





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0041
Address	37 Emma Street, LEICHHARDT NSW 2040
Proposal	Alterations and Additions to existing dwelling house.
Date of Lodgement	04 February 2020
Applicant	Andrew D'Apice
Owner	Mrs P Grierson Mr P Grierson
Number of Submissions	One (1) Submission
Value of works	\$209,905
Reason for determination at Planning Panel	Floor Space Ratio exceeds officer delegations
Main Issues	Stormwater Floor Space Ratio Variation Exceeds 10%
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to the dwelling house at 37 Emma Street, Leichhardt. The application was notified to surrounding properties and one (1) submission was received.

The main issues that have arisen from the application include:

- Floor Space Ratio variation exceeds 10%.

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

2. Proposal

The application seeks consent for the alteration of the existing attic to a bedroom via a rear skillion style dormer addition and a traditional front dormer to match No. 35 Emma Street, Leichhardt.

3. Site Description

The subject site is located on the eastern site of Emma Street, between Hill Street and Style Street. The site consists of 1 allotment and is generally rectangular in shape with a total area of 156.8sqm and is legally described as Lot 76 in Deposited Plan 667432. The site has a frontage to Emma Street of 4.71 metres.

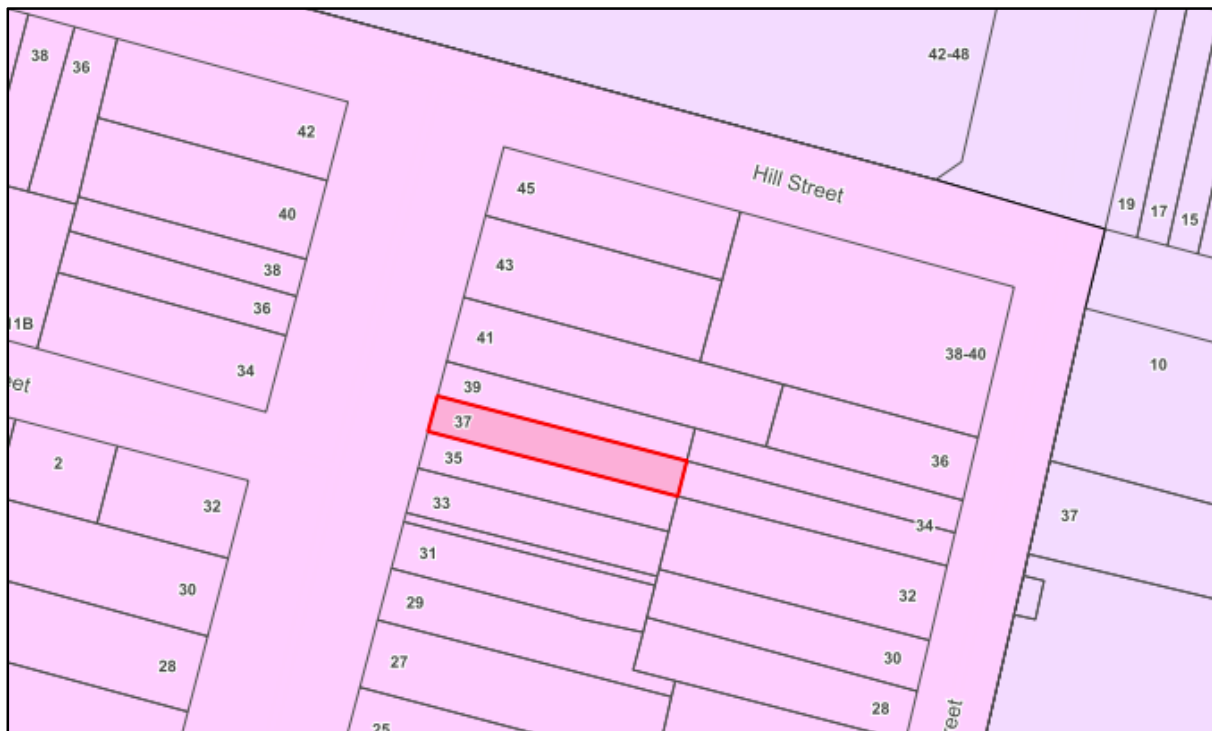


Figure A: Zoning Map R1 – General Residential



Figure B: Aerial Map of the subject site

The site supports a two-storey dwelling with attic level which presents as single storey to Emma Street with attic level dormers projecting from the front and rear roof planes. The adjoining properties to the north and south support dwelling-houses – No. 39 Emma Street presents to Emma Street as single storey with attic level dormer to the street, and No. 35 Emma Street presents to Emma Street as two storeys in form.

