



DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/354
Address	104 Foucart Street ROZELLE NSW 2039
Proposal	Alterations and additions to existing dwelling
Date of Lodgement	12 September 2019
Applicant	Steven Martin C/- Ahron Best Architects
Owner	Mr Steven A Martin Ms Natalia Gonzalez Londono
Number of Submissions	Two
Value of works	\$500,000.00
Reason for determination at Planning Panel	Clause 4.6 variations exceed 10%
Main Issues	Non-compliance with FSR, Site Coverage and Landscaping Rear Building location zone (BLZ) Extent of excavation Treatment around front ground floor window
Recommendation	Approval 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 an existing dwelling, including rear ground and upper level additions and a slight encroachment over the boundary at 104 Foucart Street, Rozelle.

The application was notified to surrounding properties and two submissions were received in response to the notification periods.

The main issues that have arisen from the application include:

- Non compliance with Floor Space Ratio, Site Coverage and Soft Landscaping Controls
- Extent of additions towards the rear boundary and associated non-compliance with the Building Location Zone (BLZ)
- Extent of excavation proposed.
- Proposed white frosted material around the front ground floor window.

The non-compliances are acceptable subject to recommended conditions which entail:

- Reduction of the extent that the additions extend towards the rear boundary; and
- Removal of the proposed white frosted white material around the front window

The application is therefore recommended for approval.

2. Proposal

The proposal is for alterations and additions to an existing 2 storey semi-detached dwelling. At ground floor it is proposed to alter the front window opening and provide new wider stairs, demolish the rear wall and extend the rear to provide a larger kitchen, laundry and bathroom. At first floor level it is proposed to slightly extend the rear to enlarge the bathroom and provide a day bed area to the rear bedroom. New roofing over the rear part of the dwelling is also proposed with a new roof form. In the rear garden a new staircase is proposed and a deck with awning, removal of a tree and a new landscaped area.

It is also noted that due to the current subdivision pattern the proposal encroaches over a small part of the boundary of 102 Foucart Street (in the corner of existing bedroom 2) therefore the consent of those owners has also been sought and provided.

3. Site Description

The subject site is located on the western side of Foucart Street, between Brockley Street and Angelini Street. The site consists of one allotment and is rectangular in shape with a total area of 101.8 sqm and is legally described as 104 Foucart Street Rozelle.

The site has a frontage to Foucart Street of 4.445 metres. The site is affected by a right of footway between 102 and 104 Foucart Street. The site falls steeply from the rear of the site to the front of the site.

The site supports a two storey semi-detached dwelling that is a pair with 102 Foucart which is located to the south of the subject site. To the north of the site is a 3 storey detached dwelling house.

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

There is an existing Bangalow palm in the rear of the property.



Figure 1: 104 is cream dwelling on right



Figure 2: Rear of existing dwelling



Figure 3: Existing rear ground floor of dwelling with ground floor bathroom and stairs to rear yard.



Figure 4: Rear yard with palm tree proposed to be removed on right

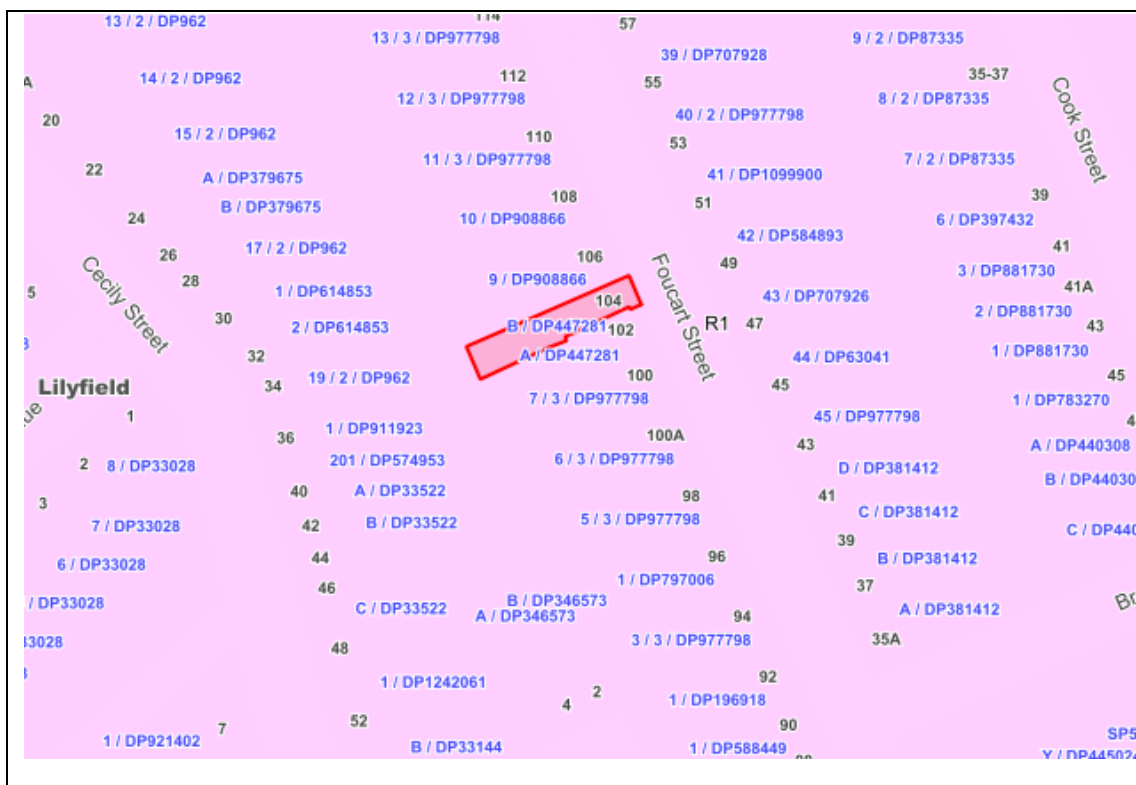


Figure 5: Zoning Map (R1 General Residential)

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

No recent relevant applications.

Surrounding properties

102 Foucart Street, Rozelle

Application	Proposal	Decision & Date
BC/2019/69	Erect a back laundry / Storage Room located at the very back of the property. 4m Wide by 3m deep. Fibro Clad walls, Timber frame. Hard wood decking floor and metal roof.	Under assessment

106 Foucart Street, Rozelle

No recent relevant applications.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
8.11.2019	Council sent a letter to the applicant regarding the following: <ul style="list-style-type: none"> Clarify/rectify boundary encroachment with 102 Foucart Street Extent of excavation not supported with respect to rear boundary and location of stairs to the rear yard.

	<ul style="list-style-type: none"> • Location of additions – extent of ground floor rear additions considered excessive and should not extend beyond the rear wall of the first floor bathroom addition. • Streetscape – alteration to the front window not supported. • Roof form – how will roof be maintained and question building over boundary. Awning in rear yard to be reduced in size. • Soft landscaping – an area to be provided in upper rear yard. • Clause 4.6 exceptions – required to be updated as required. • Amended plans – to be provided • Shadow diagrams – to be updated • Basix Certificate – to be updated • Stormwater plans – to be amended in accordance with Council requirements.
6.12.2019	<p>The applicant submitted additional information which included the following:</p> <ul style="list-style-type: none"> • Consent from the adjoining landowner at No.102 has provided; • Extent of excavation for external stairs to rear yard minorly reduced; • Rear ground floor bathroom location and layout slightly changed; • Slight change to ground floor front elevation so that it no longer projects from the existing wall; • Proposed removal of existing palm tree and provision of new garden bed at rear of site; • Clause 4.6 exception requests provided; • Amended plans and shadow diagrams provided; • Amended BASIX Certificate provided; • Amended stormwater plan provided.

The amended plans submitted on 6.12.2019 being Revision F are the plans assessed in this report. The amended plans were re-notified.

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*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

A BASIX Certificate was submitted with the application and an amended certificate was provided with the amended plans. The updated BASIX certificate will be referenced in any consent granted.

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

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

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

- Removal of existing bangalow palm is acceptable
- Replacement planting of 1 x 45 litre tree required.
- Protection of trees on adjoining properties required.

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

5(a)(x) *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant provisions of the Plan and would not have an adverse effect on environmental heritage, the visual or natural environment and open space and recreation facilities.

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

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

- Clause 1.2 - Aims of 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 6.2 - Earthworks
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

(iii) Clause 1.2 – Aims of Plan

The proposed alterations and additions are not considered to satisfy the following aim of the plan:

(2)(l) *to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*

As discussed in further detail below within section 5(d) of this report, the proposed change to the ground floor front wall of the dwelling to provide a white frosted material around the front window is not supported as it is not compatible with the pattern of the adjoining semi-detached dwelling and the desired future character of the area.

Additionally, the extent of the proposed rear ground floor additions are not compatible with the built form of the adjoining semi-detached dwelling which is discussed further within section 5(d) – 3.2 – Site Layout and Building Design,

However, these issues are able to be rectified by the imposition of conditions which require the design to be altered to be more sympathetic, and accordingly the proposal can satisfy aim (2)(l) of the plan.

(iv) Clause 2.3 – Land Use Table and Zone Objectives

The site is zoned R1 General Residential under the *LLEP 2013*. The *LLEP 2013* defines the development as:

Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

The development being alterations and additions to a semi-detached dwelling is permitted with consent within the zone. The development is not consistent with the following objectives of the R1 General Residential zone.

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

As discussed in further detail below within section 5(d) of this report, the proposed change to the ground floor front wall of the dwelling to provide a white frosted material around the front window is not supported as it is not compatible with the pattern of the adjoining semi-detached dwelling and the desired future character of the area. Additionally, the extent of the proposed additions towards the rear boundary is not considered appropriate as further discussed below within section 5(d) of this report.

However, it is considered that subject to the recommended design change conditions the proposed design can be altered to be more appropriate and accordingly satisfy the objectives of the R1 General Residential zone.

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 0.9:1 or 91.62 sqm	1.04:1 or 106.81 sqm	15.19 sqm or 16.58%	No
Landscape Area Minimum permissible: 15% or 15.27 sqm	4.86% or 4.95sqm	10.32 sqm or 67.58%	No
Site Coverage Maximum permissible: 60% or 61.08 sqm	66.11% or 67.3sqm	6.22 sqm or 10.18%	No

(v) 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 (3)(a)(i) - Landscaped areas for residential accommodation in Zone R1 (soft landscaping)
- Clause 4.3A (3)(b) – Landscaped areas for residential accommodation in Zone R1 (site coverage)
- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Landscaped areas for residential accommodation in Zone R1 and Floor Space Ratio development standards under Clauses 4.3A(3)(a)(i), 4.3A(3)(b) and 4.4 of the Leichhardt Local Environmental Plan 2013 by 14.61% (13.39 sqm - FSR), 67.58% (10.32 sqm – landscaped area) and 10.18% (6.22 sqm – site coverage).

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)(3) of the applicable local environmental plan justifying the proposed contravention of the development standards which is summarised as follows:

Floor Space Ratio

- *The proposed additions are located at the rear of the dwelling and will not be visible from the public domain*
- *The proposed additions are compatible with the desired further character of the area in relation to bulk form and scale*
- *The proposal provides improved amenity within the existing dwelling house to ensure that the dwelling house continues to provide for the housing needs of the community.*
- *There are no specific land use or environmental characteristics which would render compliance with the development standard unreasonable or inappropriate. However, it is noted that the proposed FSR is commensurate with that of other dwellings in the vicinity, which is largely a function of the modes size of the site/s.*

Landscaping (soft landscaping and site coverage)

- *The proposed development provides improved opportunities for planting at the rear of the site. The proposal provides a 1.2m x 4.325m planter adjacent to the site's rear boundary which will accommodate additional screen planting and maximise opportunities for stormwater infiltration.*
- *The site is not suitable for substantial tree planting given its minimal area and dimensions.*
- *The proposed development displays a landscaped character and building footprint which is consistent with that in the immediate vicinity of the site.*
- *The proposed development will not materially alter the existing ability of the site to absorb stormwater, as a consequence of the maintenance of the status quo in terms of the provision of landscaped area.*
- *The proposal improves the quality and functionality of landscaped areas and areas of private open space at the site.*
- *The proposed development maximises the provision of external open space areas which are functional and useable. The proposal significantly improves the functionality*

and amenity of the spaces when compared to the existing situation. In the event that the development was redesigned to comply with the minimum landscaped area standard, it would necessitate demolition of a significant area of the dwelling house, which is already limited. This would achieve compliance with the site coverage and landscaped area controls but would result in compromises to the internal amenity and functionality of the dwelling house

- *The proposed contravention of the standard is considered acceptable the proposal provides additional landscaped area when compared to the existing situation, in a form which is highly functional and will achieve excellent amenity for the occupants of the dwelling.*

Floor Space Ratio

The applicant's written request is considered to adequately demonstrate compliance with the FSR development standard and it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

However, for other reasons as discussed within this report including 6.2 – Earthworks in the LLEP and C3.2 in the DCP, it is considered that the extent of excavations should be further setback from the rear boundary by approximately 2m.

This change, which is reflected in the recommended conditions, will affect the amount of built floor space even though the applicant's argument is accepted having regard to the relevant requirements of Clause 4.6.

Landscaping (soft landscaping and site coverage)

The applicant's written request adequately demonstrates compliance with the landscaping development standard is 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 not contrary to the public interest with regard to the Landscaping development standard and the FSR development standard because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt Local Environmental Plan for the following reasons:

Zone objectives

- *To provide for the housing needs of the community*
- *To provide for a variety of housing types and densities*
- *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 protect and enhance the amenity of existing and future residents and the neighbourhood*

(with regard to landscaping)

- The proposal would improve the layout and functionality of the dwelling which provides for the housing needs of the community.
- The proposal improves the provision of landscaping on site.

