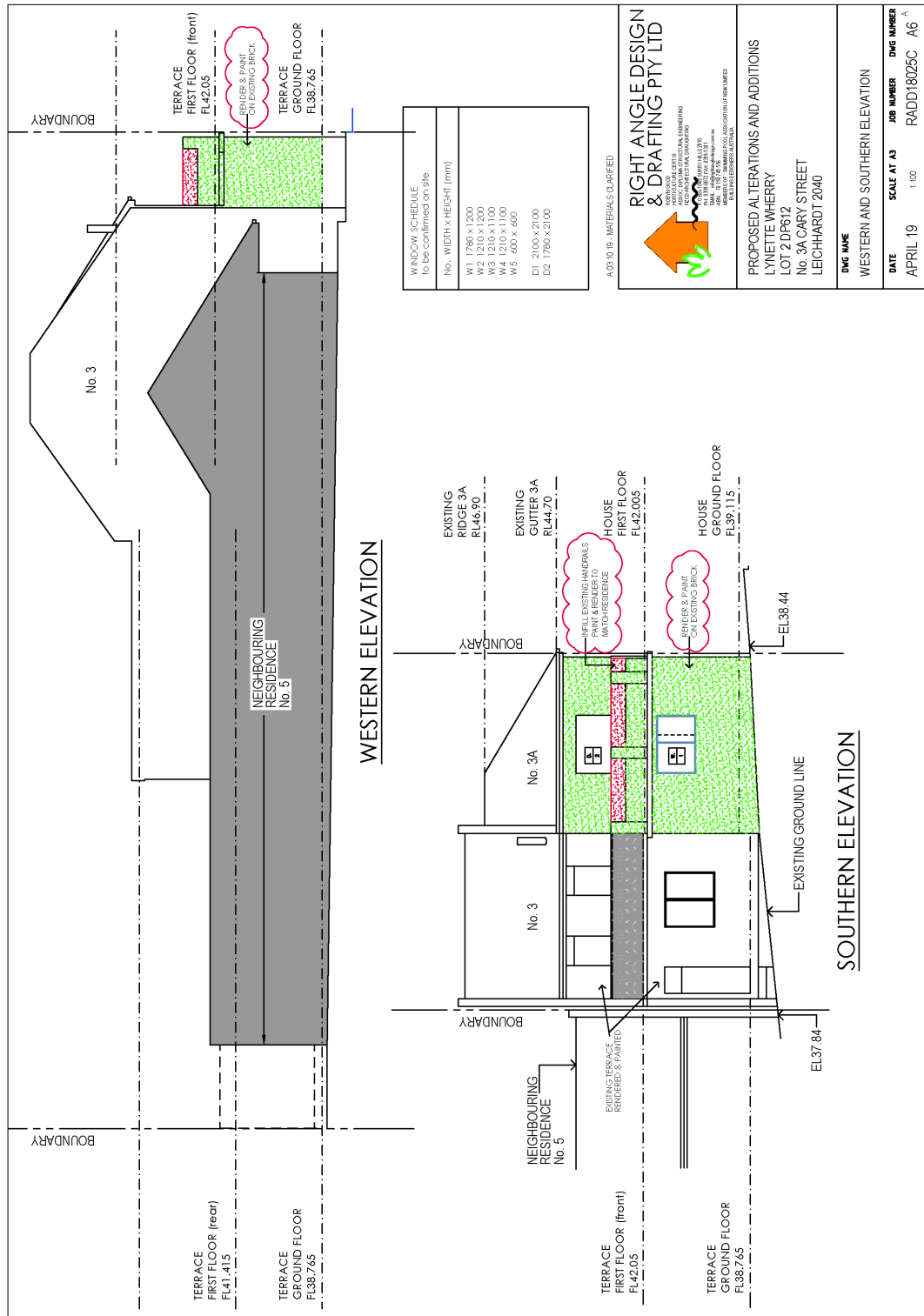
PROPOSED ALTERATIONS AND ADDITIONS
LYNETTE WHERRY
 LOT 2 DP612
 No. 3A CARY STREET
 LEICHHARDT 2040