The subject site is zoned R1 – General Residential and is not listed as a Heritage Item nor within a Heritage Conservation Area. The property is not identified as a flood prone lot.



Figure 1: Subject Site (Emma Street)



Figure 1: View of the property facing west.

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
D/2019/333	Alterations and additions to existing dwelling house	Withdrawn – 21/11/2019

Surrounding properties

Application	Proposal	Decision & Date
D/2012/135 - 39 Emma Street.	Alterations and additions to existing dwelling including new deck, addition to rear and change to glazing.	Approved – 14/08/2012
M/2012/215- 39 Emma Street.	Modification of Development Consent D/2012/135 which approved alterations and additions to existing dwelling, including new rear deck. Modification involves removal of the rear stairs and infilling with additional deck area.	Approved – 26/02/2013
M/2013/41- 39 Emma Street.	Modification of Development Consent D/2012/135 which approved alterations and additions to existing dwelling, including new rear deck. Modification seeks to delete conditions 2(c) which requires privacy screens to the deck and landing and delete condition 2 (e) which requires obscure fixed treatment to first floor glazing.	Approved – 13/03/2013

4(b) Application history

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

Date	Discussion / Letter / Additional Information
24/02/2020	Council requested additional amended plans and Clause 4.6
18/03/2020	Clause 4.6 to FSR breach and amended plans provided.

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)(xi) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent. The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

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

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

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is not contrary to the aims of the plan.

Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

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

The application proposes alterations and additions to the existing dwelling house which is permissible with consent within the R1 – General Residential zone under the *LLEP 2013*. The objectives of the zone are as follows:

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

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

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 109.76 sqm	0.86:1 or 135.62 sqm	25.86 sqm or 23.56%	No
Landscape Area* Minimum permissible: 15% or 23.52 sqm*	16.60% or 26.03sqm	COMPLIES	Yes*
Site Coverage Maximum permissible: 60% or 94.08sqm	57.77% or 90.58sqm	COMPLIES	Yes

* Landscaped area inconsistencies – The existing synthetic grass is proposed to be removed on the Site and Context Analysis Plan (Dwg no. A1.01 C) and is referenced within the provided Statement of Environmental Effects. Notwithstanding, the existing synthetic grass is detailed on the provided floor plan (Dwg no. A1.02 F). A condition will be included in the consent ensuring the removal and replacement of the synthetic grass with soft soil landscaping to ensure compliance with the landscape area development standard.

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the applicable local environmental plan by 23.56% or 25.86sqm).

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

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

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

- The proposed alterations and additions occur at the middle of the site and are not visible from Emma Street.
- No identified public views will be affected by the proposal.
- The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally.
- The additional floor space will not result in unreasonable overshadowing impacts to surrounding properties. There is no additional overshadowing to any windows or private open space to adjacent properties.
- The development standard's underlying purpose is to control bulk, scale and residential density in the R1 zone. The proposal complies with the height controls contained within the DCP. Side setbacks are the same as existing. (attached dwellings with nil wall on boundary setbacks).
- The proposed works are entirely within the approved building footprint and will not have any impact on existing soft open space and landscaping.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable 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 proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale and the increased floor area would not be visible from the primary street, and will have acceptable impacts on Emma Street.
- The proposal maintains a suitable balance between the existing landscaped areas and the built form and provides sufficient private open space on the site.
- The additional floor space is located within the existing footprint of the site 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 variation to floor space will not compromise the character of the area.
- The built form proposed under this application is considered appropriate in the context of the surrounding development.

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 the Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

5(b) Draft Environmental Planning Instruments

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

- Draft SEPP Environment
- Draft Inner West Local Environmental Plan 2011 (Amendment 4)

5(b)(i) Draft SEPP Environment

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. This consolidated SEPP proposes to provide a single set of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposal is consistent with the provisions of the draft Environment SEPP.

5(b)(ii) Draft Inner west Local Environmental Plan 2020

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

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 below
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
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	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.3 Piperston Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No - side setback breach; establishment of attic level BLZ – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes – see discussion
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes – see discussion

C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
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	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	N/A
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.3 – Alterations and Additions and C3.4 – Dormer Windows

Front Dormer

The front dormer is proposed to be of a more appropriate scale and will be consistent with the front dormer at No. 39 Emma Street. The front dormer is considered to improve the

general appearance of the dwelling from the street, and as such, will have acceptable streetscape impacts.

Rear Dormer

The rear skillion type dormer addition is consistent with the suggested design approaches for single storey terraces within Appendix B - Building Typologies in that it is set down from the ridge. Whilst the rear dormer is proposed with a nil setback to southern boundary, the technical non-compliance is considered acceptable given that it is symmetrical to the rear skillion dormer of No. 39 Emma Street which proposes a nil setback to the northern boundary.

