





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2020/0079
Address	50 Mackenzie Street LEICHHARDT NSW 2040
Proposal	Demolish existing structure at rear of site, which encroaches 52 Mackenzie Street and 43 Annesley Street, and replacement with new garage and associated works.
Date of Lodgement	17 February 2020
Applicant	Adam Feigl
Owner	Mr Gary J Smith Ms Renee M Sadler
Number of Submissions	Initial: 1 After Renotification: 1
Value of works	\$98,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	FSR variation of 20.09%
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	
Notified Area	
Objectors	
Supporters	
	 N

1. Executive Summary

This report is an assessment of the application submitted to Council to demolish the existing structure at the rear of the site, which encroaches 52 Mackenzie Street and 43 Annesley Street, and replacement with new garage and associated works at 50 Mackenzie Street, Leichhardt.

The application was notified to surrounding properties and one (1) submission was received in response to the initial notification. One (1) submission was received in response to renotification of the application.

The main issues that have arisen from the application include:

- FSR variation of 20.09%.

Subject to a reduction in the height and bulk of the garage, as recommended by conditions, the non-compliance is acceptable given that the proposal will comply with the aims and objectives of the *Leichhardt Local Environmental Plan 2013* and the Leichhardt Development Control Plan 2013, and the applicant's Clause 4.6 request to vary the maximum floor space ratio development standard can be supported and, therefore, the application is recommended for approval.

2. Proposal

Approval is sought to demolish and replace the existing garage at the rear of the site and the existing boundary fence along the southern boundary.

3. Site Description

The subject site is located on the western side of Mackenzie Street, at its intersection with Annesley Street. It has a total area of 220.1 sqm and is legally described as Lot 33 in Deposited Plan 660867.

The site has a frontage to Mackenzie Street of 6.095 metres and a frontage of 36.17 metres to Annesley Street.

The site supports a two-storey detached dwelling house. The adjoining properties support single and two-storey dwelling houses.

The following trees are located along the southern boundary of the site:

- Jacaranda; and
- Frangipani.



Figure 1: Zoning map

4. Background

4(a) Site history

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

Subject and Surrounding Sites:

No recent relevant history.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
17/02/2020	Application lodged proposing demolition of existing garage at rear and replacement with a garage and studio / study over with street balcony and new fencing to Annesley Street.
29/04/2020	Council wrote to the applicant raising the following concerns: <ul style="list-style-type: none"> • Non-compliance with maximum floor space ratio; • Contrary to the existing and desired future character of the neighbourhood; • Height, bulk and scale concerns; • Adverse visual privacy impacts; • Non-compliance with Australian Standard AS/NZS2890.1-2004 Parking Facilities–Off-street car parking and other

	<p>requirements;</p> <ul style="list-style-type: none"> • Concern regarding detrimental impacts on the Jacaranda at the rear of the site; • Encroachment of the first-floor balcony over the public domain; • Inadequate owner’s consent from No. 52 Mackenzie Street. <p>As a result, Council requested the following:</p> <ul style="list-style-type: none"> • Deletion of the studio above the garage; • Deletion of any building parts that encroach over the public domain; • Adequate owner’s consent from adjoining properties; • The proposed masonry fence along the southern boundary to be replaced with a lightweight structure; and • A detailed pruning specification and a detailed, site specific tree protection plan prepared in accordance with Council's Development Fact Sheets—Arborist Reports and Trees on Development Sites prepared by an AQF5 qualified Arborist. <p>In addition, given that the existing garage does not achieve compliance with relevant standards regarding off-street car parking requirements, Council outlined that an amended design of the garage may be supported.</p>
<p>18/05/2020</p>	<p>The applicant submitted amended plans that included, <i>inter alia</i>, the following amendments:</p> <ul style="list-style-type: none"> • Deletion of the studio above the garage; • Increase of the width of the proposed garage; • Deletion of the outdoor stairs and privacy screening along the northern boundary to access the studio; • The boundary fence along the southern boundary to be constructed of lightweight materials. <p>In addition, the applicant submitted unconditional owner’s consent for the demolition of the existing garage from the owner of No. 52 Mackenzie Street and an Arborist report.</p>

Whilst the amended plans and additional information submitted addressed most of the concerns raised, the amended plans propose that parts of the roof and downpipe of the garage are encroaching over the public domain along the southern boundary. No owner’s consent has been provided for this and, as a result, a design change condition is included in Attachment A, requiring that all proposed works are wholly within the boundary of No. 50 Mackenzie Street.

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*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

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

The site has not been used in the past for activities, which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

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

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

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

- 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 4.6 - Exceptions to development standards
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management

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

The site is zoned R1 - General Residential under the *LLEP 2013*.

The development, being ancillary to a dwelling house, is permitted with consent within the zone. The development is consistent with the objectives of the R1 General Residential zone.

(ii) Clause 2.7 – Demolition

Clause 2.7 of the *LLEP 2013* states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council’s standard conditions relating to demolition are included in the recommendation.

(iii) Clause 4.3A and 4.4 – Landscaped areas for residential accommodation in Zone R1 and Floor Space Ratio

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

Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 154.07 sqm	0.82:1 or 181.31 sqm	17.68% or 27.24 sqm	No
Landscape Area Minimum permissible: 15% or 33 sqm	15.3% or 33.76 sqm	nil	Yes
Site Coverage Maximum permissible: 60% or 132.06 sqm	60% or 132.06 sqm	nil	Yes

(iv) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the applicable local environmental plan by 17.68% or 27.24 sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Leichhardt LEP 2013 below.

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

- The development is consistent with the objectives of the development standard;

- The development complies with Clause 4.3A of the LLEP 2013, providing the minimum required landscaped area, which is 15%, and complies with the maximum permissible site coverage standard of 60%;
- The development maximises the retention and absorption of surface drainage water on site;
- The private open space on the site exceeds the minimum required significantly;
- The existing setbacks are not reduced;
- The existing encroachments over the boundaries are rectified;
- There are no adverse visual and acoustic privacy impacts;
- There is no additional overshadowing of adjoining sites; and
- The development is compatible with the current and future character of the locality.

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard for reasons discussed below and later in this report.

Pursuant to the LLEP2013, the objectives of the R1 General Residential 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.*

It is considered that the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013* for the following reasons:

- The development provides for the housing needs of the community;
- The development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas;
- The development provides landscaped areas for the use and enjoyment of existing and future residents; and
- Subject to a reduction in the height and bulk of the garage as recommended by conditions, the proposal will result in acceptable amenity impacts on adjoining properties.

Pursuant to Clause 4.4 of the LLEP2013, the objectives of the Floor Space Ratio control 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.*

It is considered that the development is in the public interest because it is consistent with the objectives of the floor space ratio standard in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013* for the following reasons:

- The proposal generally is compatible with the desired future character in relation to building bulk, form and scale;
- Subject to a reduction in the height and bulk of the garage as recommended by conditions, the bulk, form and scale of the garage has been minimised and is acceptable; and
- The development provides a suitable balance between landscaped areas and the built form.

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

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

(v) Clause 6.1 – Acid Sulfate Soils

The site is identified as Class 5 acid sulphate soils; however, the proposed works will not lower the water table below 1 metre AHD.

(vi) Clause 6.2 – Earthworks

Any excavation works are minor and will be adequately controlled by conditions of consent.

(vii) Clause 6.4 – Stormwater management

The proposal generally complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns, subject to conditions.

5(b) Draft Environmental Planning Instruments

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

Environmental Plan (Sydney Harbour Catchment) 2005. The proposal is consistent with the provisions of the draft Environment SEPP.

5(c) 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 the Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	No – see discussion
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	
C2.2.3.3 Piperston Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes – see discussion
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	Yes – see discussion
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – see discussion
C3.10 Views	N/A
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	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	Yes
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	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.11 Parking

The design of the garage is considered a sympathetic addition to the streetscape. The building has been redesigned to be a single storey structure that is subservient to the existing dwelling at the front of the site and proposes materials and finishes and a roof form that is sympathetic to this existing residence. The proposed garage will not detract from the amenity of adjoining areas and integrates with the overall site and building design.

It is noted that the proposed garage does not achieve compliance with the minimum clear internal dimensions of 6000 mm x 3000 mm (length x width). However, given the existing garage does not comply with the requirements, the width of the site of 6.06 metres, and existing encroachments are rectified, the proposal is considered acceptable.

C1.14 Tree Management

As outlined in Section 4(b) above, there were concerns regarding the initial proposal and the impacts on the *Jacaranda mimosifolia* (Jacaranda), located at the rear of the site. Council’s Arborist raises no concerns regarding the amended proposal, subject to conditions, including adequate tree protection measures to be implemented (refer to Attachment A below).

C3.2 Site Layout and Building Design

The proposal, generally, achieves the objectives of this part; however, results in a technical non-compliance with the side boundary setback control. The following table indicates compliance with the side boundary setbacks:

Elevation	Proposed Wall Height (mm)	Required setback (mm)	Proposed setback (mm)	Complies
Northern	~ 3650	491mm	0	No
Southern	~ 2800	0mm	0	Yes

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

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

Comment: The proposed garage complies with the streetscape and desired future character controls of the *LDCP 2013*.

- The pattern of development is not adversely compromised.

Comment: The reduced side setbacks will not be out of character with the existing pattern of development of the laneway and wider area.

- The bulk and scale of development is minimised by reduced floor to ceiling heights.

Comment: Given that only a minimum of 2200mm headroom is required throughout the access and parking facilities, and that only a 5 degree pitch for the roof is required, the proposed height and, therefore, bulk and scale of the proposed garage has not been minimised and is considered unnecessary. It is noted that Council has received one (1) submission, questioning whether the proposed height along the northern boundary is necessary.

- The impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised.

Comment: The proposal is acceptable having regard to the solar access controls and privacy impacts. However, as outlined above, the proposed bulk and scale is not minimised and is considered unnecessary.

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

Comment: The proposal retains existing access arrangements and is considered acceptable.

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

As a result, a condition is included in Attachment A, requiring the pitch of the garage roof be reduced from the proposed 8 degree to 5 degrees. Further, as outlined in Section 4(b) above, a design change condition is included in Attachment A, requiring that all proposed works are wholly within the boundary of No. 50 Mackenzie Street. This will reduce the length of the garage by approximately 130mm. In conjunction with the reduction of the roof pitch to 5 degrees, this will lower the height along the northern boundary by approximately 300mm and, therefore, minimise the bulk and scale.

C3.3 – Elevation and Materials

The garage will have a low-pitched skillion roof form pitching up from Annesley Street that will match that of the existing dwelling on the site.

The rendered and painted masonry, timber and metal finishes will complement existing building materials and finishes on the site and characteristic of adjoining buildings.

C3.6 Fences

The proposal generally complies with this part. It is noted that, whilst the proposed fence along the southern boundary along Annesley Street exceeds the maximum permissible height of 1.2 metres, given that the site is a corner lot, pursuant to control C7 of this part, fences up to 1.8 metres in height can be considered "...to ensure privacy to the private open space area where such fencing will not have an adverse impact on the streetscape". The proposed fence steps down from west to east and has a maximum height of 1.8 metres at any point, will provide privacy to the private opens space area of the site, and is not considered to have an adverse impact on the streetscape.

C3.9 Solar Access

The proposal does not result in additional overshadowing of neighbouring north-facing glazing to living areas and private open space.

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 the Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties.

One (1) submission from No. 52 Mackenzie Street was received in response to the initial notification. The following issues were raised:

- Issue: The submission requested that the existing boundary fence between the two (2) properties be continued instead of the proposed garage wall being on the boundary and “acting” as a boundary fence.

Comment: The amended plans include continuation of the existing boundary fence at the rear. However, it is proposed to build the garage with a nil setback along the northern boundary and that the new boundary fence that matches the existing material and finish is wholly located within the boundaries of No. 52 Mackenzie Street. The obtained and submitted owner’s consent from No. 52 Mackenzie Street only gives consent to remove the existing garage, not for removal of existing boundary fencing and other works within the boundaries of No. 52 Mackenzie Street.

Whilst the proposed zero side setback along the northern boundary is supported and, as conditioned, complies with Council’s controls, the proposed removal of parts of the existing boundary fencing and new fence is not supported as no owner’s consent has been obtained / provided for this element. As a result, a condition has been included in Attachment A, requiring that the proposed partial demolition of the existing boundary fence be removed and that all works are wholly within the boundary of No. 50 Mackenzie Street.

- Issue: Whilst no objection is raised to replace the existing garage with a single-storey structure, the proposed two-storey structure restricts access to sunlight, which is already restricted by the Jacaranda in the backyard. Regarding the tree, the objector also outlined that a tree of this “...size should never have been permitted to be planted in such a small backyard”.

Comment: The amended proposal propositions a single-storey structure. Regarding the size of the jacaranda, it is noted that Council has no restrictions for planting trees of such height and no permission was required to plant the tree.

- Issue: The proposed privacy screen and outdoor stairs to access the studio above the garage extends the height of the fence by approximately five (5) metres and results in adverse amenity impacts.

Comment: The studio above the garage and outdoor stairs and privacy screening has been removed as part of the amended plans.

- Issue: No details have been provided regarding the internal fit out of the proposed study above the garage. The objection also outlined that "...a garage and study is [not] what is intended for this area".

Comment: The studio / study above the garage has been removed as part of the amended plans.

- Issue: Safety concerns regarding the proposed side entry gate at the rear next to the pizza oven.

Comment: It is noted that the amended proposal has relocated the pizza oven away from this gate.

One (1) submission from No. 52 Mackenzie Street was received in response to renotification of the application and amended plans that form the basis of this assessment. The following issues were raised:

- Issue: The increase in visual bulk from the development

Comment: Refer to discussion under Part C3.2 of Section 5(d) above. A further reduction in height and bulk is recommended by condition.

- Issue: The submission raised concerns regarding stormwater runoff from the proposed pergola that is adjacent to the garage draining onto the neighbouring property at No. 52 Mackenzie Street.

Comment: Council's Development Engineer assessed the proposal and raised no concerns, subject to conditions. These include that all stormwater must be drained under gravity to the Annesley Street kerb and gutter, which will ensure that no stormwater will be drained onto neighbouring properties.

- Issue: The objection mentioned the "...huge canopy from the tree covering half [of] the backyard...[hoping] the pruning recommendations from the Arborist will address this.

Comment: As outlined above, there are no controls regarding amenity impacts by neighbouring trees.

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 Sections 4(b) and 5 above.

- Development Engineer
- Urban Forest

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* to vary the development standard in Clause 4.4 for Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstances of the case and that there are sufficient environmental 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 standards and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/00079 for a new garage at rear of site and associated works at 50 Mackenzie Street, Leichhardt, subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. 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
DA04 Rev F	Ground Floor Plans	13/05/2020	Feigl Consulting
DA05 Rev F	First Floor Plans	13/05/2020	Feigl Consulting
DA06 Rev F	Roof / Stormwater Plans	13/05/2020	Feigl Consulting
DA07 Rev F	Elevations - North & South	13/05/2020	Feigl Consulting
DA08 Rev F	Elevations - East & West	13/05/2020	Feigl Consulting
DA09 Rev F	Sections	13/05/2020	Feigl Consulting
DA13 Rev F	Sample Board	13/05/2020	Feigl Consulting

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. That the proposed garage is located wholly within the property boundaries of No. 50 Mackenzie Street, including the roof, gutter and downpipe along the southern (Annesley Street) boundary.
- b. That the side boundary fence with No. 52 Mackenzie Street along the northern boundary is retained in its entirety. To accommodate this, minor changes regarding the northern wall of the garage are approved.
- c. The pitch of the garage roof be reduced from the proposed 8 degree to 5 degrees.