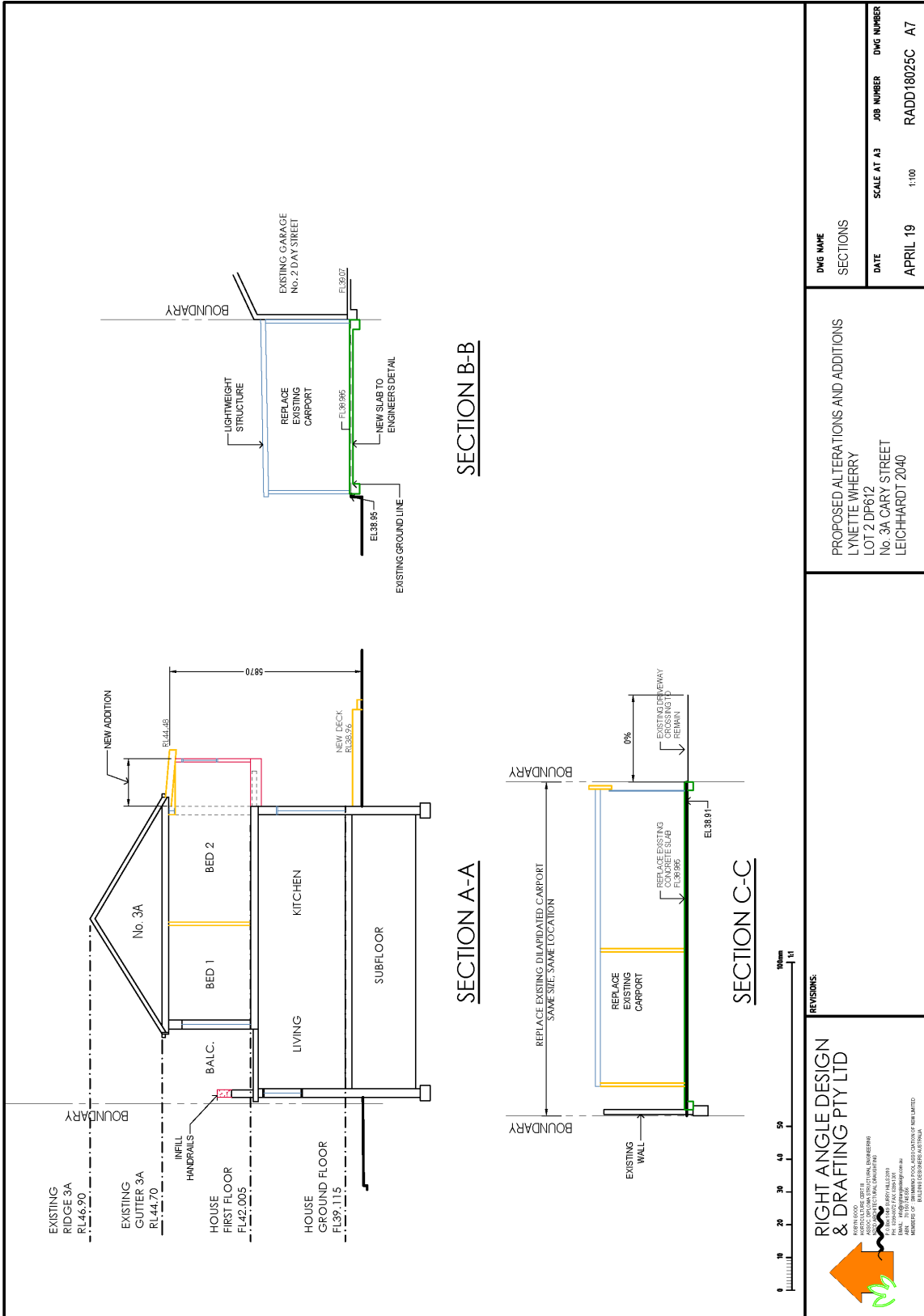
DWG NAME
 SEDIMENT CONTROL PLAN
 STORMWATER CONCEPT PLAN

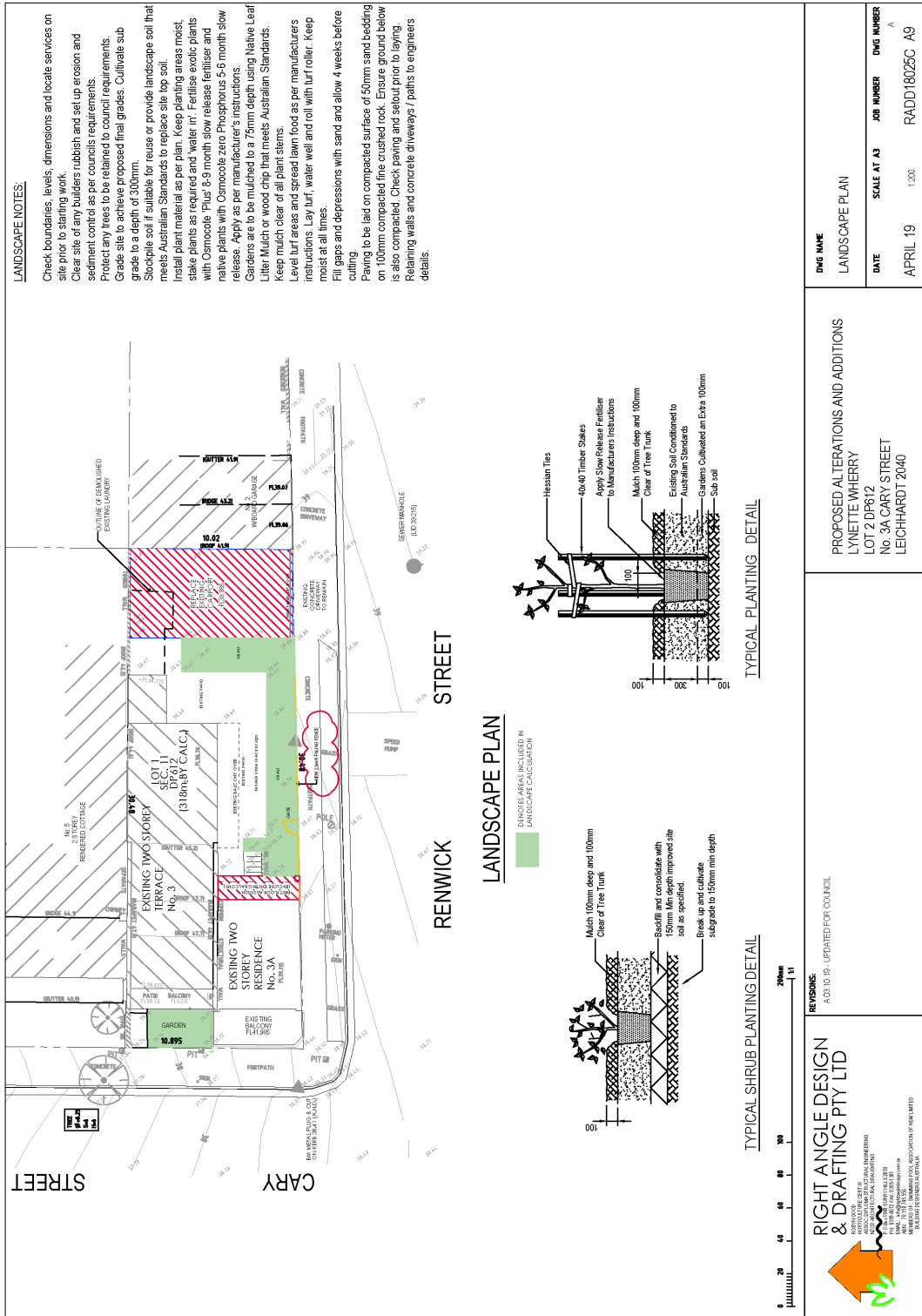
SCALE AT A3
DATE APRIL 19 2020
JOB NUMBER RADD18025C
DWG NUMBER A10

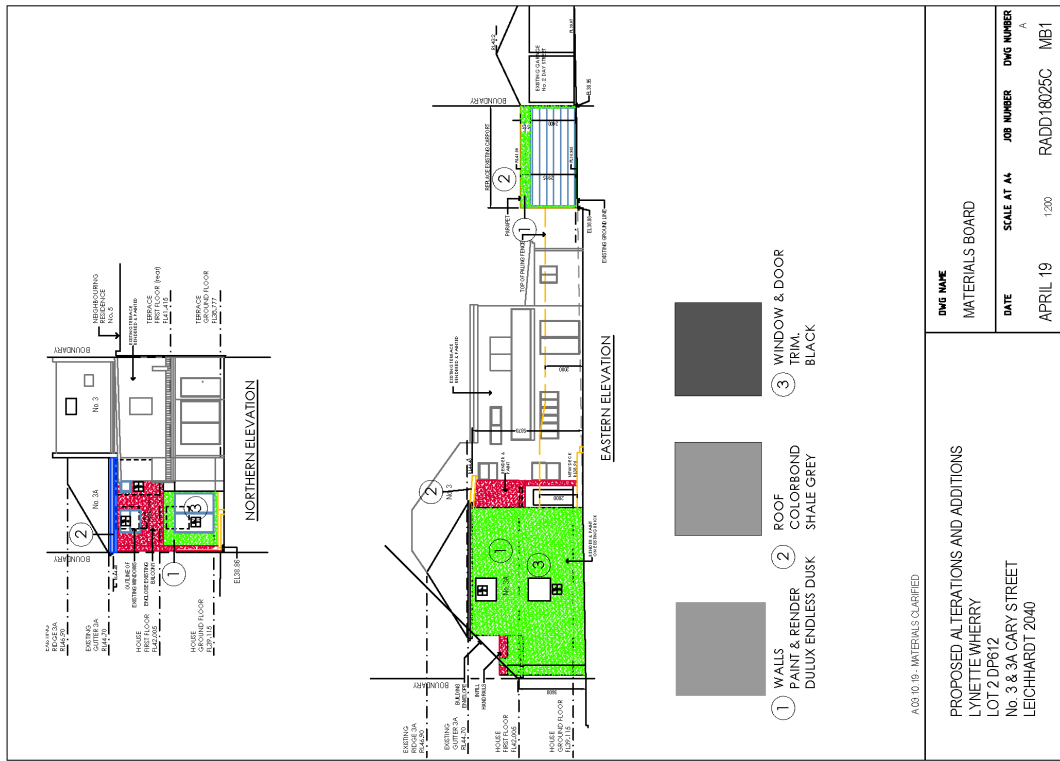