Given the above, the proposed alterations and additions are considered to be compatible in scale and design (roof forms, proportion to openings and finishes) and will not result in any unreasonable adverse amenity impacts.

C3.2 - Site Layout and Building Design

Side Setback Control

It is noted that the proposed rear dormer addition will not comply with the side setback controls to the northern and southern boundaries. The side setback breaches are shown in the table below.

Rear dormer addition Elevation	Wall height (m)	Required Setback (m)	Proposed Setback (m)	Complies (Y / N)
Northern Elevation (adjoining 39 Emma Street)	Approximately 5.9m	1.79m	Nil	No
Southern Elevation (adjoining 35 Emma Street)	Approximately 5.9m	1.79m	Nil	No

Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks a variation of the side setback control graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP2013 and complies with streetscape and desired future character controls.

Comment: The proposed new rear dormer is acceptable with respect to the Building Typologies Statements prescribed in the LDCP 2013 (see assessment above in this regard). The proposal will comply with the objectives and controls set out in the Piperston Distinctive Neighbourhood character controls. The proposal is considered to be keeping in context with the existing pattern of development in the area. As a result, the proposal will not have adverse impacts on the streetscape and will have acceptable impacts on the public domain.

- The pattern of development is not adversely compromised.

Comment: The proposed location of the dormers will replace existing dormers and will not compromise the pattern of development within the area.

- The bulk and scale of the development has been minimised and is acceptable.

Comment: The proposed new works are located below the existing maximum height of the development and will be of an acceptable scale and massing. The works are located adjacent to adjoining built forms and will not result in unreasonable visual impacts when viewed from the public domain and rear yards of the adjoining properties.

- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.

Comment: The proposal will have no undue adverse solar access impacts to the adjoining properties rear yards and will result in acceptable privacy implications and no view loss implications. As a result, the proposal is considered acceptable.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The proposal raises no issues in this regard.

In light of the above, the proposal is considered to be satisfactory with respect to the intent and objectives of the side setback controls prescribed in this Clause.

Building Location Zone

Image 1 below illustrates the established lower ground floor BLZ (yellow), and the ground floor BLZ (orange) of the subject site and adjoining properties.

The image also illustrates the approximate location of the proposed first floor BLZ (red) of the subject site.



Image 1: Subject and adjoining site Building Location Zone

As shown above, the proposal will establish a new first floor / attic level BLZ.

In accordance with Control C6, which enables a variation to the BLZ or the establishment of a new BLZ, it is considered that the proposal is acceptable for the following reasons:

- Amenity to adjacent properties (i.e. sunlight, privacy, views) is reasonably protected and acceptable solar access is achieved;
- The proposed development will be compatible with the existing streetscape and desired future character for the area;
- The proposed development does not have any impacts on on-site open space provision;
- The proposed development does not prevent opportunities for planting of new significant vegetation; and
- The development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

Given the above, the proposal is considered acceptable with respect to the intent and objectives of the BLZ control prescribed in this Clause.

C3.11 – Visual Privacy

The following controls are applicable

C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining

dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.

The layout and design of the development ensures that the visual privacy of the subject site's main living room, and the private open space of the subject site and nearby residential dwellings are maintained as:

- Window W01 (front dormer) serving bedroom 2 will look to Emma Street and will not cause any visual privacy impacts.
- Windows W02 & W03 (rear dormer) will serve bedroom 2 and will look to the rear roof from of the subject sites and are located in excess of 9m from the private open space of the subject and adjoining properties as depicted below.



Image 2. View from the existing rear dormer of 37 Emma Street.

As a result, the proposal is considered acceptable and will have minimal adverse privacy impacts to the rear private open areas/rear yards of the adjoining properties.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. One (1) submission was received.

the submissions raised the following concerns which are discussed under the respective headings below:

- Stormwater Drainage

“Stormwater drainage, towards the rear of the northern side of 37 Emma St (along the setback part of the building at 37 Emma), is inadequate to cope with the volume of water during high rainfall storm events and has caused damage to the ground level of 39 Emma St.”

The proposal is recommended to be conditioned to address site drainage and stormwater control as required by Council's Engineer. It is noted that the existing stormwater issues outlined in the submission are a civil issue between the neighbouring properties. Whilst appropriate draining of proposed works by 37 Emma Street will be addressed in the consent, existing stormwater issues which aren't a part of this development application may still persist. The owners of 39 Emma Street may need to investigate and appropriately manage existing stormwater issues on their land.