FEES

3. 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.

4. 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

5. 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.

6. Tree Protection

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

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

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

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

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Tree No.	Botanical/Common Name	Location
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	Rear of site

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

NOTE: Reference should be made to the *Arboricultural Impact Assessment Report prepared by Jim van Breda dated 12 May 2020 for tree numbering and locations*

7. 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.

8. Waste Management Plan

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

9. Erosion and Sediment Control

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

10. Standard Street Tree Protection

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

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**12. 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.

13. 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 at No. 52 Mackenzie Street and 43 Annesley Street 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.

14. 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.

15. 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**16. Dilapidation Report – Pre-Development**

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

17. Stormwater Drainage System – Minor Developments (OSD is not required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with 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. Stormwater runoff from pervious and impervious areas of the site must be collected and discharged under gravity to the Annesley Street kerb and gutter. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- f. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
- g. 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 or sewer grade uPVC pipe with a maximum diameter of 100mm.
- h. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- i. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- j. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- k. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- l. No impact to street tree(s).

18. Parking Facilities - Domestic

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

- a. The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided at a 1:25 Natural scale, demonstrating compliance with the above requirements;

- d. The garage/carport/parking space must have minimum clear internal dimensions of 5400 mm x 3000 mm (length x width) and a door opening width of 2800 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. A plan of the proposed access and adjacent laneway, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- f. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;
- g. The external form and height of the approved structures must not be altered from the approved plans.

19. Construction Methods to Minimise Impact on Trees

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that the footings of the approved 1800MM HIGH STUD / FIBRO CEMENT RENDERED BOUNDARY WALL utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk/s of the following tree/s:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	4.8

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

20. Permeable Pavement works

Prior to the issue of the Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the pavement works/decking within the specified radius of the trunk(s) of the following tree/s are constructed in a way so as to ensure that existing moisture infiltration and gaseous exchange are maintained or improved. When preparing an area for paving with the specified radius, the soil surface must not be skimmed or excavated. The new surface and subgrade must be established at grade.

Tree No.	Botanical/Common Name	Location
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	Rear of site

21. 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.

22. 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

DURING DEMOLITION AND CONSTRUCTION

23. Tree Protection Zone

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with the Tree Protection Plan. The fence/s (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	4.8

24. 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>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the site.	Prior to commencement of works	<ul style="list-style-type: none"> • Inspection and sign off installation of tree protection measures.
	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; <ul style="list-style-type: none"> • Supervise all tree work.

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

25. Canopy and Root 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	Radius in metres
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	4.8m

The person acting on this consent has approval under Council's Tree Management Controls to; prune the tree to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact with the built structure and where branch diameter (at its point of attachment) does not exceed 40 mm.

26. Limited Root Pruning

No tree roots of 30mm 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 No.	Botanical/Common Name	Radius in metres
1	<i>Jacaranda mimosifolia</i> (Jacaranda)	4.8m

All excavation within the specified radius of the trunk of the following tree(s) 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. If tree roots less than 30mm 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.

27. 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.

28. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE**29. Public Domain Works**

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

- a. Light duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone, and
- c. Other works subject to the *Roads Act 1993* approval.

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

30. 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.

Boundary Fence

The boundary fence and retaining wall at the Annesley Street frontage of the site must be reconstructed to be fully within the property boundary. A structural engineering report and plans for reconstruction of the boundary fence and entry gates within the development site prepared by a qualified practicing Structural Engineer must be provided, addressing the following:

- a. The design plans must include cross sections showing the variation in design treatments on the location of the existing and new front fence and proposed capping beam, relative to the property boundary.
- b. The retaining wall must be designed with a sub soil drainage system installed behind the wall discharging to the kerb and gutter via the piped site drainage system. No weep holes are permitted to Council's footpath.
- c. All components of any retaining walls, including subsoil drainage and footings, must be located entirely within the property boundary.

- d. The location of the proposed saw cut is to be shown on the plans and sections. The saw cut is to generally follow the existing joint line, approximately 300mm out from the fence line.
- e. Detailed methodology for the proposed works, including demolition and construction and any hold points for inspection by a Council Engineer. The methodology must include, but not be limited to, the following provisions:
 - i. A dilapidation report must be undertaken prior to the commencement of demolition works, covering the footpath and kerb and gutter adjacent to the work site.
 - ii. Inspection by Council Engineer following saw cutting of the concrete footpath prior to any further works. The purpose of this inspection(s) is to determine whether any existing concrete footpath is deemed by Council to require replacement as a result of new works
 - iii. In the event that the Council Engineer identifies any section of footpath that is to be replaced, as a result of above works. The applicant shall be responsible for the placement of damaged footpath.
- f. Any required footpath reconstruction shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specification". Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

31. Protect Sandstone Kerb

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

32. 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.

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*.

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.

Disability Discrimination Access to Premises Code

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

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.

Construction of Vehicular Crossing

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

Lead-based Paint

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

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	1300 651 116 www.wasteservice.nsw.gov.au
Environmental Solutions	
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.

Attachment B – Plans of proposed development

DEVELOPMENT APPLICATION
ALTERATIONS AND ADDITIONS

COUNCIL USE ONLY
NOT FOR CONSTRUCTION

PLANNING CONTROLS
SITE AREA: 220.10m²

Zone: R1 General Residential
Minimum Lot Size: 200m²

Maximum Building Height: Merit Based
Existing Building Height: 8.40m
Proposed Building Height: 6.22m

Maximum Wall Height: Merit Based
Existing Wall Height: 8.4m
Proposed Wall Height: 3.55m

Floor Space Area Zone D / Area 5
Maximum FSR: 0.70:1 (154.07m²)
Existing FSR: 0.79:1 (174.17m²)
Proposed FSR: 0.82:1 (181.31m²)

Maximum Site Coverage: 60.00% (132.06m²)
Existing Site Coverage: 56.02% (123.30m²)
Proposed Site Coverage: 60.00% (132.06m²)

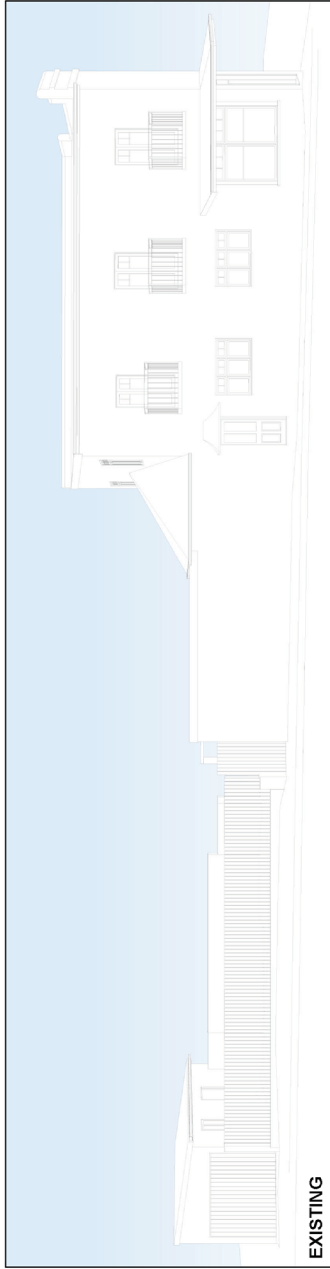
Minimum Front Setback: N/A Existing Built to Boundary
Minimum Side Setback: Merit Based
Minimum Rear Setback: Merit Based
Special Note: Existing Garage Built Over 2 Boundaries

Minimum Landscaped Area: 15.00% (33.02m²)
Existing Landscaped Area: 18.06% (39.75m²)
Proposed Landscaped Area: 15.58% (34.30m²)

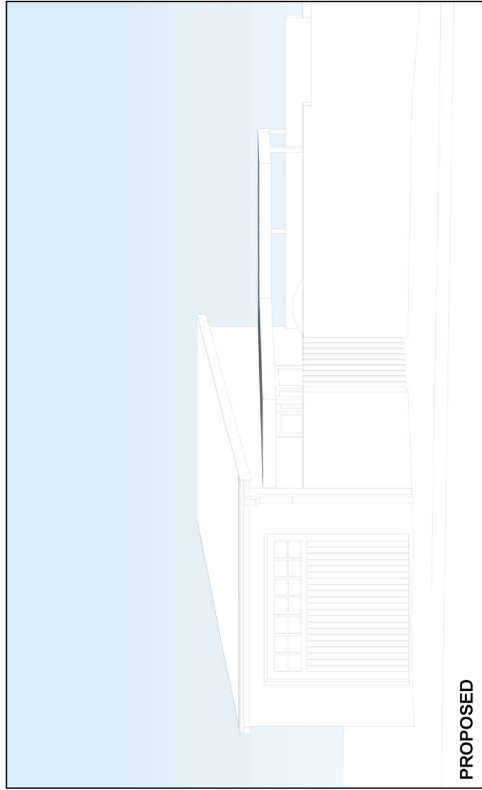
Minimum Private Open Space: 16.00m²
Existing Private Open Space: 91.59m²
Proposed Private Open Space: 83.13m²

OTHER

Heritage: Not Identified
Acid Sulfate Soil: Class 5
Flood Control Lot: Not Identified
Bushfire Prone Land: Not Identified



EXISTING



PROPOSED

NO:	SHEET NAME	DATE
DA00	TITLE PAGE	15/5/20
DA01	AREA CALCULATIONS	15/5/20
DA02	SITE ANALYSIS	15/5/20
DA03	SITE - WASTE - SEDIMENT PLAN	15/5/20
DA04	GROUND FLOOR PLANS	15/5/20
DA05	FIRST FLOOR PLANS	15/5/20
DA06	ROOF / STORMWATER PLANS	15/5/20
DA07	ELEVATIONS - NORTH & SOUTH	15/5/20
DA08	ELEVATIONS - EAST & WEST	15/5/20
DA09	SECTIONS	15/5/20
DA10	STREET ELEVATIONS	15/5/20
DA11	EXT. VIEWS - NEW PROPOSAL	15/5/20
DA12	EXT. VIEWS - NEW VS ORIGINAL	15/5/20
DA13	SAMPLE BOARD	15/5/20
DA14	SHADOW DIAGRAM - JUNE 21 - 9AM	15/5/20
DA15	SHADOW DIAGRAM - JUNE 21 - 12PM	15/5/20
DA16	SHADOW DIAGRAM - JUNE 21 - 3PM	15/5/20

GARY SMITH & RENEE SADLER

50 MACKENZIE STREET, LEICHHARDT, NSW, 2040
LOT. 33 / DP. 660867

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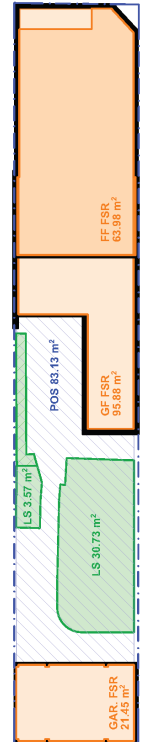
SITE AREA:	
PERMISSIBLE	220.10m ²
EXISTING	15.02m ²
PROPOSED	108.28m ²

FLOOR SPACE RATIO PERMISSIBLE:	
EXISTING	0.70:1 (154.07 m ²)
PROPOSED	0.79:1 (174.17 m ²)
ADDITIONAL	
	0.08:1 (7.14 m ²)
	4.10% INCREASE

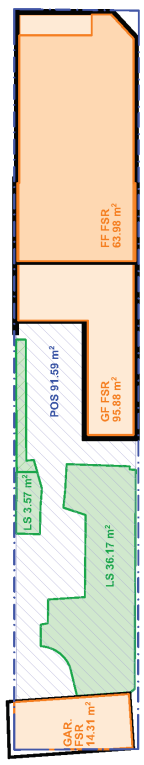
LANDSCAPE AREA:	
REQUIRED	15.00m ² (33.02 m ²)
EXISTING	18.06m ² (39.75 m ²)
PROPOSED	15.58m ² (34.30 m ²)

PRIVATE OPEN SPACE:	
REQUIRED	16.00m ²
EXISTING	91.59m ²
PROPOSED	83.13m ²

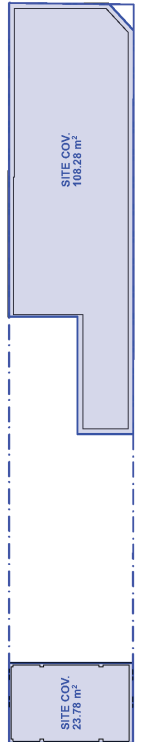
SITE COVERAGE PERMISSIBLE:	
EXISTING	60.00% (132.06 m ²)
PROPOSED	56.02% (123.30 m ²)
	60.00% (132.06 m ²)



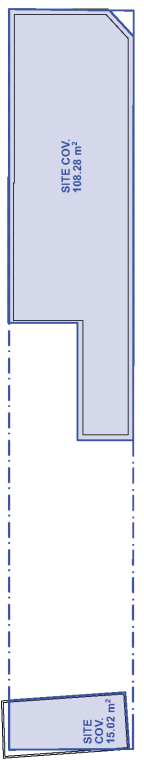
1 EXISTING AREA CALCULATIONS 1:200



2 PROPOSED AREA CALCULATIONS 1:200



3 EXISTING SITE COVERAGE 1:200



4 PROPOSED SITE COVERAGE 1:200

CONTACT	NOTES	REV.	NOTES	INITIAL	DATE	LEGEND	CLIENTS:	DRAWING TITLE:												
ADAM FEIGL DESIGNER 0422 179 225 a.feigl@dmul.com	THE BUILDER/CONTRACTOR TO CHECK EVERY ALL LEVELS & DIMENSIONS ON SITE FROM TO CORNER CORNER OF WORKING DIMENSIONS. ALL ERRORS/ OMISSIONS TO BE REFERRED BY THE BUILDER/ CONTRACTOR TO THE CONSULTING ENGINEER. DRAWING ANY WORK ON SITE. ALL DIMENSIONS TO BE REFERRED TO THE CONSULTING ENGINEER. DO NOT SCALE DRAWING FROM DIMENSIONS FIGURED DIMENSIONS. THE DRAWING IS THE COPYRIGHT OF FEIGL CONSULTING.	A	CONCEPT DESIGN	AF	07/11/19	<table border="1"> <tr> <td>SWELLING WALLS</td> <td>15.11.19</td> </tr> <tr> <td>EXCLUDED LANDSCAPE AREAS LESS THAN 1m²</td> <td>13.05.19</td> </tr> <tr> <td></td> <td>13.05.19</td> </tr> <tr> <td></td> <td>03/04/20</td> </tr> <tr> <td></td> <td>AF</td> </tr> <tr> <td></td> <td>13.05.20</td> </tr> </table>	SWELLING WALLS	15.11.19	EXCLUDED LANDSCAPE AREAS LESS THAN 1m ²	13.05.19		13.05.19		03/04/20		AF		13.05.20	GARY SMITH & RENEE SADLER	AREA CALCULATIONS
SWELLING WALLS	15.11.19																			
EXCLUDED LANDSCAPE AREAS LESS THAN 1m ²	13.05.19																			
	13.05.19																			
	03/04/20																			
	AF																			
	13.05.20																			
		B	CONCEPT DESIGN	AF	15/11/19		SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040	SCALE: 1:200 @A3												
		C	DA SUBMISSION	AF	13/05/19		PROJECT NO.:	DATE:												
		D	DA UPDATE	AF	13/05/20		2001	15/5/20												
		E	DA REVIEW/FEEDBACK	AF	03/04/20		DRAWING NO.:													
		F	DA RE-SUBMISSION	AF	13/05/20		DA01													



