




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	D/2019/360
Address	1 Athol Street, LEICHHARDT NSW 2040
Proposal	Sub-division of existing land into 2 lots. External renovations to the existing dwelling and use of the ground floor as an office. New alterations and additions to the existing warehouse and conversion to a dwelling. Changes to parking arrangements.
Date of Lodgement	13 September 2019
Applicant	Sandbox Studio Pty Ltd
Owner	Robert Hardie and Diane Hardie
Number of Submissions	Nil
Value of works	\$734,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Floor Space Ratio
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 
Notified Area 	Supporters 

1. Executive Summary

This report is an assessment of the application submitted to Council for subdivision of existing land into 2 lots, external renovations to the existing dwelling and use of the ground

floor as an office, alterations and additions to the existing warehouse and conversion to a dwelling and changes to parking arrangements at 1 Athol Street, Leichhardt NSW 2040. 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-compliances are acceptable given 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 proposal involves subdivision of the site at 1 Athol Street, Leichhardt, alterations and additions to the existing dwelling on the site to accommodate an office at the ground floor and a dwelling at the first floor, in addition to the adaptive reuse of the existing warehouse on the site to create a new dwelling. The extent of works proposed includes:

Ground Floor

- New entrance to the office premises;
- Widening of the vehicular crossover to accommodate a new vehicle access point and garage to the new dwelling;
- Existing garage door to be replaced with a new window;
- New porch, landscaping and front fence;
- Internal works to separate the two buildings and provide a new dwelling within the warehouse including living/kitchen, two bedrooms, garage, laundry and bathroom;
- Demolition of the rear portion of the warehouse to provide access from the new dwelling to the private open space and associated rear landscaping;
- New north facing window to bathroom of the new dwelling; and,
- New OSD stormwater tank

First Floor

- New porch and doors to existing dwelling above the office premises;
- Extension of the external laundry; and,
- Internal works to accommodate living areas for the new dwelling within the roof space of the existing warehouse including study, ensuite master bedroom and balcony.

Roof

- Demolition of a portion of the existing warehouse roof to accommodate a new glazed roof over the entrance to the new dwelling and breakout room for the office premises;
- New roof to match existing, and,
- New skylights and solar panels.

3. Site Description

The subject site is located on the northern side of Athol Street, between Flood Street and Darley Road. The site consists of one allotment and is generally rectangular shaped with a total area of 405 sqm and is legally described as D.P. 934046.

The site has a frontage to Athol Street of 30.48 metres.

The site supports an existing two storey brick dwelling and a single storey brick warehouse. The adjoining properties support one and two storey residential dwellings.

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

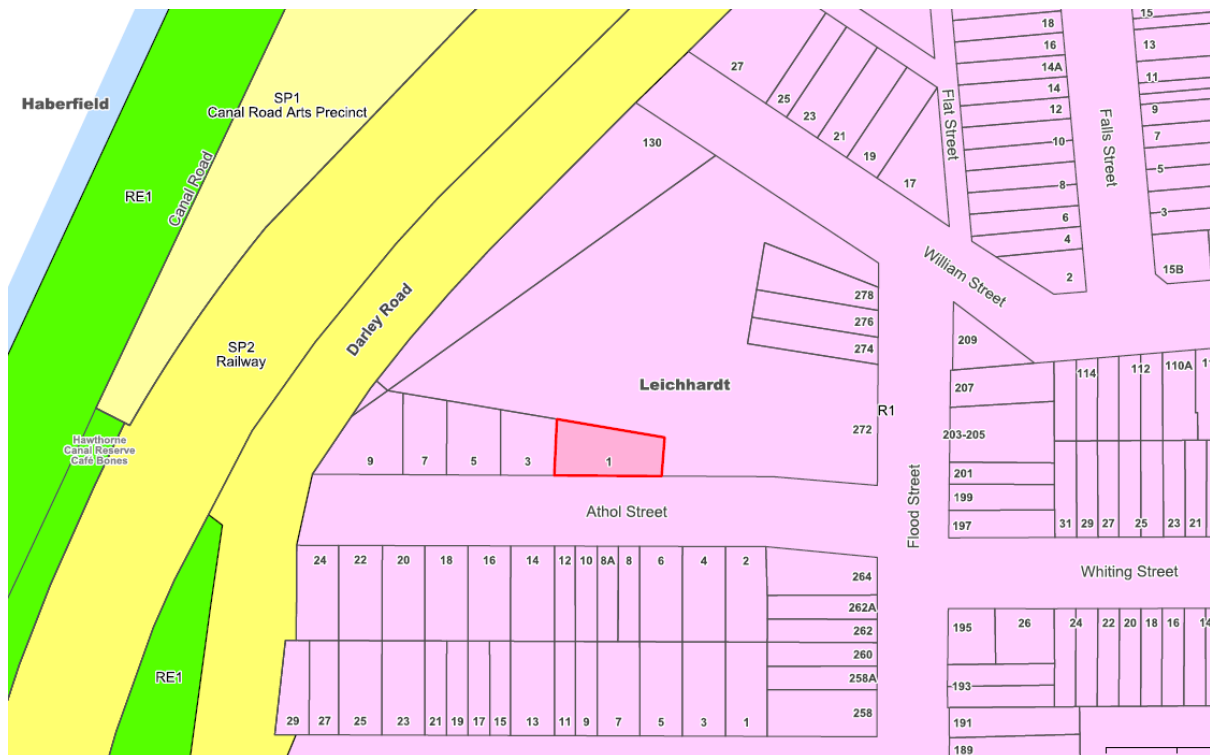


Image: Locality Zoning Map

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
DA/324/85	Demolition of existing cottage and extension to factory premises.	Approved - 22/03/63
PREDA/2018/249	Torrens title subdivision of the subject site creating two allotments. Resultant Lot 1 will consist of the exiting dwelling and an enhanced landscaped area. Lot 2 will consist of the existing single storey brick warehouse building which will be converted to provide for two new residential units.	Advise Issued – 07/12/2018

Surrounding properties

3 Athol Street

Application	Proposal	Decision & Date
D/2003/370	Alterations to an existing single storey dwelling.	23/07/2003
PREDA/2009/138	Alterations and additions to an existing dwelling.	26/11/2009
D/2010/123	Alterations and additions to existing dwelling entailing the demolition of the rear, construction of a ground and first floor addition, demolition of garage and construction of carport.	26/05/2010

4(b) Application history

Not applicable

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 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*.

A Detailed Site Investigation (DSI) has been provided to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site is suitable for the proposed use. To ensure that these works are undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of *SEPP 55*.

5(a)(ii) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

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

Clause 1.2 - Aims of the Plan
 Clause 2.3 - Zone objectives and Land Use Table
 Clause 2.6 - Subdivision
 Clause 2.7 - Demolition
 Clause 4.1 - Minimum subdivision lot size
 Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
 Clause 4.4 – Floor Space Ratio
 Clause 4.4A - Exception to maximum floor space ratio for active street frontages
 Clause 4.5 - Calculation of floor space ratio and site area
 Clause 4.6 - Exceptions to development standards
 Clause 6.1 - Acid Sulfate Soils
 Clause 6.2 - Earthworks
 Clause 6.4 - Stormwater management
 Clause 6.8 - Development in areas subject to aircraft noise
 Clause 6.10 - Use of existing buildings in Zone R1
 Clause 6.11 - Adaptive reuse of existing buildings in Zone R1

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

The site is zoned R1 General Residential under the *LLEP 2011*. The *LLEP 2013* defines the development as semi-detached dwellings and office premises and development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 General Residential zone.

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

Lot 1 – Existing Dwelling

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size (200sqm)	205sqm	N/A	Yes
Floor Space Ratio (0.7:1 or 143.5sqm)	1.19:1 or 244.632sqm	70.48% or 101.132sqm	No
Landscape Area (15% or 30.75sqm)	4.62% or 9.48sqm	69.17% or 21.27sqm	No
Site Coverage (60% or 123sqm)	80.13% or 164.27sqm	33.56% or 41.273sqm	No

Lot 2 – Warehouse / New Dwelling

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size (200sqm)	200sqm	N/A	Yes
Floor Space Ratio (0.7:1 or 140sqm)	0.97:1 or 194.13sqm	38.66% or 55.13sqm	No
Landscape Area (15% or 30sqm)	10.60% or 21.19sqm	29.37% or 8.81sqm	No
Site Coverage (60% or 120sqm)	85.50% or 171sqm	42.50% or 51sqm	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Landscaped Area development standard under Clause 4.3A of the applicable local environmental plan by 69.17% (21.27sqm) for Lot 1 and 29.37% (8.81sqm) for Lot 2. The applicant also seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the applicable local environmental plan by 70.48% (101.132sqm) for Lot 1 and 38.66% or (55.13sqm) for Lot 2.

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

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

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

- The existing non-compliances at the site (site coverage and landscaped area) are not worsened through the proposed development application. The existing non-compliances are either maintained or improved upon.
- Increased landscaping is provided along the front boundary of Lot 1 which will provide a positive streetscape response with the provision of greenery along Athol Street.
- The proposed development promotes the desired future character of the neighbourhood by providing a positive and sympathetic response to the general character and form of dwellings within the immediate area. This is ensured through retention of existing structures at the subject site with the works largely contained within existing building envelopes.

- A high-quality design has been proposed and promotes an architectural fabric that is sympathetic to the original form and the desired future character of the area and will continue to compliment the array of styles and designs exhibited within the locality.
- Whilst the proposal seeks a variation to Council's landscaped area and site coverage control, the building footprint is considered to be limited and appropriate for the subject site, noting this is not being increased with the existing structures being retained.

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 Landscaped Area development standard which is summarised as follows:

- With respect to the existing warehouse structure, the proposed works have been designed to be contained within the existing building envelope of the warehouse with no works projecting beyond the extent of the existing roof form.
- With respect to streetscape presentation, the proposal will retain a comparable presentation to the street with the bulk and scale of the form remaining largely as is.
- A minimal change to the treatment of the front façade will result from the introduction of a vehicle access point for the existing warehouse. Importantly, this would not increase the existing bulk and scale.
- In terms of the existing two storey structure, a new verandah is proposed along Athol Street with removal of an existing roller door and with introduction of windows being proposed. These works are considered minor in the overall context of the built form and will provide for a more appropriate and sympathetic integration within the locality.
- A heightened streetscape presentation will result at no detriment to the amenity of surrounding allotments.
- The existing non-compliances with respect to landscaped area at the site are not worsened through the proposed development application. The existing non-compliances
- The application seeks to use the ground floor of the existing two storey structure on resultant Lot 1 for the purpose of an office premises. This is made pursuant with Clause 6.10 of the Leichhardt Local Environmental Plan 2013. This use will not change the existing building envelope.

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 with the objectives of the R1 General Residential Zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

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

- *To provide for the housing needs of the community.*
- *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 objectives of the Landscaped Area 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.*

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 accommodate a new dwelling which is contained within the building footprint and envelope of the existing warehouse building and is considered to have minimal undue adverse privacy and streetscape impacts.
- The objective of the Landscaped Area standard is to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents and, to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.
- Additional landscaping is provided to each lot for the provision of tree planting and private open space and, would be an improvement on the existing situation.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone, the FSR development standard and the Landscaped Area development standard in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan 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 open space areas and the built form and provides sufficient private open space on the site;

- The additional floor space will be contained within the existing building footprint and will comply with the Building Location Zone where it can be reasonably assumed that development can occur; and,
- The proposal does not result in any adverse unacceptable amenity impacts to the surrounding properties.

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 and Landscaped Area development standards and, it is recommended the Clause 4.6 exception be granted.

Clause 6.8 - Development in areas subject to aircraft noise

The subject site is located in an ANEF contour 15-20 and, will result in the creation of a new dwelling. While an acoustic report has not been provided, a condition is recommended to ensure that appropriate noise attenuation measures are employed as part of the new development.

Clause 6.10 - Use of existing buildings in Zone R1

The proposal includes the adaptive reuse of the ground floor of the existing building on Lot 1 for the purpose of an office premises with associated parking, reception, break room, storage and workspace. The proposed office premises is considered appropriate for the following reasons:

- A total of two staff are proposed to be employed and would operate between 8:30-4:30 Monday to Friday.
- The proposal will not result in adverse amenity impacts to adjoining properties in terms of visual and acoustic privacy, solar access or views given that the use would be contained within the existing building envelope.
- The form and fabric of the existing building is retained with minor changes proposed to the front façade to accommodate a new entrance, new veranda, new front fence and reconfiguration of windows to Athol Street, which, are considered to have a positive contribution to the streetscape and presentation of the building.
- The existing WC and storage area at the rear of the building are retained.

As such, the proposal is considered acceptable subject to recommended conditions, complies with the objectives, and controls for adaptive reuse for the purposes of an office premises, under this Clause.

Clause 6.11 - Adaptive reuse of existing buildings in Zone R1

The proposal includes the adaptive reuse of the existing warehouse on Lot 2 to create a new residential dwelling with associated garage parking, three bedrooms and rear private open space. The proposed new dwelling is considered appropriate for the following reasons:

- The proposal will not result in adverse amenity impacts to adjoining properties in terms of visual and acoustic privacy, solar access or views given that the dwelling would be contained within the building envelope of the existing warehouse.
- The form and fabric of the existing building is retained with minor changes proposed to the front façade to accommodate a new garage door to Athol Street.
- The increase in floor space is contained within the envelope of the existing warehouse with minor changes proposed to the roof to accommodate a first floor balcony and glazed entrance to Athol Street, skylights and solar panels.
- The proposal is consistent with the prevailing streetscape and character of the neighbourhood given form and presentation of the existing warehouse building will be retained.

As such, the proposal is considered suitable and, complies with the objectives and controls for adaptive reuse, under this Clause.

5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

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
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	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes – see discussion
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies,	N/A

Verandahs and Awnings	
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	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	Yes
C2.2.3.2(b) North Residential Sub Area	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	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes – see discussion
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	Yes – see discussion
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	
E1.1 Approvals Process and Reports Required With Development Applications	N/A
E1.1.1 Water Management Statement	N/A
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
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:

C1.0 General Provisions, C1.2 Demolition, C1.3 Alterations and additions, C2.2.3.2 West Leichhardt Distinctive Neighbourhood and C2.2.3.2(b) North Residential Sub Area

The controls prescribed in these parts of the LDCP2013 seek to ensure that development:

- Preserves the subdivision pattern;
- Complements the scale, form and materials of the streetscape including wall height and roof form;
- Should appear as a sympathetic addition to the existing building (where visible from the public domain);
- Makes a positive contribution to the desired future character of the streetscape;
- Protects existing residential amenity, including the retention of adequate private open space and ensuring adequate sunlight, natural ventilation and privacy to the existing dwelling and surrounding dwellings;
- Maintains views and glimpses from the public domain to natural and built elements that contribute to local character and sense of place;
- Protects views obtained from surrounding development and promotes view sharing; and,
- Retains existing fabric wherever possible and maintains and repairs, where necessary, rather than replaces the fabric.