(with regard to FSR)

- The proposal would improve the layout and functionality of the dwelling which provides for housing needs of the community.
- The proposal would allow the occupants to work from home.

The objectives for Landscaped Area are:

- *To provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents*
- *To maintain and encourage a landscaped corridor between adjoining properties*
- *To ensure that development promotes the desired future character of the neighbourhood--*
- *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*
- *To control site density*
- *To limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

It is considered the development is in the public interest because it is consistent with the objectives for Landscaped Area development standard in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt Local Environmental Plan 2013 as the development provides for an improved single area of landscaping for the enjoyment of the residents and allows for retention of surface water. Further, adequate private open space is provided on site.

The objectives for Floor Space Ratio are

To ensure that residential accommodation –

- (i) Is compatible with the desired future character of the area in relation to building bulk, form and scale,*
- (ii) To provide a suitable balance between landscaped areas and the built form, and*
- (iii) Minimises the impact of the bulk and scale of buildings*

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt Local Environmental Plan 2013 as it minimises the impact of bulk and scale and provides suitable landscaping for the site.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Leichhardt Local Environmental Plan 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Landscaped Areas for Residential Accommodation in Zone R1 (soft landscaping and site coverage) and Floor Space Ratio development standards.

It is therefore recommended that the Clause 4.6 exceptions be granted.

(vi) Clause 6.2 – Earthworks

The proposal includes significant excavation works for the proposed ground floor bathroom and laundry area. The objective of the clause includes not having a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

As discussed below under C3.2 in the DCP assessment, the extent of the excavation towards the rear of the site is not supported as it exceeds the rear building location zone. Reduction in the extent of excavation works will also minimise the risk of damage to the adjoining dwelling whilst allowing a reasonable extension for the applicants.

Accordingly, the extent of the additions to the rear is to be reduced by approximately 2m to be setback 6m from the rear boundary. Appropriate conditions are recommended for excavation works to avoid, minimise and mitigate impacts of the excavation works to adjoining dwellings.

5(b) Draft Environmental Planning Instruments

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

- Draft Environment State Environmental Planning Policy
- Draft Inner West Local Environmental Plan 2020

Draft Environment State Environment Planning Policy

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

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

The proposal is considered to be consistent with the provisions of the draft Environment SEPP. [Draft Inner West Local Environmental Plan 2020 \(Draft IWLEP 2020\)](#)

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(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	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	N/A
C1.3 Alterations and additions	No – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes

C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes – see discussion
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	
C2.2.5.2 Eastern Park Distinctive Neighbourhood	No – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	No – see discussion
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
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	
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	Yes
E1.1.4 Flood Risk Management Report	N/A

E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.3 – Alterations and additions

The proposal includes a section of the ground floor front wall being replaced with white frosted material around a window. As discussed further below under C2.2.5.2; C3.1 and C3.3 the proposed white frosted material around the window is not supported and does not comply with the following objectives and controls of Alterations and Additions.

- O1 *To ensure that development:*
 - b. *where an alteration or additions is visible from the public domain it should appear as a sympathetic addition to the existing building;*
 - c. *makes a positive contribution to the desired future character of the streetscape and any heritage values associated with it.*
 - h. *retains existing fabric wherever possible and maintains and repairs, where necessary, rather than replaces the fabric.*
- C1 *The overall form of alterations and additions shall:*
 - c. *retain any building and streetscape consistencies which add positively to the character of the neighbourhood (e.g. architectural details, continuous rows of dwellings, groups of similar dwellings or the like);*
 - f. *achieve the objectives and controls for the applicable desired future character.*
- C2 *Development shall preserve the consistency in architectural detail and form of continuous rows of attached dwellings, or groups of similar dwellings.*
- C5 *New materials and fenestrations of alterations and additions shall be compatible with the existing building.*
- C7 *Alterations and/or additions to the front of an existing dwelling must ensure that important elements of the original character of the building and its setting are retained, restored or reconstructed, where it contributes to the desired future character, including but not limited to:*
 - c. *fences and walls;*
 - d. *fenestration.*

Accordingly a condition is recommended that the proposed white frosted material around the window is deleted from the proposal and a more sympathetic double-hung window is retained within the existing window opening.

C1.14 - Tree Management

Refer to the SEPP Vegetation assessment above in this report under 5(a)(iii). The proposed removal of the existing Bangalow palm is acceptable subject to replacement planting.

C2.2.5.2 - Eastern Park Distinctive Neighbourhood

As also discussed under C1.3, C3.1 and C3.3 the changes to the ground floor front wall are not supported. The proposal includes changing the existing original ground floor front elevation and window which is currently a timber framed double-hung window which matches the adjoining dwelling which is a pair with No.102. The proposal is for a section of wall to be replaced with white frosted material around a window. The window is proposed to match the proportions of the existing window. Refer to Figure 5 below which shows the proposed changes to the eastern elevation.

The proposed frosted section around the window is not considered appropriate given the dwelling is a pair with No.102 and accordingly does not satisfy the following controls of the Eastern Park Distinctive Neighbourhood.

- C1 *Preserve the existing varied styles of housing with special regard to the modest scale and simple, unadorned nature of the architecture.*
- C4 *Preserve the consistency and simplicity in built form, style and materials of the neighbourhood.*
- C13 *The use of traditional timber, stone or masonry finishes, iron roofing and timber windows is encouraged.*

Accordingly a condition is recommended that the proposed white frosted material around the window is deleted from the proposal and a double-hung window is retained within the existing window opening.

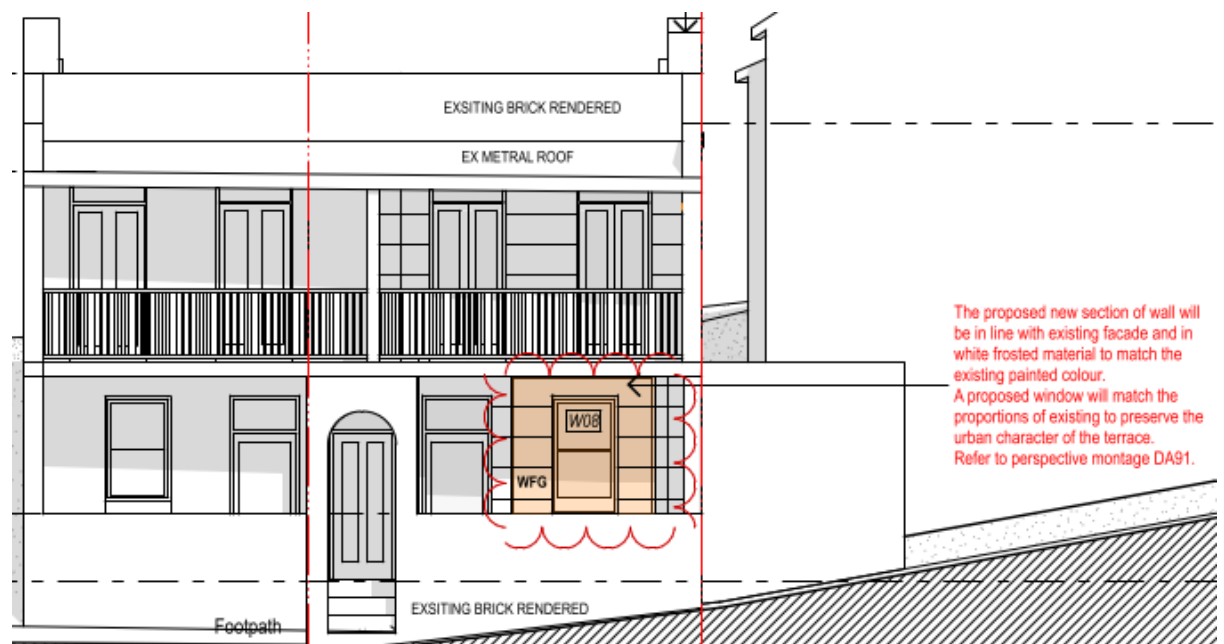


Figure 5: Proposed eastern elevation of dwelling

C3.1 - Residential General Provisions

As also discussed under C1.3; C2.2.5.2 and C3.3, the proposed treatment around the ground floor front window with white frosted material is not considered appropriate for a pair of dwellings. Accordingly is not considered to satisfy the following objectives and controls of the Residential General Provisions:

- O3 *To ensure that alterations, additions to residential buildings and new residential development are compatible with the established setting and character of the suburb and neighbourhood and compatible with the desired future character and heritage significance of the place and its setting.*
- O4 *To ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings.*
- C2 *Additions to an existing building are generally:*
- c. *maintain the form, fenestration, roof forms and chimneys of the existing building when viewed from the principal street frontage; and*
 - d. *of a design which is compatible with but does not compete with the architectural character of the existing building or the Building Typologies; and*
 - e. *of a scale, proportion (including proportion of doors and openings) and material which is compatible with the existing building.*

C3.2 - Site Layout and Building Design

The proposal is not considered to satisfy the following objectives and controls with respect to the extent of the additions to the rear at ground floor level.

- O3 *To ensure that buildings are constructed with an appropriate Building Location Zone (BLZ) from the front and rear boundary to protect neighbourhood features such as streetscape, private open space, solar access and views.*
- O4 *To ensure that development:*
- c. *complements the siting, scale and form of adjoining development;*
- C3 *Building Location Zone (BLZ) is the part of the subject site where it can be reasonably expected that a building can be located. The BLZ is determined by having regard to only the main building on the adjacent properties.*
- C4. *Development shall be located within the BLZ area of the subject site. BLZ for the main building, shall be determined having regard to that part of the building that is fully enclosed by walls, however open-sided structures such as balconies and verandas may extend beyond the BLZ so determined, where they are consistent with similar structures on adjoining properties.*

The proposed ground and first floor additions do not comply with the rear building location zone (BLZ) which should be approximately 6.8m. At ground floor the rear setback is proposed to be 4.029m and at first floor approximately 6.4m. The extent of the additions towards the rear boundary given the size of the site are considered excessive at ground floor level. It is noted that the ground floor additions require excavations being approximately 3m below natural ground level including footings.

It is considered appropriate to reduce the extent of the additions at ground floor to have a rear setback of 6m to the external wall of the bathroom. There is no objection to the ground floor bathroom occupying the small square of open space to the south of the window identified as W03 and the internal wall of the bathroom being shifted further to the east if desired to accommodate an alternate bathroom layout. The layout of either the ground or first floor bathroom could be altered to accommodate a bath with a shower over if desired. At first floor level the extent of the rear additions although not comply within with the rear BLZ for the bathroom addition are considered acceptable in this instance.

The proposed additions at first floor level do not comply with the side setback controls as set under control C7. The side setbacks require would be 1.5m which is not considered realistic on a 4.5m wide site. Given that the existing dwelling is built boundary to boundary as is the

adjoining semi-detached dwelling at No.102 it is considered acceptable and appropriate in this instance for the additions to be built to the side boundaries. There are not considered to be any significant adverse impacts as a result of the nil side setbacks at first floor level.

Subject to the recommended condition to increase the rear setback of the ground floor balcony the proposal is considered to be acceptable with regard to C3.2 – Site Layout and Building Design.

C3.3 - Elevation and Materials

As previously addressed above under C1.3; C2.2.5.2 and C3.1, the proposed treatment around the ground floor front window with white frosted material is not considered appropriate for a pair of dwellings and accordingly is not considered to satisfy the following objective and controls of Elevations and Materials

- O1 *Building elevation and materials visible from the public domain:*
 - a. *Complement the prevailing or desired future character of the neighbourhood, in particular responding to the vertical and horizontal rhythm of the streetscape;*
- C1 *Building facades are:*
 - a. *Divided into vertical bays consistent with the dimensions established by elements on adjoining development such as party walls and windows.*
- C11 *Materials and finishes are compatible with those prevailing in the streetscape and the period of construction of the dwelling.*

Accordingly, a condition is recommended that the proposed white frosted material around the window is deleted from the proposal and a double hung window is retained within the existing window opening.

C3.9 – Solar Access

The proposed additions do not comply with the following solar access controls:

- C18 *Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*
- C19 *Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

The rear yard of No.102 has an east west orientation and is therefore currently overshadowed by No.104. The proposal results in an additional approximately 1m² overshadowing of the rear yard at 10am during the winter solstice. Number 102 does not currently receive 2.5hrs solar access over 50% of their rear yard during the winter solstice.

It is noted that No.102 has further reduced opportunities for solar access through the construction of an unauthorised structure for a laundry and storage adjacent to the rear boundary which is currently under assessment under a Building Certificate application. Given the minimal additional overshadowing resulting during the winter solstice the amount of solar access would be improved at other times of the year. The additional overshadowing is considered acceptable in this instance given the orientation of the sites and the small size of the sites. It is also noted that the living room of 102 is at the front of the site and therefore is not impacted by the proposal.

5(e) 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(f) 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(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. The application was notified three times over the following dates:

- 16 September to 8th October 2019
- 12th December 2019 with incorrect response date therefore re-notified as below:
- 23 April to 14 May 2020

Two (2) submissions were received in response to the initial notification, one in support, one objecting.

The submissions raised the following concerns:

Issue: Concern about the potential for damage to the boundary wall or to the adjoining dwelling through undermining, collapse or vibration given the close proximity of the works approx. 0.75m from the adjoining house and the extent of excavation proposed up to 3.3m on the boundary.

Comment: Conditions are recommended requiring the recommendations in the submitted technical reports be complied with during excavation works. Additionally, a condition is recommended to reduce the extent of the excavation works toward the rear of the property.