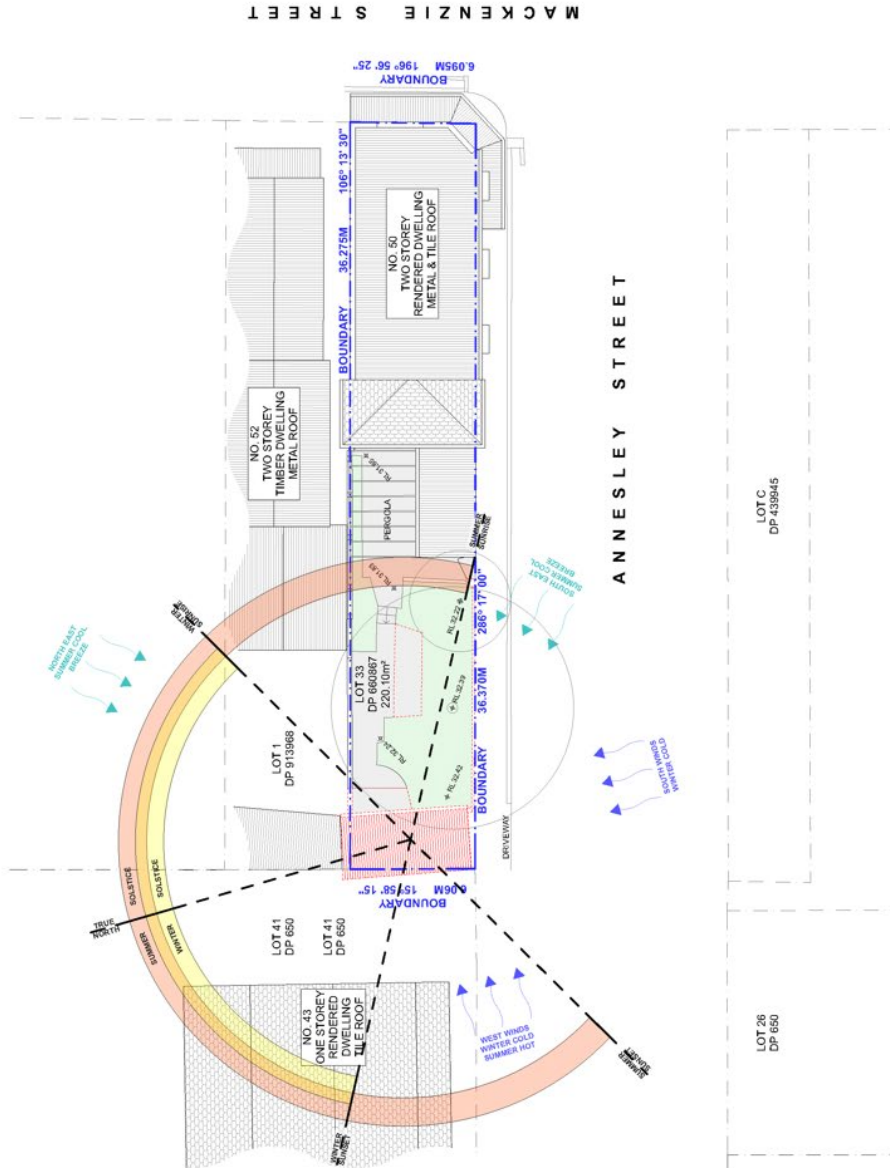
EXTERNAL VIEW



LOCATION MAP



AERIAL MAP



1 SITE ANALYSIS 1:200

FEIGL CONSULTING

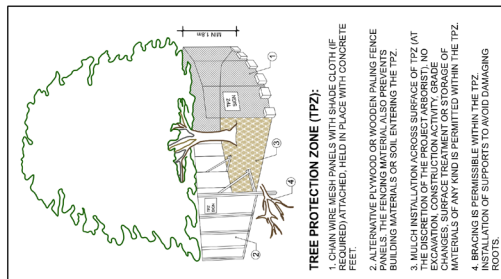
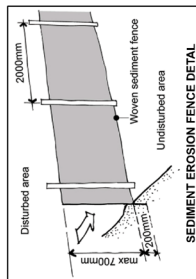
CONTACT
ADAM FEIGL
 DESIGNER
 0425 173 225
 "a_feigl@feigl.com"

NOTES
 - THE BUILDING CONTRACTOR SHOULD VERIFY ALL DIMENSIONS AND LOCATIONS OF EXISTING AND PROPOSED WORK ARE AS SHOWN ON THIS PLAN.
 - CONTRACTOR AND SUBCONTRACTOR TO VERIFY ALL DIMENSIONS AND LOCATIONS OF EXISTING AND PROPOSED WORK ARE AS SHOWN ON THIS PLAN.
 - THIS DRAWING IS THE COPYRIGHT OF FEIGL CONSULTING

REV.	NOTES	INITIAL	DATE	LEGEND
A	CONCEPT DESIGN	AF	07.11.19	EXISTING LANDSCAPE / GRASS
B	CONCEPT FOR VISION	AF	15.11.19	EXISTING CONCRETE / PAVEDS
C	DA SUBMISSION	AF	15.11.19	DEMOLISHED CONCRETE / PAVEDS
D	DA IMPROVE	AF	15.11.19	EXISTING ROOF
E	DA REVIEW FEEDBACK	AF	15.11.19	PROPOSED ROOF
F	DA REVIEW SUBMISSION	AF	15.11.19	POOL / WATER

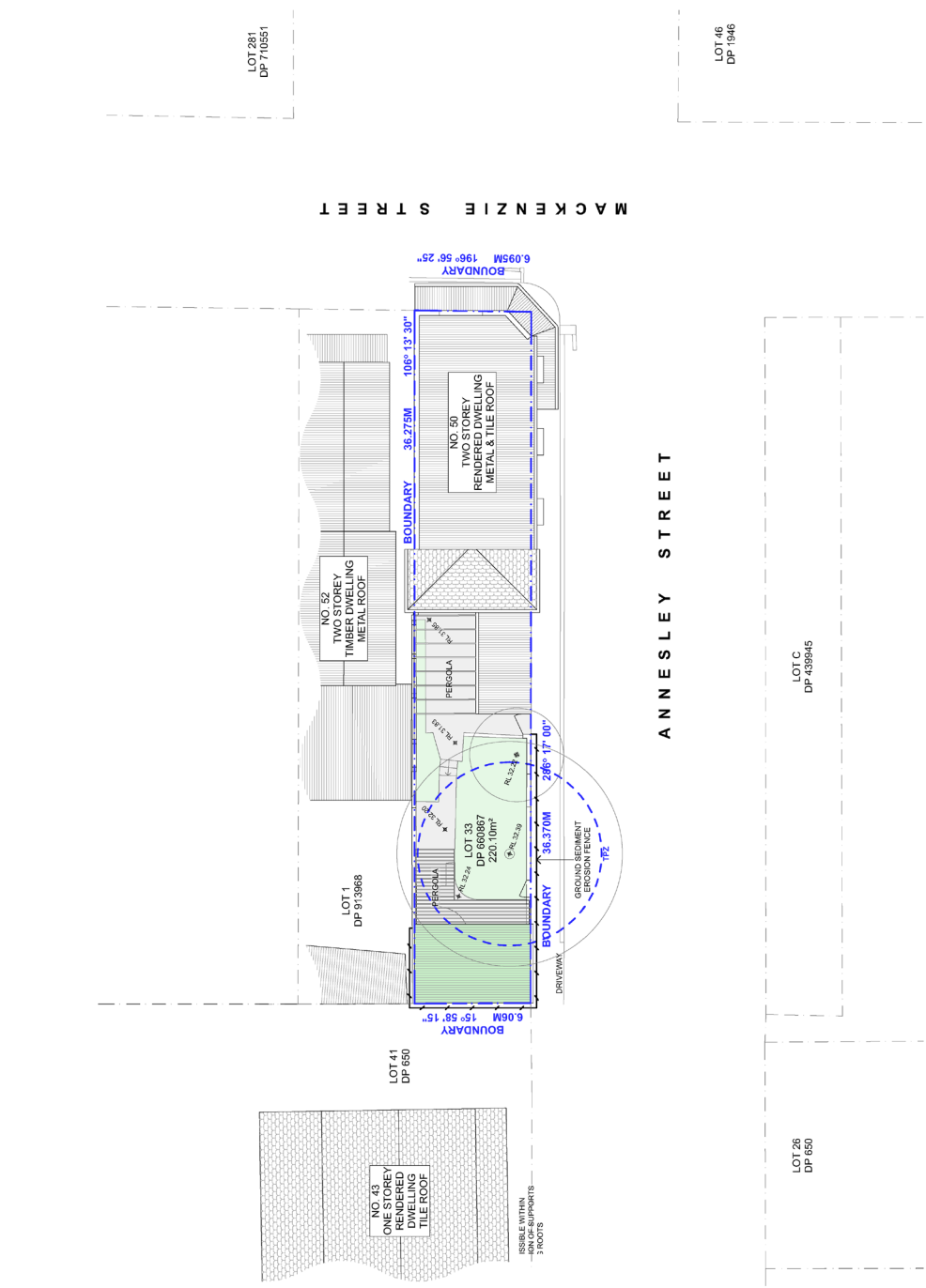
CLIENTS:
GARY SMITH & RENEE SADLER
 SITE ADDRESS:
 50 MACKENZIE STREET
 LEICHHARDT, NSW, 2040

DRAWING TITLE:
 SITE ANALYSIS
 SCALE:
 1:200 @ A3
 DATE:
 15/12/20
 PROJECT NO:
 2001
 DRAWING NO:
 DA02



TREE PROTECTION ZONE (TPZ):

1. CHAIN WIRE MESH PANELS WITH SHADE CLOTH (IF APPLICABLE) TO BE TIED TO CONCRETE FOOTING WITH GALVANIZED STEEL TIE BARS.
2. ALTERNATIVE PLYWOOD OR WOODEN PALING FENCE PANELS. THE FENCING MATERIAL ALSO PREVENTS BUILDING MATERIALS OR SOIL ENTERING THE TPZ.
3. MULCH INSTALLATION ACROSS SURFACE OF TPZ (AT MINIMUM 100MM DEPTH) TO PREVENT SOIL AND EXCAVATION. CONSTRUCTION ACTIVITY GRADE CHANGES, SURFACE TREATMENT OR STORAGE OF MATERIALS OF ANY KIND IS PERMITTED WITHIN THE TPZ.
4. BRACING IS PERMISSIBLE WITHIN THE TPZ.



1 SITE - WASTE - SEDIMENT PLAN 1:200

CONTACT
ADAM FEIGL
 DESIGNER
 0425 179 225
 a_feigl@feigl.com

FEIGL CONSULTING

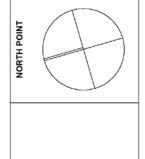
NOTES

- THE BUILDER/CONTRACTOR TO CHECK & VERIFY ALL WALLS & FOUNDATIONS TO BE VERIFIED BY THE BUILDING SURVEYOR.
- ALL EROSION CONTROL MEASURES TO BE VERIFIED BY THE BUILDING SURVEYOR.
- START/END DATES TO BE VERIFIED BY THE BUILDING SURVEYOR.
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- START/END DATES TO BE VERIFIED BY THE BUILDING SURVEYOR.

REV.	NOTES	INITIAL	DATE
A	CONCEPT DESIGN	AF	07.11.19
B	CONCEPT REVISION	AF	13.11.19
C	DATE SUBMISSION	AF	13.12.19
D	DATE UPDATE	AF	13.02.20
E	DATE REVIEW FEEDBACK	AF	30.04.20
F	DATE RE-SUBMISSION	AF	13.05.20

LEGEND

EXISTING LANDSCAPE / GRASS	EXISTING CONCRETE / PAVERS
EXISTING ROOF	EXISTING ROOF
PROPOSED ROOF	POOL / WATER



CLIENTS:
GARY SMITH & RENEE SADLER

SITE ADDRESS:
 50 MACKENZIE STREET
 LEICHHARDT, NSW, 2040

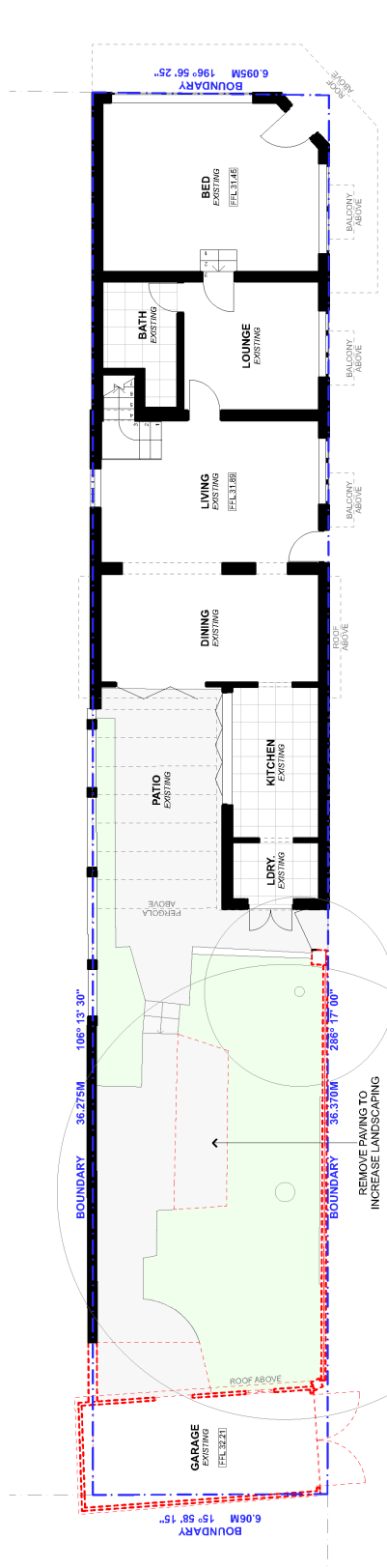
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 SITE - WASTE - SEDIMENT PLAN

SCALE:
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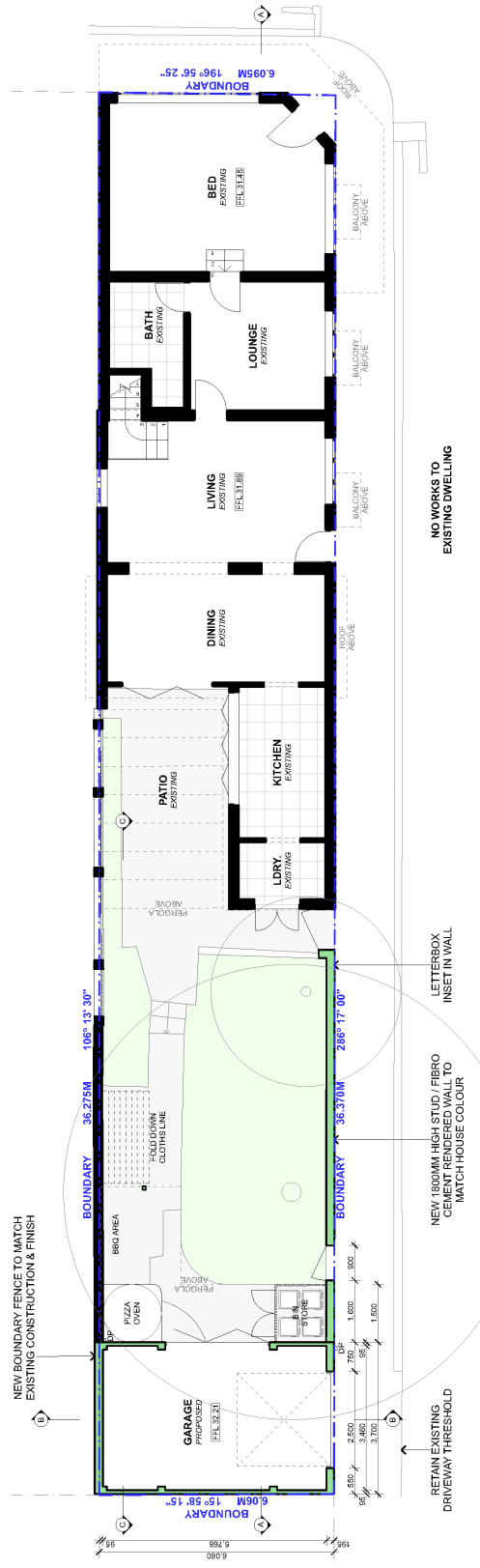
DATE:
 15/5/20