The proposed subdivision and, alterations and additions seek to retain the form, fabric and footprint of the existing buildings on the site and as such, the proposal will not be out of character with the pattern of development in the street. Further:

- The proposed additional floor space is contained within the existing built form on the site and the new roof forms, proportions to openings and finishes and materials will complement, and that will not detract from, the existing and adjoining buildings;
- The additions visible from Athol Street will be sympathetic to the streetscape and improve the visual presentation of the existing dwelling;
- The proposed alterations and additions have been designed to retain existing fabric of the two buildings on the site; and,
- The additions ensure 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 proposal is considered acceptable, subject to recommended conditions.

C1.6 Subdivision

As discussed in previous sections, the proposed subdivision of the site results in two lots with site areas of 205sqm and 200sqm, which complies with the minimum subdivision requirements. In addition, the new lots will be consistent with the prevailing pattern of development and subdivision pattern in the neighbourhood.

C1.8 Contamination

Refer to Section 5(a) (i) for discussion.

C1.11 Parking**Number of Parking Spaces**

The following parking rates are applicable to the proposed development:

Parking Rates				
Land Use	Residents		Visitors	
	Minimum	Maximum	Minimum	Maximum
Residential				
Single dwelling house	Nil	2 spaces per dwelling house	Nil	Nil
Bed-sit / Studio	Nil	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
1 bedroom unit	1 space per 3 dwellings	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
2 bedroom unit	1 space per 2 dwellings	1 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
3+ bedrooms unit	1 space per dwelling	1.2 spaces per dwelling	1 space per 11 dwellings	0.125 spaces dwelling
Land Use	Staff & Visitors Combined			
	Minimum		Maximum	
Bulky goods premises	1 space per 125 sqm		1 space per 100 sqm	
Business premises	1 space per 100 sqm		1 space per 60 sqm	
Office premises	1 space per 100 sqm		1 space per 80 sqm	

The proposed development will result in an existing single dwelling and new office premises on Lot 1 and a new single dwelling on Lot 2. The applicant proposes 1 car parking space for the office premises on Lot 1 and 1 car parking space for the new dwelling on Lot 2 and therefore, achieves compliance with the car parking requirements under this part.

The proposal seeks to provide a new garage door opening and crossover for the new dwelling on Lot 2. To ensure vehicles can enter and exit the parking space, a condition will be recommended to increase the width of the garage door to 3000mm, which will match the existing garage door opening for the office premises on Lot 1. The increase of door/driveway does not result in the loss of any legal existing on-street parking.

C3.2 Site Layout and Building Design

The proposal relies on the adaptive reuse of the existing single storey warehouse on the site and in doing so retains the building form, scale and footprint of this building. The existing

two-storey building is also retained with minor changes proposed which would not alter the footprint of this building.

As such, the proposal complies with the objectives and controls of this Clause and considered acceptable

C3.8 Private Open Space

A private open space area of 18.40sqm is provided at the ground floor at the rear of the site for the proposed new dwelling. While a minimum dimension of 3m is not achieved, given the site constraints, it is considered that the proposal provided an acceptable amount of landscaping and private open space that can be used for recreational purposes.

C3.13 Conversion of Existing Non-Residential Buildings

As discussed in earlier sections of the report, the proposal will retain the predominant form of the existing building, and subject to conditions, the proposed alterations and additions are considered to be compatible with the streetscape and neighbourhood.

The proposed first floor area is located within the existing building envelope and will not result in additional impacts in regards to solar access, bulk and scale, visual privacy and loss of views. Given the constraints of the site, the proposal provides an adequate and acceptable amount of landscaped area and private open space that can be used for recreational purposes.

Therefore, the proposal is considered to be consistent with the objectives and controls under this part.

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. Nil 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 conditions being imposed.
- Environmental Health - No objections to proposal, subject to conditions being imposed.
- Landscape/Urban Forests - No objections to proposal, subject to conditions being imposed.

6(b) External

The application was not required to be referred externally.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

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

Contribution Plan	Contribution
Open space and recreation	\$16,513.60
Community facilities and services	\$1,974.98
Local area traffic management	\$310.47
TOTAL	\$18,817.76

A condition requiring that contribution to be paid is included in the recommendation.

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 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 4.3A – Landscape Area and Clause 4.4 – Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, 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 and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2019/360 for Subdivision of existing land into 2 lots, external renovations to the existing dwelling and use of the ground floor as an office, new alterations and additions to the existing warehouse and conversion to a dwelling and changes to parking arrangements at 1 Athol Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Conditions of Consent

Fees

1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$18,817.76 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 04 February 2020.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Contribution Plan	Contribution
Open space and recreation	\$16,513.60
Community facilities and services	\$1,974.98
Local area traffic management	\$310.47
TOTAL	\$18,817.76

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*.

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

2. 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.

3. 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:	\$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

4. 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
Drawing A 01 Rev A	Schedule of Finishes	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 02 Rev A	Proposed Subdivision Plan	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 07 Rev A	Proposed Roof Plan	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 08 Rev A	Proposed Ground Floor Plan	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 09 Rev A	Proposed First Floor Plan	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 10 Rev A	Proposed North and South Elevations	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 11 Rev A	Proposed East and West Elevations and Sections	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 13 Rev A	Driveway Crossover Details	04.09.2019	Sandbox Studio Pty Ltd
Drawing A 14 Rev A	Concept Stormwater Plan	04.09.2019	Sandbox Studio Pty Ltd
Certificate No. A346684	BASIX Certificate	05.09.19	Sandbox Studio Pty Ltd

As amended by the conditions of consent.

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. 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.

8. 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.

9. Works Outside the Property Boundary

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

10. 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.

11. 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.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

12. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree No/location	Approved works
2x <i>Callistemon viminalis</i> (Weeping Bottlebrush) located in the road reserve.	Remove and replace.

The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree's removal.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

13. Asbestos Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide an asbestos survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate asbestos removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

Prior to any Demolition

14. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

15. 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.

16. 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.

17. 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.

Prior to Construction Certificate

18. 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.

19. 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.

20. 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.

21. 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.

22. Underground services near trees

Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree located on the subject site and adjoining sites (including trees located within the public domain).

23. Dilapidation Report – Pre-Development – Minor

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.

24. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans and certification by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a) The garage slab or crest of the access ramp must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.

- c) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided at a natural scale of 1:25, demonstrating compliance with the above requirements.
- d) The garage/parking space must have minimum clear internal dimensions of 6000mm x 3000mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
- e) A plan of the proposed access and adjacent road, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces.
- f) The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004.
- g) The pedestrian access door to the garage for lot 1 must open outwards from the garage.
- h) The size of the new garage door opening for Lot 2 must be increased have a minimum width of 3000mm.

Note that the levels of the adjacent road surface can have a significant bearing on the final floor and roof levels of the proposed parking facilities. It is critical that the site survey undertaken for the development includes all relevant surface levels out to the road centreline, and includes kerb alignments on both sides of the road'

25. Storm water Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating On site Stormwater Detention storage and/or On site Stormwater Retention/ re-use facilities (OSD/OSR), certified by a suitably qualified Civil Engineer. The Stormwater Drainage Concept Plan on drawing No. A 14 revision (A) prepared by SANDBOX STUDIO and dated 9 September 2019 must be amended to comply with the following specific requirements:

- a) All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (ARR), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- b) Stormwater runoff from pervious and impervious areas of the proposed dwelling must be collected and discharged under gravity via OSD to Athol Street. Separate drainage system must be provided for each lot.
- c) Charged or pump-out stormwater drainage systems are not used including for roof drainage.
- d) The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
- e) The volume of the OSD can be reduced where on-site retention (OSR) facilities for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries

and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.

- f) Details and dimensions of the OSD tank and OSR tank, the invert and top water level in the OSD and OSR and details of the discharge control device including calculation of rates of discharge and volume of storage must be indicated on the drainage plans.
- g) Where a combined OSD/OSR is proposed, only roof water is permitted to be connected to the OSD/OSR. The over flow from the storage tank must be connected under gravity to Catherine Street. Stormwater outlet pipe at a lower level of the storage tank is not required.
- h) The bin storage area shall be shown on the plans, the bins must not cause obstruction to vehicular or pedestrian access to the site.
- i) Drainage pipes must be laid at a minimum grade of 1%. All pipes' diameter and invert level and pits surface and invert level must be shown on the amended drainage plans.
- j) The location and levels of the OSD/OSR and downpipe connections must be shown on plan and elevation.
- k) 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;
- l) A 150mm step up shall be provided between the finished surface level of the external areas and the finished floor level of the internal room.
- m) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- n) Only a single point of discharge is permitted to the kerb and gutter, per frontage of each site.
- o) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

During Demolition and Construction

26. 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.

27. 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.

28. Contamination – Retention of Ground Slab

This consent only permits the fit-out and use of the premises with the retention of the existing ground slab. Intrusive ground excavations and/or works that may compromise the integrity of the existing ground slab covering the site are not approved, and existing ground slabs and hardstand areas must be retained and maintained in their original form.

Should any ground slab or hardstand area be damaged or disturbed, an appropriately qualified Environmental Consultant must inspect the site immediately and determine whether any potential contaminants have been disturbed. If preventative works need to be undertaken, a written statement prepared by a qualified Environmental Consultant must be provided to Council detailing the outcome of this investigation and associated works.

Prior to Occupation Certificate**29. Aircraft Noise –Alterations and Additions**

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the "Prior to the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

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.

30. 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.

31. Planting of Street Trees

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following 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) Street trees have been planted in Athol Street and comply with the following requirements:
 - i. Street trees must be located and planted in accordance with the Street Tree Master Plan;
 - ii. The replacement street tree species must be *Callistemon viminalis* (Weeping Bottlebrush);
 - iii. The tree must be grown and certified that it complies with AS2303:2018—Tree stock for landscape use to ensure quality trees and more successful establishment;
 - iv. The new street trees must be a minimum container size of 75(L) litres.
 - v. The street tree(s) must be planted by a practicing Arborist or Horticulturist;
 - vi. The tree pit dimensions and staking detail must be in accordance with the Marrickville Street Tree Master Plan 2014.

- vii. The applicant must demonstrate that there will be sufficient soil volume to support mature specimens in the landscape. Should it be determined that there is insufficient natural soil for replenishment plantings, the applicant must provide Council with additional construction details for site specific tree pits. Details of a vault style structural soil system must include a minimum of 20m³ available soil volume for each tree. Refer to Appendix 6.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014.
- b) The trees and tree pits must be inspected by Council's Public Tree Coordinator before and after planting.
- c) A copy of a maintenance agreement with a practicing Horticulturist or Arborist for a minimum period of twelve (12) months commencing on the planting date. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning, fertilizing, pest and disease control and any other operations to maintain a healthy robust tree.
- d) At the end of the twelve (12) month maintenance period, written approval must be obtained from Council before hand-over of any street tree to Council.
- e) If a street tree has been replaced due to maintenance deficiencies during the twelve (12) month maintenance period, the twelve (12) month maintenance period will start again from the date that the street tree is replaced.

32. 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.

33. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

34. Works as Executed – Site Storm water 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.

11. 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.

12. 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.

13. Civil Engineer Verification

Prior to the issue of a Subdivision 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.

Prior to Subdivision Certificate

Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Separate Stormwater

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with details, endorsed by a practising stormwater engineer demonstrating separate drainage systems to drain each proposed lot.

On-going

35. Hours of Operation

- a) The hours of operation of the office premises must not exceed the following:

Day	Hours
Monday to Friday	8:30am – 4:30pm

36. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

37. Commercial Waste/Recycling Collection

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

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.

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the Access To Neighbouring Lands Act 2000 to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—Pruning of amenity trees and the Safe Work Australia Code of Practice—Guide to Managing Risks of Tree Trimming and Removal Work. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's Development Fact Sheet—Trees on Development Sites and AS4970—Protection of trees on development sites.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's Development Fact Sheet—Arborist Reports.

Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

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.

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, 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.

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.

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).

Public Domain

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.

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.

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 veranda over the footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

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.

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 Environmental Solutions	1300 651 116 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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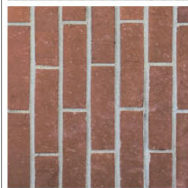
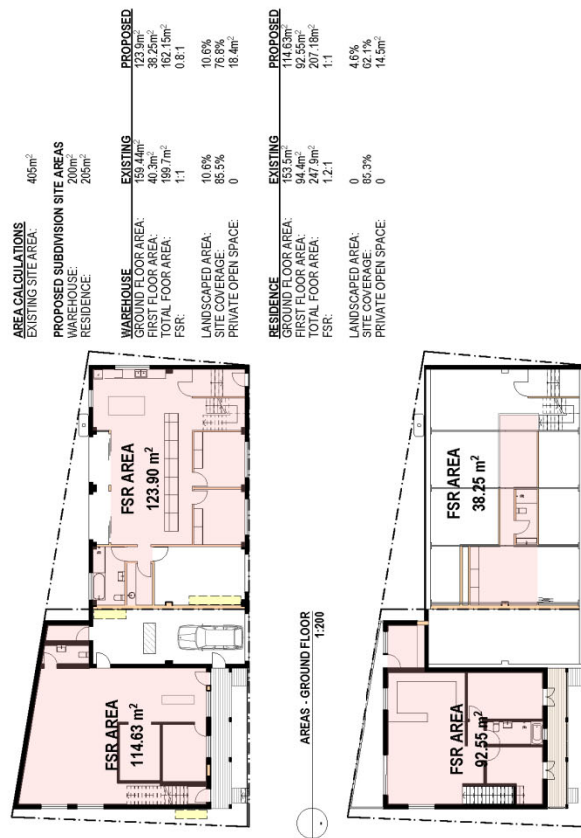
DEVELOPMENT APPLICATION