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

Council's Engineer reviewed the proposal and raised no objection to the proposal proceeding subject to standard site drainage and stormwater control conditioning of the consent – see conditions in Attachment A.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.4 Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard 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. DA/2020/0041 for alterations and additions to the existing dwelling at 37 Emma Street, Leichhardt subject to the conditions listed in Attachment A below/for the following reasons.

Attachment A – Recommended conditions of consent**CONDITIONS OF CONSENT****FEES****1. Long Service Levy**

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

2. Security Deposit - 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:	\$2,152.50
Inspection Fee:	\$230.65

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

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

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

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

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

GENERAL CONDITIONS**3. Documents related to the consent**

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Dwg No. A1.01 Rev C	Site and Context Analysis Plan	17 March 2020	CVMA Architects

Dwg No. A1.02 Rev F	Ground and Lower Ground Floor Plans	17 March 2020	CVMA Architects
Dwg No. A1.03 Rev E	Attic Floor Plans	17 March 2020	CVMA Architects
Dwg No. A2.01 Rev C	West Elevations	06 December 2019	CVMA Architects
Dwg No. A2.02 Rev D	East Elevations	06 December 2019	CVMA Architects
Dwg No. A2.03 Rev C	North Elevations	06 December 2019	CVMA Architects
Dwg No. A2.04 Rev E	South Elevations	18 March 2020	CVMA Architects
Dwg No. A3.01 Rev E	Section AA & Materials and Finishes Schedule	17 March 2020	CVMA Architects
-	Site Waste Minimisation & Management Plan	23 August 2019	Josip Kasunic

As amended by the conditions of consent.

4. 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 (RVMP) in accordance with the relevant Development Control Plan.

5. 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.

6. 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.

7. Works Outside the Property Boundary

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

8. Ad-Hoc General Condition 1

Prior to the issue of an occupation certificate, the development must remove and replace the existing synthetic turf with soft soil landscaping (grass), to be consistent with the the Site and Context Analysis Plan (Dwg. A1.01 Rev C)

PRIOR TO ANY DEMOLITION

9. 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 the dwellings at Nos. 35 and 39 Emma Street Leichhardt 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.

10. 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.

11. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**12. Structural Certificate for retained elements of the building**

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

13. Sydney Water – 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 13 20 92

14. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION**15. 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.

16. Stormwater Drainage System

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

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

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

17. 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.

ADVISORY NOTES

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, 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;
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

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.

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.

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	131 441 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.sydneystwater.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.

