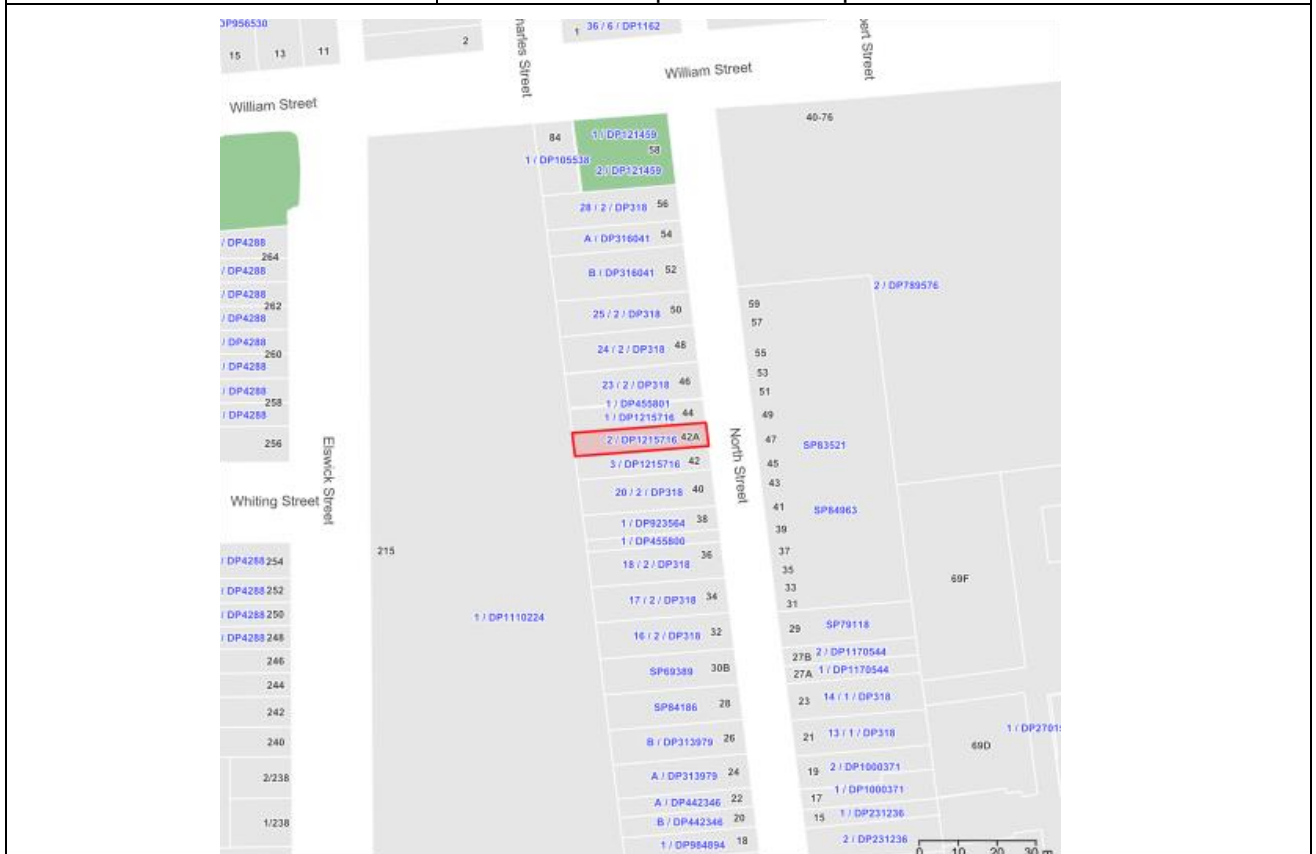

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2020/0632
Address	42A North Street LEICHHARDT NSW 2040
Proposal	Alterations to existing attached dwelling to convert internal void into bedroom
Date of Lodgement	05 August 2020
Applicant	Mr Alexander Lam
Owner	Bianca Marcocci Mr Alexander Lam
Number of Submissions	0
Value of works	\$5,000.00
Reason for determination at Planning Panel	Variation to Floor Space Ratio development standard exceeds 10%
Main Issues	Floor Space Ratio
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors	N/A	↑ N
Notified Area	N/A	Supporters	N/A	

Note: Pursuant to the Inner West Council Community Engagement Framework, adopted in November 2019, notification of the application was not required.

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations to an existing attached dwelling to convert of an internal void into a bedroom at 42A North Street, Leichhardt.

Pursuant to the Inner West Council Community Engagement Framework, adopted in November 2019, notification of the application was not required.

The main issues that have arisen from the application include:

- Non-compliance with permissible floor space ratio.

The non-compliance with floor space ratio is acceptable given that the proposed works are contained wholly within the existing footprint of the dwelling and there are no adverse impacts to surrounding properties. Therefore, the application is recommended for approval.

2. Proposal

The proposal seeks development consent for alterations and additions to an existing attached dwelling approved under Complying Development Certificate CDC/2016/175. The works include the following:

- Infill of an existing void area located above the existing ground floor kitchen to provide for a new first floor bedroom.