PROJECT NO.:
 2001

DRAWING NO.:
 DA03

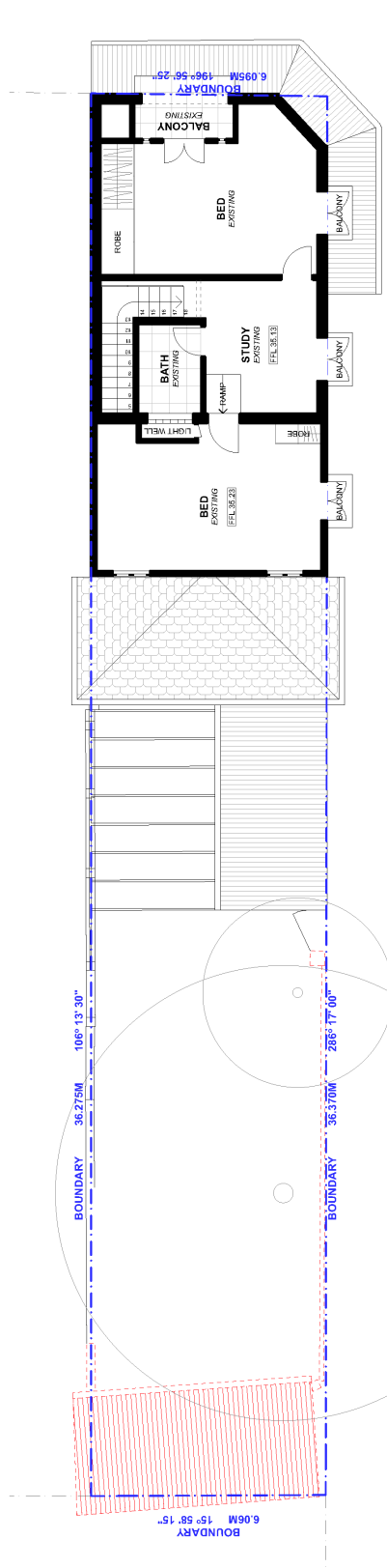


1 EXISTING - GROUND FLOOR PLAN 1:100

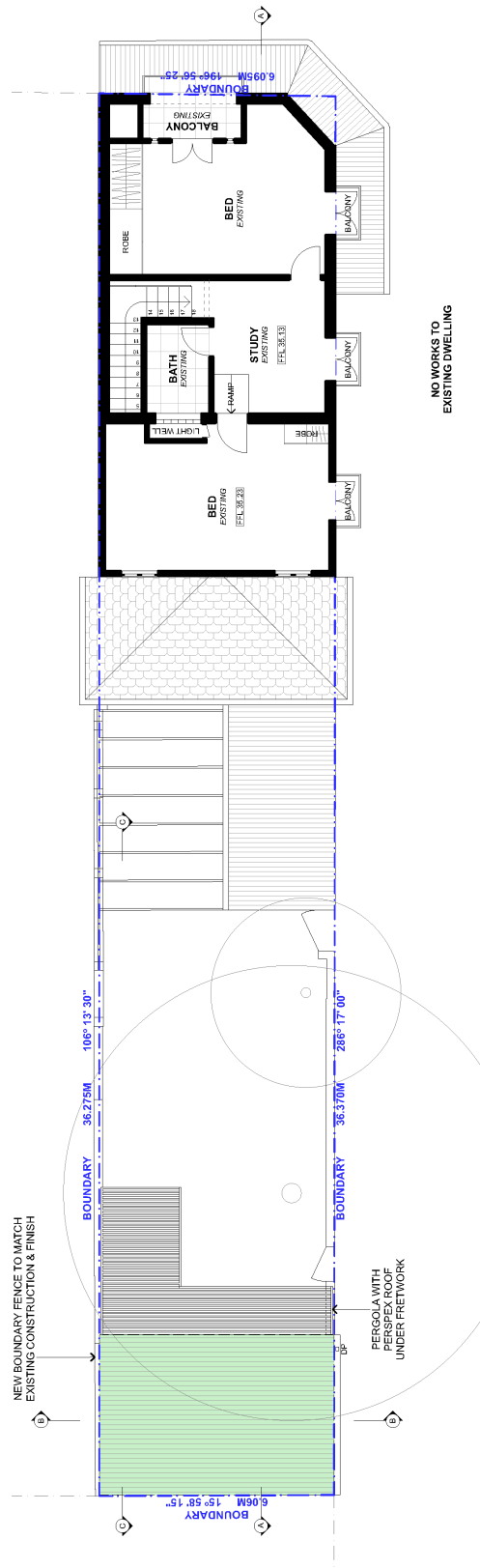


2 PROPOSED GROUND FLOOR PLAN 1:100

CONTACT ADAM FEIGL DESIGNER 0422 173 228 a.feigl@nswl.com		NOTES - THE BUILDER / CONTRACTOR TO CHECK & VERIFY ALL LEVELS & DIMENSIONS OF PROPOSED WORKS AT THE COMMENCEMENT OF WORKS. - THE BUILDER / CONTRACTOR TO CHECK & VERIFY ALL LEVELS & DIMENSIONS OF EXISTING WORKS AT THE COMMENCEMENT OF WORKS. - SHOWN WORK WITHIN THE PROPOSED BOUNDARY IS TO BE CONSIDERED AS EXISTING UNLESS OTHERWISE NOTED. - PRIOR TO SIGNATURE WORKS TO BE CHECKED BY A REGISTERED ENGINEER. - ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. - THIS DRAWING IS THE PROPERTY OF FEIGL CONSULTING.		REV. A CONCEPT DESIGN B CONCEPT DESIGN C DIM SUBMISSION D DRAFTING E DAILY FEEDBACK F DATE SUBMISSION		NOTES. AF 07/11/19 AF 10/11/19 AF 13/02/20 AF 13/02/20 AF 30/04/20 AF 13/05/20		LEGEND EXISTING DEMOLISHED PROPOSED LANDSCAPE / GRASS CONCRETE / PAVES		CLIENTS: GARY SMITH & RENEE SADLER SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040		DRAWING TITLE: GROUND FLOOR PLANS SCALE: 1:100 @ A3 PROJECT NO: 2001 DRAWING NO: DA04	
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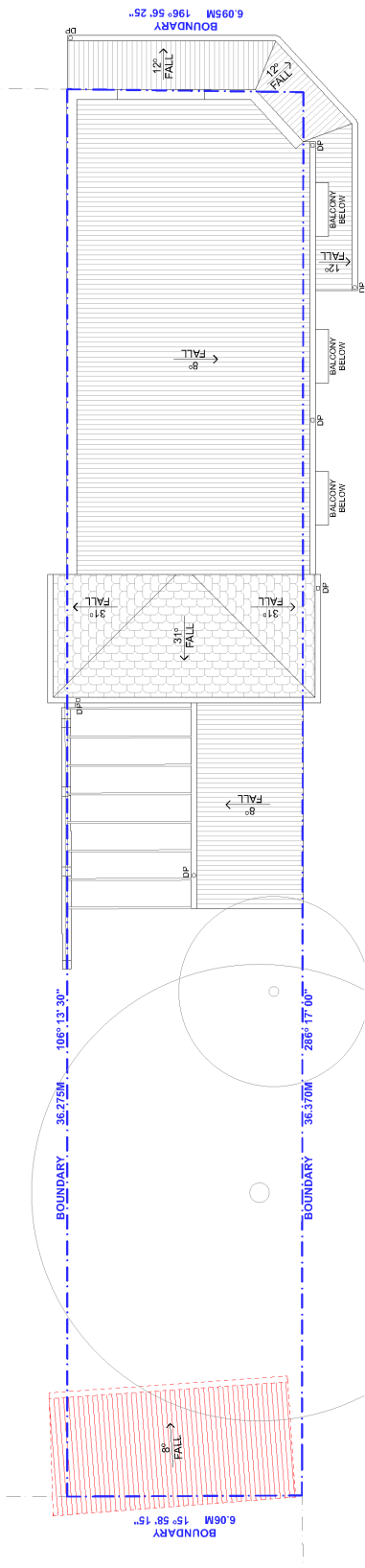


2 EXISTING - FIRST FLOOR PLAN 1:100

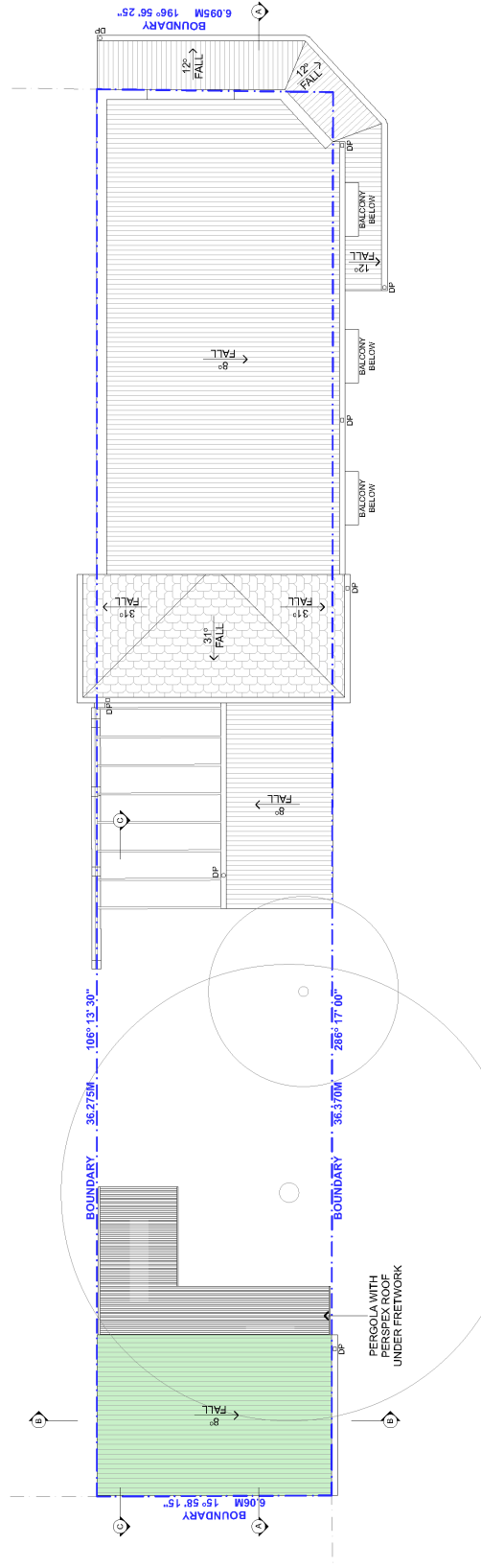


1 PROPOSED FIRST FLOOR PLAN 1:100

CONTACT ADAM FEIGL DESIGNER 0428 173 228 a.feigl@nswlpi.com	NOTES - THE BUILDER/CONTRACTOR TO CHECK & VERIFY ALL LEVELS & DIMENSIONS OF EXISTING WORK AND TO OBTAIN APPROVAL OF ALL WORKS FROM THE LOCAL COUNCIL PRIOR TO COMMENCING WORK. - THE DRAWING IS THE PROPERTY OF FEIGL CONSULTING.	REV. A B C D E F	NOTES. A CONCEPT DESIGN B CONCEPT DESIGN C ON SUBMISSION D DRAFT/DATE E DAILY/REVISION F DATE/SUBMISSION	INITIAL AF AF AF AF AF AF	DATE 07/11/19 10/11/19 13/12/19 13/03/20 30/04/20 11/05/20	LEGEND EXISTING DEMOLISHED PROPOSED	NORTH POINT 	CLIENTS: GARY SMITH & RENEE SADLER 50 MACKENZIE STREET LEICHHARDT, NSW, 2040	DRAWING TITLE: FIRST FLOOR PLANS
								SCALE: 1:100 @ A3	DATE: 5/5/20

