



 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2020/0655
<b>Address</b>	44 North Street LEICHHARDT NSW 2040
<b>Proposal</b>	Alterations to existing semi-detached dwelling to convert internal void into bedroom
<b>Date of Lodgement</b>	13 August 2020
<b>Applicant</b>	Mr Matthew J Hryniuk
<b>Owner</b>	Mr Matthew J Hryniuk Mrs Annabel J Hryniuk
<b>Number of Submissions</b>	0
<b>Value of works</b>	\$5,000.00
<b>Reason for determination at Planning Panel</b>	Variation to Floor Space Ratio development standard exceeds 10%
<b>Main Issues</b>	Floor Space Ratio
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Notification: Pursuant to the Inner West Council Community Engagement Framework, adopted in November 2019, the application was notified at the discretion of Council for 14 days.

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations to an existing semi-detached dwelling to convert an internal void into a bedroom at 44 North Street Leichhardt.

Pursuant to the Inner West Council Community Engagement Framework, adopted in November 2019, notification is not required for internal residential building works. However, Council has the discretion to notify *an application where the nature of the development, its location or the history of site development warrants it*. The proposal involves a window servicing the proposed first floor bedroom northern elevation, toward the side boundary. As a result, in this instance, Council exercised its discretion and notified the application for a period of 14 days.

The application was notified to surrounding properties and 0 submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Non-compliance with permissible Floor Space Ratio

The non-compliance 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 semi-detached dwelling approved under CDC/2016/176. 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 206.6 sqm and is legally described as Lot 1 DP 1215716. The site has a frontage to North Street of 6m.

The site supports two storey contemporary style semi-detached dwelling. The adjoining property to the north supports a single storey detached residence and the adjoining property to the south supports a two storey attached dwelling.

The site is zoned R1 General Residential (refer to Figure 1: Zoning map). The property is not listed as a heritage item, nor located in 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.