3. Site Description

The subject site is located on the western side of North Street, between Francis Street and Elswick Street. The site consists of one allotment and is generally rectangular in shape with a total area of 205.3sqm and is legally described as Lot 2 DP1215716. The site has a frontage to North Street of 6.0m.

The site supports a two storey contemporary attached dwelling. The adjoining property to the north supports a two-storey semi-detached residence known as No. 44 North Street and adjoining property to the south supports a two-storey semi-detached residence known as No. 42 North Street.

The site is zoned R1 General Residential (refer to Figure 1: Zoning map). The property is not listed as a heritage item, nor is the property located within the vicinity of any environmental heritage and is not located in a heritage conservation area. The property is not identified as a flood prone lot.

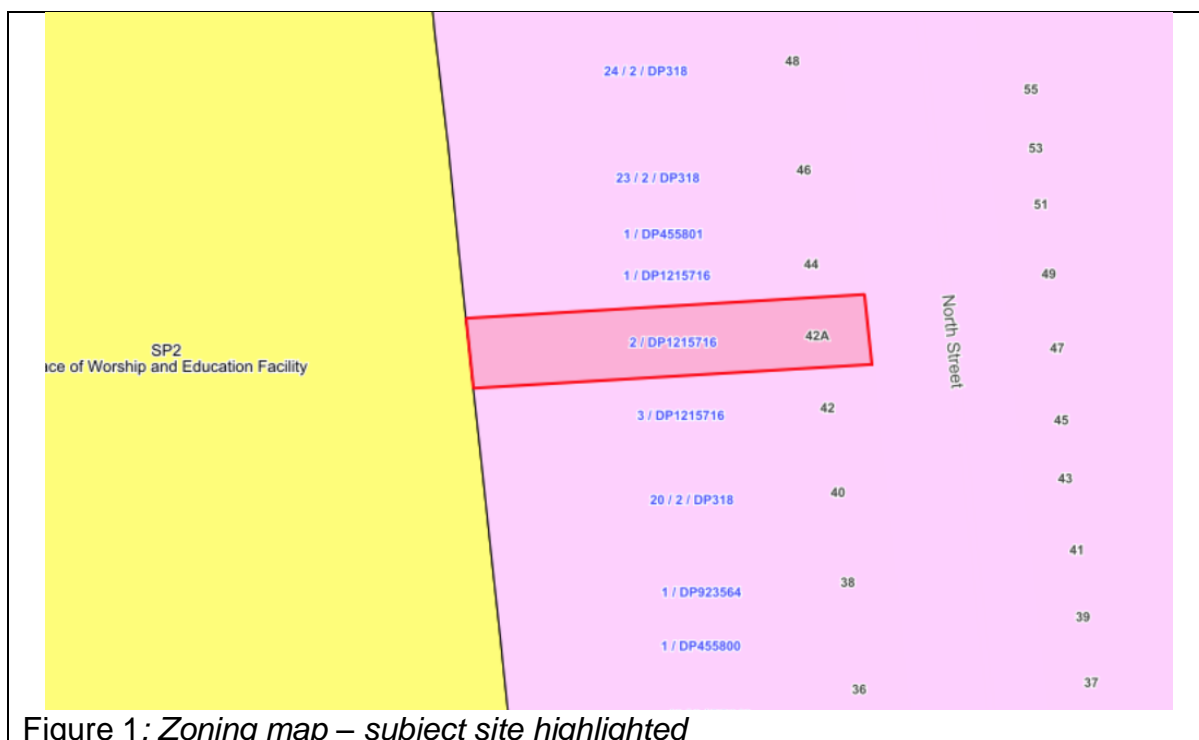


Figure 1: Zoning map – subject site highlighted

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
CDC/2016/175	Erection of a two storey dwelling to Lot 2 under Codes SEPP.	Approved by delegated officer – 30/01/2017
OC/2018/324	Occupation Certificate - CDC2016/175 - interim occupation certificate.	Approved by delegated officer – 08/10/2018

Surrounding properties

42 North Street, Leichhardt

Application	Proposal	Decision & Date
CDC/2016/175	Erection of a two storey dwelling to Lot 2 under Codes SEPP	Approved by delegated officer – 30/01/2017
CDC/2016/176	Erection of two storey dwelling to Lot 3 under Codes SEPP	Approved by delegated officer – 30/01/2017
OC/2018/325	Occupation Certificate - CDC/2016/176 - interim occupation certificate	Approved by delegated officer – 8/10/2018
D/2020/12	Conversion of first floor internal void into bedroom (timber structure infill)	Approved – Local Planning Panel – 26/05/20

44 North Street, Leichhardt

Application	Proposal	Decision & Date
CDC/2016/174	Erection of two storey dwelling to lot 1 under Codes SEPP	Approved by delegated officer – 30/01/2017
CDC/2016/175	Erection of a two storey dwelling to Lot 2 under Codes SEPP	Approved by delegated officer – 30/01/2017
OC/2018/323	Occupation Certificate - CDC/2016/174	Approved by delegated officer – 8/10/2018
DA/2020/0665	Alterations to existing attached dwelling to convert internal void into bedroom	Lodged – 13/08/20

4(b) Application history

Not applicable.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 1.15 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*
- *Draft Inner West LEP 2020*

The following provides further discussion of the relevant issues:

5(a)(v) 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. LDCP2013 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)(vi) *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

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

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

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

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

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

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

attached dwelling means a building containing 3 or more dwellings, where—

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land, and
- (c) none of the dwellings is located above any part of another dwelling

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 General Residential zone.