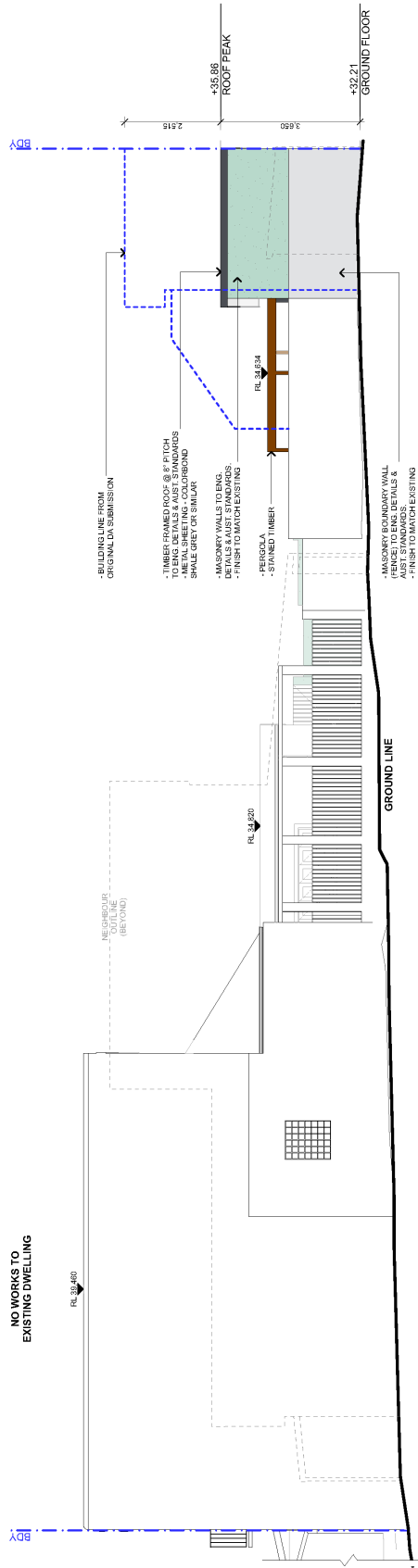


1 EXISTING ROOF PLAN 1:100

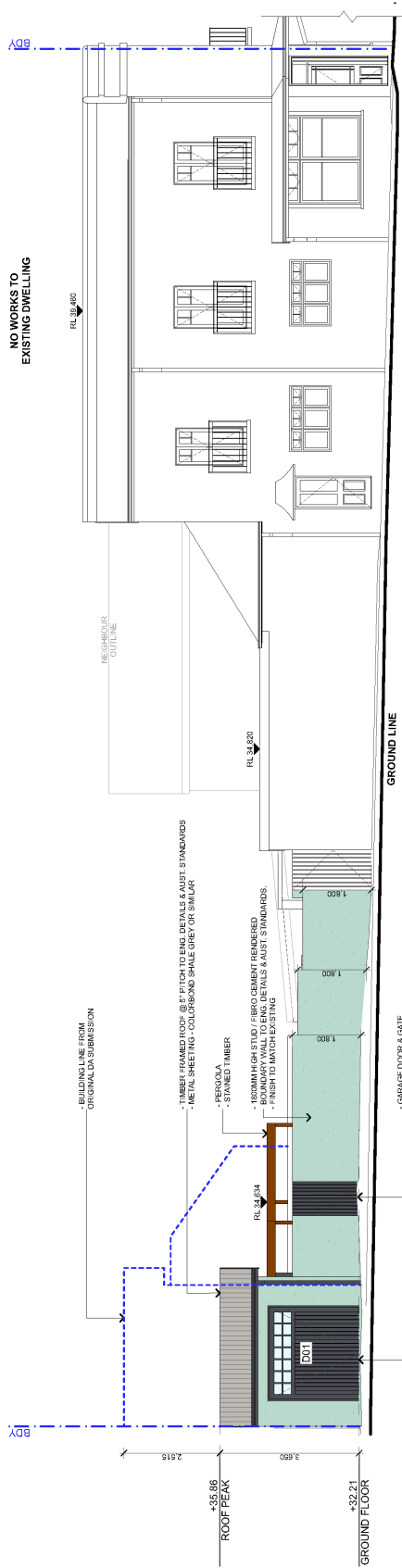


2 PROPOSED ROOF / CONCEPT STORMWATER PLAN 1:100

FEIGL CONSULTING	CONTRACT COMMERCIAL DESIGNER CASE 179 052 P. 561@feigl.com		NOTES THIS IS A PRELIMINARY DESIGN AND NOT A FINAL DESIGN. THIS PLAN IS FOR INFORMATION PURPOSES ONLY. CONTRACTOR AND SUPPLIER TO BE ADVISED BY ARCHITECT. ALL PLANS MUST TO BE VERIFIED BY STRUCTURAL ENGINEER. ALL DIMENSIONS TO BE TAKEN FROM FINISHED SURFACE UNLESS OTHERWISE NOTED. THIS DRAWING IS THE PROPERTY OF FEIGL CONSULTING.		REV. A B C D E F	NOTES CONCEPT DESIGN CONCEPT DESIGN DA SUBMISSION DA SUBMISSION DA REVIEW FEEDBACK DA RE-SUBMISSION	DATE 07/11/19 16/11/19 13/12/19 13/02/20 20/04/20 13/05/20	LEGEND EXISTING DEMOLISHED PROPOSED	NORTH POINT 	CLIENTS: GARY SMITH & RENEE SADLER SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040	DRAWING TITLE: ROOF / STORMWATER PLANS SCALE: 1:100 @A3 DATE: 15/05/20 PROJECT NO.: 2001 DRAWING NO.: DA06
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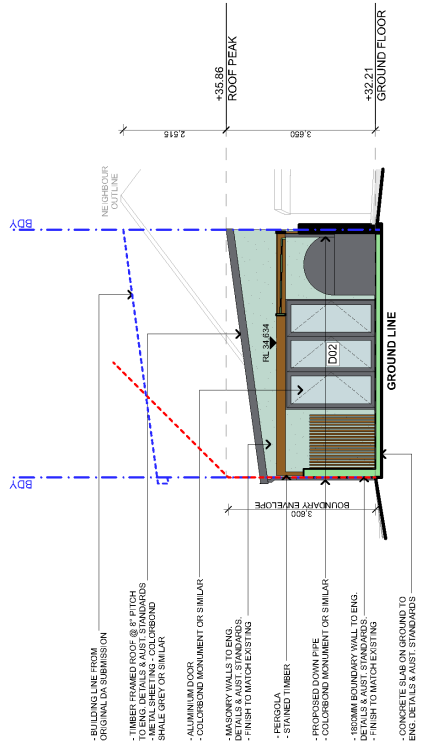
1 NORTH ELEVATION 1:100



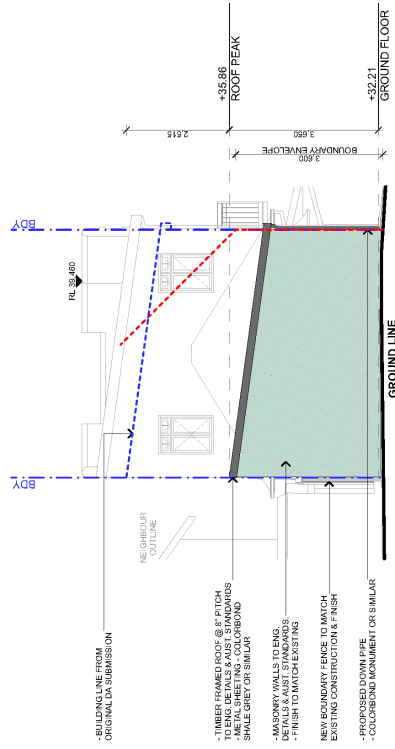
2 SOUTH ELEVATION 1:100

<p>CONTACT</p> <p>ADAM FEIGL CEO/OWNER</p> <p>0425 179 225 a_feigl@feigl.com</p>	<p>NOTES</p> <p>- THE BUILDING CONTRACTOR TO VERIFY ALL LEVELS & DIMENSIONS OF EXISTING WORK AND TO OBTAIN APPROVAL FROM LOCAL GOVERNMENT FOR ANY NECESSARY CONDUITS AND SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE LOCAL GOVERNMENT'S REQUIREMENTS.</p> <p>- ALL WORKS TO BE PERFORMED BY A STRUCTURAL ENGINEER PRIOR TO ANY TREATMENT WORKS.</p> <p>- ALL DIMENSIONS OF THIS DRAWING ARE TO BE USED ONLY.</p> <p>- THIS DRAWING IS THE COPYRIGHT OF FEIGL CONSULTING.</p>	<p>REV.</p> <p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p>	<p>NOTES</p> <p>CONCEPT DESIGN</p> <p>CONCEPT REVISION</p> <p>DA SUBMISSION</p> <p>DATE</p> <p>DATE REVIEW FEEDBACK</p> <p>DATE SUBMISSION</p>	<p>INITIAL</p> <p>AF</p> <p>AF</p> <p>AF</p> <p>AF</p> <p>AF</p> <p>AF</p>	<p>DATE</p> <p>07.11.19</p> <p>16.11.19</p> <p>03.12.19</p> <p>03.02.20</p> <p>03.03.20</p> <p>13.03.20</p>	<p>LEGEND</p> <p>EXISTING</p>	<p>DRAWING TITLE:</p> <p>ELEVATIONS - NORTH & SOUTH</p>	<p>CLIENTS:</p> <p>GARY SMITH & RENEE SADLER</p>	<p>SITE ADDRESS:</p> <p>50 MACKENZIE STREET LEICHHARDT, NSW, 2040</p>	<p>PROJECT NO.:</p> <p>2001</p>	<p>DRAWING NO.:</p> <p>DA07</p>	<p>SCALE:</p> <p>1:100 @ A3</p>	<p>DATE:</p> <p>9/5/20</p>

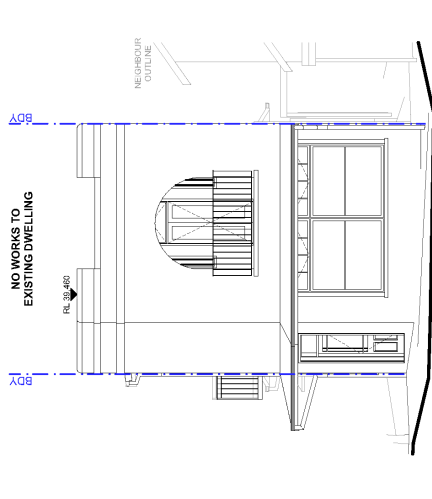




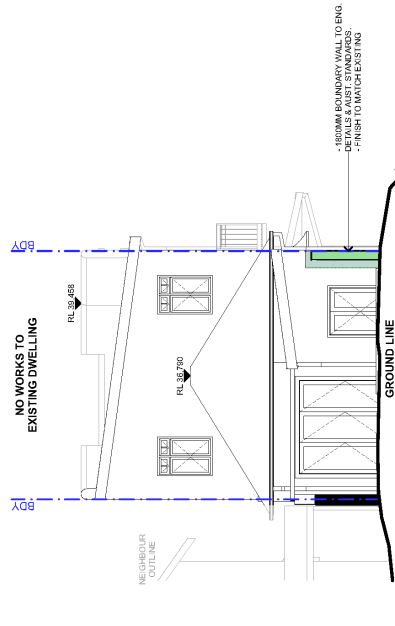
2 EAST ELEVATION - GARAGE 1:100



4 WEST ELEVATION - GARAGE 1:100

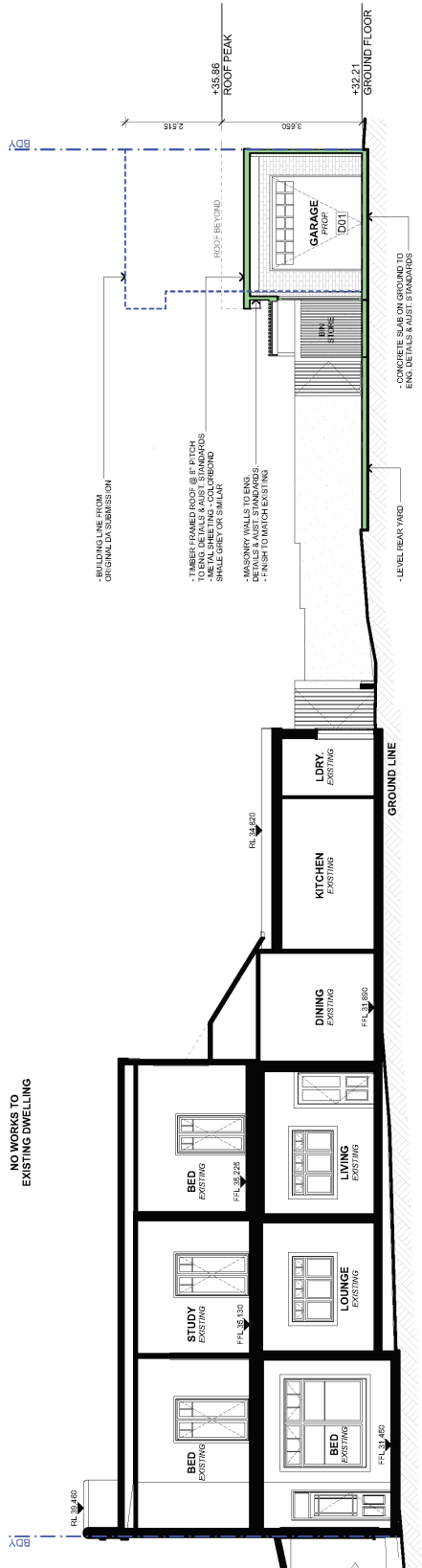


1 EAST ELEVATION - HOUSE 1:100

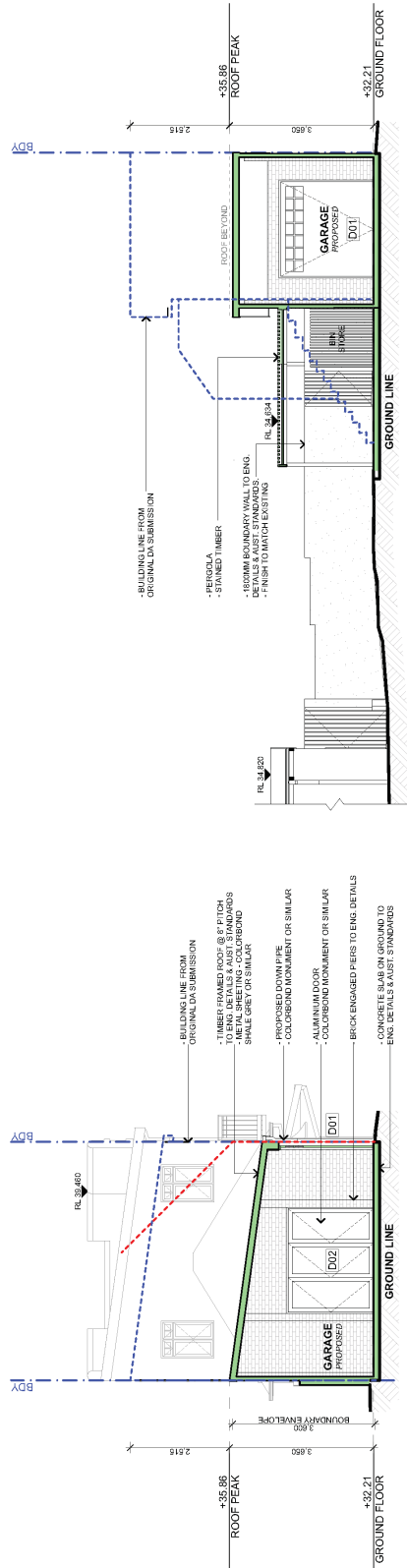


3 WEST ELEVATION - HOUSE 1:100

FEIGL CONSULTING	CONTACT ADAM FEIGL DESIGNER 0428 179 225 a.feigl@feigl.com		NOTES - THE BUILDER/CONTRACTOR TO CHECK AGAINST ALL LEVELS & DIMENSIONS ON SITE FROM TO CORNER OF EXISTING DWELLING. - ALL DIMENSIONS TO BE VERIFIED BY THE BUILDER. - DRAWING TO BE USED FOR CONSTRUCTION PURPOSES ONLY. - ALL DIMENSIONS TO BE VERIFIED BY THE BUILDER. - DO NOT SCALE DIMENSIONS FROM DRAWING. - THE DIMENSIONS ARE THE PROPERTY OF FEIGL CONSULTING.		REV. NOTES. INITIAL. DATE. A CONCEPT DESIGN AF 07.11.19 B CONCEPT DESIGN AF 15.11.19 C DA SUBMISSION AF 13.05.20 D DA UPDATE AF 30.04.20 E DA REVIEW BY FEEDBACK AF 30.04.20 F DA RE-SUBMISSION AF 13.05.20		LEGEND [Symbol] EXISTING		CLIENTS: GARY SMITH & RENEE SADLER SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040		DRAWING TITLE: ELEVATIONS - EAST & WEST SCALE: 1:100 @A3 DATE: 15/5/20 PROJECT NO.: 2001 DRAWING NO.: DA08	
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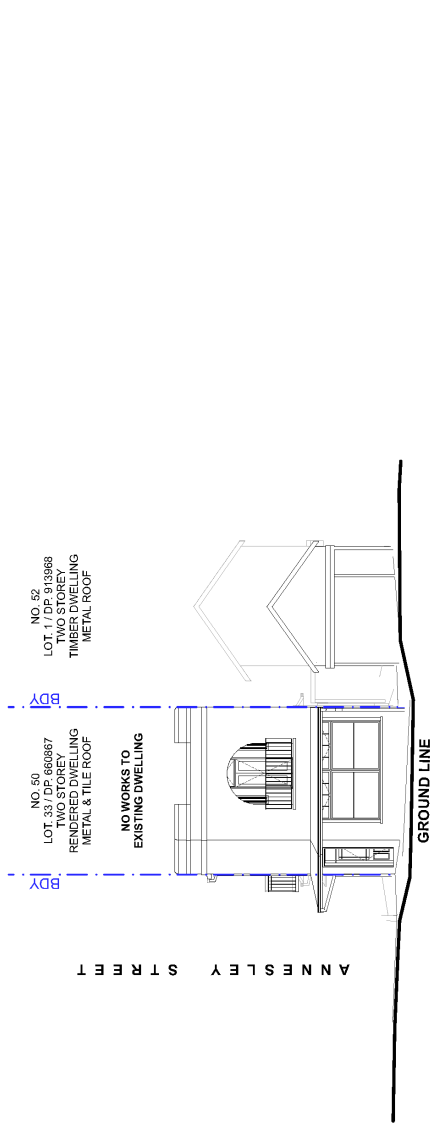
1 SECTION A 1:100