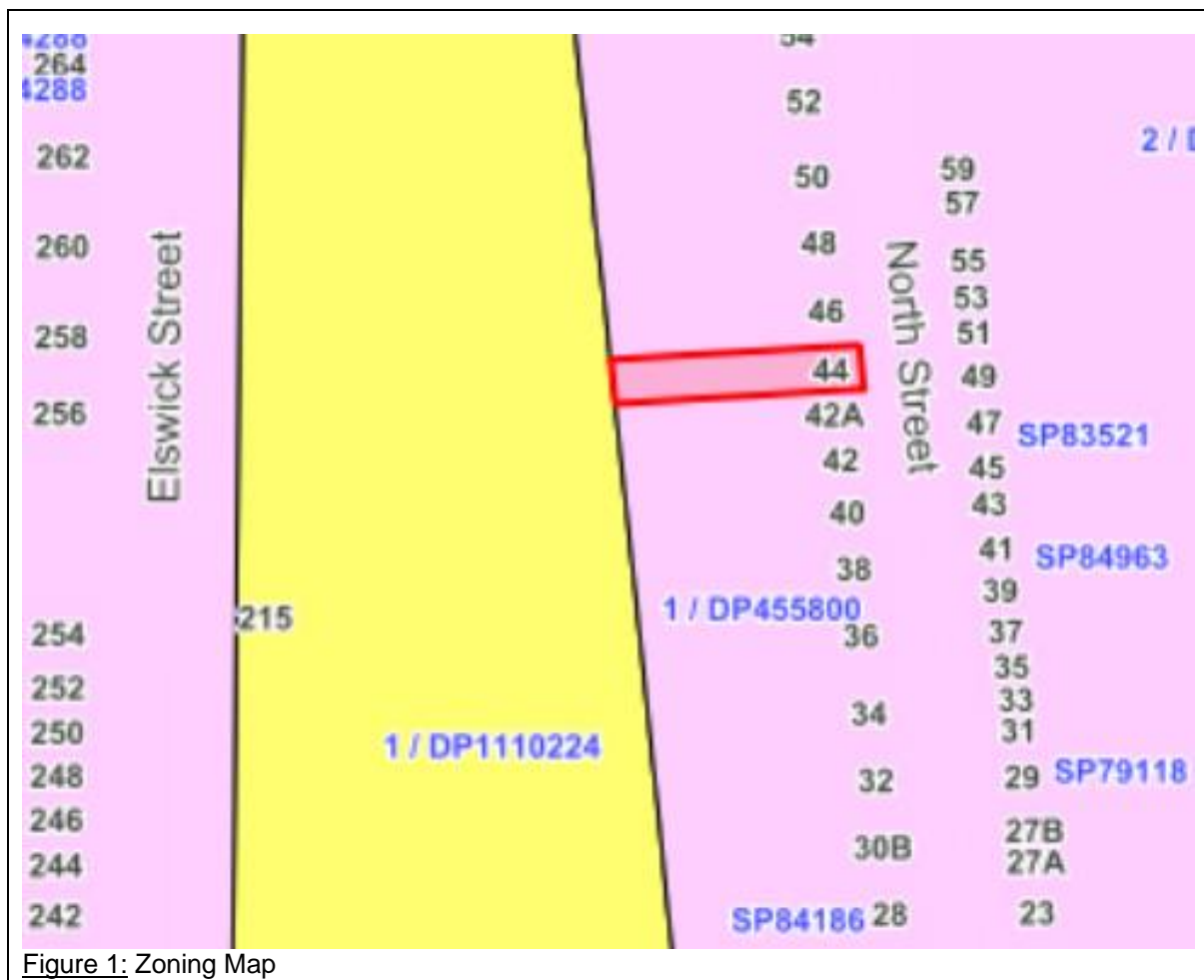


Figure 1: Zoning Map

#### 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/2016/174	Complying Development Certificate Council-Erection of two storey dwelling on lot 1 under Codes SEPP	Approved by delegated officer-30/01/2017
CDC/2016/175	Complying Development Certificate Council-Erection of 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-08/10/2018

## Surrounding properties

## 42A North Street Leichhardt

Application	Proposal	Decision & Date
CDC/2016/175	Complying Development Certificate Council-Erection of 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-08/10/2018
DA/2020/0632	Alterations/additions to dwelling	Lodged 05/08/2020

## 42 North Street Leichhardt

Application	Proposal	Decision & Date
D/2020/12	Conversion of first floor internal void into bedroom (timber structure infill).	Approved - Local Planning Panel-26/05/2020

## 4(b) Application history

Not applicable

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

## 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *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)(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 not contrary to the aims of this plan.

### 5(a)(iii) *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

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

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

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

The development 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
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 or 144.62sqm	0.97:1 or 199.67 sqm	55.1 sqm or 38.1%	No
<b>Landscape Area</b> Minimum permissible: 15% or 30.99 sqm	17.1% or 35.4sqm	N/A	Yes
<b>Site Coverage</b> Maximum permissible: 60% or 123.96sqm	63.63% or 131.5sqm	7.5sqm or 6.1%	No

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A (3)(b) – Site Coverage for residential accommodation in Zone R1

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Site Coverage Development standard under Clause 4.3A (3)(b) of the LLEP 2013 by 6.1% (7.5sqm). In addition, the applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt LEP 2013 by 38.1% (55.1sqm).

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 4.3A (3)(b)-Site Coverage for residential accommodation in zone R1.***

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

- The proposal retains the existing building envelope and footprint and no increase to site coverage or bulk and scale is sought.
- Proposed works have no impact on the amenity of adjoining properties.
- The proposal results in no changes to existing on site landscaped area.
- The proposal satisfies the objectives of the R1 General Residential zone and the Site Coverage standard.

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 as the proposal will be generally consistent with the zone objectives of the R1 General Residential Zone and will meet the objectives of the Site Coverage Standard.

The Objectives of the R1 General Residential Zone as outlined in the LLEP 2013 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 the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal will provide for the housing needs of the community and will provide additional opportunities to work from home.
- The alterations will retain the existing character of the neighbourhood and will ensure that the existing building remains compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal will maintain the provision of permeable landscaped areas for the use and enjoyment of residents.
- The proposal does not result in any undue adverse amenity impacts.

The Objectives of the Site Coverage development standard as outlined in the LLEP 2013 are outlined below:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired future character of the neighbourhood,*
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- (e) to control site density,*
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

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

- The proposal retains suitable Landscaped Areas for tree planting and private open space, to be used and enjoyed by the residents.
- The proposed development will remain compatible with the surrounding development and the desired future character of the neighbourhood in relation to building bulk, form and scale as viewed from the street - the footprint and bulk, scale and appearance of the building will not alter.
- The proposal does not result in any undue adverse amenity impacts to the surrounding properties.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from 4.3A (3)(b) Site Coverage development standard and it is recommended the Clause 4.6 exception be granted.

**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 38.1% (55.1sqm) of this, only 12.04sqm is “new” proposed gross floor area.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the LLEP 2013 justifying the proposed contravention of the Floor Space Ratio development standard which is summarised as follows:

- The existing building envelope was approved under CDC/2016/175.
- 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 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.
- The proposal is satisfactory with regards to amenity impacts on the adjoining properties.
- The proposal results in acceptable and on-site amenity outcomes on the site (e.g. natural light and ventilation).
- The proposal satisfies the objectives of the R1 General Residential zone and the Floor Space Ratio standard.

The applicant’s written rational 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 as the proposal will be generally consistent with the zone objectives of the R1 General Residential Zone and will meet the objectives of the Floor Space Ratio 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 applicable local environmental plan for the following reasons:

- The proposal will provide for the housing needs of the community and will provide additional opportunities to work from home.



- The alterations will retain the existing character of the neighbourhood and will ensure that the existing building remains compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal will maintain the provision of permeable landscaped areas for the use and enjoyment of residents.
- The proposal does not result in any undue adverse amenity impacts.