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

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 143.71 sqm	0.97:1 or 198.89 sqm	55.18 sqm or 38.4%	No
Landscape Area Minimum permissible: 15% or 30.795 sqm	18.90% or 38.81 sqm	N/A	Yes
Site Coverage Maximum permissible: 60% or 123.18 sqm	58.97% or 121.07 sqm	N/A	Yes

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt Local Environmental Plan 2013 by 38.4% (55.18sqm).

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

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

Clause 4.4 - Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the LLEP 2013 by 38.4% (55.18sqm) of this, only 13.8sqm is “new” proposed gross floor area.

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

- The site currently occupies a modern two storey attached dwelling that was approved under CDC/2016/175, with an issued Occupation Certificate. The proposal does not seek to change the approved building envelope.
- The height, bulk, form and scale of the building remains unchanged as a result of the increased floor area.
- The quantum of landscape and private open space area remains unchanged.
- The proposal does not involve any external works and will not result in any change to the architectural presentation of the dwelling upon the streetscape.
- Given the proposed works are contained wholly within the built form, the impact with regard to neighbouring amenity is minimal.
- The proposal provides acceptable on-site amenity outcomes and does not adversely impact the amenity of existing habitable rooms.

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

The objectives of the R1 General Residential zone as outlined in the LLEP 2013 are outlined below:

- *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 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 Leichardt Local Environmental Plan for the following reasons:

- The proposed development is capable of providing housing choice, which will respond to the needs of the local community.
- The proposal provides additional opportunities to work from home.
- The proposed alterations and additions are compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal maintains an acceptable level of permeable landscaped area for the enjoyment of existing and future residents.
- The proposal does not result in any discernable adverse amenity impacts to neighbouring properties.

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

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

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The objective of the Floor Space Ratio standard is to ensure residential accommodation is compatible with the desired future character of the area in relation to building bulk, form and scale. The additional gross floor area that is created as a result of infilling the existing void area is contained wholly within the existing dwelling, as such, the proposal is considered to be compatible with the desired future character of the area in relation to building bulk, form and scale.
- The additional GFA is to infill the existing internal void located at the first floor, which is considered to have minimal undue adverse amenity and streetscape impacts.
- The proposed dwelling provides a suitable balance between the built form and landscaped areas.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of the applicable local environmental plan.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Clause 4.4 Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

Clause 6.8 - Development in areas subject to aircraft noise

The site is located within ANEF 20-25. Appropriate conditions addressing the requirements of this Clause are recommended as a condition on any consent granted.

5(b) Draft Environmental Planning Instruments

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

- Draft State Environmental Planning Policy (Environment)
- Draft Inner West Local Environmental Plan 2020 (*Draft IWLEP 2020*)

5(b)(i) Draft State Environmental Planning Policy (Environment)

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

5(b)(ii) Draft Inner West Local Environmental Plan 2020 (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(c) 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	N/A
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	N/A
C1.8 Contamination	N/A
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.1.1.4 Helsarmel Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	N/A
C3.3 Elevation and Materials	N/A
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	N/A
C3.9 Solar Access	Yes – see discussion
C3.10 Views	N/A
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	N/A

D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.3 Alterations and Additions:

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

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

The proposed infill of the internal spaces will not give rise to any adverse impacts on the streetscape or amenity of neighbouring properties. The proposed works are entirely internal to the existing dwelling and fill out areas, which were not able to be constructed within the floor area permitted under a CDC.

As a result of all the above factors and considerations, the proposed internal first floor addition to infill an existing void located at the first floor is considered acceptable with respect to the intent of the objectives of this part.

C3.9 – Solar Access

The proposal will not result in any overshadowing implications for neighbours.

Control C5 of this part of the LDCP2013 requires all habitable rooms to have access to natural daylight regardless of provision of skylights or similar. The proposed bedroom is serviced by an existing window located on the western elevation of the dwelling for daylight (and ventilation) in accordance with Control C5. The proposal is considered to be satisfactory with respect to the provisions and intent of the objectives of this part.