Issue: Request a dilapidation report for the adjoining property. If damage subsequently occurs is the applicant required to rectify this prior to the granting of occupation consent.

Comment: A standard condition requiring a dilapidation report is recommended. If damage does eventuate this is a civil matter between the property owners and does not prevent the granting of an occupation certificate.

Issue: If access is required to 106 Foucart then prior consent is to be sought.

Comment: This is a civil matter between the two property owners however it is expected that builders would not enter the adjoining property without prior consent.

Issue: All works to be within the boundary of 104 Foucart.

Comment: A standard condition is recommended in this regard.

5(h) 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.

- Engineering – acceptable subject to recommended conditions.
- Landscaping – acceptable subject to recommended conditions. Refer to assessment under 5(a)(iii).

6(b) External

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

8. Conclusion

Subject to the recommended condition to reduce the extent of the ground floor bathroom, the proposal generally complies with the aims and objectives contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*. Where variations have been sought, they are considered to be well justified having regard to the constraints of the site and the character of the neighbourhood.

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

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

9. Recommendation

A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* to vary Clauses 4.3A(3)(a)(i) (soft landscaping); 4.3A(3)(b) (site coverage) and 4.4 (floor space ratio) of the *Leichhardt Local Environmental Plan 2013*. After considering the requests, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variations. 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/2019/354 for alterations and additions to existing dwelling including rear ground and upper level additions and slight encroachment over the boundary with No.102 at 104 Foucart Street Rozelle subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

FEES

Security Deposit - Custom

Prior to the commencement of demolition works or prior to the 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.

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.

GENERAL CONDITIONS

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.

Works Outside the Property Boundary

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

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. DA11 Issue F	Roof Plan	28/11/19	Ahron Best Architects
Dwg No. DA12 Issue F	Ground floor & landscape plan	28/11/19	Ahron Best Architects
Dwg No. DA13 Issue F	First floor plan & landscape plan	28/11/19	Ahron Best Architects
Dwg No. DA21 Issue F	North Elevation	28/11/19	Ahron Best Architects
Dwg No. DA22 Issue F	East Elevation	28/11/19	Ahron Best Architects
Dwg No. DA23 Issue F	West Elevation	28/11/19	Ahron Best Architects
Dwg No. DA31 Issue F	Section A	28/11/19	Ahron Best Architects
Dwg No. DA32 Issue F	Section B	28/11/19	Ahron Best Architects
Dwg No. DA33 Issue F	Section C	28/11/19	Ahron Best Architects
Dwg No. DA61 Issue F	Samples Board	28/11/19	Ahron Best Architects
A343958_03	BASIX Certificate	29/11/19	Ahron Best
Project No.19139	Feasibility of Excavation	28 June 2019	SDA Structures Pty Ltd
G1978-1	Geotechnical Investigation Report	16 April 2019	GCA - Geotechnical Consultants Australia

As amended by the conditions of consent.

Design Change

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

- a. The proposed white frosted material around the ground floor window on the front (eastern) elevation is to be deleted from the proposal with the existing wall retained as is and a double hung window is to be provided within the existing window opening.
- b. The ground floor bathroom external western wall shall be setback 6m from the rear boundary. The location of the bathroom can be rearranged if desired to occupy the small square of landscaping measuring approximately 1m x 1m to the south of window W03. Internal, to the ground floor the location of the internal wall separating

the kitchen/laundry from the bathroom can be relocated further to the east if desired. The internal layout of the bathroom can be changed as needed.

Noise Levels and Enclosure of Pool/spa Pumping Units

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

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

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.

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.

Tree Protection

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.

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.

Tree Protection measures must be in accordance with section 5. *Site specific 'Tree Management Plan'* of the submitted *Arboricultural Construction Impact and Management Statement*, prepared by *Growing my way Tree Consultancy*, dated November 2019.

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/location	Approved works
<i>Archontophoenix cunninghamiana</i> (Bangalow Palm) located in rear property	Remove

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*.

Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

Boundary fencing

The height of boundary fencing is not to be increased and any new fencing is to be no higher than existing boundary fencing.

PRIOR TO ANY DEMOLITION**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.

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 adjoining properties including boundary fencing (102 and 106 Foucart Street, Rozelle) 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.

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.

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**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.

Stormwater Drainage System – Minor Development

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- b. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- c. As there is no overland flow/flood path available from the rear and central courtyards to the Foucart Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - i. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
 - ii. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
 - iii. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- d. Drainage pipes must be accessible for inspection and maintenance and including at bends and pipe junctions.
- e. Drainage plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
- f. 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.
- g. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- h. Only a single point of discharge is permitted to the kerb and gutter.
- i. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- j. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm.
- 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. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.

Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall.

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.

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

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.

Site boundary

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with a plan of redefinition with evidence of registration with NSW Land Registry Services. If the plan of redefinition shows an encroachment within the boundary of No.102 Foucart Street then an easement is to be registered prior to the issue of a Construction Certificate.

DURING DEMOLITION AND CONSTRUCTION

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.

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.

Inspections by Project Arborist

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

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
(1) <i>Citrus sinensis</i> (Orange tree) located on adjoining property. (3) <i>Celtis spp.</i> (Hackberry) located on adjoining property.	During works	<ul style="list-style-type: none"> • Supervise all site preparation and demolition works within the TPZ; • Supervise all works inside or above the TPZ; • Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ.

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

Tree Protection measures must be in accordance with section 5. *Site specific 'Tree Management Plan'* of the submitted *Arboricultural Construction Impact and Management Statement*, prepared by *Growing my way Tree Consultancy*, dated November 2019.

Canopy Pruning

Canopy and/or root pruning of the following tree/s which is necessary to accommodate the approved building works must be undertaken by, or directly supervised by, the Project Arborist.

Tree No.	Botanical/Common Name
(1)	<i>Citrus sinensis</i> (Orange tree) located on adjoining property.
(3)	<i>Celtis spp.</i> (Hackberry) located on adjoining property.

The person acting on this consent has approval under Council's Tree Management Controls to; prune the minor branches to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 100 mm.

Limited Root Pruning

No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following, tree/s must be severed or injured in the process of any works during the construction period.

Tree ?	Botanical/Common Name	Radius in metres
(1)	<i>Citrus sinensis</i> (Orange tree) located on adjoining property.	3m
(3)	<i>Celtis spp.</i> (Hackberry) located on adjoining property.	6m

If tree roots less than 50mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

All excavation within the specified radius of the trunks of the following trees being hand dug using either pneumatic or hydraulic tools only (e.g. *Airspade®* or hydro excavation) to a depth of one (1) metre under direct supervision of the Project Arborist and then by mechanical means as agreed by the Project Arborist.

Excavation works

Prior to and during excavation works the recommendations contained within the Feasibility of Excavation prepared by SDA Structures Pty Ltd and the Geotechnical Investigation Report prepared by GCA as detailed in the approved list of documents are to be undertaken.

Prior to commencement of any excavation work a specialist sub-contractor experienced in "small space" excavations shall be employed to undertake the excavation works.

PRIOR TO OCCUPATION CERTIFICATE

No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier 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.

Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- 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 Certifier stamped Construction Certificate plans.

Aircraft Noise –Alterations and Additions

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

Or for all other ANEF affected developments

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 "Before 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.

Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of 1 x 45 (L) litre size additional tree, which will attain a minimum mature height of six (6) metres has been planted in a suitable location within the property allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Controls, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement tree is found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

ADVISORY NOTES**Permits**

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; and
- 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.

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.

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.

Swimming Pools

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

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.

- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

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

Permits from Council under Other Acts

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

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

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 Corporation	Payments 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.

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

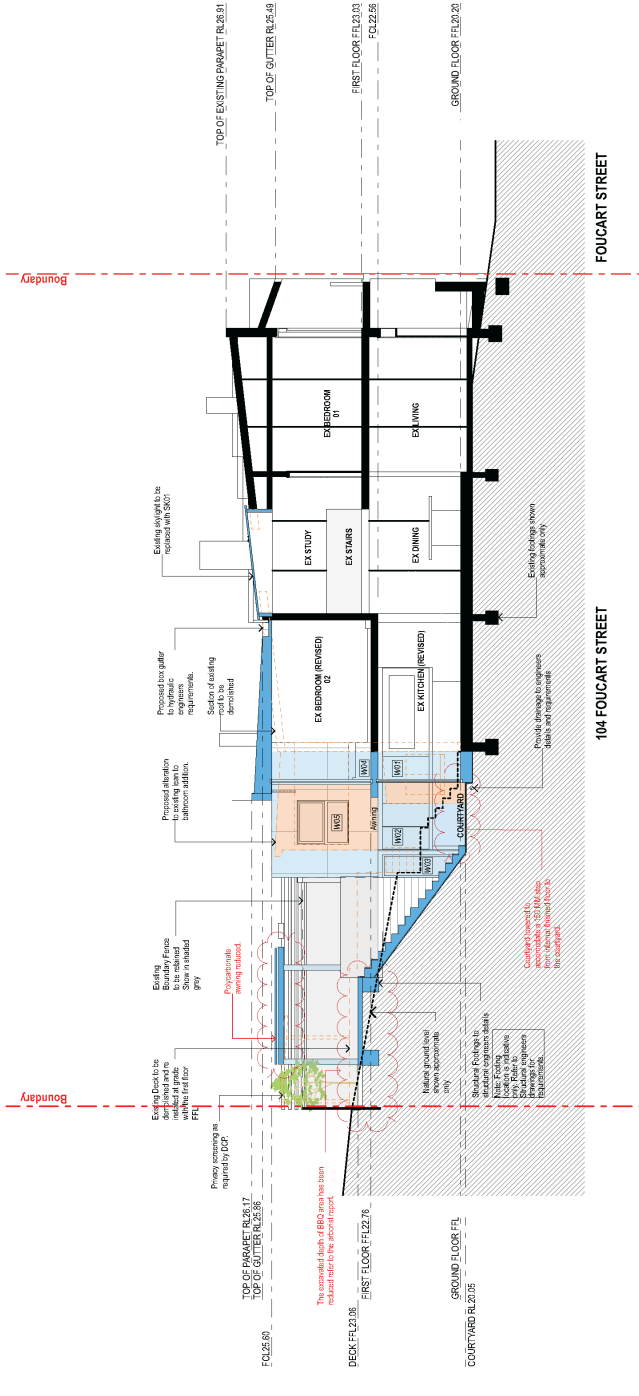
All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (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*.



Legend

- Proposed Walls
- Proposed Works
- Alteration Works
- Existing Walls
- To be demolished
- Site Boundary

Finishes Abbreviations

- MC1: Metal cladding
- MD1: Metal deck roof
- FC1: Fiber cement cladding
- GCZ: Green cladding
- GW: Green Wall

(Refer to Finishes Schedule for finish details)

NOTE: PLANS TO BE READ IN CONJUNCTION WITH PARTY WALL CERTIFICATE AND REPORTS 28/06/08 DETAILS AND METHODOLOGY FOR EXCAVATION WORKS AND PARTY WALL.

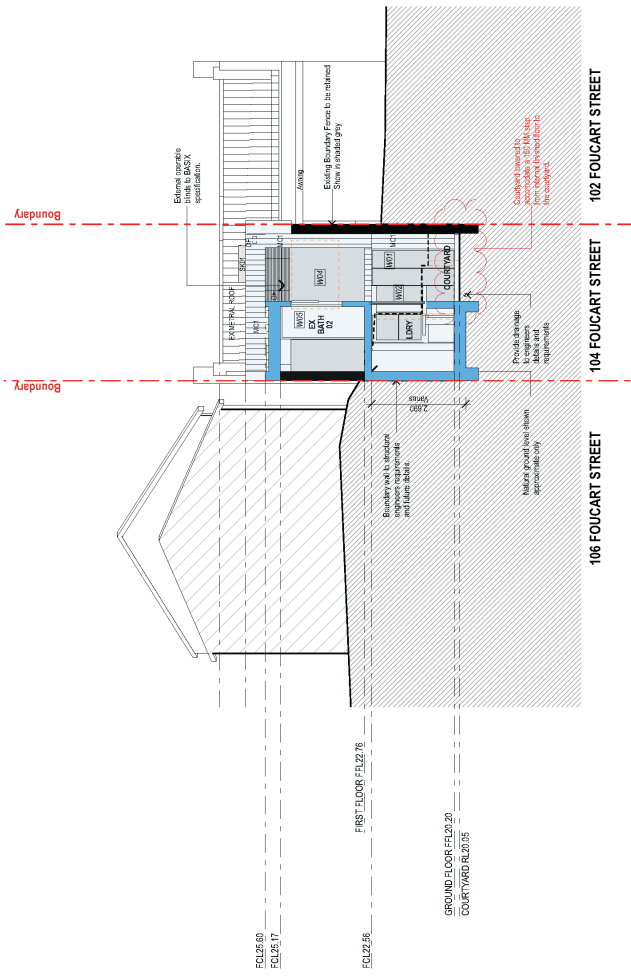
FOR APPROVALS - NOT FOR CONSTRUCTION

Project: 104 Foucart Street, Rosebud
 Client: Steve Marks
 Designer/Architect: Alhron Beest Architects
 Date: 26/11/08
 Drawing No: DA31
 Section: SECTION A
 Revision: F

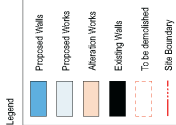
Notes:

- The drawings are to be read in conjunction with the site plan, section and elevation drawings.
- The drawings are to be read in conjunction with the conditions of consent and the Local Planning Panel's decision.
- The drawings are to be read in conjunction with the relevant provisions of the Resource Management Act 1991.
- The drawings are to be read in conjunction with the relevant provisions of the Resource Management Act 1991.
- The drawings are to be read in conjunction with the relevant provisions of the Resource Management Act 1991.
- The drawings are to be read in conjunction with the relevant provisions of the Resource Management Act 1991.
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Note: Refer to BASIX for window requirements.