The Objectives of the Floor Space Ratio development standard as outlined in the LLEP 2013 are outlined below:

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

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 additional gross floor area is created by infilling an existing internal first floor void, and such, the proposal does not involve any external works or changes to the height, bulk, form or scale or external appearance of the existing residence, and as such, remains compatible with the desired future character of the area.
- The proposal provides a suitable balance between built form and Landscaped Areas which will not alter.
- The proposal will result in no undue adverse amenity impacts on adjoining properties.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from 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 the ANEF 20-25 contour. Appropriate conditions addressing the requirements of this clause are recommended as part of 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(d) Development Control Plans**

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

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
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
<b>Part C</b>	
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
<b>Part C: Place – Section 2 Urban Character</b>	
C2.1.1.4 Helsarmel Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
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
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
<b>Part D: Energy</b>	
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
<b>Part E: Water</b>	
<b>Part F: Food</b>	
<b>Part G: Site Specific Controls</b>	
	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 works 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 first floor void space will not give rise to any adverse streetscape impacts or undue adverse amenity impacts for neighbouring properties. The proposed works are entirely internal to the existing dwelling and infills an area which was not able to be constructed within the floor area permitted under a CDC. There will be no change to the height, form, scale or appearance of the building on the site, nor changes to existing setback patterns.

As a result of the above factors and considerations, the proposed internal first floor works to infill an existing void is considered acceptable with respect to the intent and 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 shall have access to natural daylight regardless of provision of skylights or similar. The proposed bedroom will rely on an existing opening in the side wall of the dwelling for daylight (and ventilation) in accordance with Control C5. The proposal is satisfactory with respect to the provisions and objectives of this part.

### C3.11 Visual Privacy

The proposal seeks to utilise an existing first floor north facing (side) window associated with the existing void area to service the proposed bedroom. The window does provide opportunity for some sight lines across the side boundary to the private open space of 46 North Street Leichhardt, however, the privacy impacts are limited given existing vegetation levels at the rear of this adjoining site do screen these sight lines, and in light of the use of the future floor space as a bedroom rather than as a main living space where privacy mitigation measures would be necessary. For these reasons, the proposal is satisfactory with respect to the provisions and objectives of this part.

## 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

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(g) Any submissions

The application was notified in accordance with Inner West Council Community Engagement Framework for a period of 14 days to surrounding properties.

No submissions were received in response to the notification.

### 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 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 *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* to contravene Clause 4.3A (3)(b) Site Coverage and Clause 4.4 Floor Space Ratio. 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/2020/0655 for alterations to existing semi-detached dwelling to convert internal void into bedroom at 44 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 (A) 01	Ground and First Floor Plans	04/06/2020	Christopher Jordan Architecture and Design
Drawing (A) 02	Elevation North	04/06/2020	Christopher Jordan Architecture and Design
Drawing (A) 03	Section A	04/06/2020	Christopher Jordan Architecture and Design

As amended by the conditions of consent.

**FEES**

**2. Long Service Levy**

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

**GENERAL CONDITIONS**

**3. 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.

**4. Works Outside the Property Boundary**

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

**PRIOR TO CONSTRUCTION CERTIFICATE**

**5. 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****6. 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****7. 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****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.

**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 <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>

NSW Government [www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)  
[www.diySAFE.nsw.gov.au](http://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](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92  
[www.sydneywater.com.au](http://www.sydneywater.com.au)

Waste Service - SITA 1300 651 116  
Environmental Solutions [www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)  
Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

**DEVELOPMENT APPLICATION  
INTERNAL ALTERATIONS  
44 NORTH ST, LEICHHARDT NSW**

00 COVER PAGE/SITE ANALYSIS/SITE PLAN  
01 NORTH ELEVATION  
02 NORTH ELEVATION  
03 SECTION A  
04 EX. GROUND & FIRST FLOOR PLANS  
05 AREA DIAGRAM  
06 SITE COVERAGE  
07 SITE PLAN  
08 NOTIFICATION NORTH ELEVATION

**NOTE:**  
1 ALL EROSION & SEDIMENT CONTROL MEASURES TO BE MAINTAINED DAILY BY SITE MANAGER  
2 ALL STOCKPILES TO BE CLEAR FROM DRAINS, GUTTERS & FOOTPATHS  
3 DRAINAGE IS TO BE CONNECTED TO STORMWATER SYSTEMS SUCH AS  
4 LOCAL TRAFFIC ROUTES TO BE SWEEP DAILY  
5 LOCAL TRAFFIC ROUTES WILL NOT BE AFFECTED  
6 FOOTPATHS TO REMAIN OPEN DURING CONSTRUCTION

**SEDIMENT FENCE DETAIL**

PREDOMINANTLY  
NORTHERLY WINDS

MORNING SUN

MIDDAY SUN

AFTERNOON SUN

TREE GROWTH BEHIND  
WESTERN BOUNDARY

NEIGHBOURING PROPERTY  
213 ELSWICK ST, LEICHHARDT  
(ST COLUMBUS CATHOLIC PRIMARY  
SCHOOL) SETBACK 5000MM FROM  
REAR BOUNDARY