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DRAWING LIST

FINISHES SCHEDULE

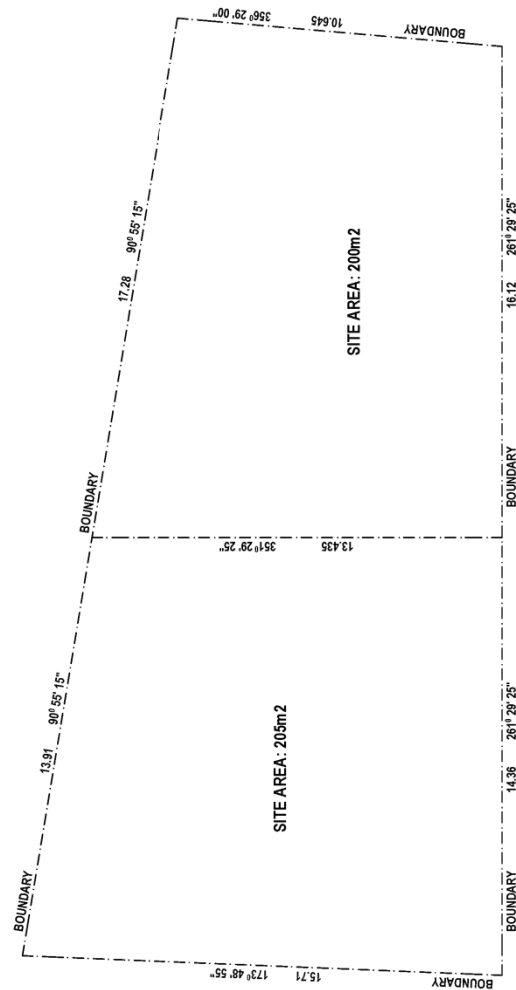
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A.02	PROPOSED SUBDIVISION	A	01
A.03	EX. GROUND PLAN	A	01
A.04	EX. FIRST FLOOR PLAN	A	01
A.05	DEM. GROUND FLOOR	A	01
A.06	DEM. FIRST FLOOR	A	01
A.07	ROOF PLAN	A	01
A.08	GROUND FLOOR PLAN	A	01
A.09	FIRST FLOOR PLAN	A	01
A.10	ELEVATIONS	A	01
A.11	ELEVATIONS & SECTIONS	A	01
A.12	CONCEPT LANDSCAPE PLAN	A	01
A.13	DRIVEWAY CROSSOVER DETAILS	A	01
A.14	CONCEPT STORMWATER PLAN	A	01
A.15	SHADOW DIAGRAM 9AM	A	01
A.16	SHADOW DIAGRAM 12PM	A	01
A.17	SHADOW DIAGRAM 3PM	A	01

FRONT FENCE -
NEW PROPOSED FRONT FENCE, TIMBER
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SHEET METAL ROOFING AND WALLING,
NOMINATED COLOUR TO MATCH EXISTING
WAREHOUSE - NOMINATED COLOUR
SHALE GREY.BR1 -
NEW BRICK WALL TO MATCH EXISTING
WAREHOUSE BRICKS.BR2 -
EXISTING WAREHOUSE BRICK WALLS TO
BE PRESSURE WASHED AND CLEANED.

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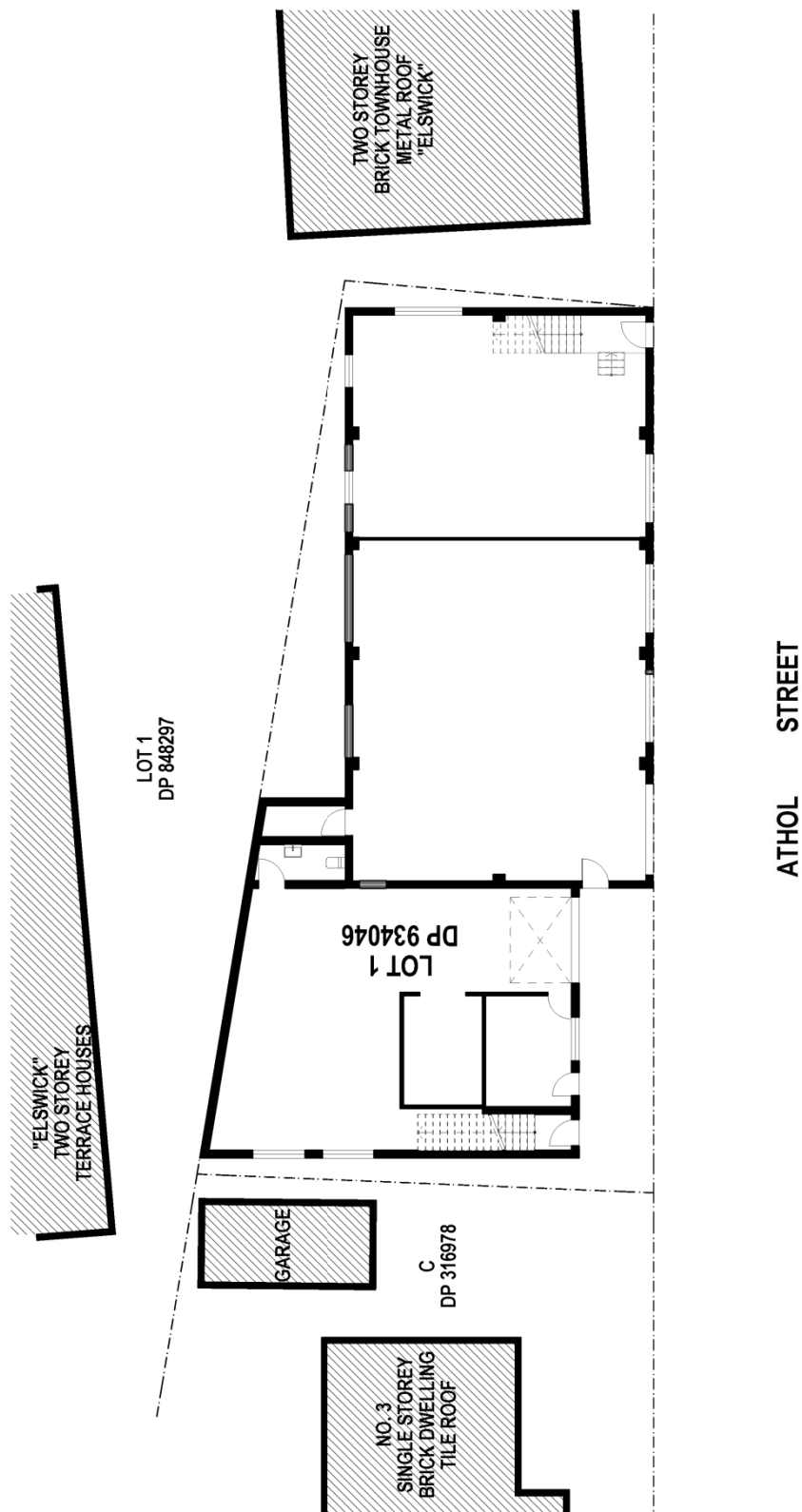
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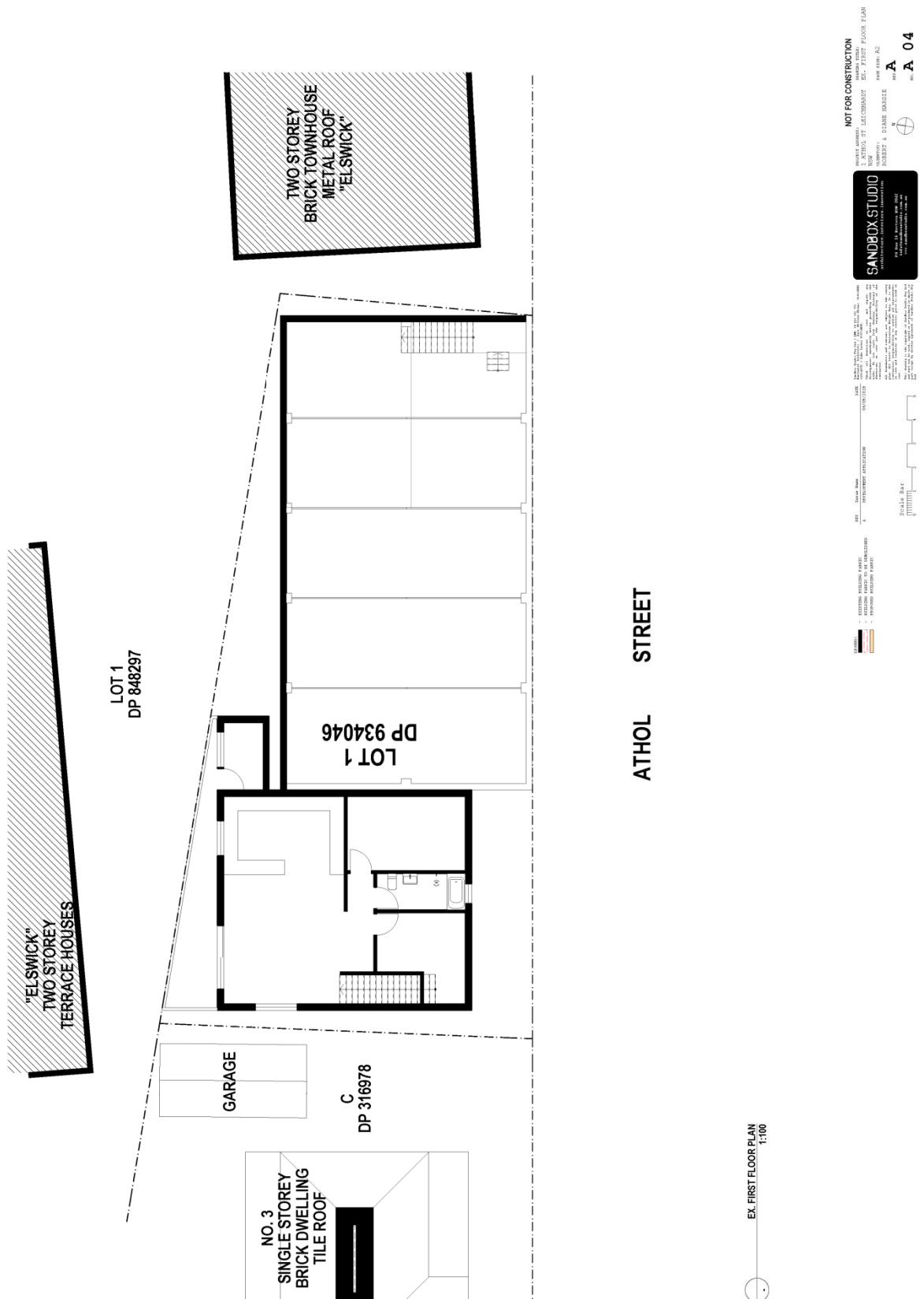
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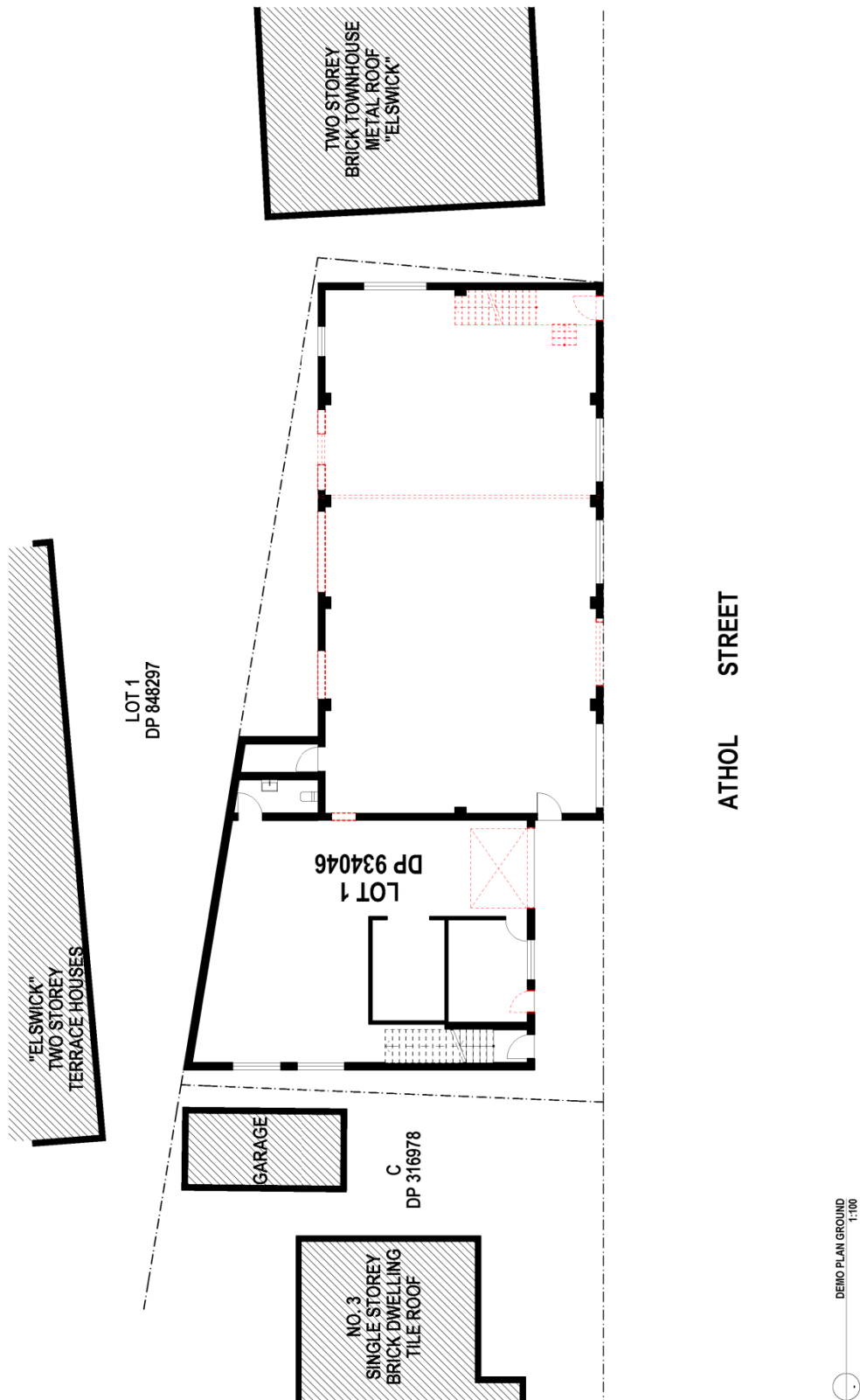
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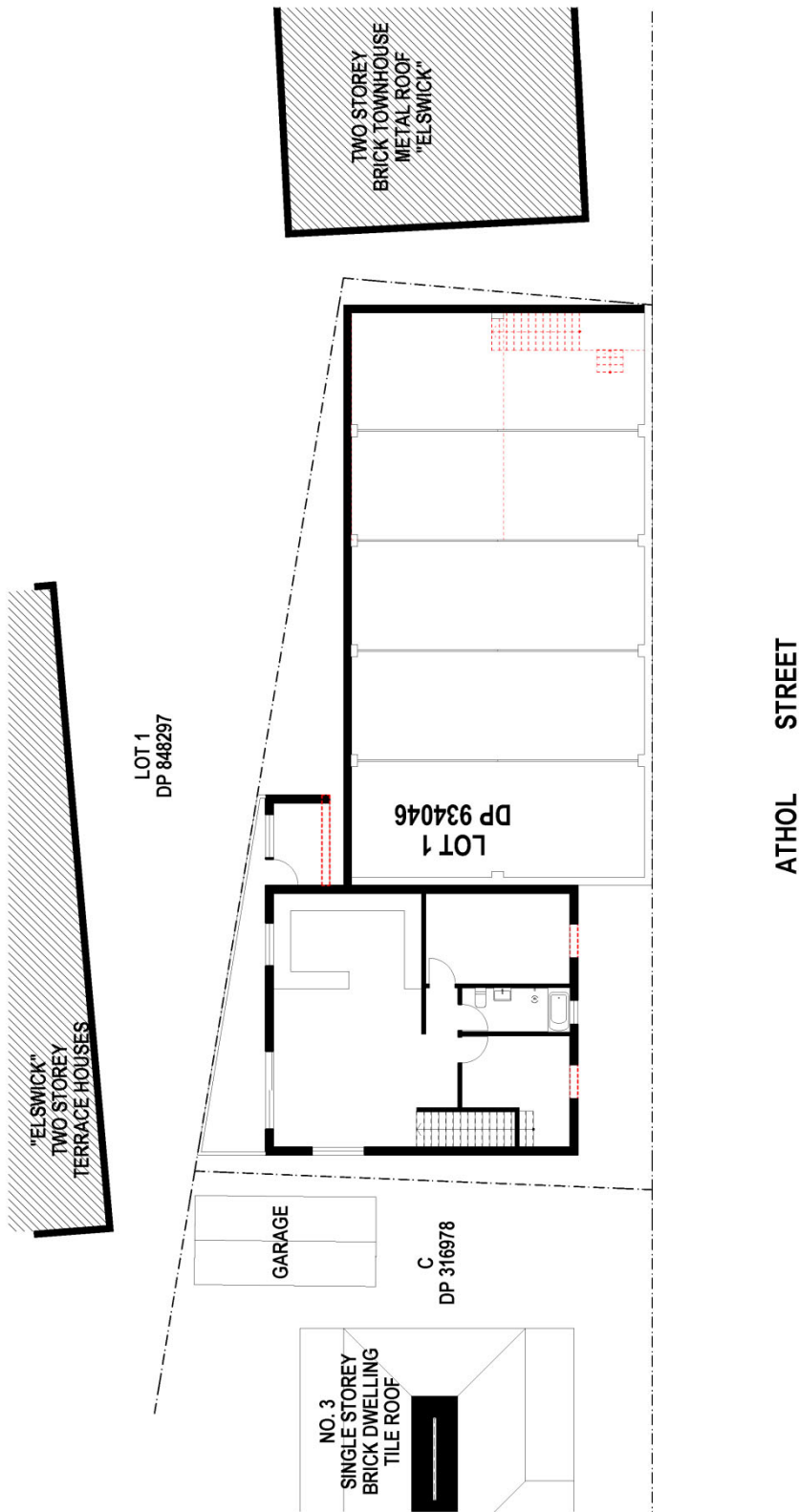