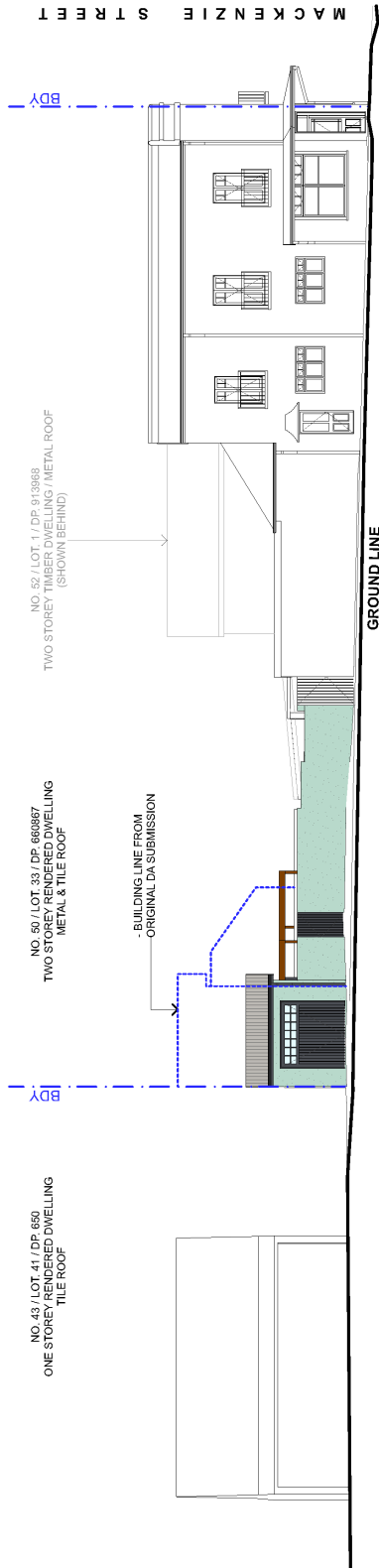
2 SECTION B 1:100

3 SECTION C 1:100

<p>CONTACT ADAM FEIGL DESIGNER 0421 173 225 a.feigl@nswl.com</p>	<p>NOTES - THE BUILDER/CONTRACTOR TO CHECK & VERIFY ALL LEVELS & DIMENSIONS OF EXISTING WORK AND RECORD IN ORIGINAL DRAWINGS. - ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. - SHOWN WORK TO BE DONE BY THE BUILDER/CONTRACTOR. - PRIOR TO SIGNATURE WORK ORDER TO BE OBTAINED FROM THE LOCAL PLANNING PANEL. - ALL TO BE USED ONLY FOR THE PROJECT AND NOT FOR REUSE. - THIS DRAWING IS THE PROPERTY OF FEIGL CONSULTING.</p>	<p>REV.</p> <table border="1"> <thead> <tr> <th>REV.</th> <th>NOTES</th> <th>INITIAL</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>CONCEPT DESIGN</td> <td>AF</td> <td>07/11/19</td> </tr> <tr> <td>B</td> <td>CONCEPT DESIGN</td> <td>AF</td> <td>10/11/19</td> </tr> <tr> <td>C</td> <td>DA SUBMISSION</td> <td>AF</td> <td>11/02/20</td> </tr> <tr> <td>D</td> <td>DAMPENATE</td> <td>AF</td> <td>11/02/20</td> </tr> <tr> <td>E</td> <td>DAILY FEEDBACK</td> <td>AF</td> <td>31/03/20</td> </tr> <tr> <td>F</td> <td>DAIR SUBMISSION</td> <td>AF</td> <td>11/03/20</td> </tr> </tbody> </table>	REV.	NOTES	INITIAL	DATE	A	CONCEPT DESIGN	AF	07/11/19	B	CONCEPT DESIGN	AF	10/11/19	C	DA SUBMISSION	AF	11/02/20	D	DAMPENATE	AF	11/02/20	E	DAILY FEEDBACK	AF	31/03/20	F	DAIR SUBMISSION	AF	11/03/20	<p>LEGEND</p> <table border="1"> <thead> <tr> <th>EXISTING</th> <th>EXISTING</th> </tr> </thead> <tbody> <tr> <td>(Solid black)</td> <td>EXISTING</td> </tr> <tr> <td>(Dashed red)</td> <td>DEMOLISHED</td> </tr> <tr> <td>(Green outline)</td> <td>PROPOSED</td> </tr> </tbody> </table>	EXISTING	EXISTING	(Solid black)	EXISTING	(Dashed red)	DEMOLISHED	(Green outline)	PROPOSED	<p>CLIENTS: GARY SMITH & RENEE SADLER</p>
			REV.	NOTES	INITIAL	DATE																																		
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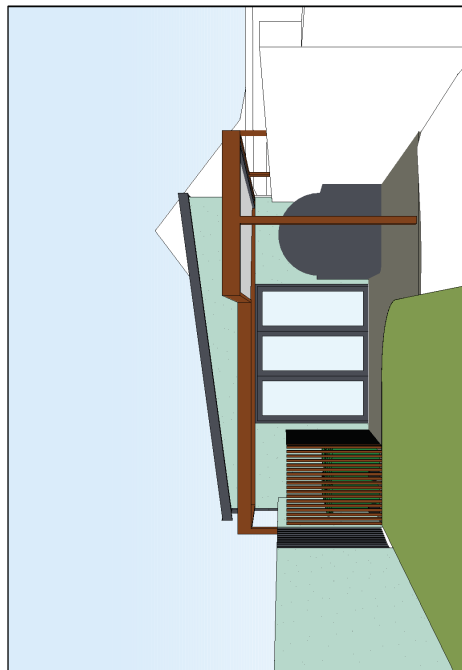
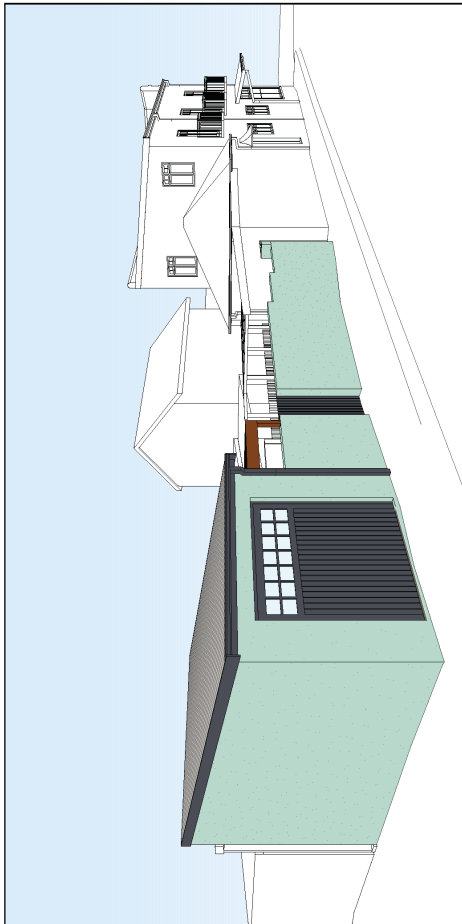
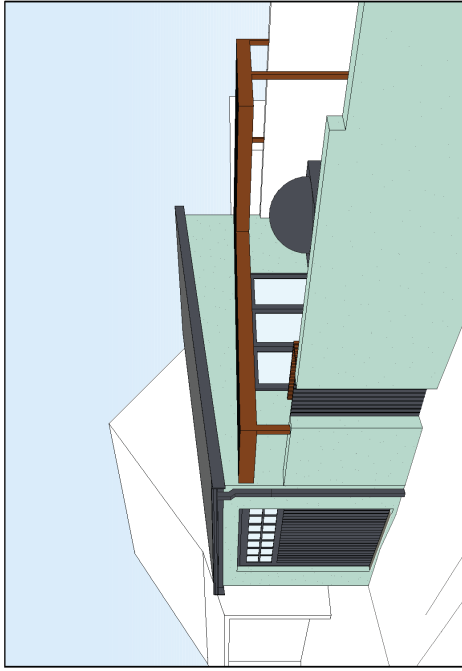


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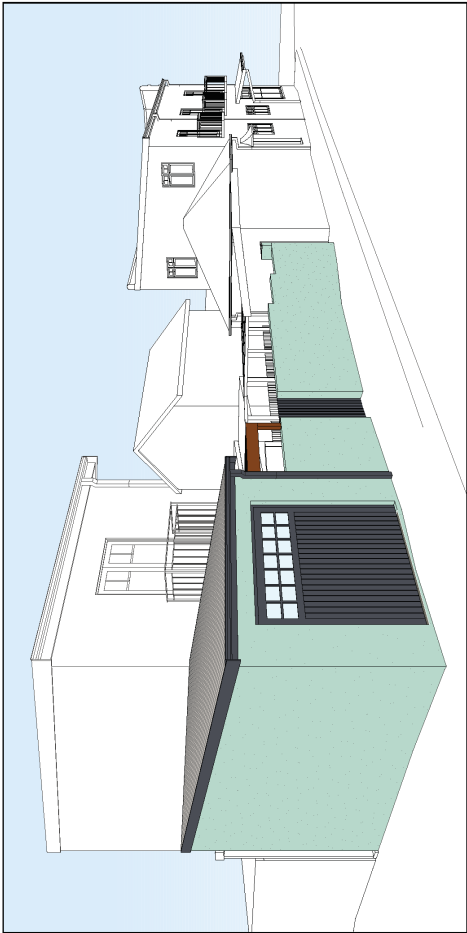
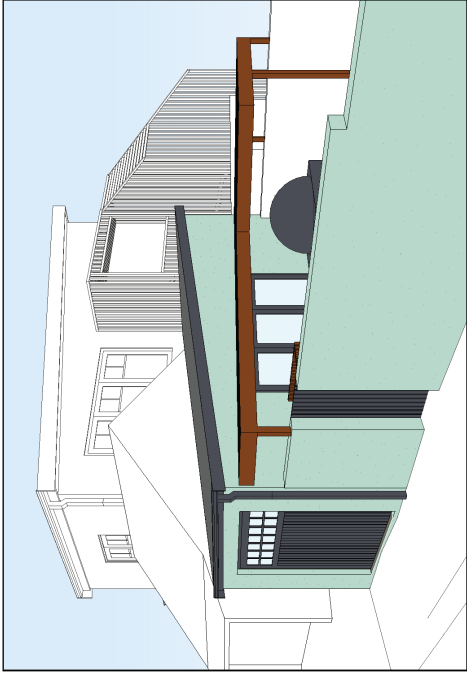