**NOTE:**  
STORMWATER DRAINAGE TO REMAIN AS EXISTING  
-NO CHANGES TO EXTERNAL FACADE

**DEVELOPMENT APPLICATION**

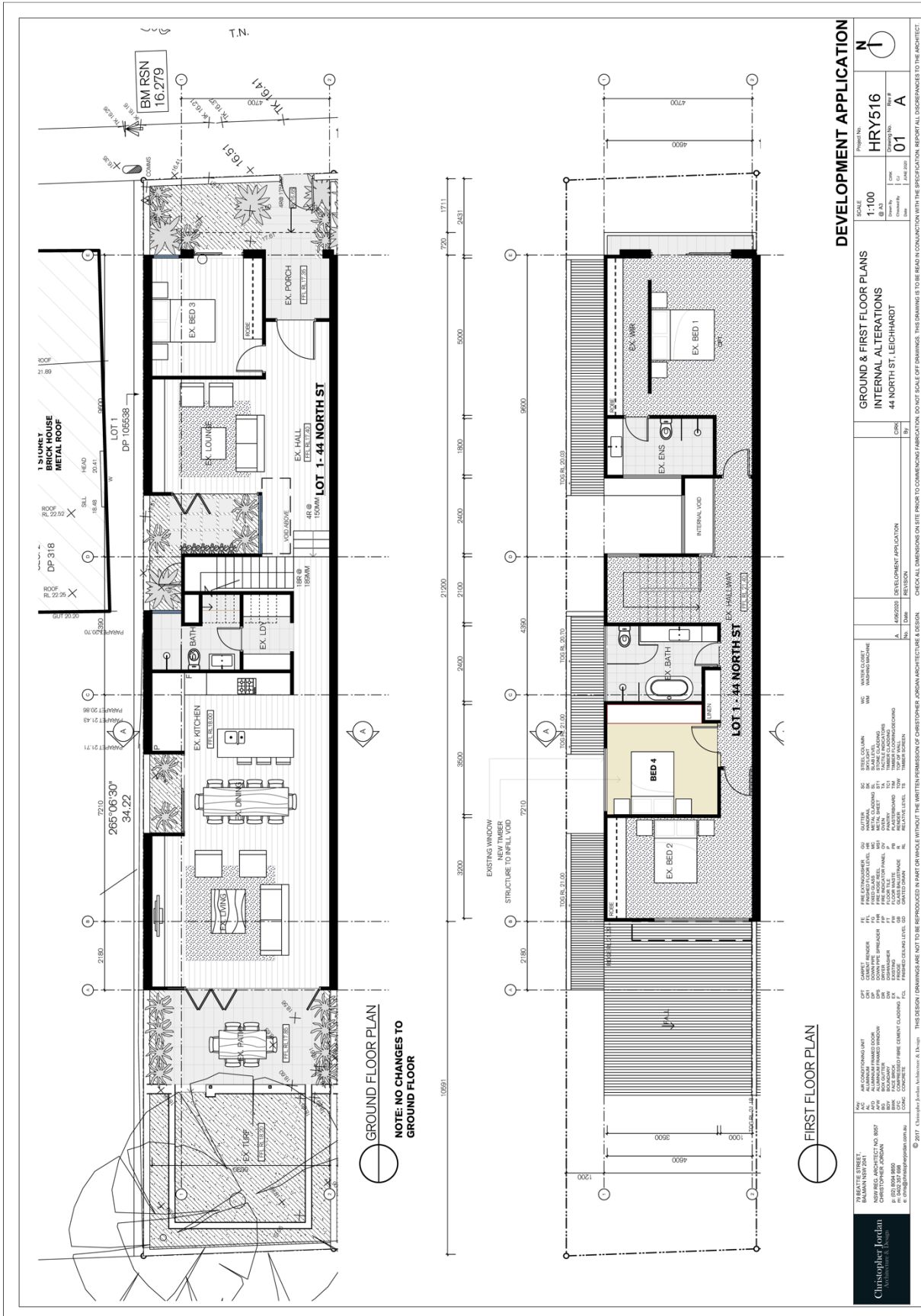
COVER PAGE/SITE ANALYSIS/SITE PLAN  
INTERNAL ALTERATIONS  
44 NORTH ST, LEICHHARDT

Project No: HRY516  
Scale: 1:200  
Date: 1 June 2017

Author: J. Jordan  
Checked: J. Jordan  
Drawn: J. Jordan  
Reviewed: J. Jordan

Client: CHRISTOPHER JORDAN ARCHITECTURE & DESIGN  
Address: 79 BEAULIE STREET, BALMAIN NSW 2041  
Phone: 02 9550 9800  
Email: info@christopherjordan.com.au