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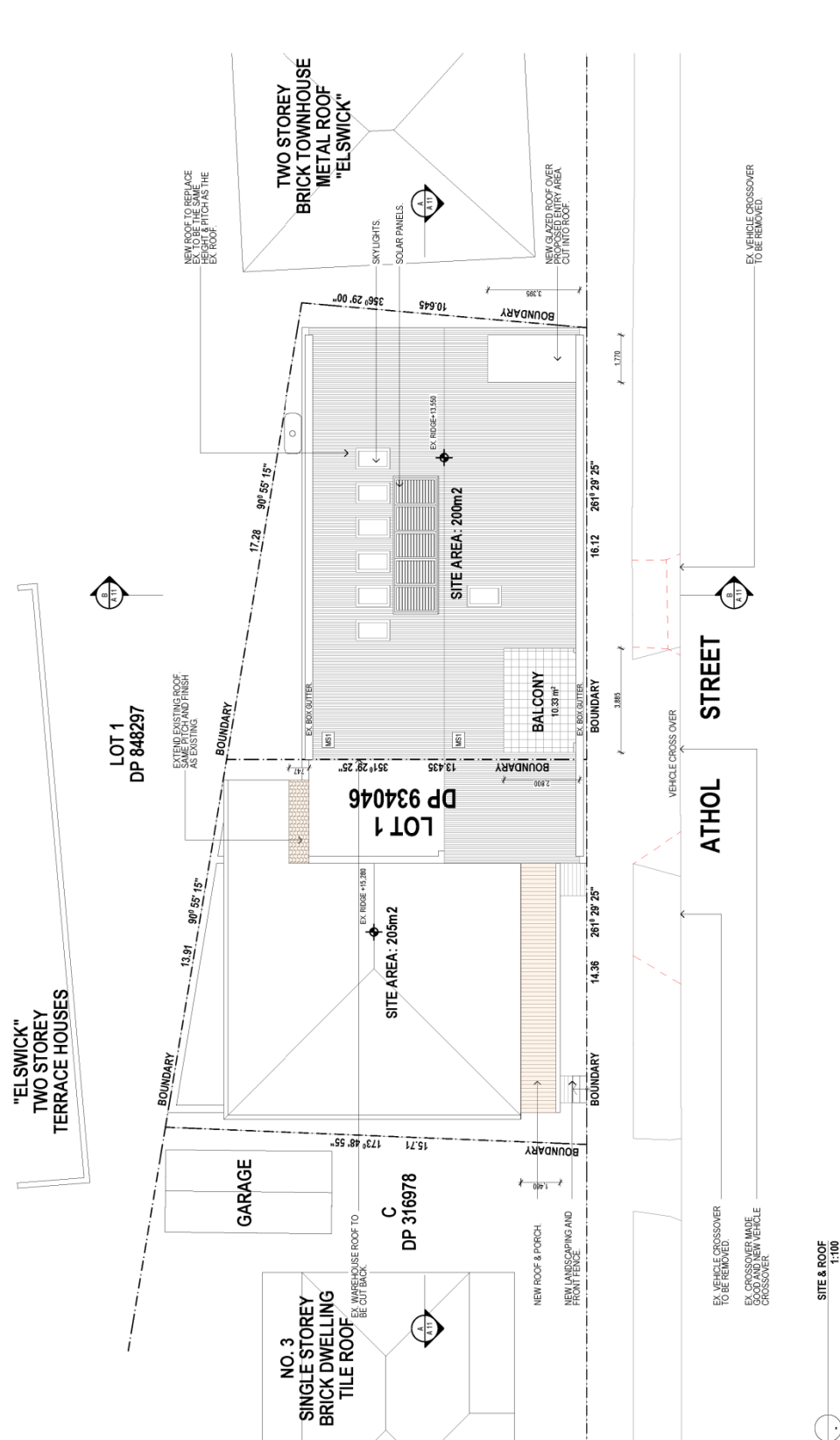