2 ANNESLEY STREET ELEVATION 1:150

<p>FEIGL CONSULTING</p>		<p>CONTRACT DESIGNER ADAM FEIGL CASEY 170 255 a.feigl@ozemail.com</p>	<p>NOTES</p> <ul style="list-style-type: none"> -THE CLIENT/CONTRACTOR TO CHECK ALL PERMITS, DIMENSIONS, SITE PRICE TO GUARANTEE OF WORK. -ALL PERMITS AND APPROVALS TO BE OBTAINED BY THE CLIENT/CONTRACTOR. -ALL PERMITS AND APPROVALS TO BE OBTAINED BY THE CLIENT/CONTRACTOR. -ALL PERMITS AND APPROVALS TO BE OBTAINED BY THE CLIENT/CONTRACTOR. -ALL PERMITS AND APPROVALS TO BE OBTAINED BY THE CLIENT/CONTRACTOR. -DO NOT SCALE DRAWINGS FOR PERMITS. -PERMITS AND APPROVALS TO BE OBTAINED BY THE CLIENT/CONTRACTOR. 	<table border="1"> <thead> <tr> <th>REV.</th> <th>NOTES</th> <th>INITIAL</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>CONCEPT DESIGN</td> <td>AF</td> <td>30.11.19</td> </tr> <tr> <td>B</td> <td>CONCEPT REVISION</td> <td>AF</td> <td>15.11.19</td> </tr> <tr> <td>C</td> <td>DA SUBMISSION</td> <td>AF</td> <td>15.11.19</td> </tr> <tr> <td>D</td> <td>DA UPDATE</td> <td>AF</td> <td>13.02.20</td> </tr> <tr> <td>E</td> <td>DA REVIEW FEEDBACK</td> <td>AF</td> <td>30.03.20</td> </tr> <tr> <td>F</td> <td>DA RE-SUBMISSION</td> <td>AF</td> <td>13.03.20</td> </tr> </tbody> </table>	REV.	NOTES	INITIAL	DATE	A	CONCEPT DESIGN	AF	30.11.19	B	CONCEPT REVISION	AF	15.11.19	C	DA SUBMISSION	AF	15.11.19	D	DA UPDATE	AF	13.02.20	E	DA REVIEW FEEDBACK	AF	30.03.20	F	DA RE-SUBMISSION	AF	13.03.20	<p>LEGEND</p> <table border="1"> <tr> <td>EXISTING</td> <td>DEVELOPED</td> <td>PROPOSED</td> </tr> </table>	EXISTING	DEVELOPED	PROPOSED	<p>CLIENTS GARY SMITH & RENEE SADLER</p> <p>SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040</p>	<p>DRAWING TITLE STREET ELEVATIONS</p> <p>SCALE: 1:50 @A3</p> <p>DATE: 15/2/20</p> <p>PROJECT NO.: 2001</p> <p>DRAWING NO.: DA10</p>
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<p>FEIGL CONSULTING</p>		<p>CONTRACT DESIGNER ADAM FEIGL 0422 170 228 a.feigl@feigl.com</p>		<p>NOTES</p> <ul style="list-style-type: none"> -THE CLIENT CONTRACTOR CHECKS ALL LEVELS & DIMENSIONS ON SITE PRIOR TO COMMENCEMENT OF WORKS. -ALL WORKS COMPLETED TO BE CHECKED BY THE CLIENT'S SURVEYOR/INSPECTOR. -SOILING AND PROTECTIVE TO BE INSTALLED PRIOR TO COMMENCEMENT OF WORKS. -ALL WORKS TO BE APPROVED BY THE LOCAL COUNCIL. -DO NOT SCALE DRAWING FOR DIMENSIONS. FIGURED DIMENSIONS TO BE USED. -THIS DRAWING IS THE COPYRIGHT OF FEIGL CONSULTING. 		<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>REV.</th> <th>NOTES</th> <th>INITIAL</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>CONCEPT DESIGN</td> <td>AF</td> <td>20/11/19</td> </tr> <tr> <td>B</td> <td>CONCEPT DESIGN</td> <td>AF</td> <td>10/11/19</td> </tr> <tr> <td>C</td> <td>DA SUBMISSION</td> <td>AF</td> <td>13/11/19</td> </tr> <tr> <td>D</td> <td>DA IMPROVE</td> <td>AF</td> <td>13/12/20</td> </tr> <tr> <td>E</td> <td>DATE VIEW FEEDBACK</td> <td>AF</td> <td>20/04/20</td> </tr> <tr> <td>F</td> <td>DATE SUBMISSION</td> <td>AF</td> <td>13/05/20</td> </tr> </tbody> </table>		REV.	NOTES	INITIAL	DATE	A	CONCEPT DESIGN	AF	20/11/19	B	CONCEPT DESIGN	AF	10/11/19	C	DA SUBMISSION	AF	13/11/19	D	DA IMPROVE	AF	13/12/20	E	DATE VIEW FEEDBACK	AF	20/04/20	F	DATE SUBMISSION	AF	13/05/20	<p>LEGEND</p> <table border="1"> <thead> <tr> <th>EXISTING</th> <th>DEMOLISHED</th> <th>PROPOSED</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>		EXISTING	DEMOLISHED	PROPOSED				<p>CLIENTS: GARY SMITH & RENEE SADLER</p> <p>SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040</p>		<p>DRAWING TITLE: EXT. VIEWS - NEW PROPOSAL</p> <p>SCALE: @A3</p> <p>DATE: 10/5/20</p> <p>PROJECT NO.: 2001</p> <p>DRAWING NO.: DA11</p>	
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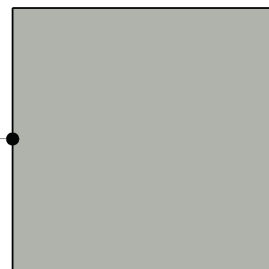
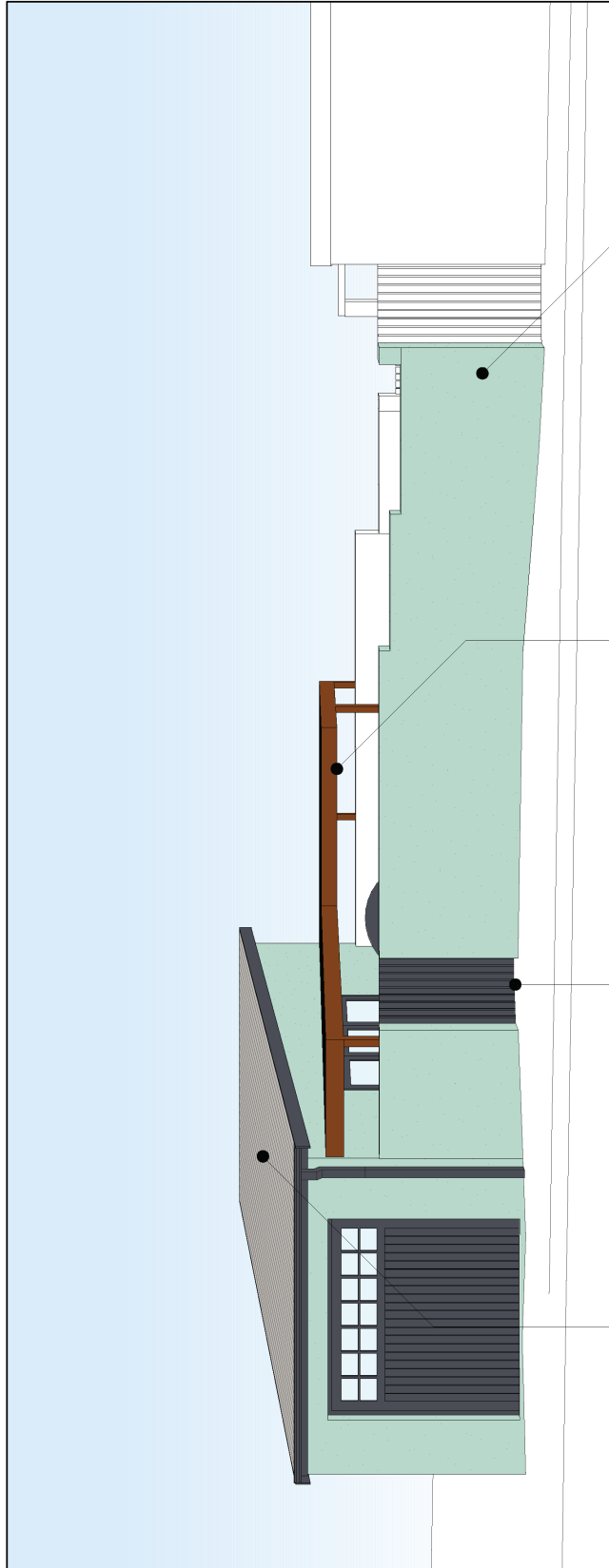
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F	DA REVISED FOR FEEDBACK	AF	13/05/20	

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 DESIGNER
 0421 173 225
 a.feigl@feigl.com

NOTES
 - THE BUILDER CONTRACTOR TO CHECK & VERIFY ALL LEVELS & DIMENSIONS OF EACH DRAWING OR FABRICATION OF COMPONENTS
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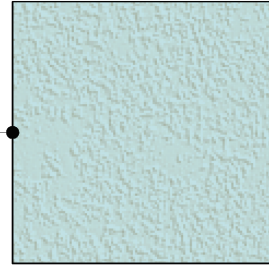
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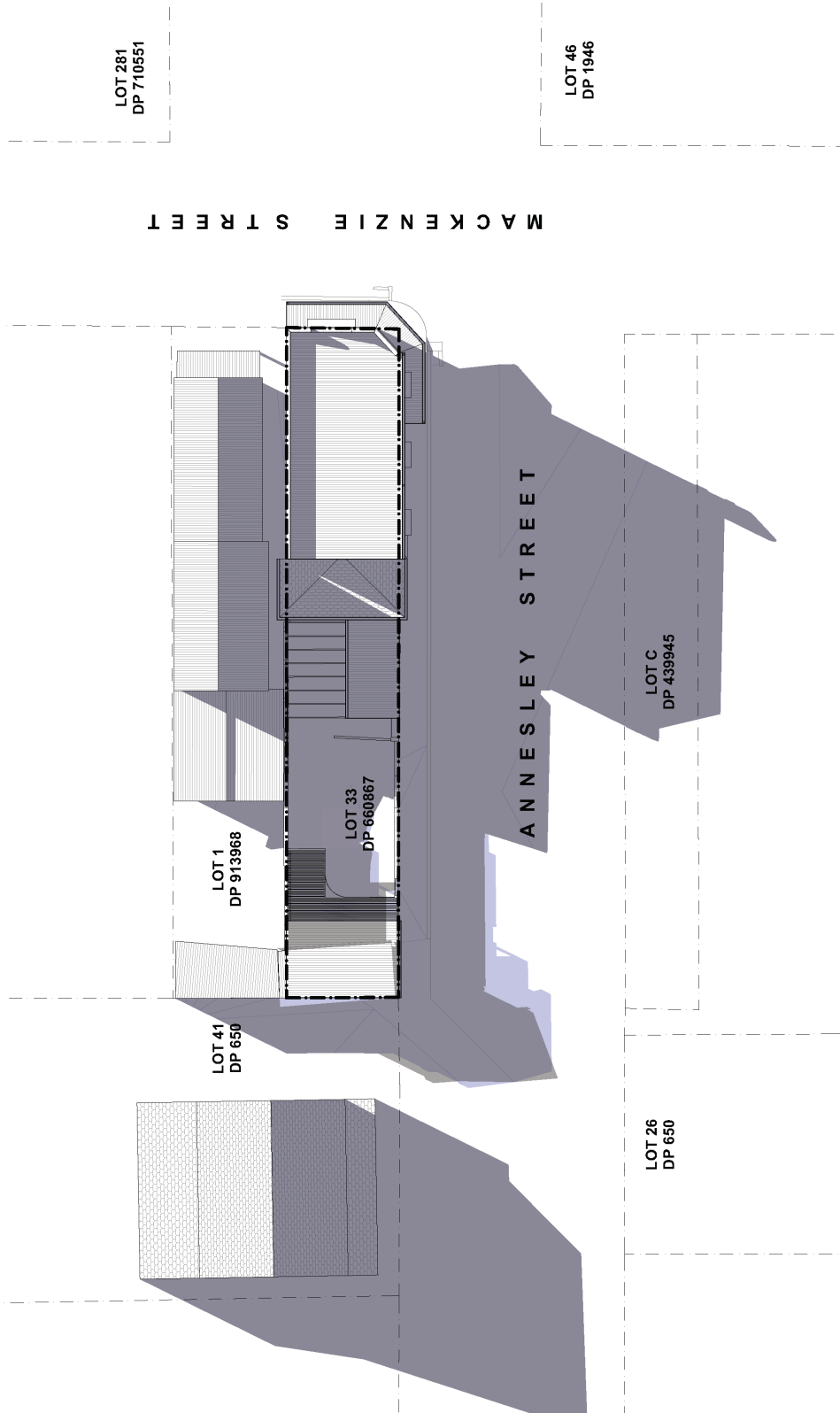


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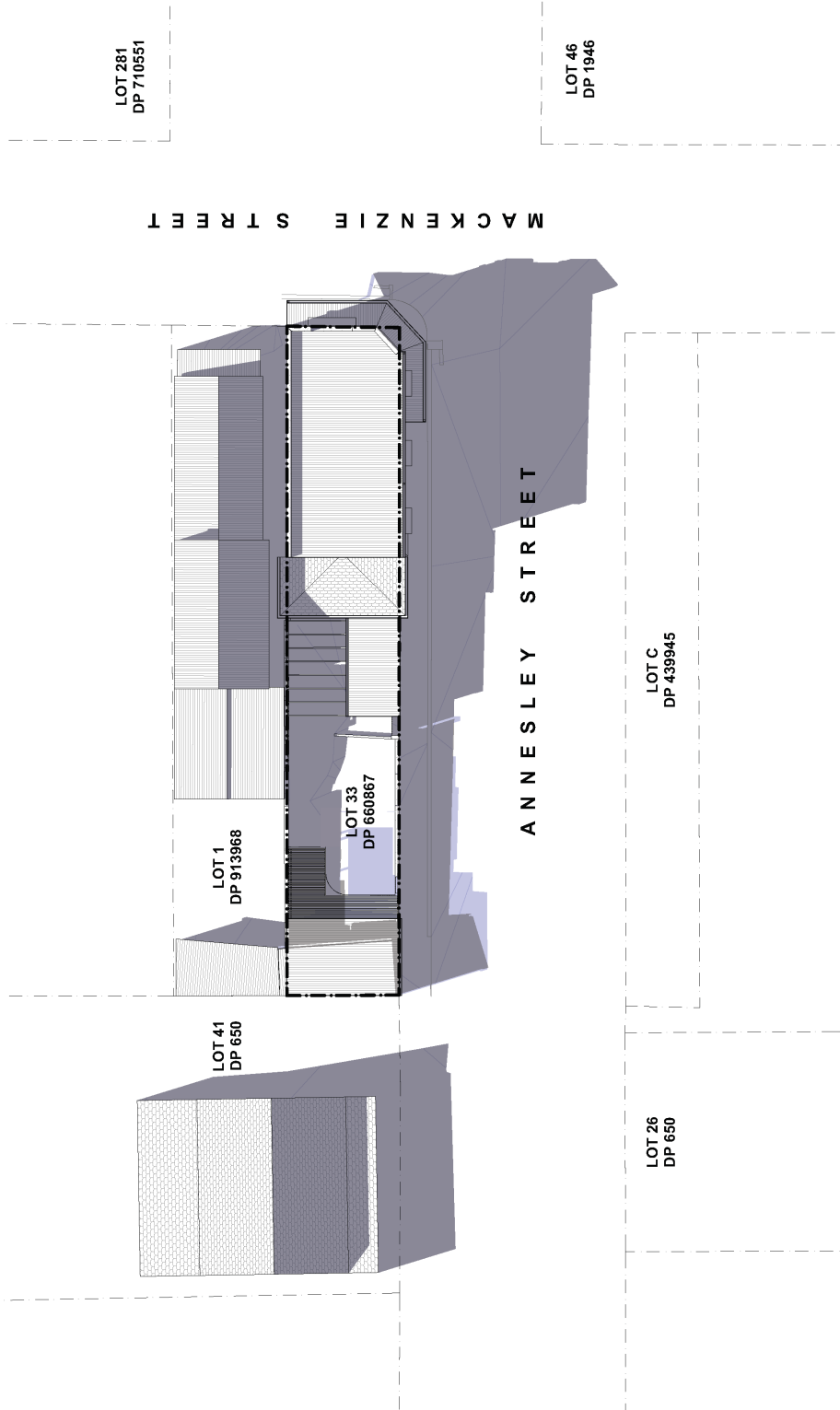
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1 SHADOW DIAGRAM - JUNE 21 - 9AM 1:200

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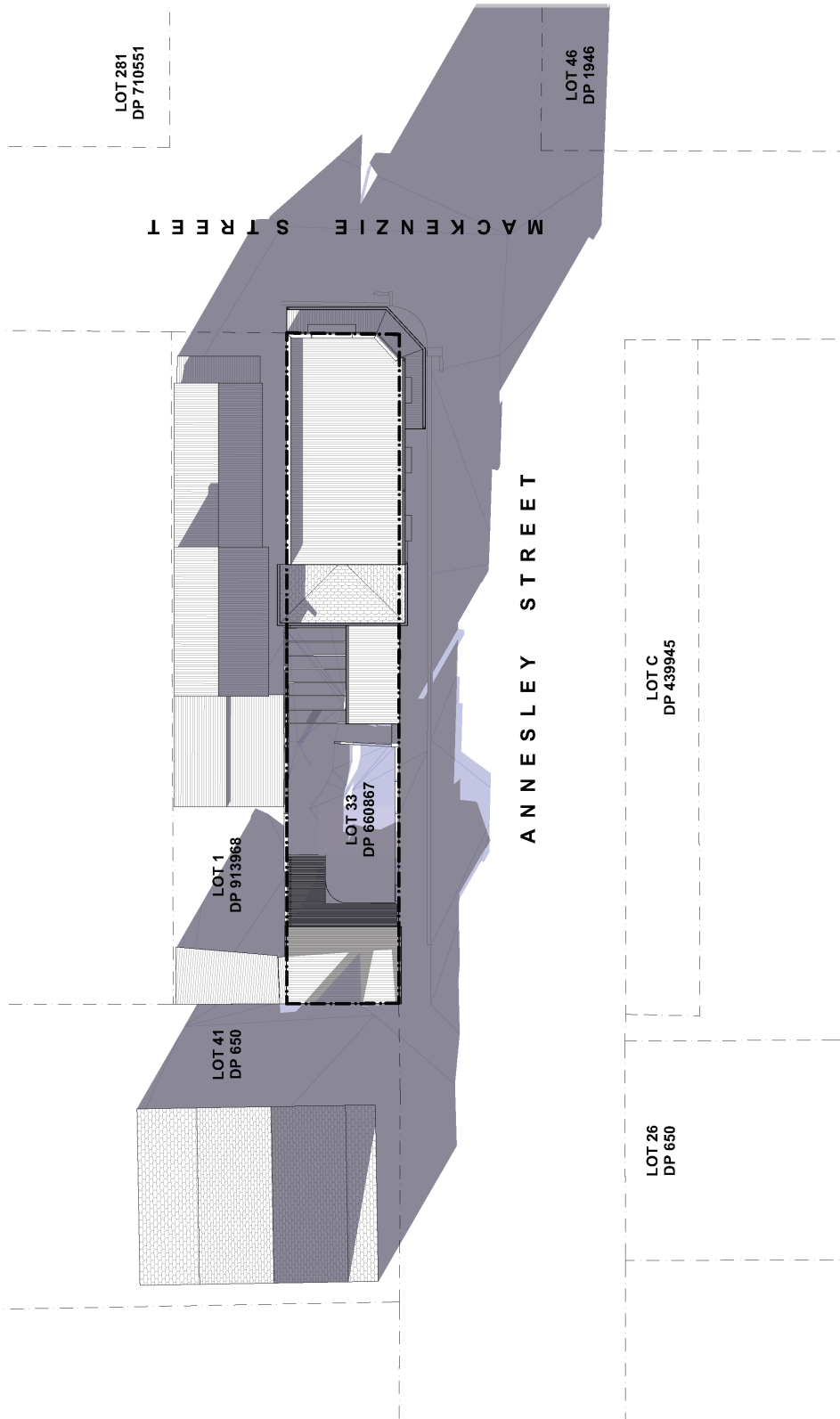