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**GROUND FLOOR PLAN**  
NOTE: NO CHANGES TO GROUND FLOOR

**FIRST FLOOR PLAN**

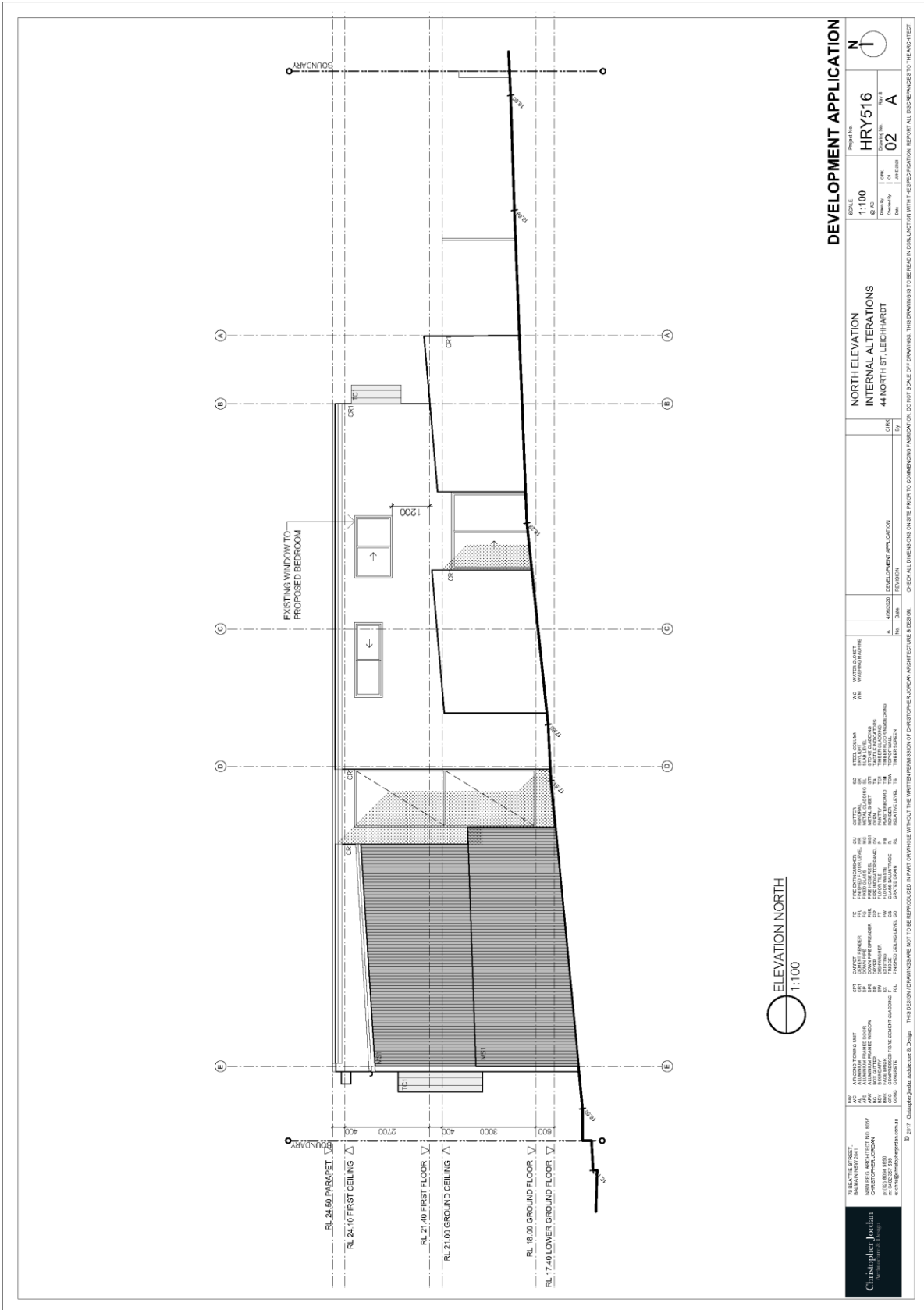
**DEVELOPMENT APPLICATION**

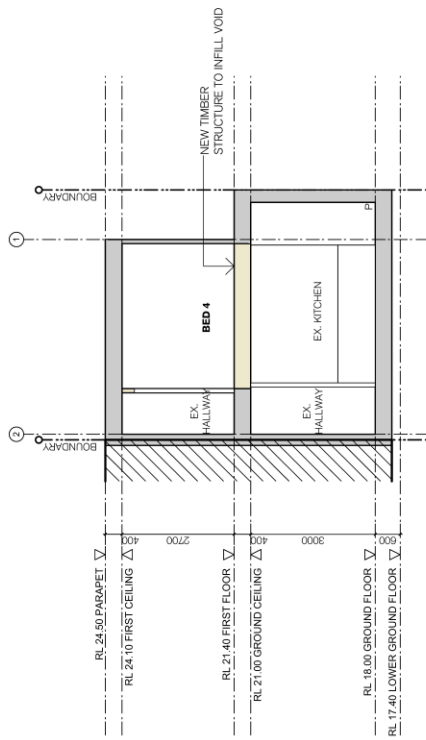
Project No: HRY516  
 Scale: 1:100  
 Drawing No: 01  
 Revision: A