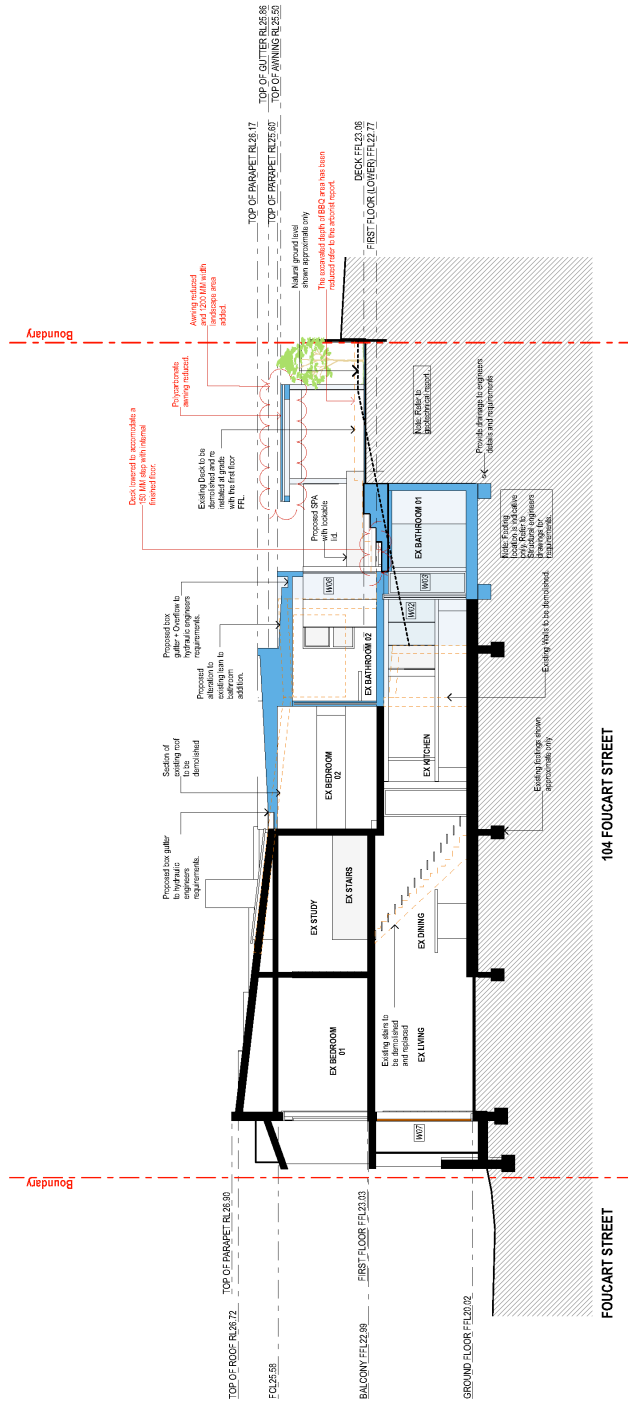
- Finishes Abbreviations
- MC1 Metal cladding
 - MD1 Metal deck roof
 - FC1 Floor concrete casting
 - FCW Green Wall
 - GW
- (Refer to Finishes Schedule for finish details)



FOR APPROVALS - NOT FOR CONSTRUCTION

Project	104 Foucart Street, Bourke	Drawn	Change	Project No.	DA32	Date	26/11/19
Client	Shah Malik	Drawn By	Asst. Dir	Drawn/By	DA32	Drawn/By	F
Drawn/By	SECTION B	Drawn/By	SECTION B	Drawn/By	SECTION B	Drawn/By	SECTION B
<p>Alyson Best Architects 18/27 222 COVLEV ROAD, HOME BUSH NSW 1510 www.alysonestarchitects.com</p>							

DESCRIPTION	NO.	DESCRIPTION	DATE	STATUS
1. APPROVED FOR CONSTRUCTION				
2. APPROVED FOR CONSTRUCTION				
3. APPROVED FOR CONSTRUCTION				
4. APPROVED FOR CONSTRUCTION				
5. APPROVED FOR CONSTRUCTION				
6. APPROVED FOR CONSTRUCTION				
7. APPROVED FOR CONSTRUCTION				
8. APPROVED FOR CONSTRUCTION				
9. APPROVED FOR CONSTRUCTION				
10. APPROVED FOR CONSTRUCTION				



Legend

- Proposed Walls
- Proposed Works
- Abandon Works
- Existing Walls
- To be demolished
- Site Boundary

Finishes Abbreviations

- MC1 Metal cladding
- MD1 Metal deck roof
- FC1 Fibre cement cladding
- FC2 Fibre cement cladding
- GW Green Wall

(Refer to Finishes Schedule for finish details)

NOTE: PLANS TO BE READ IN CONJUNCTION WITH THE WALL CERTIFICATION AND PARTY WALL REPORTS 28/06/18 DETAILS ON METHODOLOGY FOR EXCAVATION WORKS AND PARTY WALL

FOR APPROVALS - NOT FOR CONSTRUCTION

Project	104 Foucart Street, Bourke	Revision	Alteration and Addition
Client	Shane Marks	Drawn	Project 015
Designer	SECTION C	Checked	26/11/18
Drawn	DA33	Checked	Approved
Date		Checked	

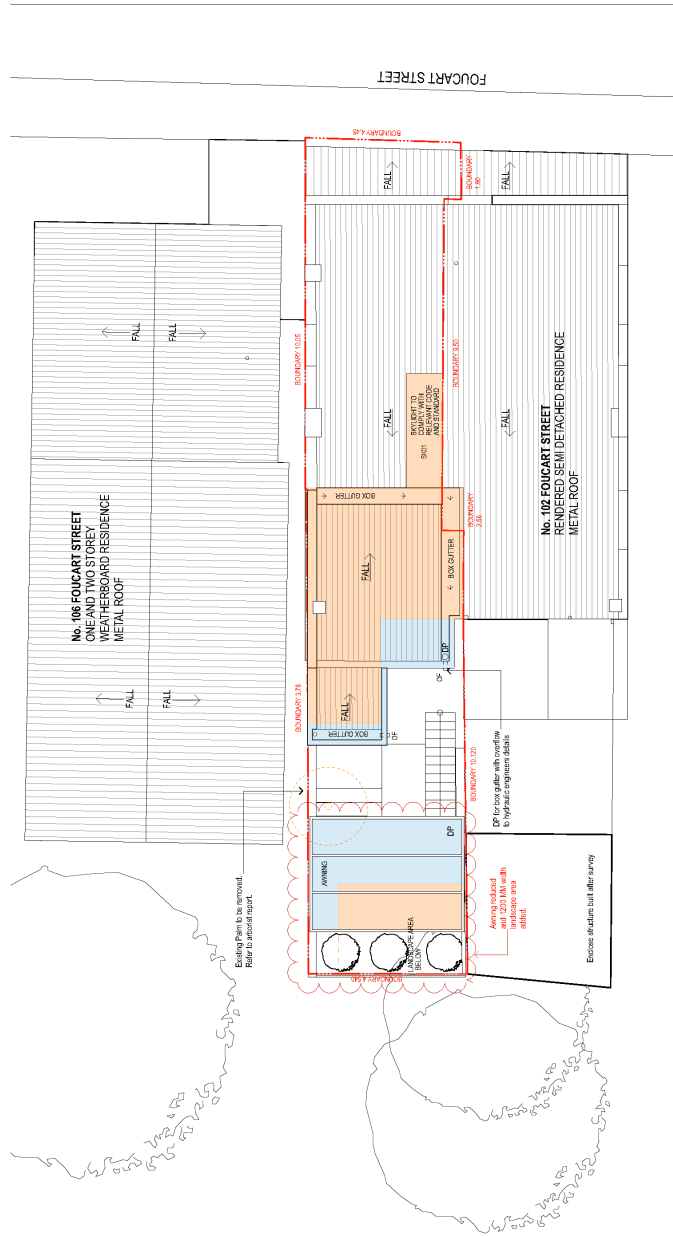
SHEET 22 OF 22 LEVEL UP ROAD,
 104 FOUCCART STREET,
 BOURKE NSW 2837
 MOBILE 0821 901010
 www.alvonnpostarchitects.com

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR CONSTRUCTION	
2	ISSUED FOR CONSTRUCTION	
3	ISSUED FOR CONSTRUCTION	
4	ISSUED FOR CONSTRUCTION	
5	ISSUED FOR CONSTRUCTION	
6	ISSUED FOR CONSTRUCTION	
7	ISSUED FOR CONSTRUCTION	
8	ISSUED FOR CONSTRUCTION	
9	ISSUED FOR CONSTRUCTION	
10	ISSUED FOR CONSTRUCTION	

NOTES

1. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
2. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
3. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
4. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
5. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
6. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
7. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
8. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
9. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.
10. All work to be done in accordance with the Australian Standards AS/NZS 3558:2018 and AS/NZS 3559:2018.

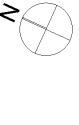


Legend

- Proposed Walls
- Proposed Works
- Alteration Works
- Existing Walls
- To be demolished
- Site Boundary

NOTE: PLANS TO BE READ IN CONJUNCTION WITH THE WALL CERTIFICATION AND PARTY WALL REPORTS 28/6/16 DETAILS FOR CONSTRUCTION METHODS ONLY FOR EXCAVATION WORKS AND PARTY WALL.

NO.	DESCRIPTION	DATE	BY
1.	ISSUED FOR CONSTRUCTION		
2.	ISSUED FOR CONSTRUCTION		
3.	ISSUED FOR CONSTRUCTION		
4.	ISSUED FOR CONSTRUCTION		
5.	ISSUED FOR CONSTRUCTION		
6.	ISSUED FOR CONSTRUCTION		
7.	ISSUED FOR CONSTRUCTION		
8.	ISSUED FOR CONSTRUCTION		
9.	ISSUED FOR CONSTRUCTION		
10.	ISSUED FOR CONSTRUCTION		

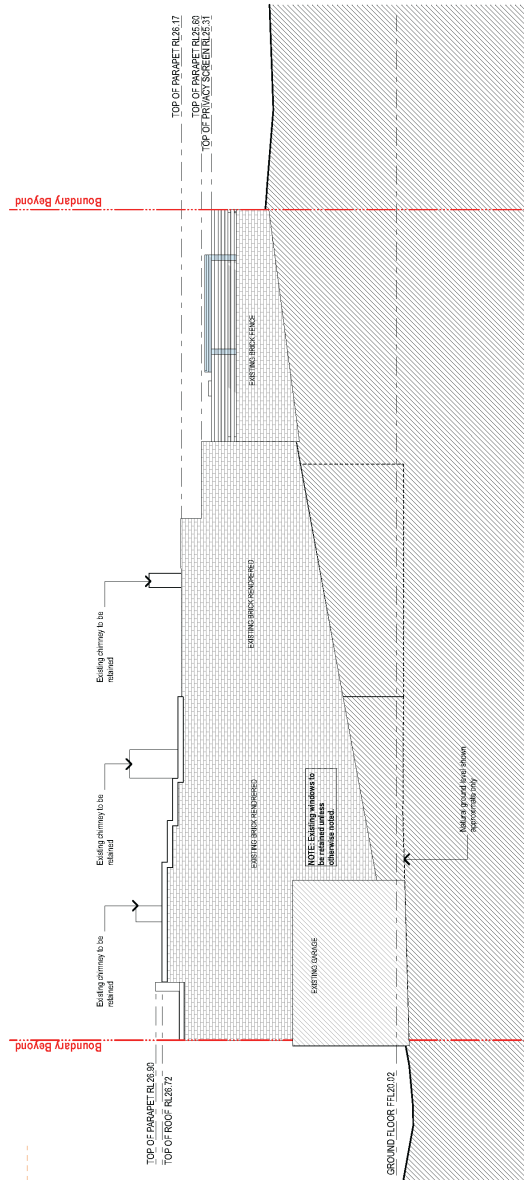


FOR APPROVALS - NOT FOR CONSTRUCTION

Project: 106 Foucart Street, Rozelle
Client: Steve Marks
Design Title: ROOF PLAN (PROPOSED)
Drawn: [Blank]
Check: [Blank]
Date: 26/11/16
Project No.: 015
Drawn By: [Blank]
Checked By: [Blank]
Scale: 1:100
DA11
F

Alton Best Architects
 www.altonbestarchitects.com
 88/87 225 COVLEV ROAD,
 MOUNTAIN VIEW, SYDNEY NSW 1572
 MOBILE 0431 971016

Note: Refer to BASIX for window requirements.