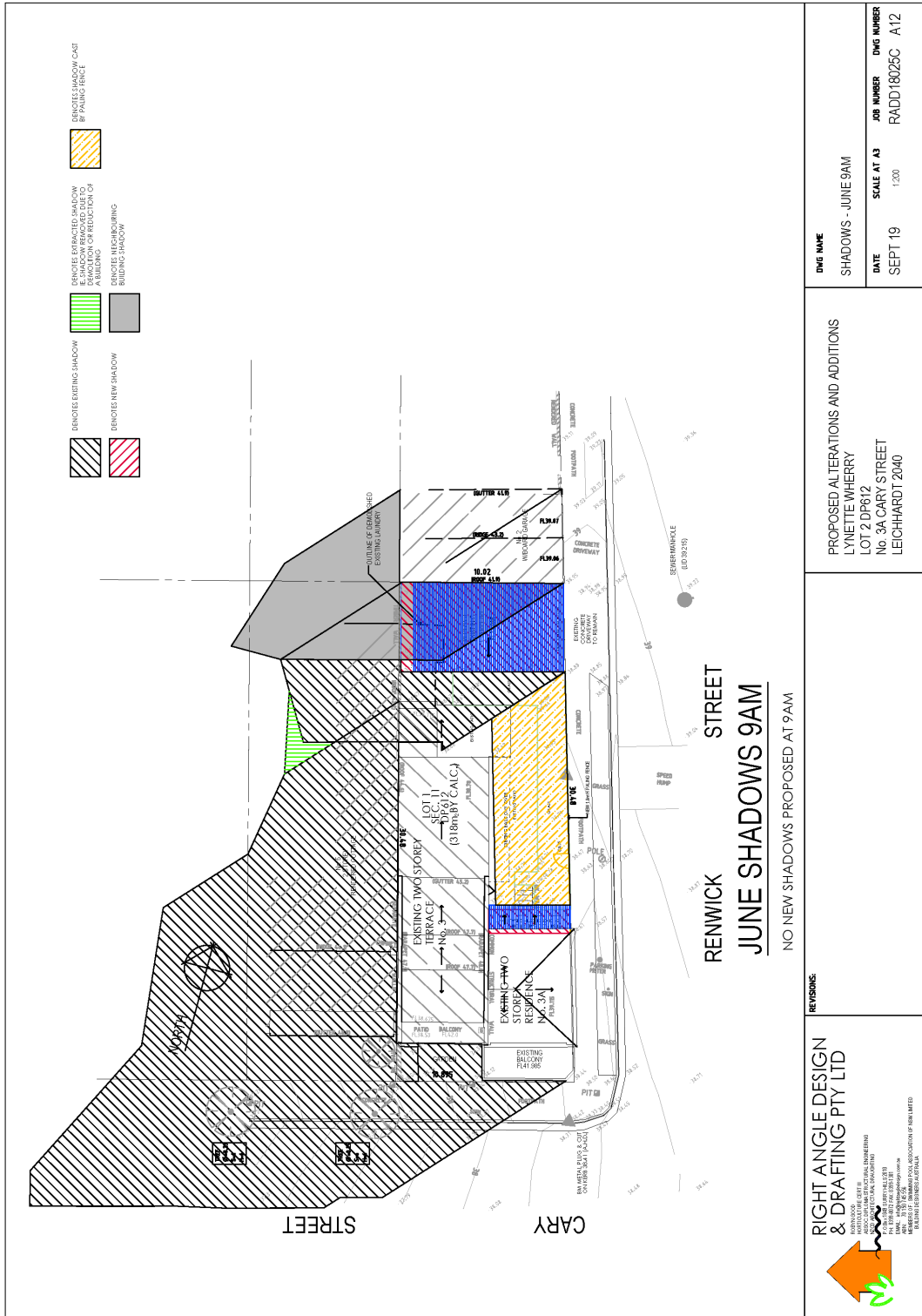
<p>RIGHT ANGLE DESIGN & DRAFTING PTY LTD</p> <p>10/100 WILSON STREET, SYDNEY NSW 1585 PHONE: 02 9550 2222 FAX: 02 9550 2223 WWW.RIGHTANGLEDESIGN.COM.AU</p>	<p>REVISIONS: A13 TO B9 - UPDATED FOR COUNCIL</p>	<p>DWG NAME ROOF PLANS</p>
	<p>PROPOSED ALTERATIONS AND ADDITIONS LYNETTE WHERRY LOT 2 DP812 No. 3A CARY STREET LEICHHARDT 2040</p>	<p>DATE APRIL 19</p>
<p>JOB NUMBER RADD18025C</p>		<p>DWG NUMBER A8</p>