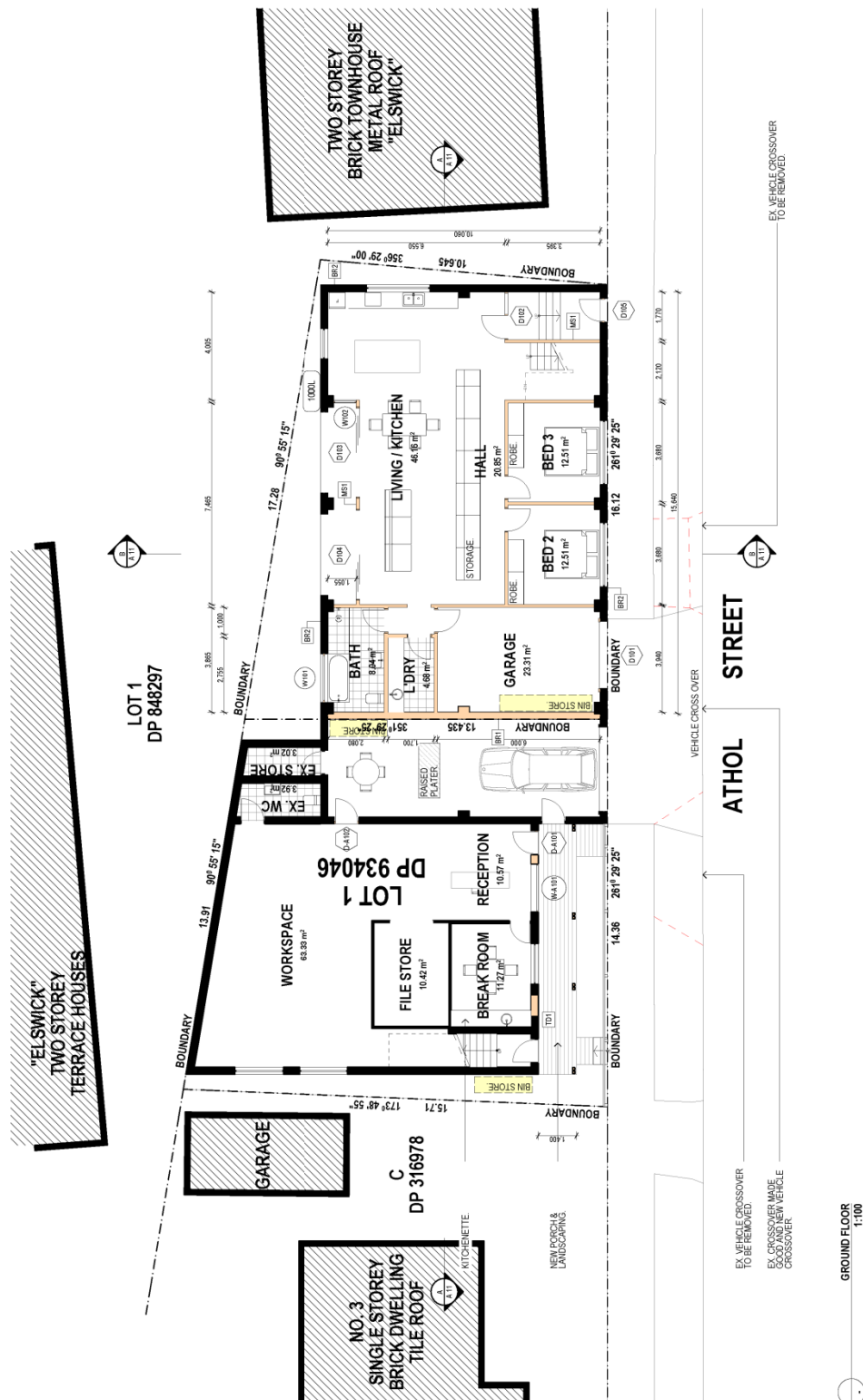




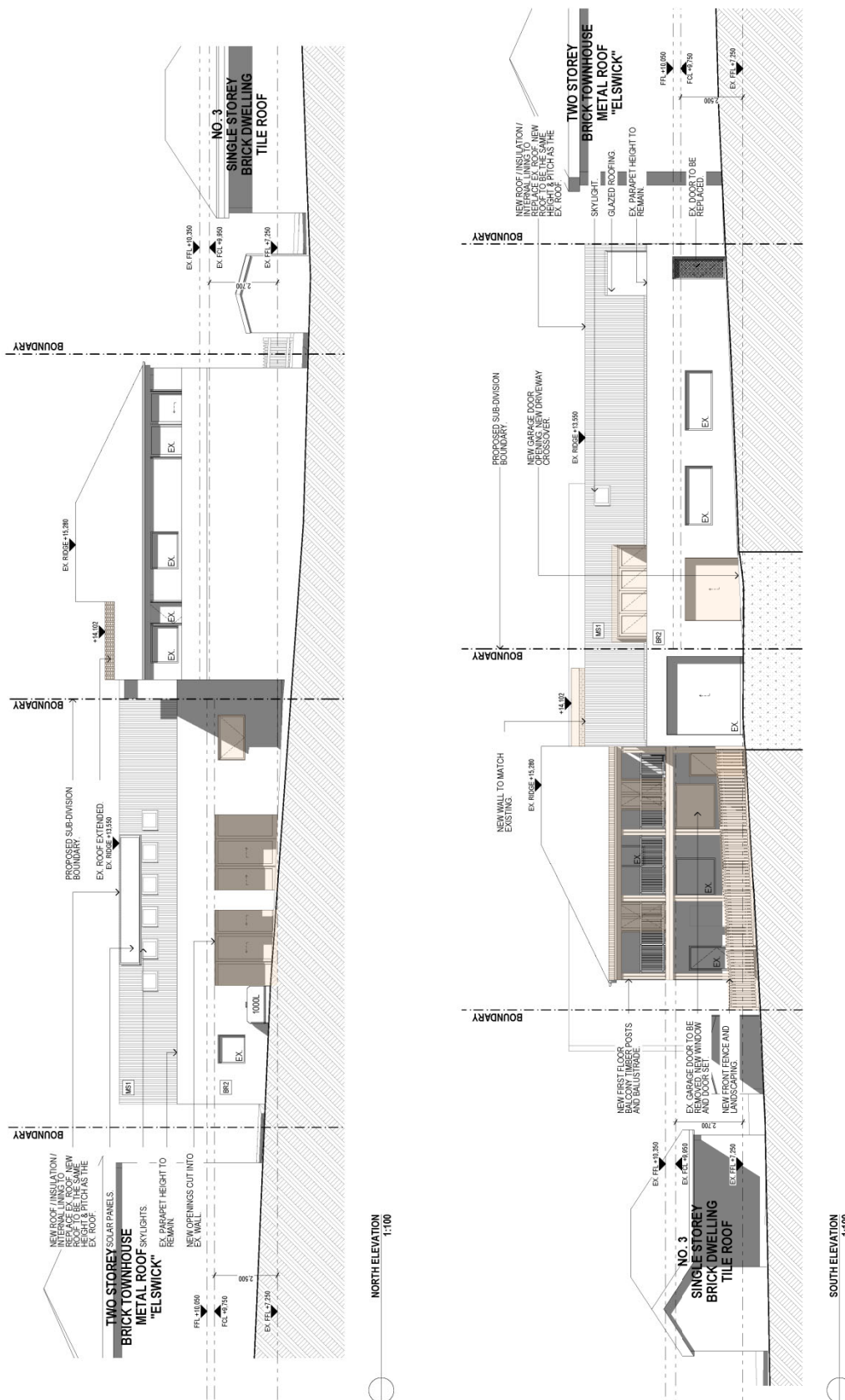
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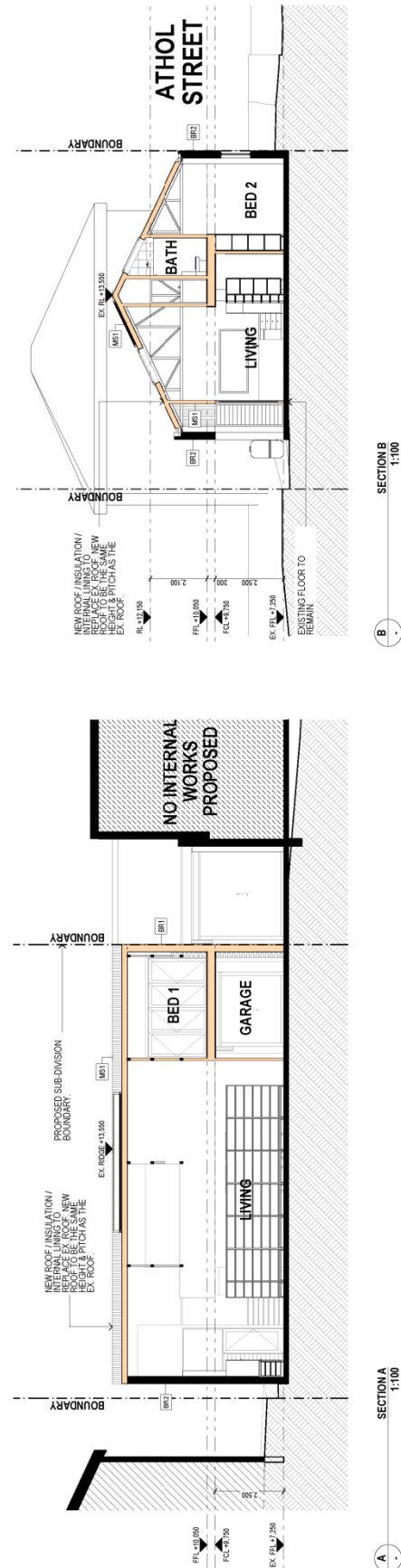
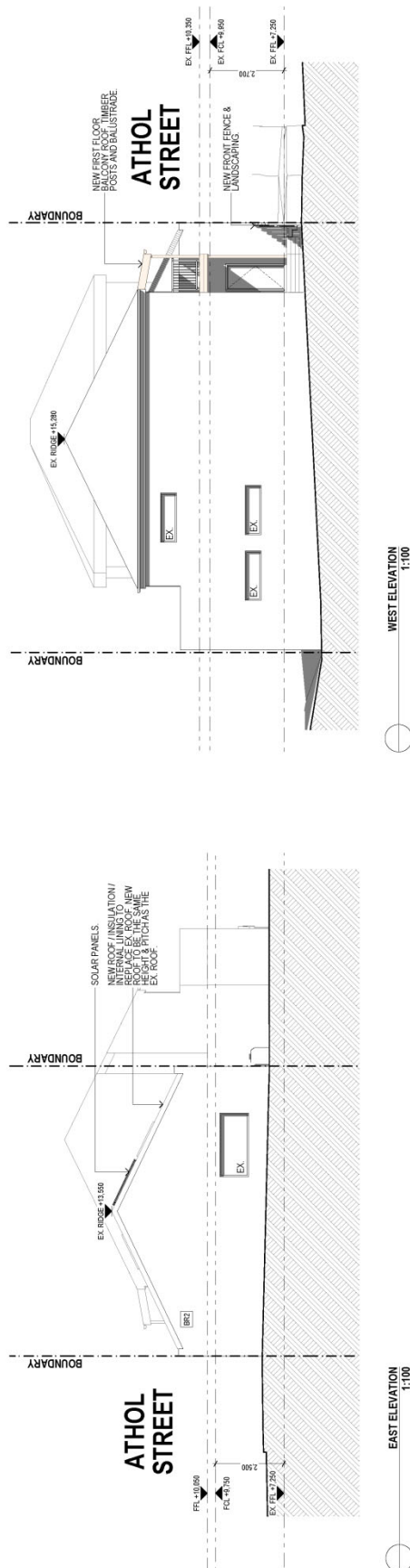
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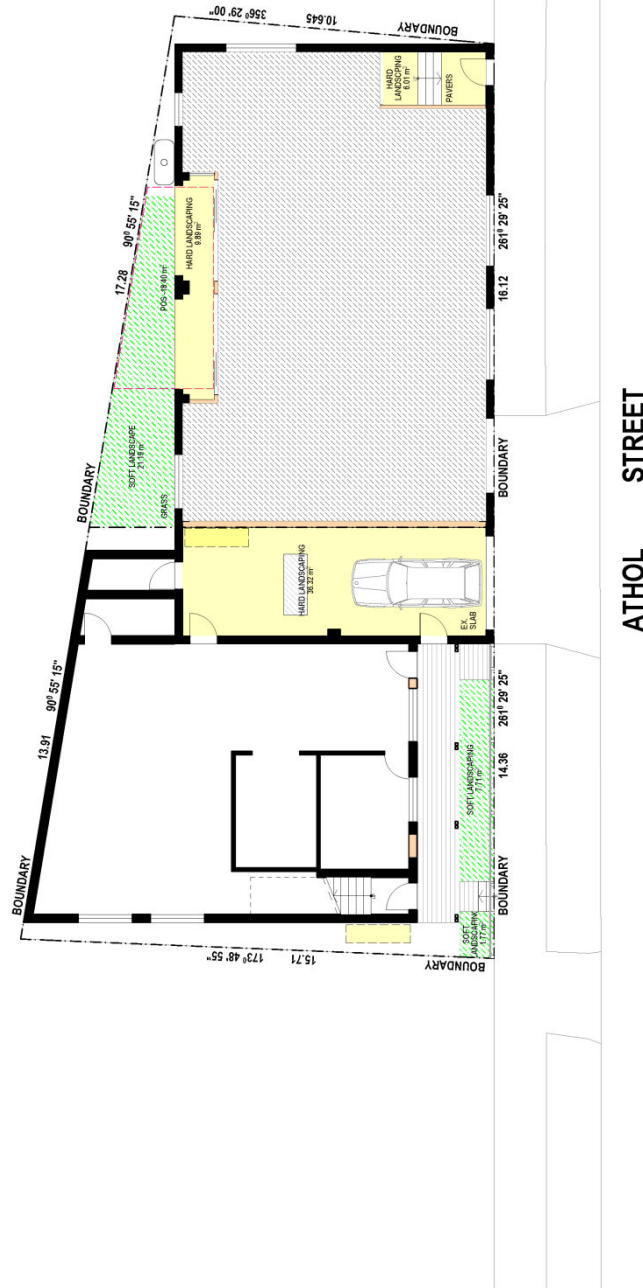
AREA CALCULATIONS
EXISTING SITE AREA: 405m²
PROPOSED SUBDIVISION SITE AREAS
WAREHOUSE: 200m²
RESIDENCE: 200m²

WAREHOUSE	EXISTING	PROPOSED
GROUND FLOOR AREA:	159.44m ²	123.9m ²
FIRST FLOOR AREA:	40.3m ²	38.25m ²
TOTAL FLOOR AREA:	199.7m ²	162.15m ²
FSR:	1.1	0.81

LANDSCAPED AREA:	10.6%	10.6%
SITE COVERAGE:	85.5%	76.8%
PRIVATE OPEN SPACE:	0	18.4m ²

RESIDENCE	EXISTING	PROPOSED
GROUND FLOOR AREA:	94.4m ²	92.55m ²
FIRST FLOOR AREA:	24.79m ²	20.718m ²
TOTAL FLOOR AREA:	12.1	1.1

LANDSCAPED AREA:	0	4.5%
SITE COVERAGE:	83.3%	82.1%
PRIVATE OPEN SPACE:	0	14.5m ²



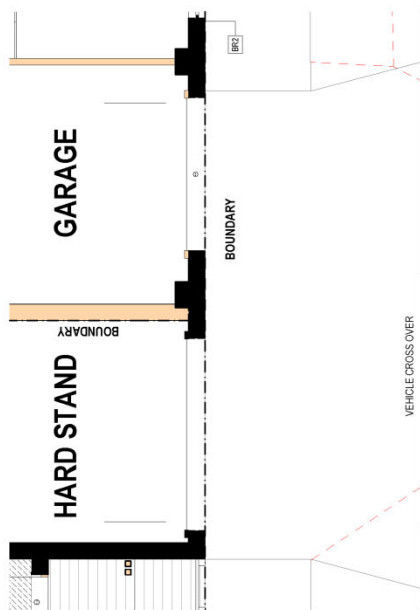
ATHOL STREET

LANDSCAPE PLAN
1:100

SANDBOX STUDIO
14.3m x 12.1m (173.1m²)
100% LANDSCAPED AREA (17.3m²)
100% SOFT LANDSCAPED AREA (11.18m²)
100% HARD LANDSCAPED AREA (30.32m²)
100% PAVED AREA (8.01m²)
100% GRASS AREA (11.18m²)
100% POCA AREA (17.3m²)
100% EX. SLAB AREA (15.71m²)
100% OTHER AREA (15.71m²)

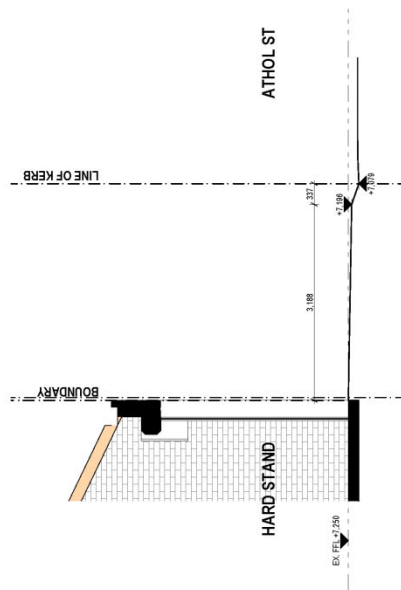
NOT FOR CONSTRUCTION
PROJECT ADDRESS: 14.3m x 12.1m (173.1m²)
PROJECT NAME: 100% LANDSCAPED AREA (17.3m²)
PROJECT TYPE: 100% SOFT LANDSCAPED AREA (11.18m²)
PROJECT DATE: 100% HARD LANDSCAPED AREA (30.32m²)
PROJECT SCALE: 100% PAVED AREA (8.01m²)
PROJECT STATUS: 100% GRASS AREA (11.18m²)
PROJECT LOCATION: 100% POCA AREA (17.3m²)
PROJECT OWNER: 100% EX. SLAB AREA (15.71m²)
PROJECT CONTACT: 100% OTHER AREA (15.71m²)