MATERIALS AND FINISHES

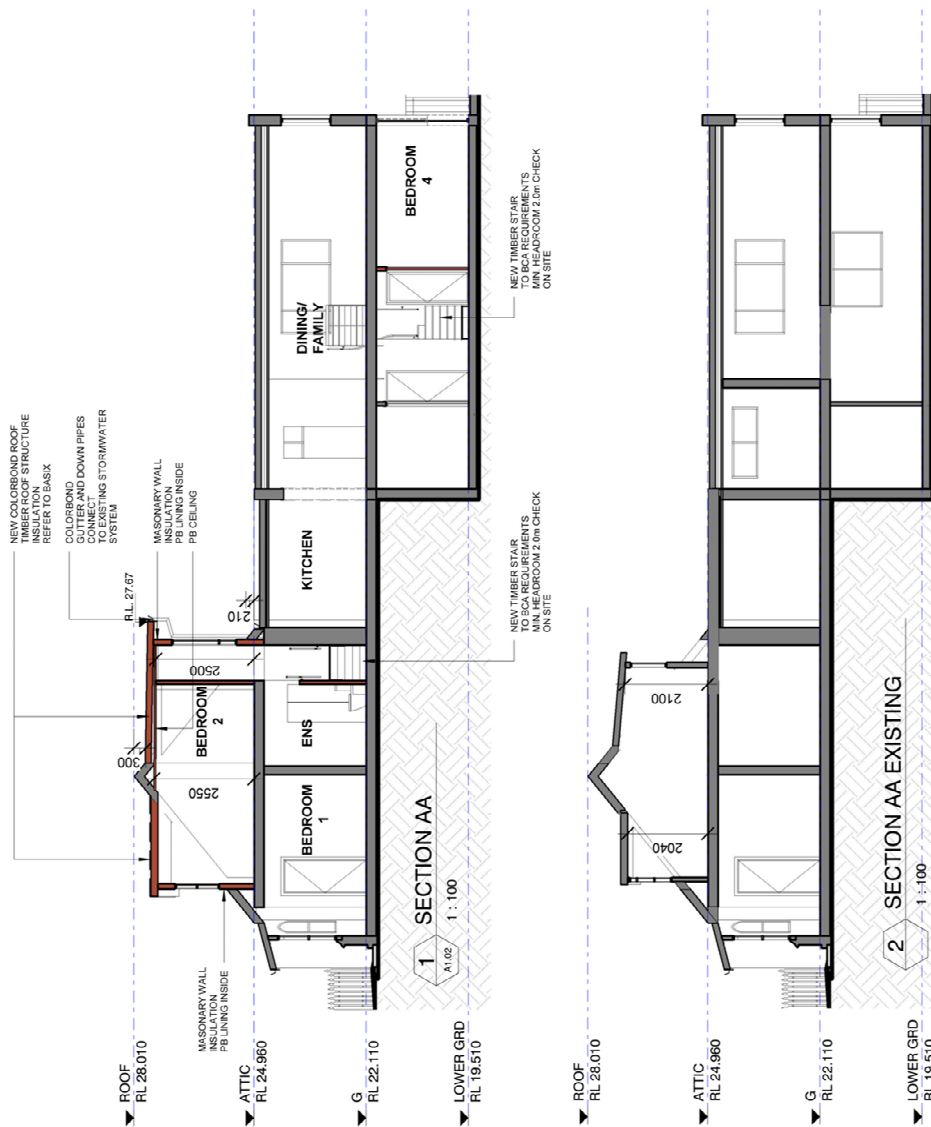


**METAL ROOF, GUTTER AND DOWN
PIPE EQUAL OR SIMILAR-
COLORBOND WALLABY**

**WALLS- ACRYLIC RENDER
COLOUR EQUAL OR SIMILAR -
DULUX COL.HOG BRISTLE HALF**



WINDOW FRAMES - COLOUR
EQUAL OR SIMILAR - WALLABY
OR BLACK



C.V.M.A. ARCHITECTS NOMINATED ARCHITECT No2106
 0439350986 | 0439353525 | 7 COOPER STREET MARLBOROUGH NSW 2035
 w@CVMARCHITECTS.COM.AU

PROJECT		DATE
RENOVATION		14/07/2019
A	DA DISCUSS	27/08/2019
B	DA DISCUSS	07/10/2019
C	REVISED DA	07/10/2019
D	REVISED DA	11/09/2020
E	REVISED DA	11/09/2020

Contractor to verify all dimensions on site before commencing work. C.V.M.A. Architects is to be notified of any discrepancies as the clients are settling out of the work. Copyright of design herein is retained by this office. Authority is required for any