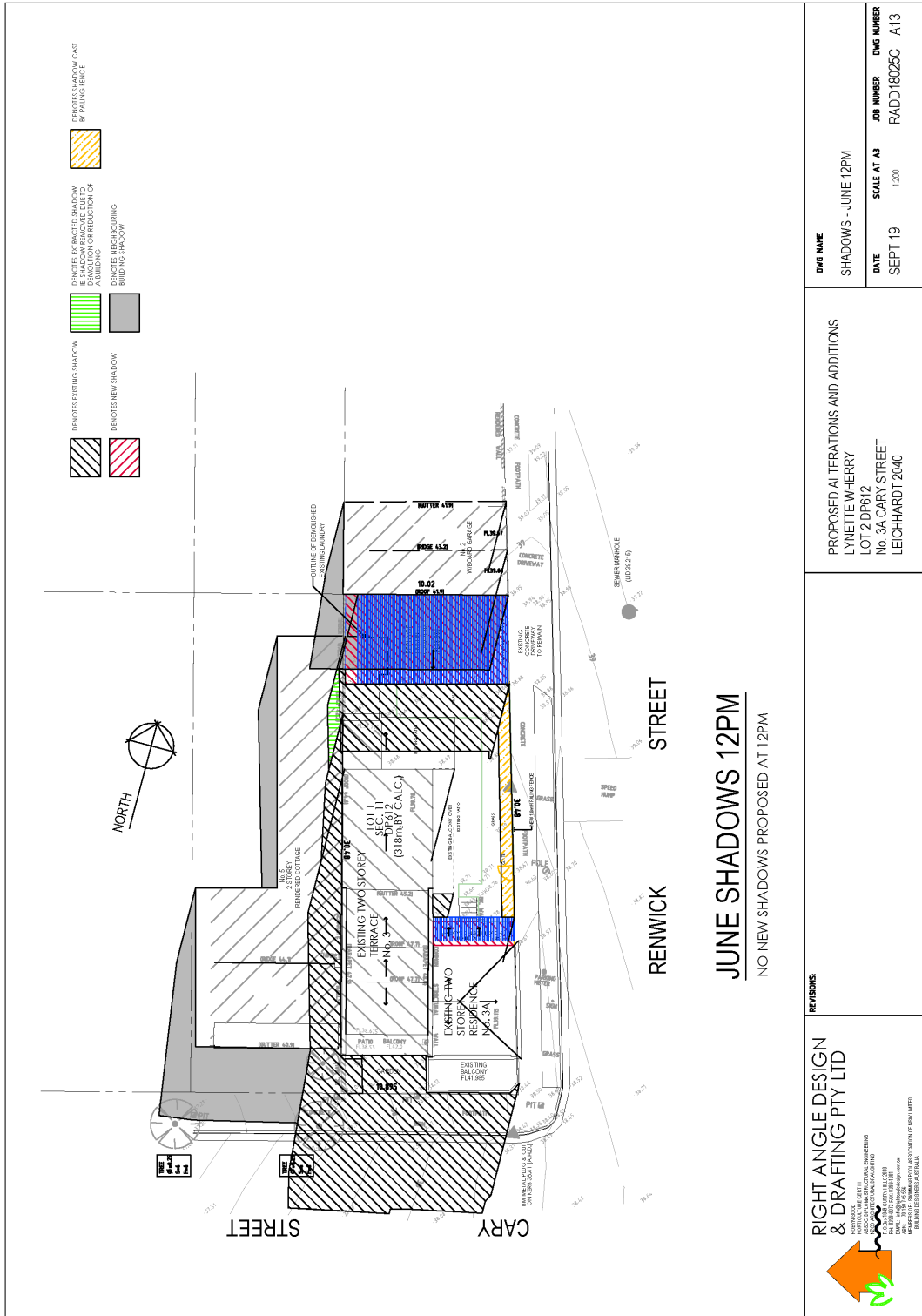


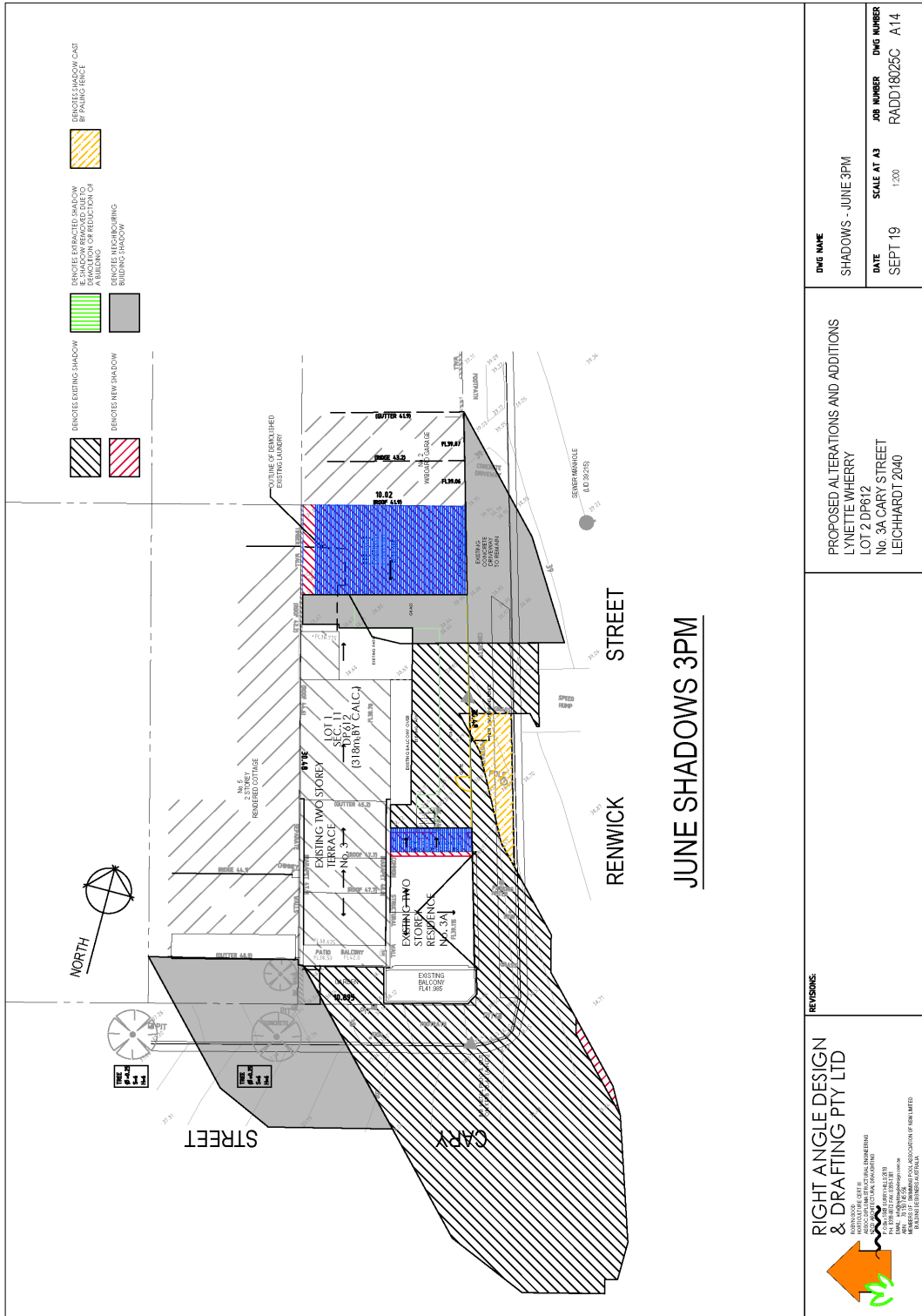












DWG NAME	SHADOWS - JUNE 3PM
DATE	SEPT 19
SCALE AT A3	1:200
JOB NUMBER	RADD18025C
DWG NUMBER	A14

PROPOSED ALTERATIONS AND ADDITIONS
 LYNETTE WHERRY
 LOT 2 DP612
 No. 3A CARY STREET
 LEICHHARDT 2040

REVISIONS:

RIGHT ANGLE DESIGN & DRAFTING PTY LTD
 1/105 HILL STREET - SYDNEY NSW 1585
 PH: (02) 9550 7777
 FAX: (02) 9550 7778
 WWW: www.rightangle.com.au
 CHARTERED PROFESSIONAL ARCHITECTS
 MEMBERS OF THE ARCHITECTS ACTUARY

Attachment C- Clause 4.6 Exception to Development Standards



Clause 4.6 (Floor Space Ratio)
3 and 3a Cary Street Leichardt
Clause 4.6 Exception to Development Standard

3 and 3a Cary Street Leichardt

Contact:

(mob) 0432 848 467
email: admin@outlookplanningdevelopment.com.au
web: www.outlookplanningdevelopment.com.au

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Clause 4.6 (Floor Space Ratio)
3 and 3a Cary Street Leichardt

1 Introduction

This Clause 4.6 report accompanies a development application for alterations and additions to an existing dual occupancy located at 3 and 3a Cary Street Leichardt. The existing buildings on the lot has an existing non compliant FSR and the proposed development seeks a minor increase in the GFA of the development and as such a variation is requested.

4.4 Floor space ratio

FSR Development Standard: 0.5:1

Existing FSR: 0.79:1

Proposed FSR: 0.82:1

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standard under the LEP. The development standard for which a variation is sought to vary the floor space ratio development standard under clause 4.4.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

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

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

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

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

Clause 4.6 (Floor Space Ratio)
3 and 3a Cary Street Leichardt
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

A detailed assessment has been carried out below:

1.1 What is the Development Standard proposed to be varied?

Clause 4.4 of the LEP refers to the Maximum floor space ratio for the site 0.5:1 however as the site is mapped as being on land shown edged brown on the Floor Space Ratio Map and is between 300sqm and 450sqm the FSR is 0.6:1.

The subject site has a lot size of 318sqm and the development results in a gross floor area of 260.4sqm which results in a FSR of 0.82:1. It is noted that the existing FSR is 0.79:1 and the proposed development only increases the GFA of the site by 8sqm.