C3.11 Visual Privacy

The proposal seeks to utilise an existing first floor west facing (rear) window associated with the existing void area to service the proposed bedroom. It is noted that the window does provide opportunity for some sight lines across the side boundary to the private open space of No. 42 and No. 44 North Street Leichhardt, however, given the proposed use as a bedroom rather than as a principle living area, privacy mitigation measures are not necessary in this instance. For these reasons, the proposal is satisfactory with respect to the provisions and intent of the objectives of this part.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

Pursuant to the Inner West Council Community Engagement Framework, adopted in November 2019, no notification was required. No submissions were received.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6. Referrals

6(a) Internal

The application was not required to be referred to any internal sections/officers.

6(b) External

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/0632 for alterations to an existing attached dwelling to convert internal void into bedroom at 42A North Street LEICHHARDT NSW 2040 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
Drawing 01 Rev. A	Ground and First Floor Plans	04/06/2020	Christopher Jordan Architecture and Design
Drawing 02 Rev. A	West Elevation	04/06/2020	Christopher Jordan Architecture and Design
Drawing 03 Rev. A	Section A	04/06/2020	Christopher Jordan Architecture and Design

As amended by the conditions of consent.

GENERAL CONDITIONS

2. 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.

PRIOR TO CONSTRUCTION CERTIFICATE

3. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION

4. 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.

PRIOR TO OCCUPATION CERTIFICATE

5. Aircraft Noise –Alterations and Additions

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

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a

further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

ADVISORY NOTES

Prescribed Conditions

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

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.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;
or

- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

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.

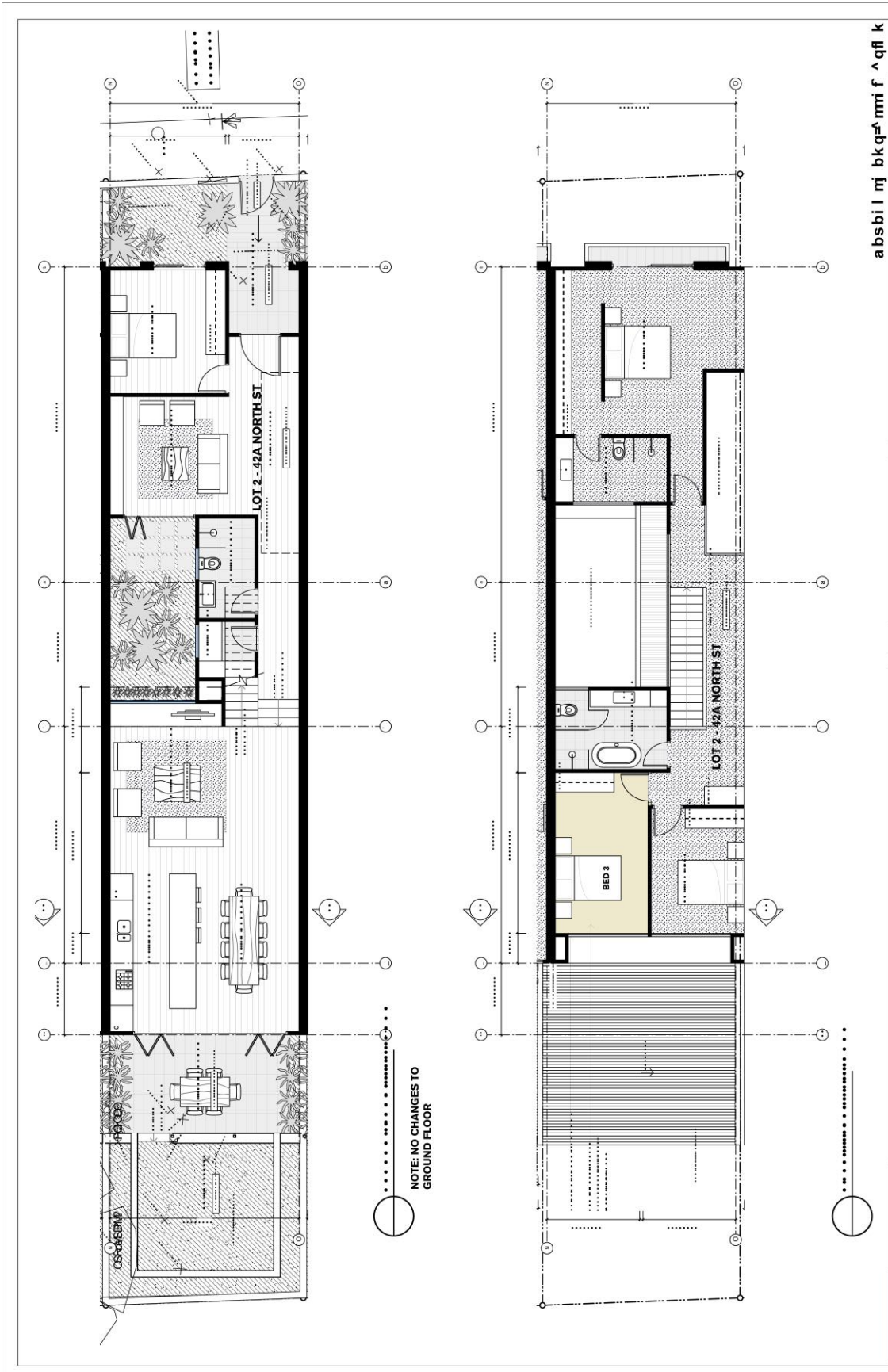
Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131 441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Notification of commencement of works