**GROUND & FIRST FLOOR PLANS**  
**INTERNAL ALTERATIONS**  
**44 NORTH ST, LEICHHARDT**

72 MACY STREET, BALMAIN NSW 2041  
 CHRISTOPHER JORDAN ARCHITECTURE & DESIGN  
 P 02 9248 8800  
 E c.jordan@christopherjordan.com.au

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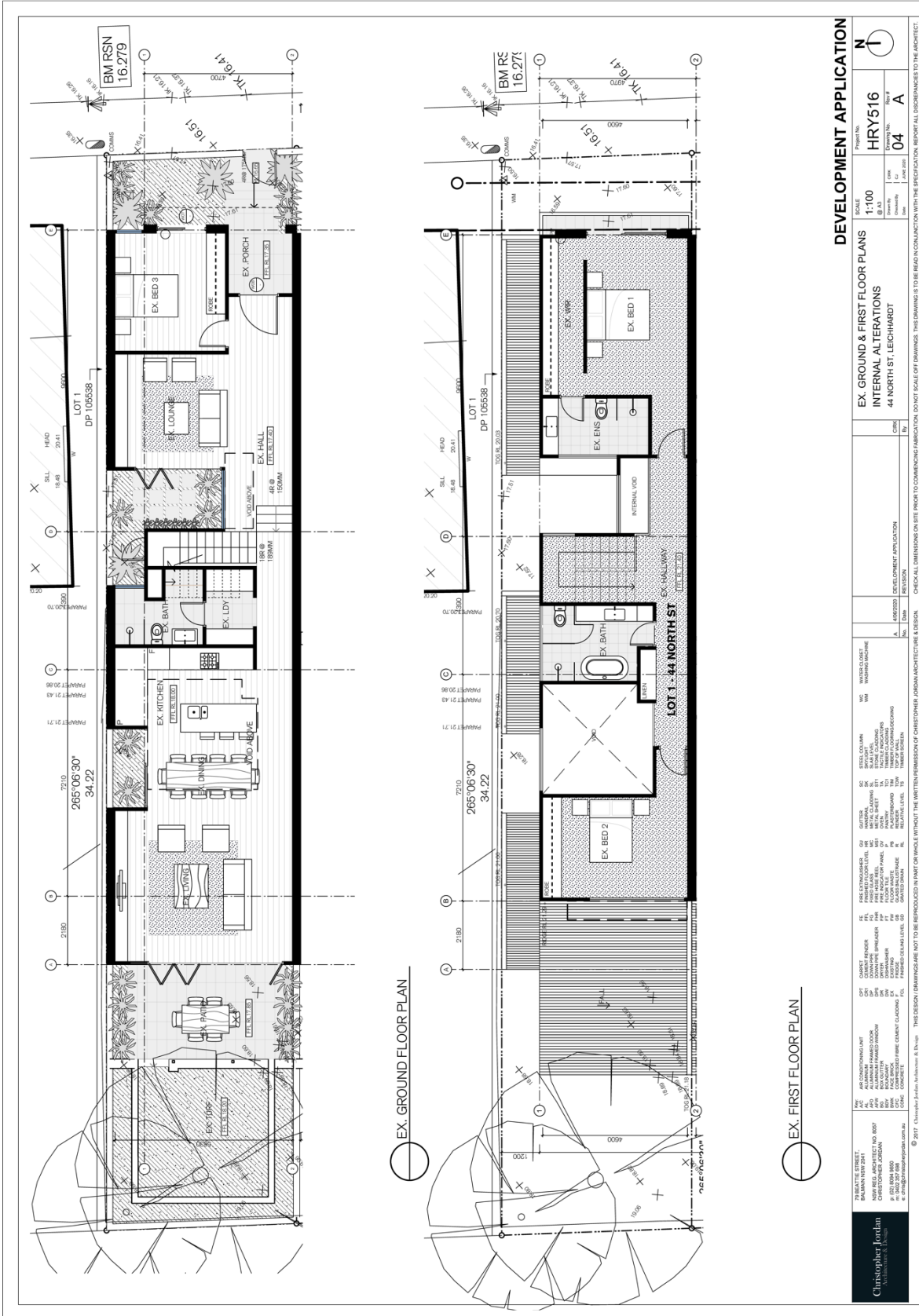