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

(a) to ensure that residential accommodation:

(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and

(ii) provides a suitable balance between landscaped areas and the built form, and

(iii) minimises the impact of the bulk and scale of buildings,

(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

1.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 has been utilised as a guide.

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the Leichardt LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *To ensure that residential accommodation is compatible with the desired future character of the area in relation to building bulk, form and scale, and*

Comment: The proposed development is alterations and additions to the existing dwelling and therefore have minimal impact on the character of the locality. The alterations have been designed to be visually appealing and unobtrusive to the locality.

Objective B: *To ensure that residential accommodation provides a suitable balance between landscaped areas and the built form, and*

Comment: The proposed alterations and additions to the existing dwelling at the subject site will result in a built form that does not obscure important landscape or townscape features as the additional floor space is situated where the existing balcony is located.

Clause 4.6 (Floor Space Ratio)
3 and 3a Cary Street Leichardt

Objective C: *To ensure that residential accommodation minimises the impact of the bulk and scale of buildings,*

Comment: The proposed alterations and additions have been designed to minimise the bulk and scale of the development with the proposed additions being minor in nature.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.4 of the LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

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

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council has granted consent for development despite a non compliance with the floor space ratio clause of the LEP.

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is general alterations and additions to an existing dual occupancy dwelling that will allow the owners of the dwelling to provide for a new bathroom within the existing dwelling.

Clause 4.6 (Floor Space Ratio)
3 and 3a Cary Street Leichardt

Object (g) to promote good design and amenity of the built environment,

Comment: The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. It is considered that the proposed development fits within the character of the locality and will improve the amenity of the built environment.