A 12

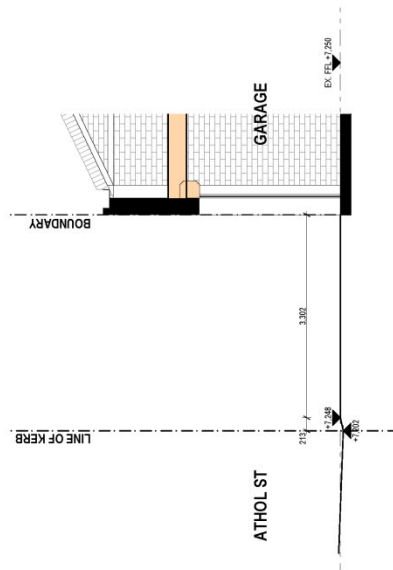


ATHOL STREET

DRIVEWAY PLAN
1:30



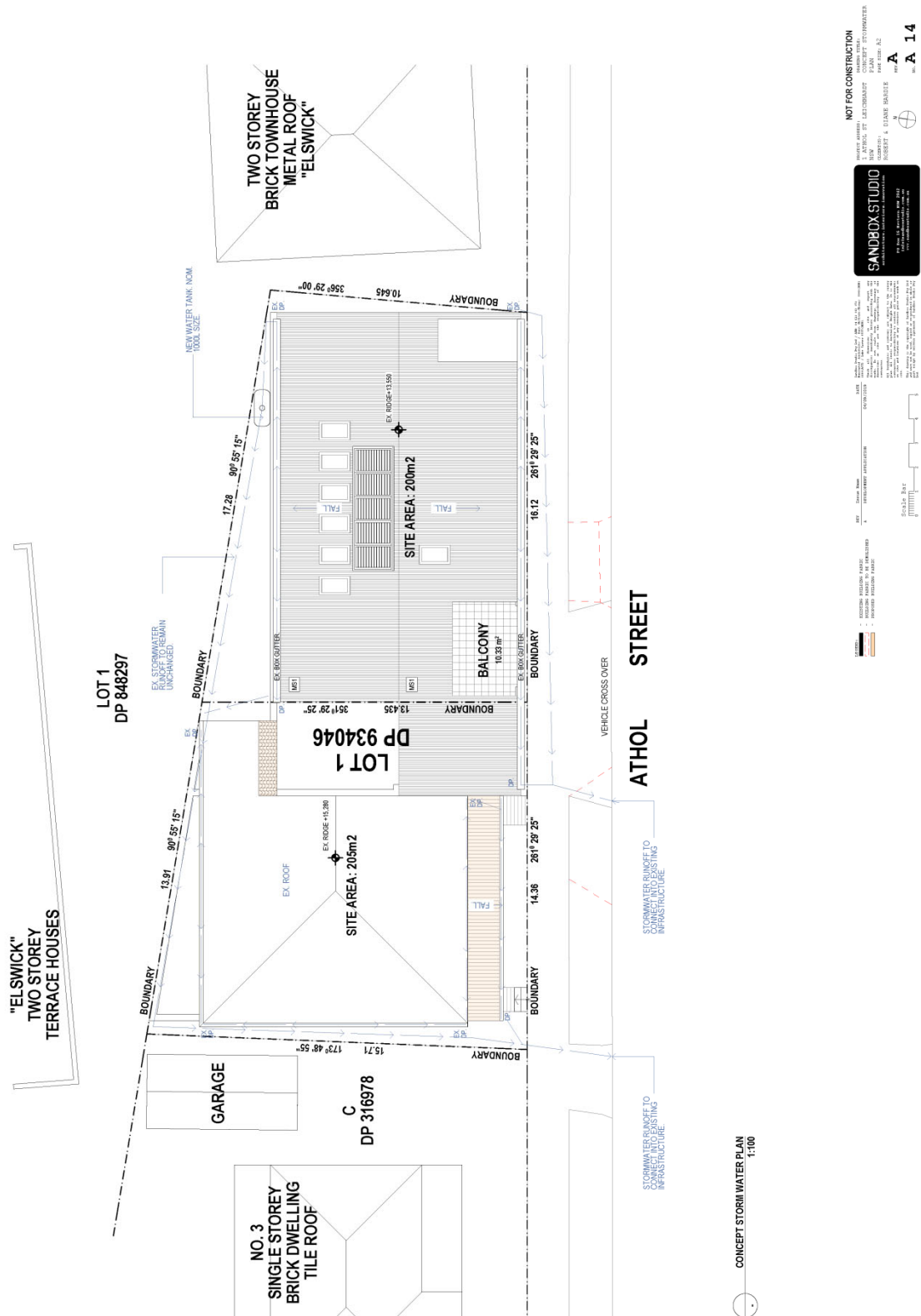
DRIVEWAY SECTION
1:30

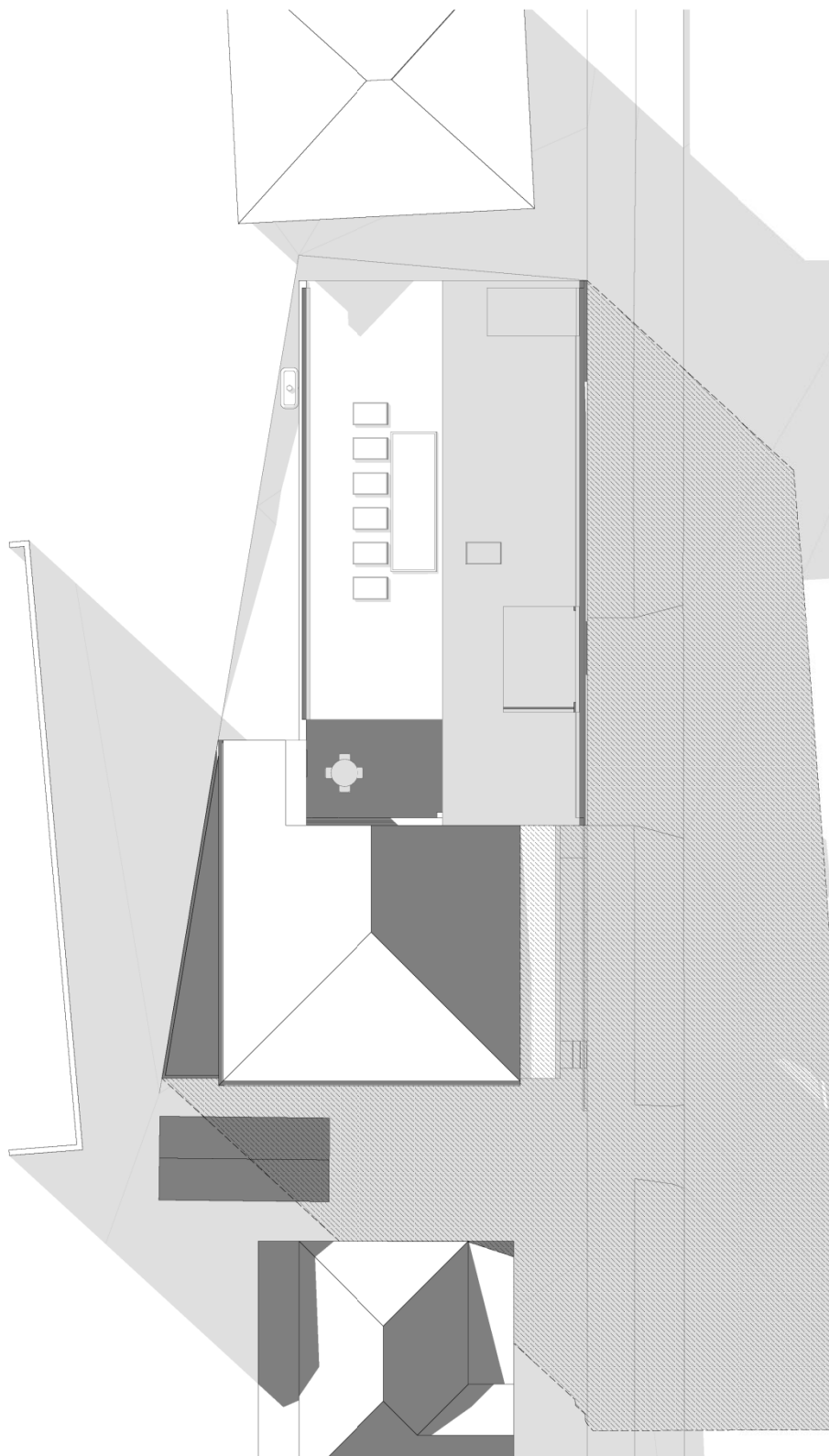


DRIVEWAY SECTION
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SANDBOX STUDIO
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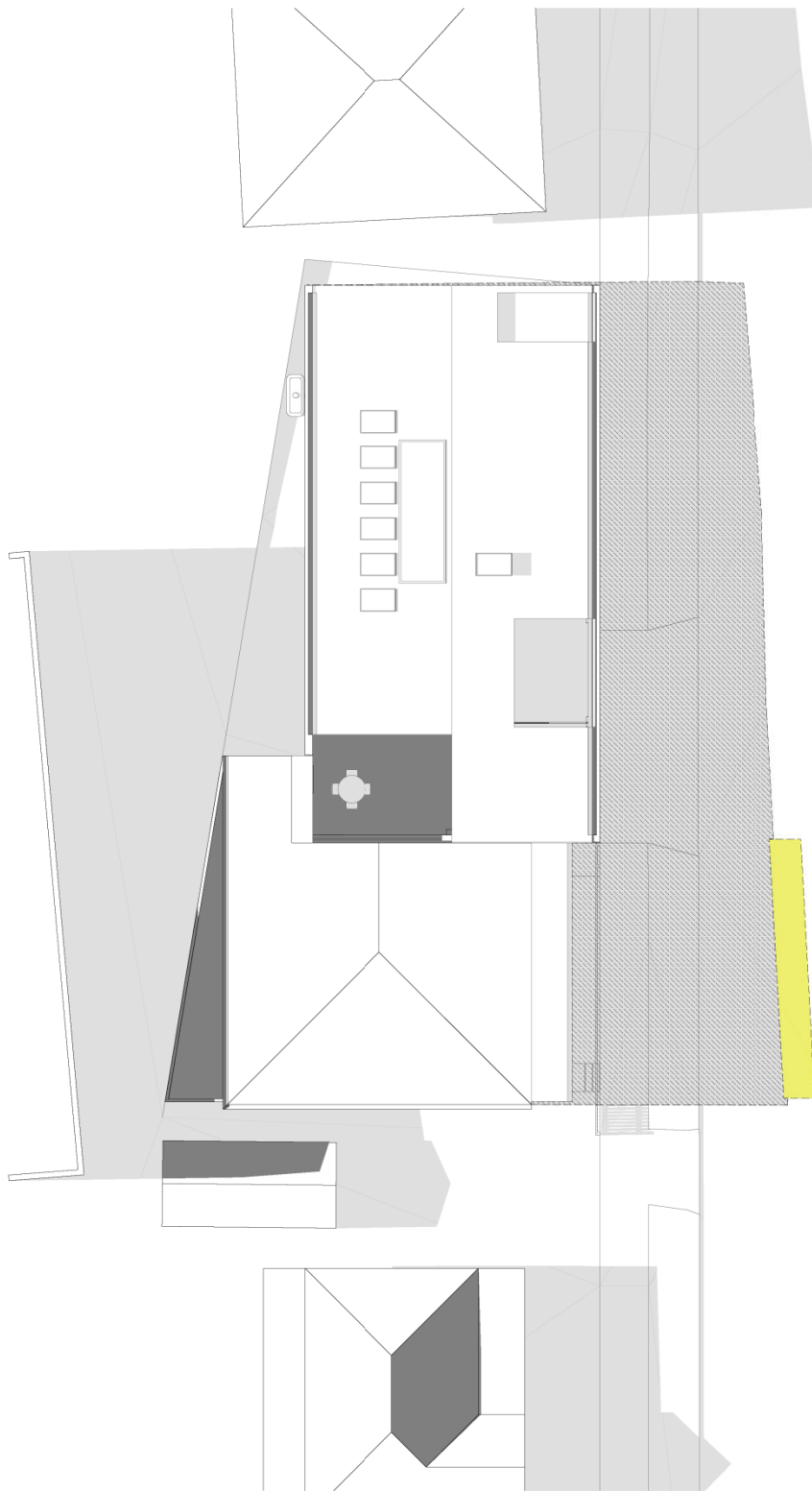


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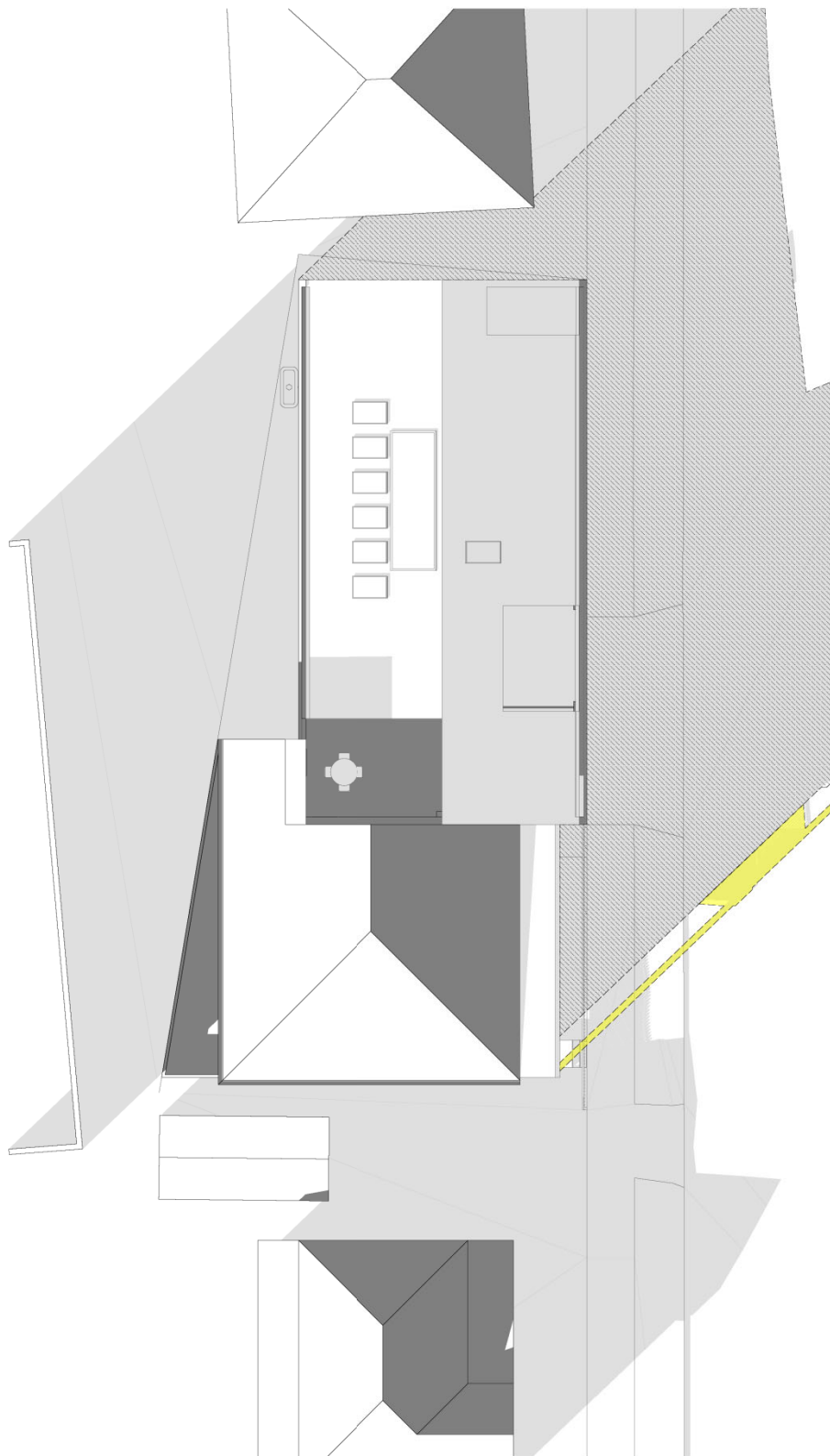


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- EXISTING DWELLING SHADOWS
- PROPOSED SHADOWS

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Attachment C- Clause 4.6 Exception to Development Standards

Appendix C Clause 4.6 to Clause 4.3A of the Leichhardt
Local Environmental Plan 2013

**CLAUSE 4.6 VARIATION TO CLAUSE 4.3A – LANDSCAPED AREAS FOR RESIDENTIAL
ACCOMMODATION IN ZONE R1 OF THE LEICHHARDT LOCAL ENVIRONMENTAL
PLAN 2013**

1. Introduction

This submission seeks a variation to Clause 4.3A of the Leichhardt Local Environmental Plan 2013, which relates to landscaped area for residential accommodation in Zone R1. It is noted that the proposal seeks a variation to Cl 4.3A(3)(a) which pertains specifically to landscaped area and 4.3A(3)(b) which relates to site coverage.

This submission has been prepared in relation to a development application seeking a Torrens title subdivision of the subject site creating two allotments. Resultant Lot 1 will consist of the existing two storey structure and an enhanced landscaped area. Use of the first floor as a dwelling is to be retained with the ground floor proposed to be used as an office premises with associated alterations and additions. Lot 2 will consist of the existing single storey brick warehouse building which will be converted to provide for a new residential unit. The site is located at 1 Athol Street, Leichhardt.

As detailed within this written request for a variation to landscaped area and site coverage being a development standard under the Leichhardt LEP 2013, the proposed development meets the requirements prescribed under Clause 4.6 of the Leichhardt LEP 2013.

This submission is made under clause 4.6 of the Leichhardt Local Environmental Plan 2013 – Exceptions to development standards. Clause 4.6 states the following:

Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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*
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4."*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires 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:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires 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 applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The Environmental Planning Instrument to which these variations relate to is the Leichhardt Local Environmental Plan 2013.

The development standard to which this variation relates to is Clause 4.3A – Landscaped Areas for residential accommodation in Zone R1, which reads as follows:

(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.*

(2) This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.