- Legend**
- Proposed Walls
 - Proposed Works
 - Alteration Works
 - Existing Walls
 - To be demolished
 - Site Boundary
- Finishes Abbreviations**
- MC1 Metal cladding
 - MD1 Metal deck roof
 - FC1 Fibre cement cladding
 - FC2 Fibre cement roof cladding
 - GW Green Wall
- (Refer to Finishes Schedule for finish details)
- NOTE: PLANS TO BE READ IN CONJUNCTION WITH THE WALL CERTIFICATION AND STRUCTURES PTLD PARTY REPORTS 2019 DETAILS AND FINISHES SCHEDULE FOR EXCAVATION WORKS AND PARTY WALL.**

FOR APPROVALS - NOT FOR CONSTRUCTION

Project	104 Forest Street, Rosalie	Drawn	Change	Project No.	015	Date	26/11/19
Client	Shane Marks	Scale	As Shown	Drawn By	DA21	Checked By	DA21
Drawn By	DA21	Scale	As Shown	Project No.	015	Date	26/11/19
Checked By	DA21	Scale	As Shown	Drawn By	DA21	Checked By	DA21

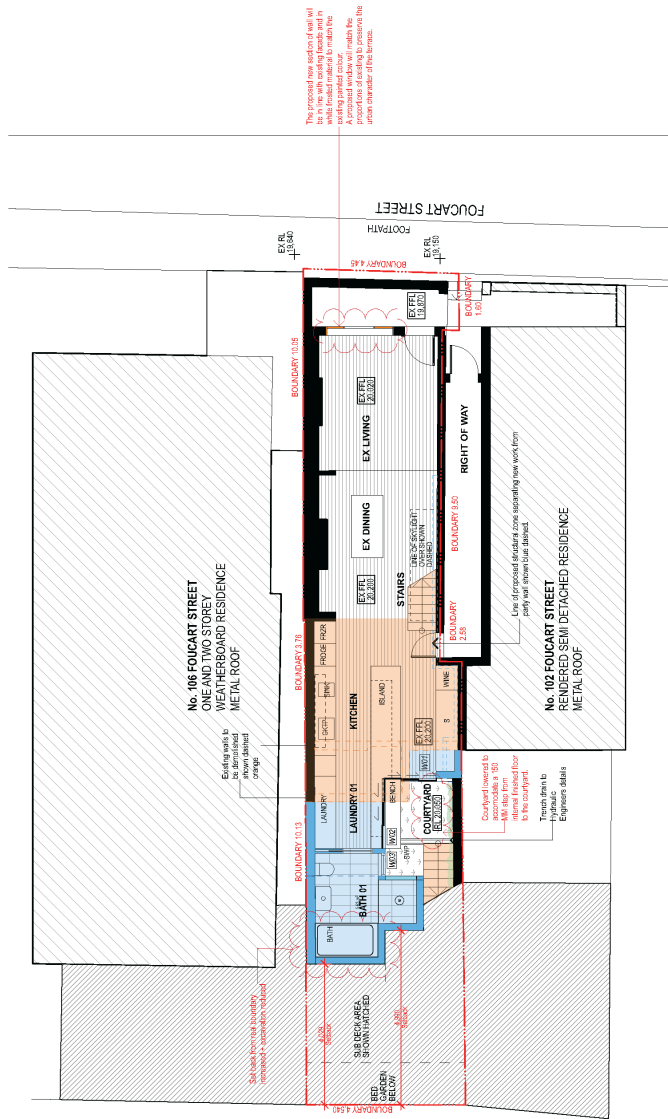
Albyn Best Architects
 www.albynbestarchitects.com
 104 Forest Street, Rosalie, QLD 4082
 Phone: 08 9419 1919
 Email: info@albynbest.com.au

REVISIONS

NO.	DATE	DESCRIPTION	ISSUED BY
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Notes:

1. All work to be done in accordance with the current Australian Standards.
2. All work to be done in accordance with the current Queensland Building Code Act 2019.
3. All work to be done in accordance with the current Queensland Building Regulation 2019.
4. All work to be done in accordance with the current Queensland Building and Construction Commission Act 2004.
5. All work to be done in accordance with the current Queensland Building and Construction Commission Regulation 2004.
6. All work to be done in accordance with the current Queensland Building and Construction Commission Code of Practice 2004.
7. All work to be done in accordance with the current Queensland Building and Construction Commission Code of Practice 2004.
8. All work to be done in accordance with the current Queensland Building and Construction Commission Code of Practice 2004.
9. All work to be done in accordance with the current Queensland Building and Construction Commission Code of Practice 2004.
10. All work to be done in accordance with the current Queensland Building and Construction Commission Code of Practice 2004.



The proposed new sections of wall will be finished in a color matching the existing finished color. This ensures the proposed form of walling to preserve the same character of the terrace.

NOTE: PLANS TO BE READ IN CONJUNCTION WITH THE WALL CERTIFICATION AND PARTY WALL REPORTS 28/6/16 DETAILS FOR CONSTRUCTION WORKS AND PARTY WALL.

Legend

- Proposed Walls
- Proposed Works
- Alteration Works
- Existing Walls
- To be demolished
- Site Boundary



FOR APPROVALS - NOT FOR CONSTRUCTION

Project	102 Foucart Street, Rozelle	Drawn	Alteration and Addition
Client	Shane Martin	Checked	Project 015
Design Title	GROUND FLOOR - LANDSCAPE PLAN (PROPOSED)	Date	28/11/16
Scale	1:100	Drawn By	DA12
		Checked By	F

NO.	DESCRIPTION	DATE
1.	ISSUED FOR APPROVAL	
2.	ISSUED FOR APPROVAL	
3.	ISSUED FOR APPROVAL	
4.	ISSUED FOR APPROVAL	
5.	ISSUED FOR APPROVAL	
6.	ISSUED FOR APPROVAL	
7.	ISSUED FOR APPROVAL	
8.	ISSUED FOR APPROVAL	
9.	ISSUED FOR APPROVAL	
10.	ISSUED FOR APPROVAL	

Attachment C- Clause 4.6 Exception to Development Standards



REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.3A(3)(a) OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

This Clause 4.6 Exception Submission has been prepared by the Slattery Planning Group on behalf of Mr. Steve Martin & Ms. Natalia Gonzalez (the Applicants), in relation to a Development Application for the property at No. 104 Foucart Street, Rozelle (the site).

This Submission is made to Inner West Council in support of a Development Application (DA) for alterations and additions to the existing semi-detached dwelling at the site.

This request has been prepared having regard to:

- Land and Environment Court of NSW judgment in *Winten Property v North Sydney Council* [2001];
- Land and Environment Court of NSW judgment in *Wehbe v Pittwater Council* [2007];
- Land and Environment Court of NSW judgments in *Four2Five Pty Ltd v Ashfield Council* [2015];
- NSW Department of Planning and Infrastructure's *Varying Development Standards: A Guide 2015*; and
- Land and Environment Court of NSW judgment in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

1.1 Clauses 4.3A(3)(a) of Leichhardt Local Environmental Plan 2013

Clause 4.3A(3) of LEP 2013 states that 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.

1.2 What is the extent of the non-compliance?

The site has an area of 101.8m² and is therefore subject to minimum 15% landscaped area (minimum 15.27m²) and maximum 60% site coverage (maximum 61.02m²) development standards.

Slattery Planning Group Pty Ltd
PO Box 86, Drummoyne
NSW 1470

Email: info@slatteryplanning.com.au
Phone: 0402 206 923
ABN: 96 152 879 224

The existing development on the site provides 1.71m² or 1.68% of the site as landscaped area and has a site coverage of 50.04m² or 49%. To this end, the existing development displays non compliances of 13.56m² or 88.8% with the landscaped area standard and complies with the site coverage standard.

The proposed development results in 8.7m² or 8.5% of the site as landscaped area and a site coverage of 53.65m² or 53%.

The proposal therefore complies with the maximum permitted site coverage standard however is non-compliant with the minimum landscaped area standard by 6.57m² or 43%.

2.0 CLAUSE 4.6 OBJECTIVES

Clause 4.6 of LEP 2013 has the following objectives:

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

As discussed below, it is considered appropriate to invoke the provisions of Clause 4.6 of LEP 2013, in order to achieve a positive planning outcome at the site.

3.0 CLAUSE 4.6(3) PROVISIONS

Clause 4.6(3) states that development consent must not be granted for development that contravenes a Development Standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating the following:

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

The following discussion constitutes a written request seeking to justify the contravention of Clause 4.3 of LEP 2013.

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4.1 Clause 4.3 Objectives

The objectives of Clause 4.3A of LEP 2013 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.”*

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

The proposed development provides improved opportunities for planting at the rear of the site, including a green wall in the courtyard at the rear of ground floor level. New planting is also proposed within the private open space, including planting adjacent to the dwelling, to provide a pleasant outlook from both the dwelling house and rear private open space.

Furthermore, the proposal provides a 1.2m x 4.325m planter adjacent to the site's rear boundary which will accommodate additional screen planting and maximise opportunities for stormwater infiltration.

At present, the rear private open space is situated over several levels, which minimises its functionality and useability. The proposal seeks to lower its floor level to relate more appropriately to the dwelling house and to provide a generally contiguous area for use by the future occupants. This will also significantly improve privacy between the site and adjoining properties to the north and south, which is currently compromised due to the significant elevation at the rear of the site.

The site is not suitable for substantial tree planting given its minimal area and dimensions, however it is noted that there are significant trees in the vicinity of the site, which provide amenity benefits to the site and the locality more generally. The proposed setting back of the development from the rear boundary will ensure that the health and longevity of these trees are not adversely affected.

The proposed development displays a landscaped character and building footprint which is consistent with that in the immediate vicinity of the site (see Figure 1 below).



Figure 1: Aerial view of the site in its immediate context (© six viewer)

To this end, it is considered that the proposal is consistent with objective (a) despite the non-compliance with the landscaped area development standard.

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

As can be seen in **Figure 1** above, there is an existing landscaped corridor currently provided between adjoining properties in the vicinity of the site.

The proposal will have no impact on the maintenance of this corridor and will provide new opportunities for substantial planting within the 1.2m wide planter proposed across the whole of the rear boundary.

To this end, it is considered that the proposal is consistent with objective (b) despite the non-compliance with the landscaped area development standard.

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

The site is located within Easton Park Distinctive Neighbourhood.

Table 1 below provides a discussion of the proposal's consistency with the Controls applicable to the Neighbourhood.

Table 1: discussion of the Easton Park Distinctive Neighbourhood Controls

CONTROL	RESPONSE
C1 Preserve the existing varied styles of housing with special regard to the modest scale and simple, unadorned nature of the architecture.	Complies The proposal maintains the existing simple façade to Foucart Street and the additions to the rear are not visible from the public domain. The proposed adjustment to the front window at ground floor level will have a negligible streetscape impact as the proportions of the existing window are retained. The works to the window remain symmetrical with the corresponding window in No. 102 Foucart Street.
C2 Preserve view lines to the south and east by stepping buildings with the prevailing topography.	Complies The proposal has been designed to ensure no impacts on views.
C3 Preserve the rhythm of the neighbourhood by maintaining the lot sizes, housing style and prevalence of hipped and pitched roofs. Preserve the established setbacks for each street.	Complies The proposal maintains the existing lot size and roof styles. No change is proposed to the existing front setback.
C4 Preserve the consistency and simplicity in built form, style and materials of the neighbourhood.	Complies The proposal generally maintains the existing simple built form and external materials evident in the locality.
C5 Maintain the existing roof forms, setbacks and fencing styles prevalent in each street.	Complies The proposal maintains the existing simple skillion style roof form. The existing front and side setbacks are maintained and the rear setback sits within the BLZ. The proposed side fences are consistent with the existing situation.
C6 Preserve stone cottages and stone walls throughout the neighbourhood.	N/A
C7 Maintain the established open low timber and iron picket front fences.	N/A
C8 Cutting into rock face for any purpose including driveway crossings, is to be avoided.	The proposal involves excavation at the rear of the site to accommodate additional internal floor area. Excavation has been minimised as far as is possible.
C9 A maximum building wall height of 3.6m applies to the neighbourhood	N/A
C10 A 6m maximum building wall height may be suitable where two storey terraced development is dominant.	No changes are proposed to the front building wall height.
C11 Front building setbacks within the neighbourhood should be a minimum of 1m. However, where the prevailing setbacks in the immediate area of the development site (i.e. the adjoining three (3) sites on either side of the development site) are different, the setback for new development should be compatible with the prevailing setbacks.	No changes are proposed to the front setback.
C12 Maintain roof forms with pitched, gable or hipped roofs.	Complies

CONTROL	RESPONSE
	The proposal maintains the existing front roof form with a skillion roof proposed at the rear.
C13 The use of traditional timber, stone or masonry finishes, iron roofing and timber windows is encouraged.	Complies
C14 Reconstruction of posted verandahs over footpaths may be considered on corner sites where the established setback is nil and the established scale is two storeys.	N/A
C15 Where structures are proposed to be built on top of exposed rock face(s), they are to be timber or rendered masonry and coloured to complement the sandstone.	No exposed rock faces are provided. The decking over the existing rock will comprise timber.

Furthermore, the proposed development is compliant with Leichhardt Development Control Plan 2013 in relation to the following, as outlined in the Statement of Environmental Effects report accompanying this DA:

- controls relating to alterations and additions to the rear of semi-detached dwellings (approach 3); and
- building location zones.

To this end, it is considered that the proposal is consistent with objective (c) despite the non-compliance with the landscaped area development standard.

(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

The proposed development will not materially alter the existing ability of the site to absorb stormwater, as a consequence of the maintenance of the status quo in terms of the provision of landscaped area. The proposed development will have no impact on underground water flows as discussed in the geotechnical assessment accompanying the DA.

To this end, it is considered that the proposal is consistent with objective (d) despite the non-compliance with the landscaped area development standard.

(e) to control site density.

LEP 2013 contains the following objectives with regard to FSR, which is generally considered to be a measure of density:

- (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."

The proposed development is considered to incorporate a density that is acceptable and consistent with the objectives of the FSR development standard, for the following reasons:

- the proposed development is consistent with the desired future character for the area, as outlined above in **Table 1**;
- the proposed development is generally consistent with the controls relating to alterations and additions to the rear of semi-detached dwellings at Part C1.3 of DCP 2013, as per **Table 2** below;
- the proposal improves the quality and functionality of landscaped areas and areas of private open space at the site as discussed herein;
- the quantum of landscaped area is consistent with that provided by other properties in the locality;
- the proposed development has no material overshadowing impacts in relation to living room windows and generally maintains the status quo in terms of solar access to adjoining private open spaces;
- the proposal has no known impact on views from nearby properties or the public domain; and
- the proposal does not have any unreasonable adverse visual or acoustic privacy impacts.