At least 7 days before any demolition work commences:

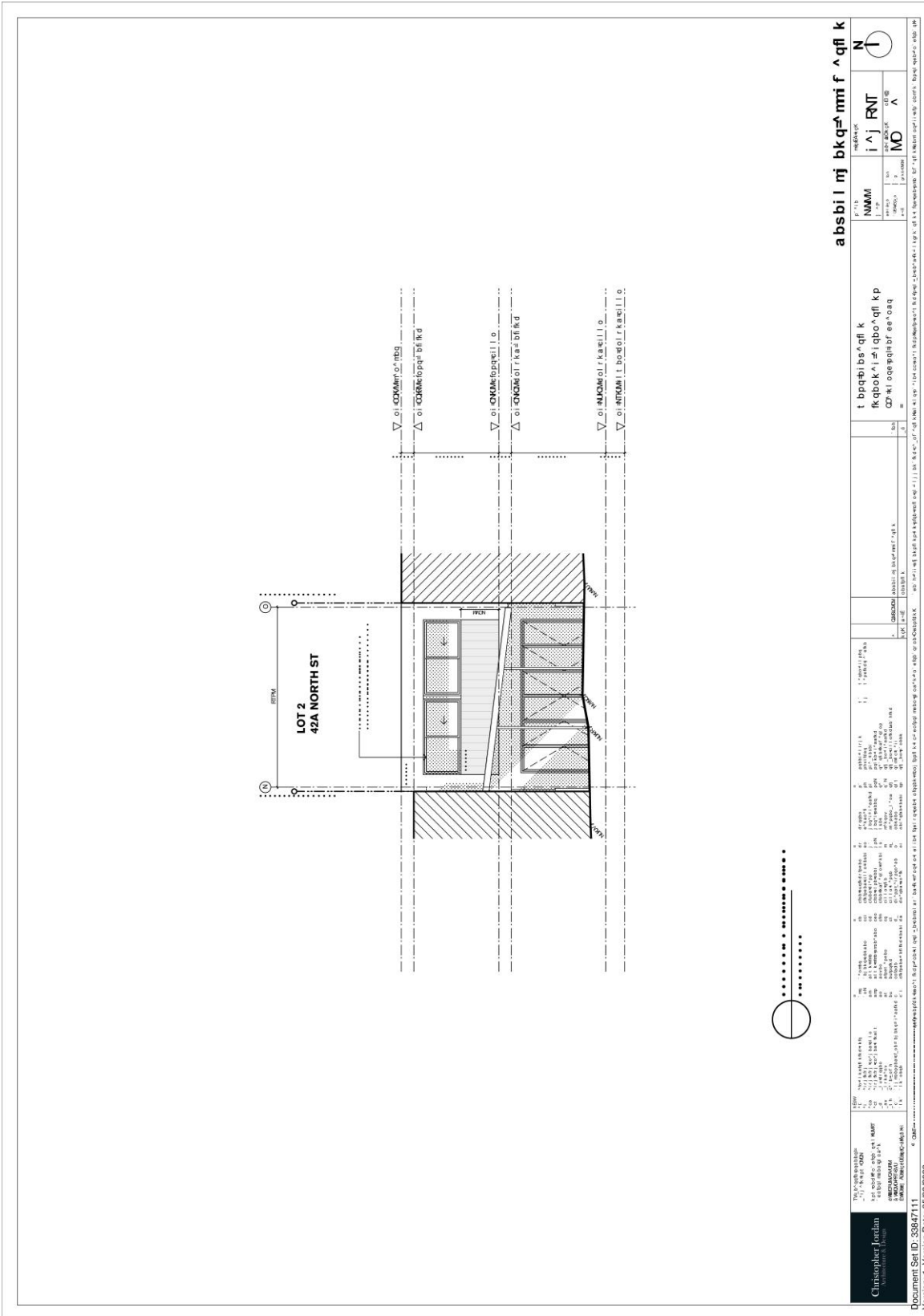
- a. the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be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



NOTE: NO CHANGES TO GROUND FLOOR

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Christopher Jordan Architects & Planners	Document Set ID: 3884711 Version: 1, Version Date: 05/08/2020	PROJ. NO: 1111111111 PROJ. NAME: 1111111111	DATE: 05/08/2020 TIME: 10:00 AM	SCALE: 1:100 DATE: 05/08/2020
Client: 1111111111		Address: 1111111111		City: 1111111111
Project Description: 1111111111		Site Area: 1111111111		Lot Area: 1111111111
Design Description: 1111111111		Design Date: 05/08/2020		Design Time: 10:00 AM
Design Status: 1111111111		Design Stage: 1111111111		Design Version: 1111111111
Design Notes: 1111111111		Design Comments: 1111111111		Design Remarks: 1111111111