SECTION A  
1:100

DEVELOPMENT APPLICATION

<p>78 BAYVIEW STREET BALMAIN NSW 2041 NEWFIELD ARCHITECT NO. 8007 10/100 BALMAIN ROAD SYDNEY NSW 2008 t: 02 9554 8800 e: info@newfieldarchitect.com.au</p>		<p>Project No. <b>HRV516</b></p> <p>Drawing No. <b>03</b></p> <p>Rev. # <b>A</b></p>		<p>Scale <b>1:100</b></p> <p>Drawn By Checked By Date</p>		<p>SECTION A <b>INTERNAL ALTERATIONS</b> 44 NORTH ST, LEICHHARDT</p>		<p>DATE DRAWN BY CHECKED BY DATE</p>		<p>DEVELOPMENT APPLICATION</p>		<p>DATE DRAWN BY CHECKED BY DATE</p>	
<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>		<p>APPROVED FOR CONSTRUCTION BY THE LOCAL GOVERNMENT</p>	

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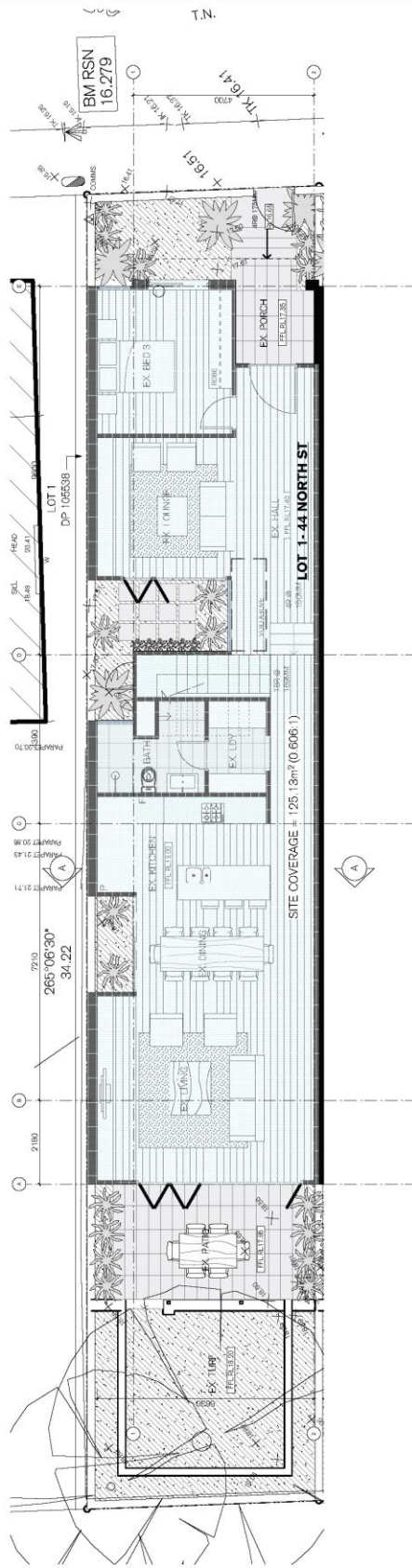


DEVELOPMENT APPLICATION	
Project No.	HRYS16
Scale	1:100
Drawn By	AS
Checked By	AS
Date	04
Revision	A
EX-GROUND & FIRST FLOOR PLANS	
INTERNAL ALTERATIONS	
44 NORTH ST, LEICHHARDT	
Client	CRIC
Contract No.	A. 4020202
Development Application No.	105538
Revision	By
PREPARED BY: JORDAN ARCHITECTURE & DESIGN DRAWING NO: 105538-01 DATE: 10/10/2016	CHECKED BY: JORDAN ARCHITECTURE & DESIGN DATE: 10/10/2016

**Christopher Jordan**  
 ARCHITECTURE & DESIGN  
 10/10/2016  
 44 NORTH ST, LEICHHARDT  
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 WWW: www.christopherjordan.com.au  
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SITE COVERAGE DIAGRAM

**SITE AREA** 206.6 SQM  
**SITE COVERAGE CONTROL** (0.60:1) 123.96 SQM  
**EXISTING GROUND** (0.606:1) 125.13 SQM  
**PROPOSED GROUND** (0.606:1) 125.13 SQM  
**TOTAL PROPOSED SITE COVERAGE (MINOR NON-COMPLIANCE)** 125.13 SQM  
 0.606:1