Table 2: compliance with Controls at Part C1.3 of DCP 2013

CONTROL	RESPONSE
<p>General provisions C1 The overall form of alterations and additions shall:</p> <p>a. have regard to the provisions within Appendix B – Building Typologies of this Development Control Plan;</p> <p>b. be compatible with the <i>scale</i>, form and material of the existing <i>dwelling</i> and adjoining <i>dwellings</i>, including wall height and roof form;</p> <p>c. retain any building and streetscape consistencies which add positively to the character of the neighbourhood (e.g. architectural details, continuous rows of <i>dwellings</i>, groups of similar <i>dwellings</i>, or the like);</p> <p>d. maintain the integrity of the streetscape and heritage significance; and</p> <p>e. be considered from all public vantage points from which the additions will be visible; and</p> <p>f. achieve the objectives and controls for the applicable desired future character</p>	<p>Complies The proposed alterations and additions have been designed having regard to the Design Approach 3 for alterations semi-detached dwellings – see discussion following in Table 3 below.</p> <p>Complies The proposed development maintains the existing apparent height of the existing building, at the front and rear, with the additional levels not visible from the public domain. The height of the proposed alterations at the rear is the same as the existing height.</p> <p>Complies The proposal retains the essential character and form of the existing building and enhances the contribution that it makes to the streetscape within which it is located.</p> <p>Complies The proposed development is acceptable in streetscape terms.</p> <p>Complies The proposed rear addition will not be apparent from any public vantage points.</p> <p>Complies See below.</p>

CONTROL	RESPONSE
<p>C2 Development shall preserve the consistency in architectural detail and form of continuous rows of attached <i>dwelling</i>s, or groups of similar <i>dwelling</i>s.</p> <p>C3 For end terraces / buildings, new works should be setback a minimum of 500mm from the end side wall to retain the historic form as it presents to the public domain.</p> <p>C4 Where buildings contain original form or detail which has been compromised, the integrity of the original form and detail should be enhanced, rather than being justification for further compromise. Note: This may include missing architectural detail and enclosed verandahs.</p> <p>C5 New materials and fenestrations of alterations and additions shall be compatible with the existing building.</p> <p>C6 The <i>reconstruction</i> of posted verandahs is encouraged where consistent with the architectural style of the building and suitable evidence of original verandahs is on that property.</p>	<p>Complies The proposal maintains consistency with the adjoining semi and the proposed alterations and additions do not impact on the ability of the adjoining semi to be altered in the future.</p> <p>N/A as the site is not an end terrace/building.</p> <p>Complies The proposal retains the existing chimney and front elevational proportions (refer to streetscape elevation and perspective).</p> <p>Complies The proposed materials and works are compatible with the existing and adjoining semis.</p> <p>N/A</p>
<p>For alterations and additions to the front of existing dwellings</p> <p>C7 Alterations and/or additions to the front of an existing <i>dwelling</i> must ensure that important elements of the original character of the building and its setting are retained, restored or reconstructed, where it contributes to the desired future character, including but not limited to:</p> <ul style="list-style-type: none"> a. balconies and verandahs; b. front gardens and landscaping; c. fences and walls; d. fenestration; e. roof forms. <p><i>Note: Refer to Building Typologies within Appendix B of this Development Control Plan for information about the type of building.</i></p>	<p>Complies</p> <p>The proposal does not alter the front of the dwelling (apart from a new bay window with the same proportions as the existing window) so that it will maintain the form and fenestration of the existing building (refer to front elevation and perspective). Similarly, existing landscaping and front balcony will be retained.</p>
<p>For alterations and additions to the side of existing dwellings</p> <p>C8 Alterations and additions to the side of an existing <i>dwelling</i> (where that <i>dwelling</i> is currently setback from the side property boundary), must:</p> <ul style="list-style-type: none"> a. endeavour to minimise visibility from the street; b. retain the predominant and desired future character of the street; 	<p>N/A</p>

CONTROL	RESPONSE
<p>c. ensure compliance with the remaining suite of controls within this Development Control Plan relating to residential development where relevant; and</p> <p>d. when located on the ground floor, the alterations and additions shall be:</p> <ul style="list-style-type: none"> i. setback a minimum of 1 metre from the front wall of the existing <i>dwelling</i>; and ii. have minimum ceiling heights and a roof form which is subordinate to the existing <i>dwelling</i>, to ensure the additions do not detract from the detached nature of the <i>dwelling</i>. <p><i>Note: Ground floor side additions which include provision for parking are to comply with Part C Section 1.11 – Parking of this Development Control Plan</i></p>	
<p>For alterations and additions to the rear of an existing dwelling– on any level</p> <p>C9 Alterations or additions to the rear of an existing building are to:</p> <ul style="list-style-type: none"> a. be of a building height that complies with the objectives and controls of the Site Layout and Building Design Part C3.2 of this Development Control Plan; b. maintain an area of useable <i>private open space</i> in accordance with Part C Section 3.8 – Private Open Space of this Development Control Plan; c. be of minimum visibility from the street (refer to <i>Figure C1</i>); d. comply with any other relevant residential development controls within this Development Control Plan. <p>C10 Where rear additions are visible from the public domain due to street layout or topography, maintaining original roof form is preferred and new additions are to be sympathetic to that original roof.</p> <p>C11 Alterations and additions above ground floor level shall:</p> <ul style="list-style-type: none"> a. comply with the appropriate provisions within Appendix B – Building Typologies of this Development Control Plan; b. maintain setback patterns within surrounding development; c. be subordinate to the existing building so that the additions do not dominate the building from the public domain. <p>C12 Additions at first floor and above shall be of a <i>scale</i> and are to be located in a manner which:</p>	<p>Complies</p> <p>The proposal does not alter the existing front building wall height.</p> <p>The proposal improves the provision and functionality of private open spaces at the rear of the site. The proposal incorporates a generous area of private open space at the rear of the site.</p> <p>The proposed additions are not visible from the street and comply with relevant provisions apart from FSR and landscaped area which are discussed in the Clause 4.6 variations accompanying the DA.</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

CONTROL	RESPONSE
<p>a. maintains visual separation between the existing building and adjoining residential development; and</p> <p>b. maintains setback patterns of surrounding development; and</p> <p>c. will ensure that the addition does not dominate, but is sub-ordinate to the existing <i>dwelling</i> when viewed from the street.</p> <p>C13 Any first floor and above additions to the side of the <i>dwelling</i> will not be supported where they detract from the detached or semi-detached nature of the streetscape or the existing <i>dwelling</i>. <i>Note: where an existing side setback exists, consideration of access for people and equipment for future maintenance and construction should occur, particularly if the side setback is the only point of access to the rear of the site.</i></p> <p>C14 Any first floor and above additions attached to the rear of the existing roof form is to:</p> <p>a. be subordinate to that roof form;</p> <p>i. where attached to the existing roof form, be set 300mm below the ridgeline;</p> <p>ii. enable the original roof form to be apparent from the public domain by:</p> <ul style="list-style-type: none"> • setting the additions back from the external face of the existing side roof plane (so the gable, hip or original parapet roof form is retained); or • comprising a rear sub roof linking the existing roof to additions that appear as a separate roof form to that of the existing <i>dwelling</i>. Any proposed link must be set 300mm below the existing ridgeline. 	<p>N/A</p> <p>N/A</p>
<p>Roof forms for alterations and additions</p> <p>C15 Appropriate roof forms for rear additions depend on the context of the site, and may include:</p> <p>a. pitched in form to match the predominant roof forms of the original property and / or its context; or</p> <p>b. boxed in form where not incongruous in the context, and where this approach reduces the visual impact of the addition, such that it is not overtly visible from the street; or</p> <p>c. a hybrid of roof forms where the appearance of the addition from the street is not overtly visible and is compatible with the Appendix B – Building Typologies of this Development Control Plan.</p>	<p>Complies</p> <p>The proposal incorporates a simple skillion style roof, as per the existing situation and the adjoining semi.</p>

CONTROL	RESPONSE
<p>C16 Where roof links are proposed to connect the original roof space to the new addition, they are to:</p> <ul style="list-style-type: none"> a. be of minimal scale and proportion (up to a maximum of 50% of the rear roof plane) and are to provide a link only. Roof links which span the whole rear roof plane will not be supported; b. preserve the unity of the row, preserve chimneys and traditional scale and proportion in the street; c. not raise the roof ridge for the purpose of an internal room's compliance with the Building Code of Australia; and d. be located below the original ridge line, including clerestory roofs. 	<p>N/A</p>
<p>C17 Original front verandah roofs are generally to:</p> <ul style="list-style-type: none"> a. remain separate from the main roof slope; and b. reconstruct original form and detail where there is evidence that a front verandah was a part of the original building (evidence is often found in the fabric of the blade wall or similar). 	<p>Complies</p> <p>The proposal retains the existing front verandah roof.</p>

Table 3: compliance with Controls relating to alterations and additions to 2/3 storey terraces in Appendix B of DCP 2013

CONTROL	RESPONSE
<p>C1 Development shall:</p> <ul style="list-style-type: none"> a. retain the curtilage and setting of the pair; b. retain the presentation of the building to the street including the single storey scale, roof form, building massing and façade proportions; c. maintain the original symmetrical character and appearance of pairs of houses where it is still evident; d. protect the amenity of each house and its neighbours; and e. restore/reconstruct original forms, finishes and details. 	<p>Complies</p> <p>The proposal is responsive to the curtilage and setting of the pair of semi-detached dwellings.</p> <p>The proposal retains the streetscape presentation and proportions of the existing semi- ensuring the maintenance quo in terms of relationship with the adjoining semi.</p> <p>The proposal has been designed to minimise impacts on neighbours as discussed throughout this report.</p> <p>The proposed external colours, materials and finishes are acceptable in the context of the site and existing dwelling.</p>
<p>C2 Alterations and additions to either house are:</p> <ul style="list-style-type: none"> a. to be subordinate to the main form of the pair such that they do not dominate one or both houses; b. not to compromise the symmetry and/or 	<p>Complies</p> <p>The proposed alterations and additions are confined to the rear of the existing semi and have been designed to ensure that neither semi is dominated.</p>

CONTROL	RESPONSE
proportions and massing of the pair; and c. not to incorporate materials and finishes on the front elevation which could detract from or dominate the appearance of the other.	The proposed works do not compromise the symmetry or massing of the pair given their location at the rear of the site and the proposed materials and finishes.
C3 Rear additions to either dwelling are to be carefully sited and designed to: a. optimise daylight and natural ventilation to both dwellings of the pair; b. minimise overshadowing and privacy impacts; and c. provide sun access to private open space. Note: Adjoining land owners are encouraged to develop an integrated design approach to any additions to the pair of dwellings. In some circumstances it may not be possible for only one of the pair to be extended, due to the adverse impacts on the other.	Complies The proposal maintains excellent daylight and ventilation to both dwellings. The proposal has no significant or unreasonable overshadowing impacts in relation to the adjoining properties. Privacy impacts have been addressed with the provision of boundary fencing/screening. The adjoining dwelling to the south maintains existing solar access to its private open space.
C4 Side setbacks are to be maintained.	Complies The proposal maintains existing side setbacks.
C5 Dormer windows may only be approved in the following circumstances: a. on the rear roof plane of any building; b. to be vertically proportioned and with the same pitch as the main roof, or c. may be a skillion type dormer at the rear of the property	N/A

To this end, it is considered that the proposal is consistent with objective (e) despite the non-compliance with the landscaped area development standard.

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

The proposed development has been designed in response to the constraints of the site and the clients' desire to improve the amenity and functionality of the internal and external spaces at the site. To this end, the proposal incorporates private open space at the rear of the site, having a minimum dimension of 4m and an overall area of 24m².

The proposed private open space is proposed to be lowered from the existing level, to improve its relationship with the rear of the dwelling house and to provide improvements to privacy between the site and neighbouring properties.

Despite the non-compliance with the minimum landscaped area requirement, the proposed private open space provides significant amenity for the occupants of the dwelling and is considered acceptable for the following reasons:

- the private open space exceeds the minimum dimension requirement;
- accommodates a significant area of landscaping across the whole of the rear of the site;
- the space is functional and large enough to be appropriately furnished, including furniture, a BBQ and spa with adjoining areas of planting;

- the space integrates with and is capable of serving as an outdoor extension of the dwelling's main open plan kitchen/dining/living area at ground floor level;
- the space has access to desirable breezes, air circulation and sunlight given its northern orientation;
- the space is located at ground floor level and will not permit any overlooking into adjoining properties;
- the space provides useable private open space within the constraints posed by altering an existing building on a small allotment; and
- the provision of landscaping is commensurate with that provided for other dwellings in the locality, as can be seen in Figure 1 above.

To this end, it is considered that the proposal is consistent with objective (f) despite the non-compliance with the landscaped area development standard.

4.2 R1 General residential zone objectives

The site is located in the R1 General Residential zone. The proposal for alterations and additions to the existing dwelling house is permissible with consent in the zone.