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o p ^ k i o q e q b i b t e e o a q

Lot 2
42A North St

Lot 2
42A North St

Lot 2
42A North St

Lot 2
42A North St



Christopher Jordan
Architects & Planners

Document Set ID: 336677111
Version: 1, Version Date: 05/08/2020

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<p>Christopher Jordan Architects</p>	<p>Project Name: [illegible] Project Address: [illegible] Project No: [illegible]</p>	<p>Client: [illegible] Project Manager: [illegible]</p>	<p>Scale: 1:100 Date: [illegible]</p>	<p>Project No: [illegible] Drawing No: [illegible]</p>
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LOT 2, 52A NORTH ST

LOT 3, 52B NORTH ST

SITE AREA	205.3 SQM
FSR	
EXISTING	
TOTAL EXISTING	181.07 SQM
EXISTING FSR	0.88:1
PROPOSED	
TOTAL PROPOSED-FSR	194.86 SQM
	0.95:1

Christopher Jordan
Architect

Document Set ID: 28847111
Version: 1, Version Date: 05/08/2020

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Document Set ID: 28847111
Version: 1, Version Date: 05/08/2020

Attachment C- Clause 4.6 Exception to Development Standards



30.06.2020

Clause 4.6 - Variation Request

Floor Space Ratio Development Standard
(Clause 4.4 of Leichhardt LEP 2013)

42A North Street, Leichhardt

1. Introduction

This Variation Statement has been in support of a development application for the redevelopment of 42A North Street, Leichhardt, and seeks to vary clause 4.4 of *Leichhardt Local Environmental Plan 2013* (Leichhardt LEP 2013) in relation to Floor Space Ratio.

This Statement has been prepared in accordance with clause 4.6 – Exceptions to Development Standards of the *Leichhardt LEP 2013*, and the NSW Department of Planning and Infrastructure (DP&I) “Varying development standards: A Guide”, August 2011.

2. Development Standard to be varied

The development standard to be varied is clause 4.4 of *Leichhardt LEP 2013* relating to Floor Space Ratio

Clause 4.4 – Floor Space Ratio

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

(a) *to ensure that residential accommodation—*

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

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

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

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

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

(2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*

(2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation—*

(a) *on land shown edged black or pink on the [Floor Space Ratio Map](#) is not to exceed—*

(i) *in the case of development on a lot with an area of less than 150 square metres—0.9:1, or*

(ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or*

(iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or*

1 / 12

- (iv) in the case of development on a lot with an area of 450 square metres or more—0.6:1, or
- (b) on land shown edged red or green on the [Floor Space Ratio Map](#) is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—1.0:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or
 - (iv) in the case of development on a lot with an area of 450 square metres or more—0.7:1, or
- (c) on land shown edged brown on the [Floor Space Ratio Map](#) is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.8:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or**
 - (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or
 - (iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or
- (d) on land shown edged yellow on the [Floor Space Ratio Map](#) is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

The site is identified as being located within Area 5, and the proposed development relates to a residential dwelling on a site area of 205.3m². Accordingly, the Floor Space Ratio control for the site is 0.7:1 in accordance with clause 4.4 (2B)(c)(ii) (Refer to **Figure 1**).

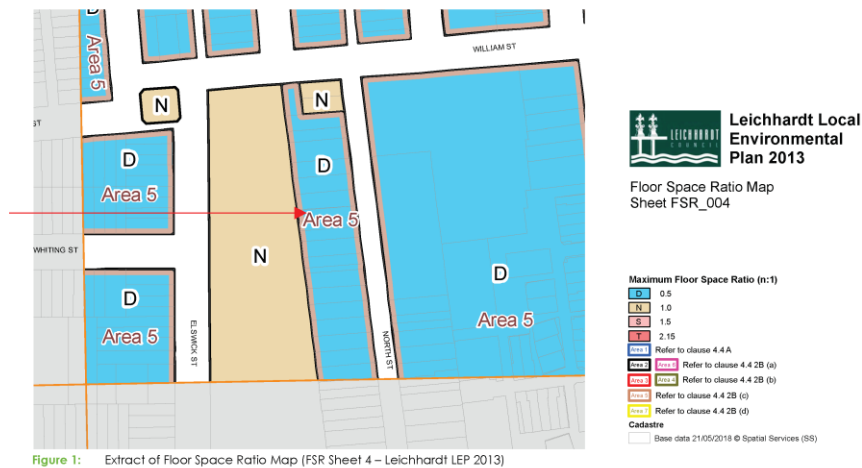


Figure 1: Extract of Floor Space Ratio Map (FSR Sheet 4 – Leichhardt LEP 2013)

3. Proposed Development

The application seeks approval to undertake internal alterations to the existing dwelling to construct a new bedroom at first floor level within an existing internal void located over the kitchen.

The bedroom addition increases the floor area to 194.86m², resulting in a FSR of 0.95:1. The proposal does not comply with the permitted maximum floor space ratio.