- (3) Development consent must not be granted to development to which this clause applies unless:
- (a) the development includes landscaped area that comprises at least:
 - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
 - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
 - (b) the site coverage does not exceed 60% of the site area.
- (4) For the purposes of subclause (3):
- (a) the site area is to be calculated under clause 4.5 (3), and
 - (b) any area that:
 - (i) has a length or a width of less than 1 metre, or
 - (ii) is greater than 500mm above ground level (existing), is not to be included in calculating the proportion of landscaped area, and
 - (c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if:
 - (i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or
 - (ii) the finished floor level is 500mm or less above ground level (existing).

Clause 4.3A(3)(a)(i) nominates a minimum landscaped requirement of 15% for allotments which equal to or less than 235 square metres. Clause 4.3(4) provides guidelines for determining how landscaped area should be calculated.

Clause 4.3A(3)(b) nominates a maximum 60% site coverage requirement to each allotment whilst Clause 4.3A(4) provides guidelines for determining how site coverage should be calculated.

With regards to Lot 1, being the site, which contains the existing two-storey structure, a total landscaped area of 9.48m² or 4.8% is proposed. Notably, there are currently no landscaped areas provided for this Lot. Therefore, the existing condition is improved.

In terms of Lot 2, being the site that will contain the warehouse structure, the existing landscaped area of 21.19m² or 10.6% will be retained. No increase or decrease is proposed.

As this relates to site coverage, the current site coverage for Lot 1 equals 174.86m² or 85.3% of the site area. A reduction is proposed with the resulting site coverage equaling 127.305m² or 62.1% of the site area.

For Lot 2 the existing site coverage equals 171m² or 85.5% with a reduction being proposed to equal 153.6m² or 76.8%.

There are existing non-compliances at the subject site with respect to minimum landscape areas and maximum site coverage requirements. Through this application, the existing condition is either retained or the non-compliance is improved. There are no further non-compliances proposed.

A written justification is therefore required for the proposed variation to the minimum landscaped area and maximum site coverage development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

2. Site Background

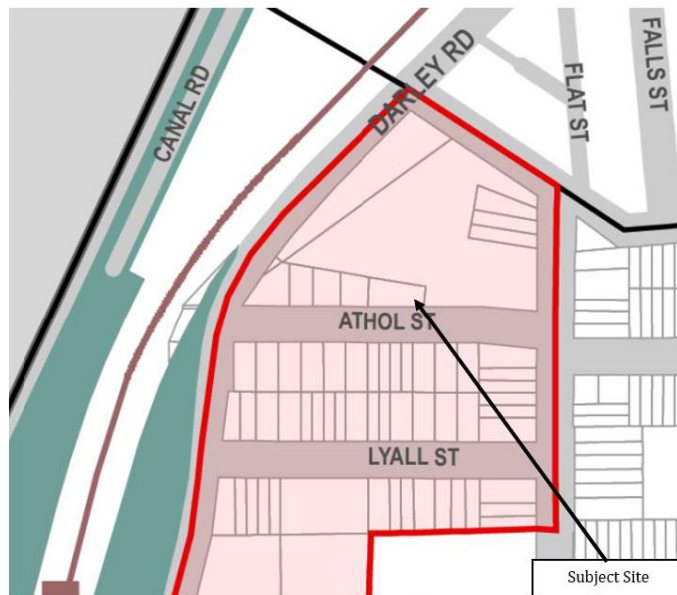
The subject site is located on the northern side of Athol Street. The site is legally defined as Lot 1 in Deposited Plan 934046 and is commonly referred to as 1 Athol Street, Leichhardt. To Athol Street, the site provides for a primary frontage of 30.48m, with the rear site boundary equalling 31.19m in length. The western side boundary equals 15.71m in length, with the site narrowing towards the eastern boundary which equals 10.645m in its length. Overall, the site provides for a total area of 405m². Refer to Figure 1 – Site Location Map.



Source: <https://maps.six.nsw.gov.au/>

Figure 1 Site Location Map

The site is located within The West Leichhardt Neighbourhood and is specifically located within the North Residential Sub Area. Refer to Figure 2 on the following page.



Source: Leichhardt Council Development Control Plan 2013

Figure 2 North Residential Sub Area

Located on the subject site at present is a two-storey brick structure with tiled roof and single storey brick warehouse building with mezzanine and with fibrous roof. The structures are attached.

Development in the area is typically characterised by low to medium density residential forms that are generally of an older housing stock. Dwellings in the immediate locality comprise a mix of single and two storey dwellings which are both attached and detached in their nature. Immediately adjoining the subject site to the east is a two storey multi-dwelling housing development with metal roof at No. 272 and 272A Flood Street, which also bounds the subject site at the rear. Adjoining the site to the west at No. 3 Athol Street is a single storey brick dwelling with tile roof.

Located approximately 290m walking distance east of the site is St Columba's Catholic Church, St Columba's Catholic Primary School and Aspect South East Sydney School. Situated at an approximate distance of 120m west of the site is Shields Playground, providing a wide expanse of public green open space within walking distance of the site.

The site is well serviced by public transport with Hawthorne Light Rail stop situated approximately 400m from the site, providing connections to nearby suburbs, amenities and to a more expansive public transport network.

The subject site is zoned R1 General Residential. The proposed development is permissible with consent in this zone under the Leichhardt Local Environmental Plan 2013.

3. Extent of Non-Compliance

As noted above, with respect to Clause 4.3A, Council requires that at least 15% of the site area be landscaped being for lots that are equal to or less than 235m² in area. Under this Clause, Council also requires that the site coverage for each allotment does not exceed 60% of the site area.

With regards to Lot 1, being the site, which contains the two-storey structure, a total landscaped area of 9.48m² or 4.8% is proposed. Notably, there are currently no landscaped areas provided for this Lot. Therefore, the existing condition is improved.

A total landscaped area of 30.75m² is required with 9.48m² proposed. Therefore, a variation of 21.27m² or 30.8% is sought.

In terms of Lot 2, being the site that will contain the warehouse structure, the existing landscaped area of 21.19m² or 10.6% will be retained. No increase or decrease is proposed.

A total landscaped area of 30m² is required, with the variation equalling 8.81m² or 29.3%.

As this relates to site coverage, the current site coverage for Lot 1 equals 174.86m² or 85.3% of the site area. A reduction is proposed with the resulting site coverage equalling 127.305m² or 62.1% of the site area.

A total site coverage area of 123m² is allowed with 127.305m² proposed. Therefore, a variation of 4.305m² or 3.5%.

For Lot 2 the existing site coverage equals 171m² or 85.5% with a reduction being proposed to equal 153.6m² or 76.8%.

A total site coverage area of 120m² is allowed with 153.5m² proposed. Therefore, a variation of 33.5m² or 27.9%.

There are existing non-compliances at the subject site with respect to minimum landscape areas and maximum site coverage requirements. Through this application, the existing conditions are either retained or the current non-compliances are improved. There are no further non-compliances proposed.

4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that 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. (not applicable)</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of landscaped area and site coverage under the landscaped areas for residential accommodation in Zone R1 standard, the first method is invoked.

The objectives supporting the minimum landscaped area and maximum site coverage control identified in Clause 4.3A are discussed below along with commentary on the development's positive response to each objective. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the landscaped area and site coverage standard would be both unreasonable and unnecessary in this instance. The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3A.

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.3A), which are as follows:

(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,*

Comment

It should be noted that the existing non-compliances at the site are not worsened through the proposed development application. The existing non-compliances are either maintained or improved upon. Where an improvement is proposed, this will allow for enhanced planting and landscape strategy throughout the site for the benefit of residents. Importantly, increased landscaping is provided along the front boundary of Lot 1 which will provide a positive streetscape response with the provision of greenery along Athol Street.

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

Comment

Where practicable, a landscaped corridor has been introduced to resulting Lot 1 which will contain the existing two storey built form. Given the nature of works proposed to the existing warehouse and given this structure is being retained and is built to the front property boundary it is not considered appropriate to provide this along Lot 2. Corridors between the subject site and neighbouring properties is retained given no change to the location of existing structures is proposed.

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

Comment

The proposed development promotes the desired future character of the neighbourhood by providing a positive and sympathetic response to the general character and form of dwellings within the immediate area. This is ensured through retention of existing structures at the subject site with the works largely contained within existing building envelopes. Landscaping within the front setback of Lot 1 will ensure a consistent presentation and character along the Athol Street frontage.

A high-quality design has been proposed and promotes an architectural fabric that is sympathetic to the original form and the desired future character of the area and will continue to compliment the array of styles and designs exhibited within the locality. A continued and sympathetic integration will result.

- (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

As detailed previously, the existing non-compliances are either retained or improved upon. As such it is considered that the proposal is ecologically sustainable as there is adequate opportunity for the retention and absorption of drainage water on site, as is evident through the existing condition. An appropriate stormwater solution has been proposed to minimise obstruction to the underground flow of water and has been submitted with the development application.

(e) *To control site density*

Comment

The proposal will reinforce the character of the locality in terms of its density. This is expressed through retaining the existing built forms at the site. Improvements to the existing site coverage and landscaped areas are proposed which will ensure for an enhanced integration within the locality. Where works are proposed, these will offer a sympathetic integration within the locality in a manner which mitigates any negative impacts upon the residential amenity of neighbouring dwellings.

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

Comment

Whilst the proposal seeks a variation to Council's landscaped area and site coverage control, the building footprint is considered to be limited and appropriate for the subject site, noting this is not being increased with the existing structures being retained.

As detailed within this submission the proposal does not worsen the existing non-compliances with respect to the landscaped area and site coverage development standards.

It is considered that this submission provides for sufficient environmental planning grounds to justify contravening the development standard. As demonstrated above, the objectives of the standard have been achieved.

5. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposal addresses the site constraints, streetscape characteristics and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts. The proposal has been purposefully designed and sited to ensure consistency with the bulk and scale of dwellings situated on neighbouring sites and notably with the existing first floor dwelling at the site. As such the proposal provides a respectful response to the general character of the locality and to the existing built form.

It is worth noting that the amenity of the site and surrounds, existing view corridors and solar access patterns will not be negatively impacted by breach in Council's landscaped area and

site coverage standard. The proposal will provide for an enhanced development outcome at the subject site which seeks to maximise residential amenity for future occupants.

The proposal will provide a heightened residential amenity and increase the diversity of housing stock made available within the community and within a defined residential area. It is important to reiterate that the non-compliances are existing and are not worsened through this development application. These are either maintained or improved.

The ability to achieve the future desired character of the locality provides a better planning outcome as is facilitated through a variation to Council's landscaped area and site coverage standard. This will result in the most efficient and orderly use of the site, without compromising neighbouring residential amenity.

In this case, strict compliance with the development standard for landscaped area and site coverage in the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

6. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 5.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3A.

The existing buildings and proposed works contextually have regard to surrounding properties and provides for an enhanced amenity of future residents.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Responses have been provided beneath each individual objective:

Zone R1 General Residential

Objectives of zone

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

Comment

The proposed development seeks to use the existing warehouse structure on site for the purposes of residential accommodation with the works providing for rejuvenation of the existing structure that will enhance their residential amenity and contribution to the immediate and broader development context. The existing use of the first floor at the existing two storey structure is retained.

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

Comment

Proposed works, will offer a housing type and density that is consistent with those in the immediate vicinity and the broader locality, complimenting the variety of available housing stock.

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

Comment

The ground floor of the existing two storey structure is proposed to be used as an office premises, therefore diversifying the nature of land uses in the locality.

- *To improve opportunities to work from home.*

Comment

Increased internal amenity will improve the opportunities for residents 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.*

Comment

Majority of works are contained within the internal portions of the existing structures. Where works are visible these have been designed of a scale, proportion and style which compliments the predominant residential character of the locality and will offer for an enhanced presentation of the existing built form to the streetscape.

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

Comment

There is no decrease to the degree of landscaped areas across the site. The existing condition is either retained or improved. Enhanced planting and inviting landscaped areas are provided, in appropriate locations being to the front and rear of the built form. Landscaped areas will provide residents with an enjoyable and useable private recreation area.

- *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.*

Comment

The lot sizes resulting from the proposed subdivision have achieved compliance with Council's minimum standard of 200m² and are consistent with lot sizes currently exhibited along Athol Street. These are notably compatible with the general style, character, pattern and orientation of lots that offer a frontage to Athol Street.

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

Comment

The proposal has been designed to ensure that positive visual privacy and solar access amenity is retained between neighbouring sites. There are no significant view lines to or from the subject site that would be impacted in this instance.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

7. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standards. The proposed development will retain the existing buildings at the site whilst providing for an overall increased internal amenity and heightened presentation to the public domain. The proposal will ensure for the efficient use of the land and revitalisation of the overall site.

The proposed works have been designed of a high architectural quality and fabric in manner which respects adjoining dwellings in terms of bulk, scale, privacy mitigation and retention of view lines. It is considered that the proposal complements the existing form located at the subject site with no additional bulk or scale being proposed to the building envelope. In turn the works will offer a seamless integration with the general character of the locality.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the landscaped area and site coverage standard within the Leichhardt Local Environmental Plan 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

8. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt Local Environmental Plan 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development and the existing condition;

- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (site coverage) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance;
- The built form is existing, with there being current non-compliances at the site. The existing non-compliances are either retained or improved, with no further breaches being proposed; and
- The proposal will allow for the most efficient use of land and rejuvenation of the existing site and buildings.

Based on the above, the variation is considered to be well founded.

9. General

Clause 4.6 also states that:

- “(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all of these zones.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4.”*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.
A BASIX certificate was provided for the development.

Clause 5.4 does not apply to the proposal.

10. Conclusion

The proposal does not strictly comply with the minimum landscaped area and maximum site coverage control as prescribed by Clause 4.3A of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the minimum landscaped area and maximum site coverage control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans
Town Planner
GAT & Associates
Plan 3123

Appendix D Clause 4.6 to Clause 4.4 Floor Space Ratio of
the Leichhardt Local Environmental Plan 2013

**CLAUSE 4.6 VARIATION TO CLAUSE 4.4 –FLOOR SPACE RATIO OF THE
LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013**

1. Introduction

This submission seeks a variation to Clause 4.4 of the Leichhardt Local Environmental Plan 2013, which relates to Floor Space Ratio.

This submission has been prepared in relation to a development application seeking a Torrens title subdivision of the subject site creating two allotments. Resultant Lot 1 will consist of the existing two storey structure and an enhanced landscaped area. Use of the first floor as a dwelling is to be retained with the ground floor proposed to be used as an office premises with associated alterations and additions. Lot 2 will consist of the existing single storey brick warehouse building which will be converted to provide for a new residential unit. The site is located at 1 Athol Street, Leichhardt.