C.V.M.A. ARCHITECTS NOMINATED ARCHITECT No71096
T: 02030450984 E: 04031313025 79 COPPEL STREET MARCUBA NSW 655

cvma_architects
ARCHITECTURE • INTERIORS

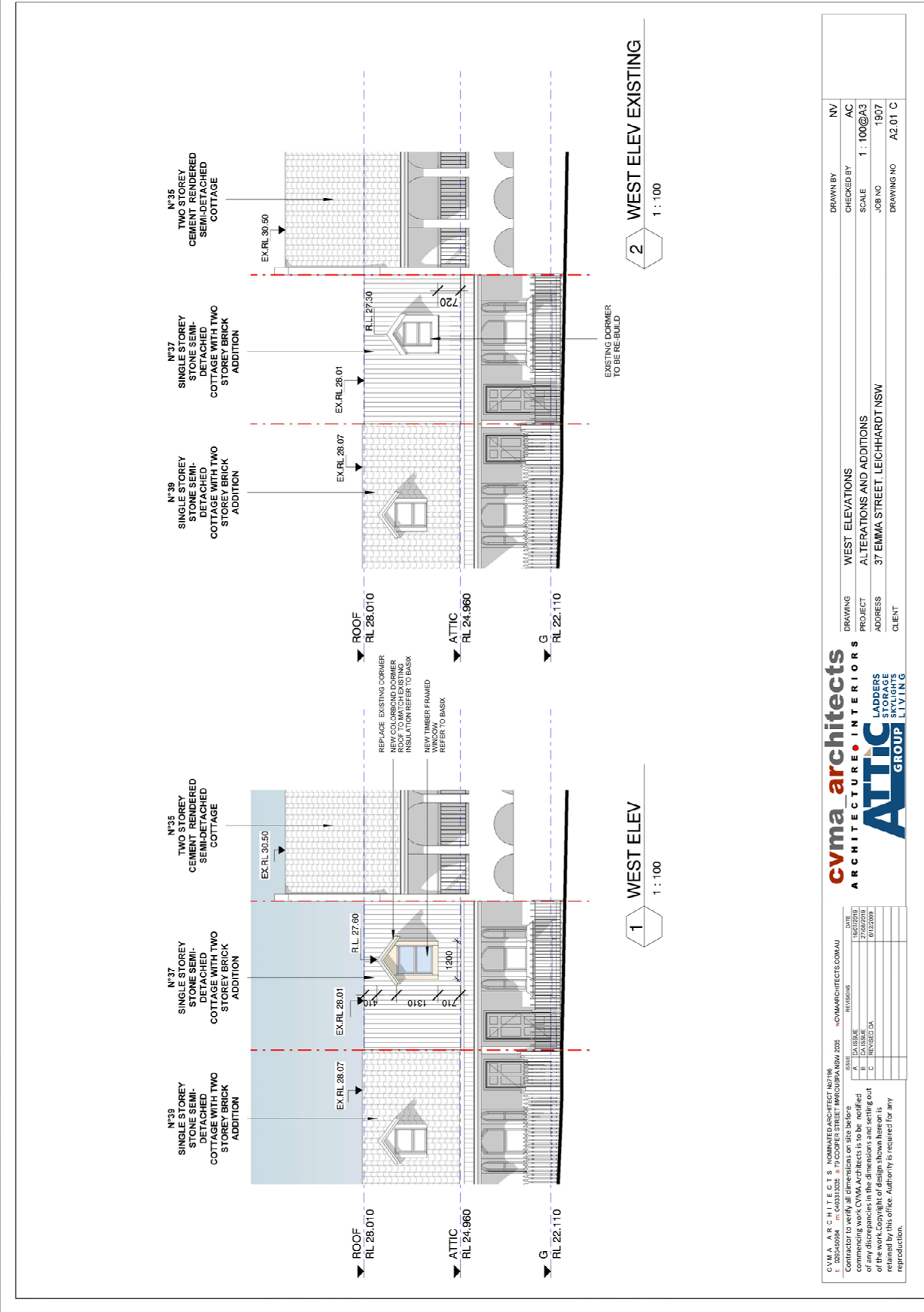
Attic
LADDERS
STORAGE
SKYLIGHTS
GROUP

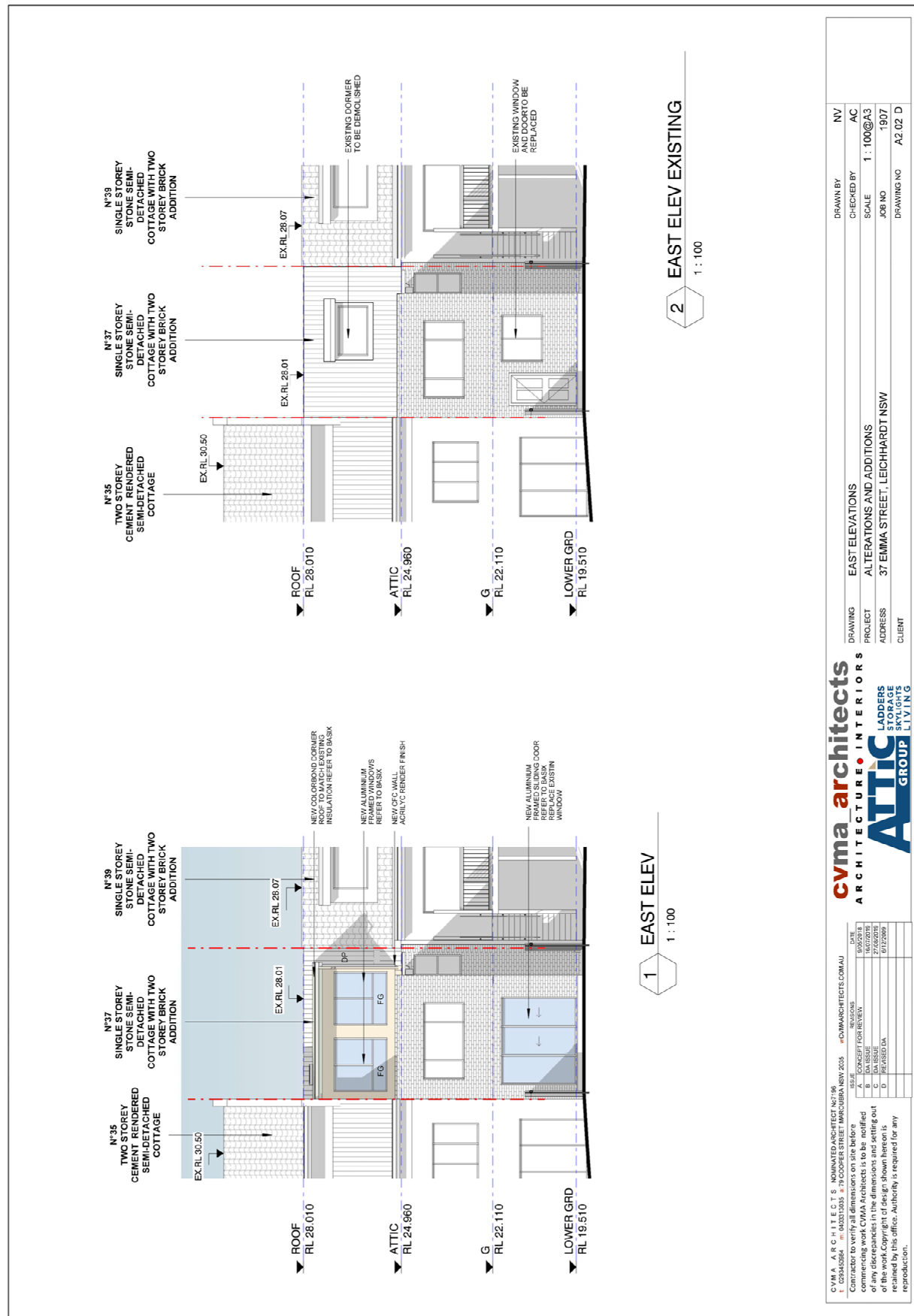
DRAWING	SECTION 4A. MATERIALS AND COLOURS	DRAWN BY	Author
PROJECT	ALTERATIONS AND ADDITIONS	CHECKED BY	Checker
ADDRESS	37 EMMA STREET, LEICHHARDT NSW	SCALE	1:100@A3
CLIENT		JOB NO	1907
		DRAWING NO	A3.01 E