4. Principles of Exceptions to Development Standards

Clause 4.6 provides a nexus to enable the flexibility of development standards where it is demonstrated that the proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard can be deemed to be unreasonable and unnecessary and Council could approve an exception.

It is noted that the NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare clause 4.6 variations in the form of "Varying development standards: A Guide August 2011". This written request to vary the standard is based on the DP&I guide, in particular Appendix 3 which provides a template for and "Application Form to vary a development standard".

The following has been prepared in accordance with this Guide:

4.1. What is the name of the environmental planning instrument that applies to the land?

The *Leichhardt Local Environmental Plan 2013* (Leichhardt LEP 2013)

4.2. What is the zoning of the land?

The land is zoned R1 – General Residential under *Leichhardt Local Environmental Plan 2013*.

4.3. What are the Objectives of the zone?

The Objectives of the R1 – General Residential zone are:

- 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.

4.4. What is the development standard being varied?

The development standard being varied is the Floor Space Ratio.

4.5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.4 of the Leichhardt LEP 2013.

4.6. What are the Objectives of the development standard?

Clause 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.

4.7. What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the development standard is 0.7:1 in accordance with clause 4.4 (2B)(c)(ii).

4.8. What is the proposed numeric value of the development standard in your development application?

The bedroom addition increases the floor area by 13.79m², resulting in a total floor space of 194.86m², and a FSR of 0.95:1. The proposal does not comply with the permitted maximum floor space ratio.

4.9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation is 36%.

5. Proper application of Clause 4.6

Clause 4.6 of Leichhardt LEP 2013 provides:

- 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) - 8) ...

Clause 4.6 has five requirements as follows:

1. There must be a written request from the applicant that seeks to justify the contravention of the standard (clause 4.6(3)).
2. That written request must seek to justify contravention of the standard by demonstrating that:
 - Compliance with the development standard is unreasonable or unnecessary in particular circumstances of the case (clause 4.6(3)(a)); and

- That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).
3. The consent authority must consider the written request.
 4. The consent authority must be satisfied that:
 - The written request as adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds (clause 4.6(4)(a)(i)).
 - The development is 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 grounds (clause 4.6(4)(a)(ii)).
 5. Concurrence to the variation must have been obtained from the Director-General grounds (clause 4.6(4)(b)).

It should be noted that steps 1 and 2 are matters for the applicant. Steps 3 and 4 are matters for the consent authority. Step 5 is a matter for the Director-General, however in this case the Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains clause 4.6 in the form contained in the standard template or in similar terms.

Assistance on the approach to justifying a development standard variation is found in certain defining decisions of the NSW Land and Environment Court, in particular the judgements for:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2FivePtyLtd v Ashfield Council* [2015] NSWLEC 1009
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386
- *Moskovich v Waverley Council* [2016] NSWLEC 1015
- *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

6. Assessment of the Proposed Variation under Clause 4.6

This Variation Request has been prepared against the following relevant Steps in reference to clause 4.6:

- Step 1 – The written request
- Step 2 – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3))
- Step 3 – The proposed development will be in the public interest because it is consistent with the objectives of the development standard and objectives for development within the zone (clause 4.6(4))

STEP 1

6.1. Step 1 – The written Request

This document constitutes the written request to the application which seeks to justify contravention of the standard.

STEP 2

6.2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a));

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways that could be applied to establish whether compliance is unreasonable or unnecessary. These are discussed below:

1. *Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard*

As set out below, the proposed development will achieve the objectives of the standard notwithstanding numerical non-compliance.

The objectives of the Floor Space Ratio standard are set out in clause 4.4, and reproduced in Part 4.6 of this Variation.

- (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.*

The site currently contains a recently constructed modern 2 storey attached dwelling that was approved under Innerwest Council under CDC/2016/175, with an issued Occupation Certificate.

The application seeks approval to undertake internal alterations to the existing dwelling to construct a new bedroom at first floor level within an existing internal void located over the kitchen.

The proposal does not seek to alter the external envelope of the building including footprint, setbacks and height. The external elevations of the building and material composition will remain unchanged, the visual appearance of the building when viewed from the street and from adjoining properties will remain unchanged as originally approved by Council.

Overall, building bulk, form and scale of the building, and balance with the landscaped area is unchanged as a result of the increased floor area of the building.

(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.

Not applicable to the proposed development.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

This contention is not applicable to the proposal.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

This contention is not applicable to the proposal.

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.*

This contention is not applicable to the proposal.

5. *"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.*

This contention is not applicable to the proposal.