As detailed within this written request for a variation to floor space ratio being a development standard under the Leichhardt LEP 2013, the proposed development meets the requirements prescribed under Clause 4.6 of the Leichhardt LEP 2013.

This submission is made under Clause 4.6 of the Leichhardt Local Environmental Plan 2013 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Director-General has been obtained.**

- (5) In deciding whether to grant concurrence, the Director-General 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
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4."

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires 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:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires 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 applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

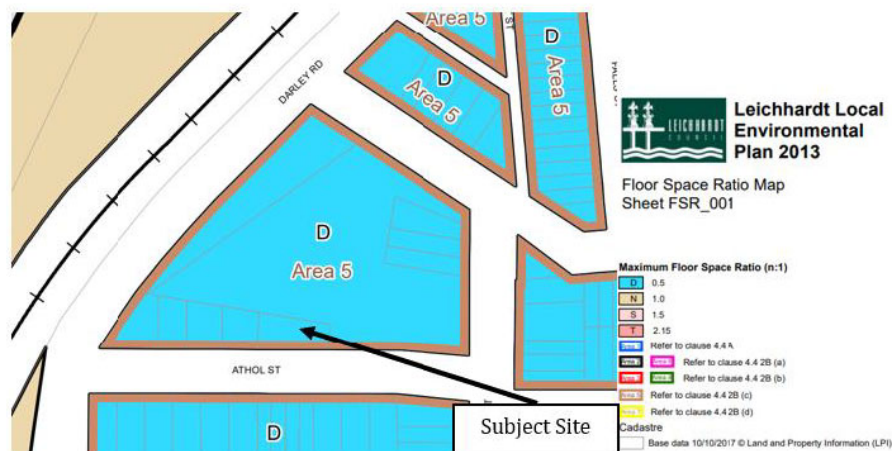
The Environmental Planning Instrument to which these variations relate to is the Leichhardt Local Environmental Plan 2013.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

- 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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*
- (2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:*
 - (c) *on land shown edged brown on the Floor Space Ratio Map is not to exceed:*
 - (i) *in the case of development on a lot with an area of less than 150 square metres—0.8:1, or*
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or**
 - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or*
 - (iv) *in the case of development on a lot with an area of 450 square metres or more—0.5:1, or...*

In accordance with Council's mapping and Clause 4.4 Floor Space Ratio of the Leichhardt Local Environmental Plan 2013 a maximum floor space ratio of 0.7:1 is afforded to the subject site. Clause 4.4 (2B) (c) states that for land shown and edged brown on Council's floor space ratio map a with an area of more than 150m² but less than 300m² the FSR is to be 0.7:1. Refer to Figure 1 below.

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Source: Leichhardt Local Environmental Plan 2013

Figure 1 Floor Space Ratio Map

For Lot 1 which will contain the existing two-storey structure, the existing FSR equals 1.2:1 or a GFA of 247.9m². The proposal will result in an FSR which equals 1:1 or a GFA of 207.18m².

For Lot 2 which will contain the warehouse structure, the existing FSR equals 1:1 or a GFA of 199.7m². The proposal will result in an FSR which equals 0.8:1 or a GFA of 162.15m².

Therefore, a reduction in the overall amount for gross floor area to each site will result through the proposal. It is important to note that the structures are existing which has resulted in a numerical non-compliance, with the proposed works reducing the extent of this.

No additional GFA is being proposed.

A written justification is therefore required for the proposed variation to the floor space ratio development standard, in accordance with Clause 4.6 of the Leichhardt LEP 2013.

2. Site Background

The subject site is located on the northern side of Athol Street. The site is legally defined as Lot 1 in Deposited Plan 934046 and is commonly referred to as 1 Athol Street, Leichhardt.

To Athol Street, the site provides for a primary frontage of 30.48m, with the rear site boundary equalling 31.19m in length. The western side boundary equals 15.71m in length, with the site narrowing towards the eastern boundary which equals 10.645m in its length. Overall, the site provides for a total area of 405m². Refer to Figure 2 – Site Location Map.

5

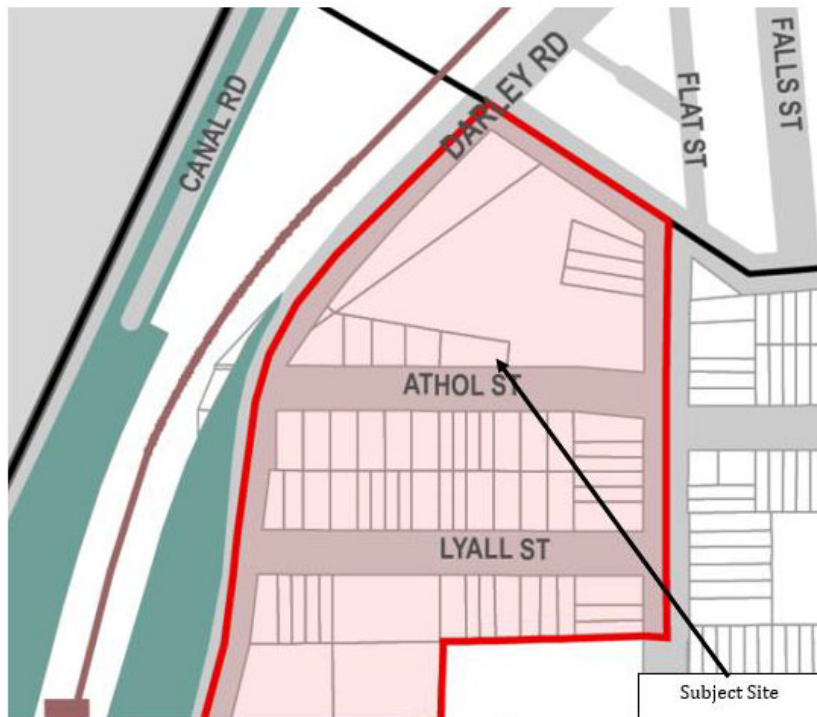


Source: <https://maps.six.nsw.gov.au/>

Figure 2 Site Location Map

The site is located within The West Leichhardt Neighbourhood and is specifically located within the North Residential Sub Area. Refer to Figure 3.

6



Source: Leichhardt Council Development Control Plan 2013

Figure 3 North Residential Sub Area

Located on the subject site at present is a two-storey brick structure with tiled roof and single storey brick warehouse building with mezzanine and with fibrous roof. The structures are attached.

Development in the area is typically characterised by low to medium density residential forms that are generally of an older housing stock. Dwellings in the immediate locality comprise a mix of single and two storey dwellings which are both attached and detached in their nature. Immediately adjoining the subject site to the east is a two storey multi-dwelling housing development with metal roof at No. 272 and 272A Flood Street, which also bounds the subject site at the rear. Adjoining the site to the west at No. 3 Athol Street is a single storey brick dwelling with tile roof.

Located approximately 290m walking distance east of the site is St Columba's Catholic Church, St Columba's Catholic Primary School and Aspect South East Sydney School. Situated at an approximate distance of 120m west of the site is Shields Playground, providing a wide expanse of public green open space within walking distance of the site.

The site is well serviced by public transport with Hawthorne Light Rail stop situated approximately 400m from the site, providing connections to nearby suburbs, amenities and to a more expansive public transport network.

The subject site is zoned R1 General Residential. The proposed development is permissible with consent in this zone under the Leichhardt Local Environmental Plan 2013.

3. Extent of Non-Compliance

As noted above, in accordance with Council's mapping and Clause 4.4 Floor Space Ratio of the Leichhardt Local Environmental Plan 2013 a maximum floor space ratio of 0.7:1 is afforded to the subject site. Clause 4.4 (2B)(c) states that for land shown and edged brown on Council's floor space ratio map a with an area of more than 150m² but less than 300m² the FSR is to be 0.7:1.

For Lot 1 which will contain the existing two-storey structure, the existing FSR equals 1.2:1 or a GFA of 247.9m². The proposed FSR equals 1:1 or a GFA of 207.18m².

The maximum amount of GFA afforded to Lot 1 equals 143.5m². Therefore, the variation equals 63.68m² or 44%.

For Lot 2 which will contain the warehouse structure, the existing FSR equals 1:1 or a GFA of 199.7m². The resulting FSR equals 0.8:1 or a GFA of 162.15m².

The maximum amount of GFA afforded to Lot 2 equals 140m². Therefore, the variation equals 22.15m² or 15%.

A reduction in the overall amount for gross floor area to each site will result through the proposal. It is important to note that the structures are existing which has resulted in a numerical non-compliance, with the proposed works reducing the extent of non-compliance.

No additional GFA is being proposed.

The proposed variation is not considered to result in an unreasonable bulk or scale as the general massing and form is consistent with the existing structures. There are no unreasonable impacts deemed to result.

4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>
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	<i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that 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. (not applicable)</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

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

a) *(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

Comment

With respect to the existing warehouse structure, the proposed works have been designed to be contained within the existing building envelope of the warehouse with no works projecting beyond the extent of the existing roof form.

With respect to streetscape presentation, the proposal will retain a comparable presentation to the street with the bulk and scale of the form remaining largely as is. A minimal change to the treatment of the front façade will result from the introduction of a vehicle access point for the existing warehouse. Importantly, this would not increase the existing bulk and scale.

In terms of the existing two storey structure, a new verandah is proposed along Athol Street with removal of an existing roller door and with introduction of windows being proposed. These works are considered minor in the overall context of the built form and will provide for a more appropriate and sympathetic integration within the locality. A heightened streetscape presentation will result at no detriment to the amenity of surrounding allotments.

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

Comment

It should be noted that the existing non-compliances with respect to landscaped area at the site are not worsened through the proposed development application. The existing non-compliances are either maintained or improved upon. Where an improvement is proposed, this will allow for enhanced planting and landscape strategy throughout the site for the benefit of residents. Importantly, increased landscaping is provided along the front boundary of Lot 1 which will provide a positive streetscape response with the provision of greenery along Athol Street.

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

Comment

The proposed development promotes the desired future character of the neighbourhood by providing a positive and sympathetic response to the general character and form of dwellings within the immediate area. This is ensured through retention of existing structures at the subject site with the works largely contained within existing building envelopes.

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.

The application seeks to use the ground floor of the existing two storey structure on resultant Lot 1 for the purpose of an office premises. This is made pursuant with Clause 6.10 of the Leichhardt Local Environmental Plan 2013. This use will not change the existing building envelope.

5. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposal addresses the site constraints, streetscape characteristics and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts. The proposal has been purposefully designed and sited to ensure consistency with the bulk and scale of dwellings situated on neighbouring sites and notably with the existing first floor dwelling at the site. As such the proposal provides a respectful response to the general character of the locality and to the existing built form.

It is worth noting that the amenity of the site and surrounds, existing view corridors and solar access patterns will not be negatively impacted by breach in Council's landscaped area and site coverage standard. The proposal will provide for an enhanced development outcome at the subject site which seeks to maximise residential amenity for future occupants.

The proposal will provide a heightened residential amenity and increase the diversity of housing stock made available within the community and within a defined residential area. It is important to reiterate that the non-compliances are existing and are not worsened through this development application.

A reduction in the overall amount for gross floor area to each site will be result through the proposal. It is important to note that the structures are existing which has resulted in a numerical non-compliance, with the proposed works reducing the extent of non-compliance.

The ability to achieve the future desired character of the locality provides a better planning outcome as is facilitated through a variation to Council's floor space ratio standard.

This will result in the most efficient and orderly use of the site, without compromising neighbouring residential amenity.

In this case, strict compliance with the development standard for floor space ratio in the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

6. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 5.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The existing buildings and proposed works contextually have regard to surrounding properties and provides for an enhanced amenity of future occupants.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development. Responses have been provided beneath each individual objective:

Zone R1 General Residential

Objectives of zone

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

Comment

The proposed development seeks to use the existing warehouse structure on site for the purposes of residential accommodation with the works providing for rejuvenation of the existing structure that will enhance their residential amenity and contribution to the immediate and broader development context. The existing use of the first floor at the existing two storey structure is retained.

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

Comment

Proposed works, will offer a housing type and density that is consistent with those in the immediate vicinity and the broader locality, complimenting the variety of available housing stock.

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

Comment

The ground floor of the existing two storey structure is proposed to be used as an office premises, therefore diversifying the nature of land uses in the locality.

- *To improve opportunities to work from home.*

Comment

Increased internal amenity will improve the opportunities for residents 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.*

Comment

Majority of works are contained within the internal portions of the existing structures. Where works are visible these have been designed of a scale, proportion and style which compliments the predominant residential character of the locality and will offer for an enhanced presentation of the existing built form to the streetscape.

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

Comment

There is no decrease to the degree of landscaped areas across the site. The existing condition is either retained or improved. Enhanced planting and inviting landscaped areas are provided, in appropriate locations being to the front and rear of the built form. Landscaped areas will provide residents with an enjoyable and useable private recreation area.

- *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.*

Comment

The lot sizes resulting from the proposed subdivision have achieved compliance with Council's minimum standard of 200m² and are consistent with the lot sizes currently exhibited along Athol Street. These are notably compatible with the general style, character, pattern and orientation of lots that offer a frontage to Athol Street.

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

Comment

The proposal has been designed to ensure that positive visual privacy and solar access amenity is retained between neighbouring sites. There are no significant view lines to or from the subject site that would be impacted in this instance.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

7. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality residential amenity and an increase in the diversity of housing choice as is keeping with the residential zoning. This will also allow for a varied land use with an office premises being proposed to the ground floor of the existing two-storey structure.

It is considered that the public benefit will not be undermined by varying the standard. The proposed alterations and additions are confined to the rear of the existing site only and will provide for the efficient use of the land and revitalisation of the overall site.

The proposed works have been designed of a high architectural quality and fabric in manner which respects adjoining dwellings in terms of bulk, scale, privacy mitigation and retention of view lines. It is considered that the proposal complements the existing form located at the subject site with no additional bulk or scale being proposed to the building envelope. In turn the works will offer a seamless integration with the general character of the locality.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio standard within the Leichhardt Local Environmental Plan 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

The departure from the floor space ratio control allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

8. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt Local Environmental Plan 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional significance;
- The built form is existing, with there being current non-compliances at the site. The existing non-compliances are improved with no further breaches being proposed; and
- The proposal will allow for the most efficient use of land and rejuvenation of the existing site and buildings.

Based on the above, the variation is considered to be well founded.

9. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. *When this plan was made it did not include all these zones.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4."*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been prepared in relation to the proposed development and is submitted under a separate cover.

Clauses 5.4 does not apply to the proposal.

10. Conclusion

The proposal does not strictly comply with the floor space ratio control as prescribed by Clause 4.4 of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the prescribed floor space ratio standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans
Town Planner
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