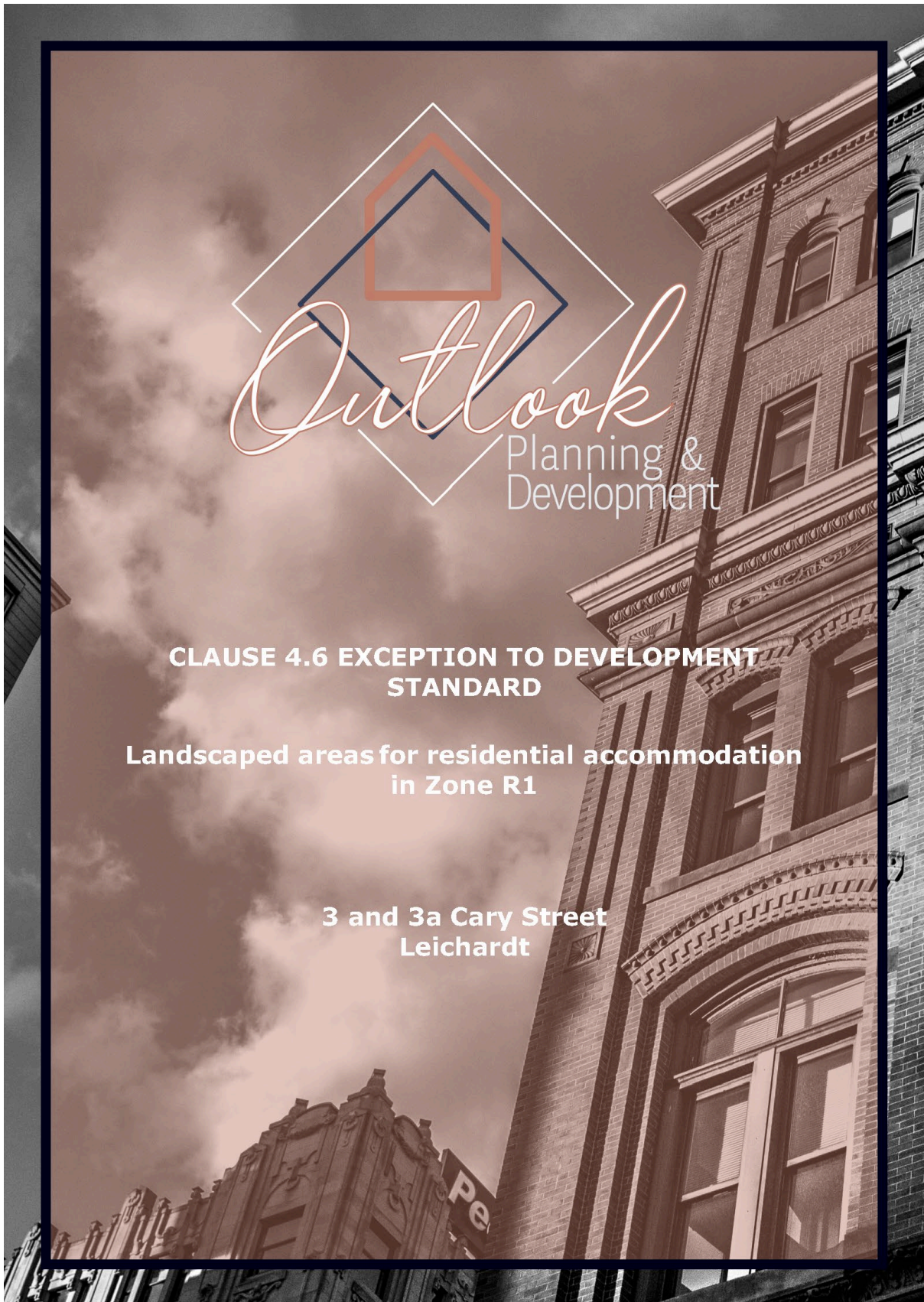
It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone as well as the outcomes of the FSR Development Standard.

1.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

2 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner to provide suitable accommodation for their family. It is considered that the development results in a good planning and design outcome for the property and the community.



**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT
STANDARD**

**Landscaped areas for residential accommodation
in Zone R1**

**3 and 3a Cary Street
Leichardt**

Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt

Clause 4.6 Exception to Development Standard

3 and 3a Cary Street Leichardt

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Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt

1 Introduction

This Clause 4.6 report accompanies a development application for alterations and additions to an existing dual occupancy located at 3 and 3a Cary Street Leichardt. The existing buildings on the lot has an existing non compliant Landscaped area and the proposed development results in a better outcome for the landscaped area with additional landscaping provided as part of the development.

4.4 Landscaped area for residential accommodation in Zone R1

Landscaped Area Development Standard: 20%

Existing Landscaped Area: 45.4 or 14%

Proposed Landscaped Area: 41.4sqm or 13%

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standard under The LEP. The development standard for which a variation is sought to vary the landscaped area for residential accommodation in Zone R1.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

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

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

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

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt

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

A detailed assessment has been carried out below:

1.1 What is the Development Standard proposed to be varied?

Clause 4.3A of the LEP refers to the Minimum Landscaped area for residential accommodation in zone R1 with the development standard requiring a minimum of 20% for sites where the site area is greater than 235sqm.

The subject site has a lot size of 318sqm and the development standard requires a landscaped area of at least 63.6sqm. It is noted that the site has an existing landscaped area of 45.4sqm and proposes a landscaped area of 41.4sqm. The proposed development seeks to reduce the already non-compliance landscaped area by 4sqm. It is considered that the non-compliance still achieves compliance with the objectives of the development standard.

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

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

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

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

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

(e) to control site density,

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

1.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 has been utilised as a guide.

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the Leichardt LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*

Comment: The existing dwelling is not compliant with the landscaping provisions with the proposed development resulting in a minor reduction in landscaping however it is still able to provide area for tree planting.

Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt

Objective B: *to maintain and encourage a landscaped corridor between adjoining properties,*

Comment: It is noted that the surrounding area does not provide a landscaped corridor between adjoining and the proposed development is minor in nature.