The objectives of the R1 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 consistent with the abovestated zone objectives, as follows:

- the proposal provides improved amenity within the existing dwelling house to ensure that the dwelling house continues to provide for the housing needs of the community;
- the proposal improves the functionality and liveability of the existing dwelling house to contribute to the provision of a variety of housing types and densities in the area;
- the proposal incorporates internal space which allows flexibility in terms of the ability to carry out work-from-home activities;
- the proposal maintains the general siting and orientation of the existing building. The proposed rear additions sit comfortably within the rear Building Location Zone, so as to ensure an appropriate relationship to the adjoining properties to the north and south. The proposed additions sit below the existing ridge so as to minimise streetscape, overshadowing and view-related impacts;

- the proposal provides pleasant outdoor spaces for the enjoyment of future residents;
- the proposal does not alter the existing pattern of subdivision or orientation of the existing dwelling house; and
- the proposal has no unreasonable adverse environmental impacts in relation to nearby properties and the streetscape, as discussed throughout this report.

To this end, the proposal is consistent with the objectives of the zone despite the non-compliance with the landscaped area development standard.

4.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objectives of the Standards is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

4.4 Has the development standard 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?

It is not considered that the Standards have been virtually abandoned or destroyed by Council's actions, however, having regard to the particulars of this Application, and the amenity gains resulting from the non-compliance, it is considered that flexibility in the application of the Standard is warranted.

While not demonstrating abandonment, it is reiterated that the quantum of landscaped area proposed at the site is commensurate with that for other dwellings within the vicinity of the site, demonstrating consistency with the character of development in the locality.

4.5 Is compliance with development standard unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone?

There are no specific land use or environmental characteristics which would render compliance with the development standard unreasonable or inappropriate.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

5.1 What is the aspect or feature of the development that contravenes the development standard?

As discussed previously, the proposed configuration of the ground floor level of the proposed dwelling house result in a development which fails to comply with the minimum landscaped area development standard.

5.2 Why is contravention of the development standard acceptable?

Contravention of the minimum landscaped area development standard is considered acceptable for the following reasons:

- the proposed development maximises the provision of external open space areas which are functional and useable. The proposal significantly improves the functionality and amenity of the spaces when compared to the existing situation. In the event that the development was redesigned to comply with the minimum landscaped area standard, it would necessitate demolition of a significant area of the dwelling house, which is already limited. This would achieve compliance with the site coverage and landscaped area controls but would result in compromises to the internal amenity and functionality of the dwelling house; and
- the proposed contravention of the standard is considered acceptable the proposal provides additional landscaped area when compared to the existing situation, in a form which is highly functional and will achieve excellent amenity for the occupants of the dwelling.

5.3 On what basis there are sufficient environmental planning grounds to justify contravening the development standard?**5.3.1 Clause 4.6(5)(A) - Matters of State or Regional Environmental Planning**

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

5.3.2 Clause 4.6(5)(B) - The Public Interest

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance.

The proposed departure from the standard does not create any unreasonable adverse amenity or streetscape impacts, as discussed herein.

Furthermore, the proposal is considered to meet the public interest, as it results in sensitively designed alterations and additions to an existing semi-detached dwelling in a manner which improves its amenity and functionality without compromising the ability of the other dwelling in the pair to achieve a similar outcome.

The proposal enables the existing dwelling to continue to provide a high level of amenity for its occupants in a form which enables the significant fabric to be retained and enjoyed without any material adverse amenity impacts.

5.3.3 Clause 4.6(5)(C) - Any Other Matters Required To Be Considered

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

As can be seen from the discussion herein, the proposed development is consistent with the objectives of the development standard and R1 General Residential zone pursuant to LLEP 2013 despite the non-compliance with the landscaped area development standard.

It is considered that the proposal has adequately addressed the matters outlined in Section 4.6(3) – (5) of LEP 2013.

6.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of LEP 2013, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clauses 4.3 of LEP 2013 and on this basis, an exception to Clauses 4.3A(3)(a) of Leichhardt LEP 2013 is considered well-founded, and worthy of Council's support.



REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.4(2B)(a)(i) of LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

This Clause 4.6 Exception Submission has been prepared by the Slattery Planning Group on behalf of Mr. Steve Martin & Ms. Natalia Gonzalez (the Applicants), in relation to a Development Application for the property at No. 104 Foucart Street, Rozelle (the site).

This Submission is made to Inner West Council in support of a Development Application (DA) for alterations and additions to the existing semi-detached dwelling house at the site.

This request has been prepared having regard to:

- Land and Environment Court of NSW judgment in Winten Property v North Sydney Council [2001];
- Land and Environment Court of NSW judgment in Wehbe v Pittwater Council [2007];
- Land and Environment Court of NSW judgments in Four2Five Pty Ltd v Ashfield Council [2015];
- NSW Department of Planning and Infrastructure's Varying Development Standards: A Guide 2015; and
- Land and Environment Court of NSW judgment in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

1.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

1.1 Clause 4.4(2B)(b)(i) of Leichhardt Local Environmental Plan 2013

Pursuant to Clause 4.4(2B)(a)(i) of LEP 2013, a maximum Floor Space Ratio (FSR) of 0.9:1 is permitted at the site. This equates with a Gross Floor Area (GFA) of 91.62m² at the site.

1.2 What is the extent of the non-compliance?

The site has an area of 101.8m².

The existing dwelling house has a Gross Floor Area (GFA) of 92.67m² and an FSR of 0.91:1.

The proposed alterations and additions seek to introduce an additional 15.58m² of GFA, resulting in a GFA of 108.25m² and an FSR of 1.06:1. The proposal is therefore non-compliant by 16.63m² or 18.15%.

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2.0 CLAUSE 4.6 OBJECTIVES

Clause 4.6 of LEP 2013 has the following objectives:

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

As discussed below, it is considered appropriate to invoke the provisions of Clause 4.6 of LEP 2013, in order to achieve a positive planning outcome at the site.

3.0 CLAUSE 4.6(3) PROVISIONS

Clause 4.6(3) states that development consent must not be granted for development that contravenes a Development Standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating the following:

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

The following discussion constitutes a written request seeking to justify the contravention of Clause 4.4 of LEP 2013.

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4.1 Clause 4.4 Objectives

The objectives of Clause 4.4 of LEP 2013 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.”*

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

The proposed development is compatible with the desired future character of the area in relation to bulk, form and scale as:

- the proposed additions are located at the rear of the dwelling and will not be visible from the public domain;
- the proposed addition at the rear will have an apparent single storey scale, due to the significant previous excavation which has occurred and topography of the site;

- the proposed addition sits comfortably between the dwelling houses to the immediate north and south;
- the proposal is consistent with the Controls for development in the Easton Park Distinctive Locality, as outlined in Table 1 below;
- the proposal is consistent with the Controls for alterations and additions to suggested approach 3 for alterations and additions to semi-detached dwellings, as outlined below in Table 2; and
- the proposal is consistent with relevant Controls at Part C1.3 of LDCP 2013, as outlined in Table 3.

Table 1: discussion of the Easton Park Distinctive Neighbourhood Controls

CONTROL	RESPONSE
C1 Preserve the existing varied styles of housing with special regard to the modest scale and simple, unadorned nature of the architecture.	Complies The proposal maintains the existing simple façade to Foucart Street and the additions to the rear are not visible from the public domain.
C2 Preserve view lines to the south and east by stepping buildings with the prevailing topography.	Complies The proposal has been designed to ensure no impacts on views.
C3 Preserve the rhythm of the neighbourhood by maintaining the lot sizes, housing style and prevalence of hipped and pitched roofs. Preserve the established setbacks for each street.	Complies The proposal maintains the existing lot size and roof styles. No change is proposed to the existing front setback.
C4 Preserve the consistency and simplicity in built form, style and materials of the neighbourhood.	Complies The proposal generally maintains the existing simple built form and external materials evident in the locality.
C5 Maintain the existing roof forms, setbacks and fencing styles prevalent in each street.	Complies The proposal maintains the existing simple skillion style roof form. The existing front and side setbacks are maintained and the rear setback sits within the BLZ. The proposed side fences are consistent with the existing situation.
C6 Preserve stone cottages and stone walls throughout the neighbourhood.	N/A
C7 Maintain the established open low timber and iron picket front fences.	N/A
C8 Cutting into rock face for any purpose including driveway crossings, is to be avoided.	The proposal involves excavation at the rear of the site to accommodate additional internal floor area.
C9 A maximum building wall height of 3.6m applies to the neighbourhood	N/A
C10 A 6m maximum building wall height may be suitable where two storey terraced development is dominant.	No changes are proposed to the front building wall height.
C11 Front building setbacks within the neighbourhood should be a minimum of 1m. However, where the prevailing setbacks in the immediate area of the development site (i.e. the adjoining three (3) sites on either side of the development site) are different,	No changes are proposed to the front setback.

CONTROL	RESPONSE
the setback for new development should be compatible with the prevailing setbacks.	
C12 Maintain roof forms with pitched, gable or hipped roofs.	Complies The proposal maintains the existing front roof form with a skillion roof proposed at the rear.
C13 The use of traditional timber, stone or masonry finishes, iron roofing and timber windows is encouraged.	Complies
C14 Reconstruction of posted verandahs over footpaths may be considered on corner sites where the established setback is nil and the established scale is two storeys.	N/A
C15 Where structures are proposed to be built on top of exposed rock face(s), they are to be timber or rendered masonry and coloured to complement the sandstone.	No exposed rock faces are provided.

Table 2: compliance with Controls relating to alterations and additions to 2/3 storey terraces in Appendix B of DCP 2013

CONTROL	RESPONSE
C1 Development shall: a. retain the curtilage and setting of the pair; b. retain the presentation of the building to the street including the single storey scale, roof form, building massing and façade proportions; c. maintain the original symmetrical character and appearance of pairs of houses where it is still evident; d. protect the amenity of each house and its neighbours; and e. restore/reconstruct original forms, finishes and details.	Complies The proposal is responsive to the curtilage and setting of the pair of semi detached dwellings. The proposal retains the streetscape presentation and proportions of the existing semi- ensuring the maintenance quo in terms of relationship with the adjoining semi. The proposal has been designed to minimise impacts on neighbours as discussed throughout this report. The proposed external colours, materials and finishes are acceptable in the context of the site and existing dwelling.
C2 Alterations and additions to either house are: a. to be subordinate to the main form of the pair such that they do not dominate one or both houses; b. not to compromise the symmetry and/or proportions and massing of the pair; and c. not to incorporate materials and finishes on the front elevation which could detract from or dominate the appearance of the other.	Complies The proposed alterations and additions are confined to the rear of the existing semi and have been designed to ensure that neither semi is dominated. The proposed works do not compromise the symmetry or massing of the pair given their location at the rear of the site and the proposed materials and finishes.
C3 Rear additions to either dwelling are to be carefully sited and designed to: a. optimise daylight and natural ventilation to both dwellings of the pair; b. minimise overshadowing and privacy impacts; and	Complies The proposal maintains excellent daylight and ventilation to both dwellings. The proposal has no unreasonable adverse

CONTROL	RESPONSE
<p>c. provide sun access to private open space.</p> <p>Note: Adjoining land owners are encouraged to develop an integrated design approach to any additions to the pair of dwellings. In some circumstances it may not be possible for only one of the pair to be extended, due to the adverse impacts on the other.</p>	<p>overshadowing impacts in relation to the adjoining properties.</p> <p>Privacy impacts have been addressed with the provision of boundary fencing/screening.</p> <p>The adjoining dwelling to the south maintains existing solar access to its private open space.</p>
<p>C4 Side setbacks are to be maintained.</p>	<p>Complies</p> <p>The proposal maintains existing side setbacks.</p>
<p>C5 Dormer windows may only be approved in the following circumstances: a. on the rear roof plane of any building; b. to be vertically proportioned and with the same pitch as the main roof; or c. may be a skillion type dormer at the rear of the property</p>	<p>N/A</p>

Table 3: compliance with Controls at Part C1.3 of DCP 2013

CONTROL	RESPONSE
<p>General provisions</p> <p>C1 The overall form of alterations and additions shall:</p> <p>a. have regard to the provisions within Appendix B – Building Typologies of this Development Control Plan;</p> <p>b. be compatible with the <i>scale</i>, form and material of the existing <i>dwelling</i> and adjoining <i>dwellings</i>, including wall height and roof form;</p> <p>c. retain any building and streetscape consistencies which add positively to the character of the neighbourhood (e.g. architectural details, continuous rows of <i>dwellings</i>, groups of similar <i>dwellings</i>, or the like);</p> <p>d. maintain the integrity of the streetscape and heritage significance; and</p> <p>e. be considered from all public vantage points from which the additions will be visible; and</p> <p>f. achieve the objectives and controls</p>	<p>Complies</p> <p>The proposed alterations and additions have been designed having regard to the Design Approach 3 for alterations semi-detached dwellings – see discussion following in Table 3 below.</p> <p>Complies</p> <p>The proposed development maintains the existing apparent height of the existing building, at the front and rear, with the additional levels not visible from the public domain. The height of the proposed alterations at the rear is the same as the existing height.</p> <p>Complies</p> <p>The proposal retains the essential character and form of the existing building and enhances the contribution that it makes to the streetscape within which it is located.</p> <p>Complies</p> <p>The proposed development is acceptable in streetscape terms.</p> <p>Complies</p> <p>The proposed rear addition will not be apparent from any public vantage points.</p> <p>Complies</p>