[illegible]

DRAWING	NORTH ELEVATION	DRAWN BY	INV
PROJECT	ALTERATIONS AND ADDITIONS	CHECKED BY	AC
ADDRESS	37 EMMA STREET, LEICHHARDT NSW	SCALE	1: 100@A3
CLIENT		JOB NO	1907
		DRAWING NO	A2 03 C



Attachment C- Clause 4.6 Exception to Development Standards

STATEMENT OF ENVIRONMENTAL EFFECTS

Clause 4.6 Application To Vary A Development Standard: Floor Space Ratio

This Variation Request accompanies a Development application for alteration and additions at No.37 Emma Street Leichhardt. It should be read in conjunction with the Statement of Environmental Effects to which it is attached, and the proposed plans by CVMA Architects.

The proposal involves a small non-compliance with the maximum permitted Floor Space Ratio standard in Leichhardt Local Environmental Plan.

1.(i) Name of the applicable planning instrument which specifies the development standard:

Leichhardt Local Environmental Plan 2013

(ii) The land is zoned:

Zoned R1 General Residential

(iii) The number of the relevant clauses therein:

Clause 4.4 – Floor Space Ratio (FSR)

(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:

(a) on land shown edged black or pink 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—0.9:1, 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—0.8:1, or

STATEMENT OF ENVIRONMENTAL EFFECTS

- (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or
- (iv) in the case of development on a lot with an area of 450 square metres or more—0.6:1, or
- (b) on land shown edged red or green 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—1.0:1, 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—0.9:1, 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—0.8:1, or
 - (iv) in the case of development on a lot with an area of 450 square metres or more—0.7:1, or
- (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
- (d) on land shown edged yellow 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—0.9:1, 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—0.8:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

2. Specify the nature of Development Standard sought to be varied and details of variation:

The maximum Floor Space Ratio for the site is specified in Clause 4.4 2B (c). The clause specifies the maximum FSR for a dwelling house within an R2, R3 or R4 residential zone to be calculated based on site area. The site has an allowable FSR of 0.7:1. The FSR of the proposal exceeds the maximum for the site under the MLEP. The variation sought is equal to 15.64m² which is approximately only 9.97% variation.

LEP			
Floor Space Ratio	FSR Maximum 0.7:1	0.857:1	The FSR of the proposal exceeds the maximum for the site under the MLEP.
(c) on land shown edged brown on the Floor Space Ratio Map is not to exceed:	Site area 156.8m ²	Existing GFA- 124.6m ²	The gross floor area proposed is 128m ² . The variation sought is equal to 18.24 m ² which is approximately only 16.61% variation. Given that the environmental impacts resulting from this development are acceptable and have been minimised through good design, there is no
in the case of development on a lot with an area of less than 150 square metres—0.8:1, or	Max. FSR 109.76m ²	Proposed new GFA- additional 3.4 m ²	
in the case of development on a lot with an area of 150 square metres or		Total GFA 128 m ²	

STATEMENT OF ENVIRONMENTAL EFFECTS

more but less than 300 square metres—0.7:1, or			<p>environmental benefit in reducing the floor area to merely comply with the numerical standard.</p> <p>The proposed works are entirely within the existing building footprint and will not have any impact on existing soft open space and landscaping.</p> <p>The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site.</p> <p>The proposed building is considered to have an appropriate density for the site and the locality.</p>
--	--	--	--

3. Consistency with Objectives of Clause 4.6

Clause 4.6 provides appropriate flexibility in applying development standards to achieve better planning outcomes for and from the development. The objectives outlined in Clause 4.6(1) and our planning responses are as follows:

Objective (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Objective (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Flexibility in applying the maximum FSR development standard is appropriate in this case. The SEE demonstrates the proposal is unlikely to cause impacts to nearby residents. Rear extension is not visible from the public domain.