Objective C: *to ensure that development promotes the desired future character of the neighbourhood,*

Comment: The proposed development is alterations and additions to the existing dwelling and therefore have minimal impact on the character of the locality. The alterations have been designed to be visually appealing and unobtrusive to the locality.

Objective D: *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*

Comment: The proposed alterations and additions result in a minor reduction in the landscaping area and will not impede underground flow of water.

Objective E: *to control site density,*

Comment: The proposed alterations and additions results in a minor decrease in landscaping area and is not considered to result in an unacceptable site density.

Objective F: *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

Comment: The proposed alterations and additions have been designed to minimise reduction in landscaping and is considered a minor development for the existing non compliant site.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.3A of the LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

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

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council has granted consent for development despite a non compliance with the landscaped area clause of the LEP.

Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt

- 5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.**

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling to provide a new bathroom area for the dwelling within the existing footprint without a substantial additions to the dwelling.

***Object (g)** to promote good design and amenity of the built environment,*

Comment: The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. It is considered that the proposed development fits within the character of the locality and will improve the amenity of the built environment.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone as well as the outcomes of the Landscaped Area development standard.

1.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

2 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner to provide suitable accommodation for their family. It

Clause 4.6 (Landscaped Area)
3 and 3a Cary Street Leichardt
is considered that the development results in a good planning and design outcome for the property and the community.



**DEVELOPMENT APPLICATIONS
EXCEPTIONS TO DEVELOPMENT STANDARDS**
PURSUANT TO CLAUSE 4.6 OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

DEVELOPMENT APPLICATION DETAILS:

Address:	3A CARY STREET, LEICHHARDT 2040
Proposed Development:	ALTERATIONS AND ADDITIONS TO EXISTING DWELLING HOUSE INCL CARPORT
I wish to lodge a request to vary the following development standard for the reasons indicated:	

WHAT IS THE STANDARD SOUGHT TO BE VARIED?

- Floor Space Ratio** – Clause 4.4 or 4.4A of LEP 2013
- Landscaped Area** – Clause 4.3A(3)(a) of LEP 2013
- Site Coverage** – Clause 4.3A(3)(b) of LEP 2013
- Subdivision Allotment size** – Clause 4.1 of LEP 2013
- Foreshore Building Area** – Clause 6.5 of LEP 2013
- Diverse Housing** – Clause 6.13 of LEP 2013

The purpose of the above standards is to ensure that the proposed works are compatible with the surrounding environment in terms of bulk, scale, amenity, streetscape, setting, transport and preserving the character of the building and surrounding conservation area and heritage items

Where an applicant wishes to vary a development standard, the application must be accompanied by a well-founded, written request which seeks to justify the contravention of the development standard by demonstrating:

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

<p>What are the environmental planning grounds that justify contravening the development standard?</p> <p>The proposed works are mainly replacing existing structure on site. The small addition of enclosing the existing balcony will not increase site coverage above what was existing on site at the beginning of the year. Small outbuildings have already been removed. The proposal has been designed to keep the site coverage and landscaped areas as close to existing as possible. If the landform rule were strictly applied this would have the effect of prohibiting a any new construction on the property completely, which would be an unfair result given that there are many examples of new works daily in the locality. The vast majority of properties in the area all exceed the site coverage and landscape ratios.</p> <p>The site has a required maximum site coverage of 60%. This proposal will have a ratio of 62.58% and though this exceeds the required maximum, it is a small increase in the existing ratio of 61.3%. The total increase is 4 square metres.</p> <p>This proposal meets the objectives of the LEP 2013 part 4.3A and the EP&A Act section 5(a).</p>
<p>Why is compliance with the standard unreasonable or unnecessary? What are the special circumstances in this case? (To answer consider whether a development that complies is unnecessary or unreasonable)</p> <p>It is considered that compliance with the development standard is unreasonable and unnecessary because of the following reasons:</p> <ul style="list-style-type: none"> • The new proposal is small in nature and has been kept to a minimum, is replacing an existing carport and creates a small addition to the existing residence, there is a small, less than 3%, breach of the required site coverage. • The development, adding only to the rear and non-neighbour side of the residence, will ensure there will be no impact on shadows or visual obstruction. • With the proposed works only replacing existing structure and enclosing a balcony, it seems highly acceptable to have the works approved above this existing hard surface area. The impact on site ratios will be approximately 1%. All works will be finished in quality materials. • All work has been designed and proposed to have as minimal an impact on any existing ratios on site as possible. Existing soft surface areas will be regenerated and maintained at a very high standard.
<p>Is the proposed development consistent with the objectives of the particular standard? Is the proposal consistent with the objectives of the relevant zone?</p> <p>The main reasons for the objection pertain to the quality of the development and the small impact it has on the site. The development has taken into consideration design aspects of human comfort such as scale, noise, solar access and shade to both this residence and the neighbouring properties. The design protects the neighbour's amenity including visual and acoustic privacy particularly regarding living area and private open spaces. We therefore state that the development is sensitive to the landscaped setting, environmental conditions and the established character of the locality. The site's difficulty and the proposed works make a better, safer and more efficient and economic use of the area for the residence, it is noted that the compliance with Council's regulations will hinder the attainment of the objectives specified in section 5(a)i and ii of the EP&A Act. In conclusion, it is believed that the proposal is in keeping with the guides and objectives of the Leichhardt LEP 2013.</p>