CONTROL	RESPONSE
<p>for the applicable desired future character</p> <p>C2 Development shall preserve the consistency in architectural detail and form of continuous rows of attached <i>dwelling</i>s, or groups of similar <i>dwelling</i>s.</p> <p>C3 For end terraces / buildings, new works should be setback a minimum of 500mm from the end side wall to retain the historic form as it presents to the public domain.</p> <p>C4 Where buildings contain original form or detail which has been compromised, the integrity of the original form and detail should be enhanced, rather than being justification for further compromise. Note: This may include missing architectural detail and enclosed verandahs.</p> <p>C5 New materials and fenestrations of alterations and additions shall be compatible with the existing building.</p> <p>C6 The <i>reconstruction</i> of posted verandahs is encouraged where consistent with the architectural style of the building and suitable evidence of original verandahs is on that property.</p>	<p>See Section 4.1.5.10 below.</p> <p>Complies The proposal maintains consistency with the adjoining semi and the proposed alterations and additions do not impact on the ability of the adjoining semi to be altered in the future.</p> <p>N/A as the site is not an end terrace/building.</p> <p>Complies The proposal retains the existing chimney and front elevational proportions.</p> <p>Complies The proposed materials and works are compatible with the existing and adjoining semis.</p> <p>N/A</p>
<p>For alterations and additions to the front of existing dwellings</p> <p>C7 Alterations and/or additions to the front of an existing <i>dwelling</i> must ensure that important elements of the original character of the building and its setting are retained, restored or reconstructed, where it contributes to the desired future character, including but not limited to:</p> <ul style="list-style-type: none"> a. balconies and verandahs; b. front gardens and landscaping; c. fences and walls; d. fenestration; e. roof forms. <p><i>Note: Refer to Building Typologies within Appendix B of this Development Control Plan for information about the type of building.</i></p>	<p>Complies</p> <p>The proposal does not alter the front of the dwelling (apart from a new bay window with the same proportions as the existing window) so that it will maintain the form and fenestration of the existing building. Similarly, existing landscaping and front balcony will be retained.</p>
<p>For alterations and additions to the side of existing dwellings</p> <p>C8 Alterations and additions to the side of an existing <i>dwelling</i> (where that <i>dwelling</i> is currently setback from the side property boundary), must:</p> <ul style="list-style-type: none"> a. endeavour to minimise visibility from the street; 	<p>N/A</p>

CONTROL	RESPONSE
<p>b. retain the predominant and desired future character of the street;</p> <p>c. ensure compliance with the remaining suite of controls within this Development Control Plan relating to residential development where relevant; and</p> <p>d. when located on the ground floor, the alterations and additions shall be:</p> <ul style="list-style-type: none"> i. setback a minimum of 1 metre from the front wall of the existing <i>dwelling</i>; and ii. have minimum ceiling heights and a roof form which is subordinate to the existing <i>dwelling</i>, to ensure the additions do not detract from the detached nature of the <i>dwelling</i>. <p><i>Note: Ground floor side additions which include provision for parking are to comply with Part C Section 1.11 – Parking of this Development Control Plan</i></p>	
<p>For alterations and additions to the rear of an existing dwelling– on any level</p> <p>C9 Alterations or additions to the rear of an existing building are to:</p> <ul style="list-style-type: none"> a. be of a building height that complies with the objectives and controls of the Site Layout and Building Design Part C3.2 of this Development Control Plan; b. maintain an area of useable <i>private open space</i> in accordance with Part C Section 3.8 – Private Open Space of this Development Control Plan; c. be of minimum visibility from the street (refer to <i>Figure C1</i>); d. comply with any other relevant residential development controls within this Development Control Plan. <p>C10 Where rear additions are visible from the public domain due to street layout or topography, maintaining original roof form is preferred and new additions are to be sympathetic to that original roof.</p> <p>C11 Alterations and additions above ground floor level shall:</p> <ul style="list-style-type: none"> a. comply with the appropriate provisions within Appendix B – Building Typologies of this Development Control Plan; b. maintain setback patterns within surrounding development; c. be subordinate to the existing building so that the additions do not dominate the building from the public domain. <p>C12 Additions at first floor and above shall</p>	<p>Complies</p> <p>The proposal does not alter the existing front building wall height.</p> <p>The proposal improves the provision and functionality of private open spaces at the rear of the site. The proposal incorporates 24m² of private open space at the rear of the site.</p> <p>The proposed additions are not visible from the street and comply with relevant provisions apart from FSR and landscaped area which are discussed in the Clause 4.6 variations accompanying this DA.</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

CONTROL	RESPONSE
<p>be of a <i>scale</i> and are to be located in a manner which:</p> <ul style="list-style-type: none"> a. maintains visual separation between the existing building and adjoining residential development; and b. maintains setback patterns of surrounding development; and c. will ensure that the addition does not dominate, but is sub-ordinate to the existing <i>dwelling</i> when viewed from the street. <p>C13 Any first floor and above additions to the side of the <i>dwelling</i> will not be supported where they detract from the detached or semi-detached nature of the streetscape or the existing <i>dwelling</i>.</p> <p><i>Note: where an existing side setback exists, consideration of access for people and equipment for future maintenance and construction should occur, particularly if the side setback is the only point of access to the rear of the site.</i></p> <p>C14 Any first floor and above additions attached to the rear of the existing roof form is to:</p> <ul style="list-style-type: none"> a. be subordinate to that roof form; <ul style="list-style-type: none"> I. where attached to the existing roof form, be set 300mm below the ridgeline; II. enable the original roof form to be apparent from the public domain by: <ul style="list-style-type: none"> • setting the additions back from the external face of the existing side roof plane (so the gable, hip or original parapet roof form is retained); or • comprising a rear sub roof linking the existing roof to additions that appear as a separate roof form to that of the existing <i>dwelling</i>. Any proposed link must be set 300mm below the existing ridgeline. 	<p>N/A</p> <p>N/A</p>
<p>Roof forms for alterations and additions</p> <p>C15 Appropriate roof forms for rear additions depend on the context of the site, and may include:</p> <ul style="list-style-type: none"> a. pitched in form to match the predominant roof forms of the original property and / or its context; or b. boxed in form where not incongruous in the context, and where this approach reduces the visual impact of the addition, such that it is not overtly visible from the street; or c. a hybrid of roof forms where the appearance of the addition from the street is not overtly visible and is compatible with the 	<p>Complies</p> <p>The proposal incorporates a simple skillion style roof, as per the existing situation and the adjoining semi.</p>

CONTROL	RESPONSE
Appendix B – Building Typologies of this Development Control Plan.	
<p>C16 Where roof links are proposed to connect the original roof space to the new addition, they are to:</p> <ul style="list-style-type: none"> a. be of minimal <i>scale</i> and proportion (up to a maximum of 50% of the rear roof plane) and are to provide a link only. Roof links which span the whole rear roof plane will not be supported; b. preserve the unity of the row, preserve chimneys and traditional <i>scale</i> and proportion in the street; c. not raise the roof ridge for the purpose of an internal room's compliance with the Building Code of Australia; and d. be located below the original ridge line, including clerestory roofs. 	N/A
<p>C17 Original front verandah roofs are generally to:</p> <ul style="list-style-type: none"> a. remain separate from the main roof slope; and b. reconstruct original form and detail where there is evidence that a front verandah was a part of the original building (evidence is often found in the fabric of the blade wall or similar). 	<p>Complies</p> <p>The proposal retains the existing front verandah roof.</p>

Having regard to the discussion above, it is considered that the proposal is consistent with objective (a)(i) despite the non-compliance with the FSR development standard.

(a)(ii) to ensure that residential accommodation provides a suitable balance between landscaped areas and the built form

The proposed development increases the provision of landscaped area when compared to the existing situation. This improves the balance between landscaped areas and built form and ensures that a high level of internal and external amenity is achieved at the site.

The proposed development also lowers the level of the rear private open space to achieve a generally a contiguous area with an improved relationship with the internal levels at first floor level.

It appears that the properties in the vicinity of the site have similar building footprints as that proposed.

The proposal provides 8.7m² or 8.5% of the site as landscaped area, representing an improvement to the existing situation, which incorporates only 1.71m².

The proposal could be amended to achieve technical compliance with the FSR development standard without any impact on the provision of landscaping at the site and having regard to the amenity improvements achieved both internally and externally at the site, the proposal is considered acceptable.

Having regard to the discussion above, it is considered that the proposal is consistent with objective (a)(ii) despite the non-compliance with the FSR development standard.

(a)(iii) to ensure that residential accommodation minimises the impact of the bulk and scale of buildings

As discussed above in Tables 1 to 3 inclusive, the proposed development is generally consistent with the controls applicable to the type of development proposed at the site.

The proposed bulk and scale are generally consistent with that envisaged by the applicable planning controls and result in a form which relates appropriately to other development in the locality, with particular regard to the dwelling house to the north and the adjoining semi to the south.

Shadow diagrams accompanying this DA show that the proposal will not create any overshadowing of windows of any nearby dwellings on 21 June. The proposal creates minor additional overshadowing to the rear yard of No. 102 Foucart Street on 21 June however the impact is minor and solar access is retained to part of the rear yard at between 10am and 2pm on 21 June.

Furthermore, the proposal is consistent with the Building Location Zone control and does not alter the existing front wall height control applicable to the site, furthermore reinforcing the appropriateness of the bulk and scale of the proposed development.

Having regard to the discussion above, it is considered that the proposal is consistent with objective (a)(iii) despite the non-compliance with the FSR development standard.

(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

On the basis that this DA relates to residential development, objective (b) is not applicable.

4.2 R1 General residential zone objectives

The site is located in the R1 General Residential zone. The proposal for alterations and additions to the existing dwelling house is permissible with consent in the zone.

The objectives of the R1 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 consistent with the abovestated zone objectives, as follows:

- the proposal provides improved amenity within the existing dwelling house to ensure that the dwelling house continues to provide for the housing needs of the community;
- the proposal improves the functionality and liveability of the existing dwelling house to contribute to the provision of a variety of housing types and densities in the area;
- the proposal incorporates internal space which allows flexibility in terms of the ability to carry out work-from-home activities;
- the proposal maintains the general siting and orientation of the existing building. The proposed rear additions sit comfortably within the rear Building Location Zone, so as to ensure an appropriate relationship to the adjoining properties to the north and south. The proposed additions sit below the existing ridge so as to minimise streetscape, overshadowing and view-related impacts;
- the proposal provides pleasant outdoor spaces for the enjoyment of future residents;
- the proposal does not alter the existing pattern of subdivision or orientation of the existing dwelling house; and
- the proposal has no unreasonable adverse environmental impacts in relation to nearby properties and the streetscape, as discussed throughout this report.

To this end, the proposal is consistent with the objectives of the zone despite the non-compliance with the FSR development standard.

4.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objective of the Standards is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

4.4 Has the development standard 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?

It is not considered that the Standard has been virtually abandoned or destroyed by Council's actions, however, having regard to the particulars of this Application, and the internal amenity gains resulting from the non-compliance, it is considered that flexibility in the application of the Standard is warranted.

While not demonstrating abandonment, it is reiterated that the FSR and associated bulk and scale which are proposed at the site are commensurate with that for other

dwellings in the locality, demonstrating consistency with the character of development in the vicinity of the site.

4.5 Is compliance with development standard unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone?

There are no specific land use or environmental characteristics which would render compliance with the development standard unreasonable or inappropriate. However, it is noted that the proposed FSR is commensurate with that of other dwellings in the vicinity, which is largely a function of the modest size of the site/s.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

5.1 What is the aspect or feature of the development that contravenes the development standard?

As discussed previously, the proposed alterations and additions result in a development which fails to comply with the FSR development standard.

5.2 Why is contravention of the development standard acceptable?

Contravention of the development standard is considered acceptable for the following reasons:

- the proposed dwelling floor layout maximises the provision of external open space areas which are functional and useable. In the event that the development was redesigned to comply with the FSR standard, there would be no material gains to any nearby properties in terms of a reduction in impacts, as the proposal is generally consistent with the DCP building envelope controls and meets the requirements of the DCP in relation to overshadowing, overlooking and general overbearing impacts;
- 5.63m² of the GFA is located below existing ground level. If this area were excluded from the GFA of the proposal, as it does not add to the bulk or scale of the building and is not visible from any adjoining properties, the proposal would have a total GFA of 102.62m² and an FSR of 1:1, close to achieving compliance and commensurate with the existing FSR on the site; and
- the proposed contravention of the maximum FSR development standard is considered acceptable as it enables the dwelling house to be configured in a manner which ensures it is useable and functional and incorporates sufficient space to meet contemporary amenity requirements. Compliance with the FSR standard could be achieved, however this would necessitate deleting internal floor area, which would compromise the amenity and functionality of the dwelling house. It is considered that on the basis that the proposal meets the objectives of the development standard and zone despite the non-compliance with the FSR standard, and having regard to the amenity benefits arising from the proposed alterations and additions, it is considered that the non-compliance is acceptable

5.3 On what basis there are sufficient environmental planning grounds to justify contravening the development standard?

5.3.1 Clause 4.6(5)(A) - Matters of State or Regional Environmental Planning

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

5.3.2 Clause 4.6(5)(B) - The Public Interest

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance.

The proposed departure from the standard does not create any unreasonable adverse amenity or streetscape impacts, as discussed herein. Furthermore, the proposal is considered to meet the public interest, as it results in sensitively designed alterations and additions to an existing semi-detached dwelling in a manner which does not have any discernible streetscape impacts and which will not adversely impact on the amenity of nearby properties. The proposal enables the existing dwelling to continue to provide a high level of amenity for its occupants.

5.3.3 Clause 4.6(5)(C) – Any Other Matters Required To Be Considered

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

As can be seen from the discussion herein, the proposed development is consistent with the objectives of the development standard and R1 General Residential zone pursuant to LEP 2013 despite the non-compliance with the FSR development standard.

It is considered that the proposal has adequately addressed the matters outlined in Section 4.6(3) – (5) of LEP 2013.

6.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of LEP 2013, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clause 4.4 of LEP 2013 and on this basis, an exception to Clause 4.4(2B)(a)(i) of Leichhardt LEP 2013 is considered well-founded, and worthy of Council's support.