The proposal also complies with the key development standards determining an appropriate building envelope for a project of this type on this site.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The clause is stated:

(3) Development consent must not be granted for development that contravenes a development standard

STATEMENT OF ENVIRONMENTAL EFFECTS

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.

These matters are considered in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

The Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 1009 required additional justification, beyond achieving compliance with the development standard and zone objectives. The Commissioner noted Preston CJ had identified "other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary" [61].

In our opinion the proposal satisfies the relevant tests established in *Wehbe* and for that reason; the compliance with development standard is unreasonable and unnecessary. The tests are considered on the following pages.

Test 1 - The objectives of the development standard are achieved notwithstanding non-compliance with the standard;

The objectives outlined in Clause 4.4

4.4 Floor space ratio

(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:

STATEMENT OF ENVIRONMENTAL EFFECTS

The proposed alterations and additions occur at the middle of the site, and are not visible from Emma Street.

No identified public views will be affected by the proposal.

The interface of the building and the streetscape are of a compliant envelope. Any impacts to the neighbouring properties are of a compliant built form.

The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally.

The additional floor space will not result in unreasonable overshadowing impacts to surrounding properties. There is no additional overshadowing to any windows or private open space to adjacent properties

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The development standard's underlying purpose is to control bulk, scale and residential density in the R1 zone. The proposal complies with the height controls contained with the DCP. Side setback are the same as existing. (attached dwellings with nil wall on boundary setbacks).

The proposal demonstrates this can be achieved despite non-compliance with the FSR development standard. Compliance with the standard would require a reduction in FSR which would not necessarily lead to a better outcome for the site.

The proposed works are entirely within the approved building footprint and will not have any impact on existing soft open space and landscaping.

Accordingly in our opinion, the requirement to comply with the maximum FSR control is unnecessary in this circumstance as the proposal is contextually compatible with the surrounding developments and does not result in unreasonable amenity impacts to neighbouring properties.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The underlying objective is to provide residential development of a bulk, scale and residential amenity which will be consistent with the character of the neighbourhood.

Consequently the immediate area surrounding the site is characterised by a variety of built forms, and no one style of architecture dominates the streetscape. Some of the buildings within the street have been well maintained and retain their built form integrity. Other buildings within the street have been altered and refurbished significantly. The land-use pattern of the precinct is divided between two main types – single or two storey residential dwellings.

The variation to floor space will not compromise the character of the area. The built form proposed under this application is considered appropriate in the context of the surrounding development.

The proposal is not within the proximity of a heritage item or within a heritage conservation area.

The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site.

STATEMENT OF ENVIRONMENTAL EFFECTS

In our opinion, strict compliance with the maximum FSR requirement is unreasonable in the context of the site and will prevent the orderly and economic use and development of the subject land.

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

While the standard has not been virtually abandoned or destroyed, there are numerous examples of developments in the LGA which have been approved with non-compliances with the maximum FSR development standard.

While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum FSR standard in the past.

4.2. There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible within the R1 Low Density Residential zone. It also satisfies four of the 'unreasonable and unnecessary' tests established by the Court in Wehbe.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

5. Clause 4.6(4) Requirements

Clause 4.6(4) guides the consent authority's consideration of this clause 4.6 variation request. It provides that 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

The applicant submits that the consent authority can be satisfied of each of these requirements of clause 4.6(4), for all of the reasons set out in this request, and also having regard to the unique characteristics of this particular site, in this particular locality. In our opinion the proposal is in the public interest, as it is consistent with the objectives of the development standard and the Zone. This satisfies Tests 1 to 4 in Wehbe and Clause 4.6(4)(a)(ii) as the objectives are achieved, despite the non-compliance.

6. Clause 4.6(5) Requirements

The Council as the concurrence authority, is required to consider the following:

(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

STATEMENT OF ENVIRONMENTAL EFFECTS

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

The FSR non-compliance is considered to be in the public interest as it will enhance the amenity and functionality of the dwelling without significantly impacting neighbouring properties. The non-compliances are minor (5.12%) and contribute to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

For and on behalf of

CVMA Architects

Alexander Chougam R.A.I.A.

Principal Architect

Registration No7196