6.3. Is there sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- A residential dwelling development is a permissible use of the subject site under the R1 Zoning.
- The proposal does not seek to alter the external envelope of the building including footprint, setbacks and height. The external elevations of the building and material composition will remain unchanged, the visual appearance of the building and presentation to the streetscape will remain unchanged as originally approved by Council.
- The existing building envelope was legally approved under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* by Council.
- The overall, building bulk, form and scale of the building, and balance with the landscaped area is unchanged as a result of the increased floor area of the building.
- The proposal does not involve any external works and accordingly the architectural presentation of the building upon the streetscape will remain unchanged as originally approved by council.
- The quantum of landscape and private open space area remains unchanged and is not required to be increased in size.
- Given the proposal does not alter the overall footprint, setbacks and height of the building will remain unchanged, and proposal will result in no change to the visual or solar impacts upon adjoining properties. The amenity of existing and future residents and the neighbourhood will remain unchanged.
- There proposed floor space does not trigger then need to include additional parking or other site facilities on the site.
- The proposal provides superior amenity to the proposed bedroom in terms of natural light, privacy and ventilation, and does not compromise the amenity of the remaining habitable rooms of the dwelling.
- Overall, it is considered that providing a 4 bedroom dwelling will provide a dwelling type that is in short fall within the Leichhardt Area and the remainder of the Inner West LGA. Together with the increasing household size of the local area containing couples with children, the proposal provides a dwelling type that is needed within the community. Accordingly, the proposal provides a community benefit and is in the public interest. (Source: Australian Bureau of Statistics, Census of Population and Housing, 2016 – www.profile.id for InnerWest Council).

For the reasons set out above, the proposal will achieve a better planning outcome than a compliant development of the site.

STEP 3**6.4. Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?**

The objectives of development standard are:

Clause 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.

An assessment against these objectives is provided in Section 6.2.

Even though the proposal results in a non-compliance with the development standard, as demonstrated above, the proposal is considered consistent with the objectives of the development standard, and is in the public interest.

6.5. Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

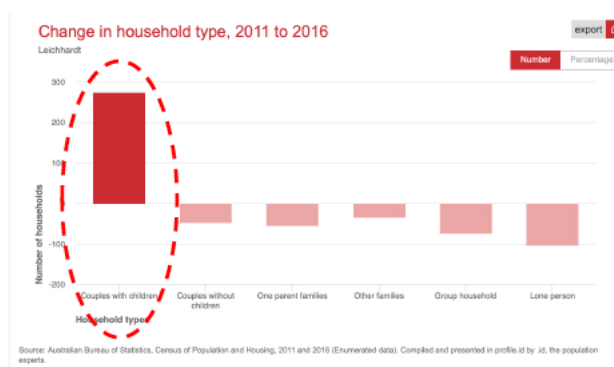
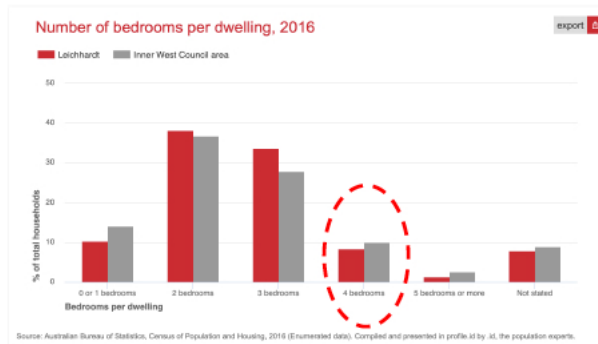
The Objectives of the R1 – General Residential zone are:

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

The proposal is consistent with the zone objectives for the following reasons:

- In regard to dot points 1 and 2, the proposal provides a 4 bedroom dwelling which is in demand within the local area given the increasing household size of the local area containing couples with children, and the overall shortfall in comparison to the remainder of the Inner West LGA. The proposal provide housing variety to meet the housing needs of the community.

(Source: Australian Bureau of Statistics, Census of Population and Housing, 2016 – www.profile.idj for InnerWest Council).



- In regards to dot point 5, the proposal does not involve any external works and accordingly the architectural presentation of the building upon the streetscape will remain unchanged as originally approved by council.
- In regards to dot point 6, the quantum of landscape and open space area remains unchanged, and is not required to be increased in size.
- In regards to dot point 8, the overall footprint, setbacks and height of the building will remain unchanged, and thereby resulting in no change to the visual or solar impacts upon adjoining properties. The amenity of existing and future residents and the neighbourhood will remain unchanged.
- Dot points 3, 4 and 7 are not applicable to the proposal.

7. Conclusion

It is requested that council supports the proposed variation to Clause 4.4 of Leichhardt LEP 2013 for the following reasons:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. There are sufficient environmental planning grounds to justify contravening the development standard.
3. No unreasonable environmental impacts are introduced as a result of the proposal.
4. There is no public benefit in maintaining strict compliance with the standards.
5. The proposed development is in the public interest.
6. Overall, it is considered that providing a 4 bedroom dwelling will provide a dwelling type that is in short fall within the Leichhardt Area and the remainder of the Inner West LGA. Together with the increasing household size of the local area containing couples with children, the proposal provides a dwelling type that is needed within the community. Accordingly, the proposal provides a community benefit and is in the public interest. (Source: Australian Bureau of Statistics, Census of Population and Housing, 2016 – www.profile.idj for InnerWest Council).

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favourably considered by Council.