1 SHADOW DIAGRAM - JUNE 21 - 12PM 1:200

CONTACT ADAM FEIGL DESIGNER 0425 179 228 a_feigl@hotmail.com		NOTES *THE CLIENT CONTRACTOR TO CHECK EVERYTHING AND VERIFY ALL SERVICES AND CONDITIONS OF THE PROJECT. *THIS DRAWING IS THE PROPERTY OF FEIGL CONSULTING.		REV.		NOTES.		INITIAL		DATE		LEGEND		NORTH POINT		CLIENTS: GARY SMITH & RENEE SADLER SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040		DRAWING TITLE: SHADOW DIAGRAM - JUNE 21 - 12PM	
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SCALE: 1:200 @A3
 DATE: 15/5/20
 PROJECT NO: 2001
 DRAWING NO: DA15

EXISTING SHADOWS
 PROPOSED SHADOW REDUCTIONS
 PROPOSED SHADOW ADDITIONS



1 SHADOW DIAGRAM - JUNE 21 - 3PM 1:200

CONTRACT ADAM FEIGL DESIGNER 0435 170 225 a.feigl@optusnet.com.au		NOTES -THE BUILDER/CONTRACTOR TO CHECK VERIFY ALL LEVELS & DIMENSIONS ON SITE PRIOR TO COMMENCEMENT OF WORKS. -ALL LEVELS/ DIMENSIONS TO BE GIVEN BY THE BUILDER TO SURVEYOR/ LAND SURVEYOR. -ALL PARTS MUST BE VERIFIED BY ARCHITECTURAL INSPECTOR. -DO NOT SCALE DRAWING FROM DIMENSIONS. FIGURED DIMENSIONS TO BE USED. -THIS DRAWING IS THE COPYRIGHT OF FEIGL CONSULTING		REV. A CONCEPT DESIGN B CONCEPT DESIGN C DA SUBMISSION D DA UPDATE E DA REVIEW FEEDBACK F DA RE-SUBMISSION		INITIAL AF AF AF AF AF AF		DATE 07.11.19 15.11.19 13.12.19 13.02.20 30.04.20 13.06.20		LEGEND ■ EXISTING SHADOWS ■ PROPOSED SHADOW REDUCTIONS ■ PROPOSED SHADOW ADDITIONS		NORTH POINT 		CLIENTS: GARY SMITH & RENEE SADLER SITE ADDRESS: 50 MACKENZIE STREET LEICHHARDT, NSW, 2040		DRAWING TITLE: SHADOW DIAGRAM - JUNE 21 - 3PM SCALE: 1:200 @ A3 PROJECT NO.: 2001 DATE: 15/02/20 DRAWING NO.: DA16	
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Attachment C- Clause 4.6 Exception to Development Standards



10 APPENDIX 1

10.1 REQUEST TO VARY THE DEVELOPMENT STANDARD FOR MAXIMUM FSR

This request to vary the maximum FSR development standard – Clause 4.4(2) of the Leichhardt Local Environmental Plan 2013 – relates to the development at 50 Mackenzie Street, Leichhardt.

As detailed in this written request, the proposed variation meets the requirements prescribed under Clause 4.6 of the Leichhardt LEP 2013.

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11 CLAUSE 4.6 VARIATION TO CLAUSE 4.4(2) OF LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

This submission is made under Clause 4.6 of the Leichhardt Local Environmental Plan 2013 – Exceptions to development standards. Clause 4.6 establishes the framework for varying statutory development standards applying under a Local Environmental Plan. Clause 4.6 states the following:

4.6 Exceptions to development standards

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



- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

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

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

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

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

A key consideration is that the fundamental purpose/objective of Clause 4.6 is to provide flexibility in applying development standards in that in so doing better development outcomes ensue.



11.1 CLAUSE 4.4(2) OF THE LEICHHARDT LEP 2013

The Environmental Planning Instrument to which this variation relates to is Leichhardt LEP 2013, and the development standard is Clause 4.4(2) of the Leichhardt LEP 2013, which reads as follows:

4.4 Floor space ratio

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

(a) to ensure that residential accommodation—

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

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

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

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The maximum FSR for the site is 0.7:1 (154.07m²) pursuant to Clause 4.4(2B)(c)(ii). The proposed development will have a total gross floor area of 173.37m², which results in a total FSR of 0.79:1 for the site and does not comply with the maximum FSR.

It should be noted that the site has an existing GFA/FSR of 155.76m²/0.71:1 i.e. the existing GFA already exceeds the maximum by 1.69m².

An exception (variation) request under Clause 4.6 is proposed by this development application (DA) for the minor variation to the maximum GFA/FSR (over the existing non-complying GFA) of 17.61m² or 11.3%.

It is worth noting that there are no numerical limit to how much variations can be supported by Councils and/or the NSW Land and Environment Court e.g. in the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, the Court approved a proposed FSR of 1.5:1 where the control was 0.9:1, or a 65% exceedance!

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* and and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*.

12 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The NSW Land and Environment Court (LEC) in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council [2007] NSW LEC 827*.



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

First	<p>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</p> <p>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective.</p>
Second	<p>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</p>
Third	<p>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</p>
Fourth	<p>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</p>
Fifth	<p>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</p>

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The following discussion is provided in response to each point of the above Table:



12.1 THE OBJECTIVES OF THE STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

The objectives supporting the maximum landscaped area control identified in Clause 4.4(2) are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with Clause 4.4(2) would be both unreasonable and unnecessary in this instance. The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4(2).

The development as proposed is consistent with the objectives of the development standard (being Clause 4.4(2)), which are as follows:

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4.4 Floor space ratio

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

(a) to ensure that residential accommodation—

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

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

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

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

The objective/purpose of the standard is clearly to restrict the built form of development to ensure that its bulk and scale is compatible with the character of the locality, and to mitigate against undesirable amenity impacts.

In the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site.

In this regard, the development is consistent with the objectives as:

- Clause 4.3(A) of Leichhardt Local Environmental Plan 2013 has a minimum landscaped area requirement of 15%. The development proposes a landscaped area of 35.44m² or 16.10% of the site area, and comply with this standard.
- the site coverage of 59.38% (130.70m²) comply with the maximum site coverage of 60% (Clause 4.3(A) of Leichhardt Local Environmental Plan 2013)
- by complying with the site coverage & landscaped area controls, the development footprint is adequate and therefore maximising the retention and absorption of surface drainage water on-site and minimising obstruction to the underground flow of water.
- A new landscaped area will also replace an existing paved section to balance the built form, and generally enhance the site presentation.
- the 81.03m² of private open space is well in excess (5x more) than the 16m² that is required by the DCP.



- The development is set well back from the front property boundary, and does not reduce the existing side/rear building setbacks (in fact – as the current corrugated iron garage extend beyond the site's rear/side boundaries – the new garage will be repositioned to the correct location to be within the legal lot boundaries).
- will provide sufficient floor space to meet anticipated residential needs for the foreseeable future;
- There is unlikely to be any adverse visual and/or acoustic privacy impacts for surrounding properties i.e. no windows are proposed on the north & west boundaries and the external staircase to access the new Study will be screened
- There is virtually no additional shadowing of adjoining neighbours.
- If the planned density for the site can be achieved (FSR/height) in a way which provides a better planning outcome for the site, notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.
- The development is also compatible with the current and future character of the locality – other properties in the street have had similar additions approved/built e.g. Council approved D/2012/386 for the alterations and additions to the ground and first floor levels at 30 Mackenzie Street. Variation to the Floor Space Ratio development standard were also approved.

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The SEE submitted with the DA demonstrates that the proposal is unlikely to result in significant unreasonable/adverse impacts by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.

As demonstrated, the objectives of the standard have been achieved.

12.2 THE UNDERLYING OBJECTIVE OR THE PURPOSE OF THE STANDARD IS NOT RELEVANT TO THE DEVELOPMENT AND THEREFORE COMPLIANCE IS UNNECESSARY

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined as above.

12.3 THE UNDERLYING OBJECT OR PURPOSE WOULD BE DEFEATED OR THWARTED IF COMPLIANCE WAS REQUIRED AND THEREFORE COMPLIANCE IS UNREASONABLE

Not applicable as the underlying objective or purpose would not be defeated or thwarted if compliance was required.

12.4 THE DEVELOPMENT STANDARD HAS BEEN VIRTUALLY ABANDONED OR DESTROYED BY THE COUNCIL'S OWN ACTIONS IN GRANTING CONSENTS DEPARTING FROM THE STANDARD AND HENCE COMPLIANCE WITH THE STANDARD IS UNNECESSARY AND UNREASONABLE; AND

It cannot be said that this development standard has been abandoned, however there are several examples of approved developments that did not comply with the maximum FSR development standards elsewhere in the LGA.



As examples, there are 2 properties in Annandale, with variations to not only the Floor Space Ratio, but also Landscaped Area and Site Coverage supported:

12.4.1 233 YOUNG STREET, ANNANDALE

Council approved D/2015/228 for the Alterations and additions to the existing dwelling including a first floor extension and balcony. Variations to Landscaped Area, Site Coverage and Floor Space Ratio development standards were also approved. The Table below summarises the variations approved:

LLEP 2013 Development Standard	Proposal m ²	Proposal ratio / %	Compliance	% of Non-compliance
Floor Space Ratio – 0.6 :1	146.5	0.78:1	No	29.74%
Landscaped Area – minimum 15% of site area	13.2	7%	No	53.24%
Site Coverage – maximum 60% of site Area	147.3	78.24%	No	29.74%

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12.4.2 229 YOUNG STREET, ANNANDALE

On 04/09/2015, Council approved D/2015/104 for the Alterations and additions to the existing dwelling including construction of a first floor level with front dormer windows and swimming pool. Variations to Site Coverage and Floor Space Ratio development standards were also approved as part of this development. The Table below summarises the variations approved:

LLEP 2013 Development Standard	Proposal m ²	Proposal ratio / %	Compliance	% of Non-compliance
Floor Space Ratio – 0.6 :1	192.4 m ²	0.72:1	No	20%
Landscaped Area – minimum 10% of site area	41.3 m ²	15%	Yes	Not Applicable
Site Coverage – maximum 60% of site Area	170.8 m ²	64%	No	7%

Most importantly, in these 2 examples, Council has approved first floor additions, with large variations to Landscaped Area, Site Coverage and Floor Space Ratio (2 controls were varied for No. 229, and all 3 controls were varied for No. 233), whereas the subject DA only propose minor variation to 1 control.

12.4.3 30 MACKENZIE STREET, LEICHHARDT

An example closer to the subject site, Council approved D/2012/386 for the alterations and additions to the ground and first floor levels of the existing dwelling and construction of an in-ground swimming pool. Variation to the Floor Space Ratio development standard was also approved.



- 12.5 THE ZONING OF THE LAND IS UNREASONABLE OR INAPPROPRIATE SO THAT A DEVELOPMENT STANDARD APPROPRIATE FOR THAT ZONING IS ALSO UNREASONABLE AND UNNECESSARY AS IT APPLIES TO THE LAND AND COMPLIANCE WITH THE STANDARD WOULD BE UNREASONABLE OR UNNECESSARY. THAT IS, THE PARTICULAR PARCEL OF LAND SHOULD NOT HAVE BEEN INCLUDED IN THE PARTICULAR ZONE.**

Not applicable as the zoning of the site is appropriate.

13 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In the circumstances of this case, there are sufficient planning grounds particular to the site to justify contravening the development standard being:

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- In the 2 Annandale examples above, Council has approved first floor additions, with large variations to Landscaped Area, Site Coverage and Floor Space Ratio (2 controls were varied for No. 229, and all 3 controls were varied for No. 233), whereas the subject DA only propose minor variation to 1 control

Furthermore, the proposal is unlikely to result in significant adverse visual massing, and bulk and scale impacts above the impacts that could be reasonably expected from a compliant FSR.

- In the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, the LEC accepted that compliance with the standard (also FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site.

Notwithstanding the minor variation, the proposal represent a well-considered development that addresses the site constraints, streetscape and satisfy the relevant objectives of both the standards and the zone.

- The development is consistent with the objectives of the development standard as:
 - by complying with the site coverage & landscaped area controls, the proposal demonstrates that it's a reasonable development with a suitable footprint that maximise the retention and absorption of surface drainage water on-site and minimise obstruction to the underground flow of water.
 - A new landscaped area will also replace an existing paved section to balance the built form, and generally enhance the site presentation.
 - The 81.03m² of private open space is well in excess (5x more) than the 16m² that is required by the DCP.
 - There is virtually no additional shadowing of adjoining neighbours.
 - The development is set well back from the front property boundary, and does not reduce the existing side/rear building setbacks (in fact – as the current corrugated iron garage extend beyond the site's rear/side



- boundaries – the new garage will be repositioned to the correct location to be within the legal lot boundaries).
- If the planned density for the site can be achieved (FSR/height) in a way which provides a better planning outcome for the site (increased landscaped area), notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.
 - The SEE submitted with the DA demonstrates that the proposal is unlikely to result in significant unreasonable/adverse impacts to neighbours by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.
 - The development may result in public benefit through contributions in accordance with Council's S94 Contributions Plan which will provide Council with the opportunity to deliver public infrastructure /services to the locality and the LGA.

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The majority of the above environmental planning grounds that warrant the minor variation, are not "generic", but rather, specific to the site and circumstances of the development.

14 IS THE VARIATION IN THE PUBLIC INTEREST?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

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

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.4(2)) & and the objectives of the R1 zone. Reference should be made to the discussions above, and in other supporting reports/documentation accompanying the DA.

15 PUBLIC BENEFIT OF MAINTAINING THE STANDARD

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the development standard, whilst better planning outcomes are achieved.



Reference should be made to the discussions above.

The proposed development will allow for the rejuvenation of the site & creation of a high quality contemporary addition to the rear of the site which as stated above meets the desired objectives of the relevant standards/objectives.

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

The minor departure from Clause 4.4(2) within the Leichhardt LEP 2013 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

On balance, it is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will allow for the creation of a high quality contemporary addition to the rear of the site which as stated above meets the desired objectives of the relevant standards. We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

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16 IS THE VARIATION WELL FOUNDED?

In summary, this Clause 4.6 Variation Request is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary, in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard, which results in a same or better planning outcome than a strictly compliant development in the circumstances of this particular case; The development meets the objectives of the development standard and where relevant, the objectives of the land use zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development generally aligns with Council's Development Standards & Controls.

Based on the above, the variation is considered to be well founded. The consent authority may be satisfied that all requirements of Clause 4.6 have been accounted for, having regards to the merits of the proposed development.