DEVELOPMENT APPLICATION

<b>Christopher Jordan</b> ARCHITECTS 110 RIVERVIEW ROAD SYDNEY NSW 1510 P (02) 9554 8895 F (02) 9554 6999 www.christopherjordan.com.au		78 MCINTOSH STREET, BALMAIN NSW 1501 P (02) 9554 8895 F (02) 9554 6999 www.christopherjordan.com.au		PROJECT NO: HRV516 SCALE: 1:100 @ A2 DATE: 11/06/20 SHEET: 06 A	SITE COVERAGE INTERNAL ALTERATIONS 44 NORTH ST LEICHHARDT DP 106538 LOT 1 L.P. 106538	SUBMITTANT: A. LEICHHARDT DATE: 11/06/20 REVISION:	TITLE: 1:100 DEVELOPMENT APPLICATION DATE: 11/06/20 PREPARED BY: A. LEICHHARDT CHECKED BY:	NO. 106538 DATE: 11/06/20	WKS: 1 DATE: 11/06/20	EXISTING: EX 1168g, EX 1168f, EX 1168d, EX 1168c, EX 1168b, EX 1168a, EX 1168e PROPOSED: EX 1168g, EX 1168f, EX 1168d, EX 1168c, EX 1168b, EX 1168a, EX 1168e MATERIALS: ALUMINIUM, TIMBER, BRICK, CONCRETE FINISHES: PAINT, STAIN, POLISH COLOURS: WHITE, GREY, BROWN, RED LANDSCAPE: GRASS, TREES, SHRUBS UTILITIES: WATER, SEWER, GAS, ELECTRICITY ROADWAY: ASPHALT, PAVED SIGNAGE: NONE FENCES: NONE GARDENING: NONE POOLS: NONE OTHER: NONE	I AM A QUALIFIED ARCHITECT THIS DESIGN DRAWING IS NOT TO BE REPRODUCED IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF CHRISTOPHER JORDAN ARCHITECTURE & DESIGN	I AM A QUALIFIED ARCHITECT THIS DESIGN DRAWING IS NOT TO BE REPRODUCED IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF CHRISTOPHER JORDAN ARCHITECTURE & DESIGN	I AM A QUALIFIED ARCHITECT THIS DESIGN DRAWING IS NOT TO BE REPRODUCED IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF CHRISTOPHER JORDAN ARCHITECTURE & DESIGN	I AM A QUALIFIED ARCHITECT THIS DESIGN DRAWING IS NOT TO BE REPRODUCED IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF CHRISTOPHER JORDAN ARCHITECTURE & DESIGN
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## Attachment C- Clause 4.6 Exception to Development Standards

Christopher Jordan  
Architecture & Design

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### Clause 4.6 Variation: SITE COVERAGE

To Accompany  
Development Application  
For Internal Alterations

44 North Street, Leichhardt

#### 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 Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

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

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

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

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

Note. When this Plan was made it did not include any of these zones.

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

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

(a) a development standard for complying development,

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

(c) clause 5.4.

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79 Beattie St Balmain NSW 2041 | www.christopherjordan.com.au | chris@christopherjordan.com.au

44 North Street, Leichhardt

The applicant requests a variation under Clause 4.6 to site coverage landscaped area standard contained under Clause 4.3A of LLEP 2013.

Any variation request must justify the need to vary the particular development standard by considering the following:

- *whether strict compliance with the standard, in the particular case, would be unreasonable or unnecessary and why, and*
- *demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.*

Strict application of the site coverage development standard is considered unreasonable and unnecessary in the circumstances of the case for the following reasons:

1. The proposal does not seek to increase the site coverage of the property, as it retains the existing building envelope and building footprint. The proposed works are minimal, being the infill of an internal void for bedroom. Due to the scale of the proposed works it is deemed unnecessary to comply with the 60% site coverage control.
2. The proposed works do not impact the amenity of the neighbouring properties or the surrounding area.
3. The retention of the principle original structure of the building will be encouraged by Council.
4. The extent to which the property does not comply with the standard of 60% site coverage is minimal – being only 0.6% over the control.
5. There are no changes to the existing landscaped area, which is 52.61sqm (25.4% of site-compliant).
6. The proposal satisfies the zone objectives.

The relevant objectives are as follows and a comment is provided in relation to each objective demonstrating adequacy of the proposal and the requested variation:

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

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,
  - The site contains adequate soft landscaped area (25.4%) which allows for the planting of trees. The proposal includes no changes to existing landscaped area.
- (b) to maintain and encourage a landscaped corridor between adjoining properties,
  - The proposal includes no changes to existing landscaped/corridor area.
- (c) to ensure that development promotes the desired future character of the neighbourhood,
  - The proposal promotes the desired future character of the area as it increases the amenity of the site.
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,
  - As existing
- (e) to control site density,
  - Existing site density is retained
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.
  - The proposal does not seek to increase the site coverage of the property, as it retains the existing building envelope and building footprint. There are no proposed changes to the existing soft landscaped area, which is compliant.

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

(3) Development consent must not be granted to development to which this clause applies unless:

- (a) the development includes landscaped area that comprises at least –
  - (i) where the lot size is equal to or less than 235 square metres – 15% of the site area,
    - The proposal retains the existing landscaped area of 52.61sqm (25.4% of site area).
  - (b) the site coverage does not exceed 60% of the site area.
    - The proposal does not seek to increase the site coverage of the property, as it retains the existing building envelope and building footprint. There are no proposed changes to the existing soft landscaped area, which is compliant. Due to the minor non-compliance of the site coverage (0.6%), the proposal is deemed adequate.

The proposal demonstrates that the built form is compatible with the desired future character in the area. There is no potential for this development to have a jarring effect on the streetscape or landscaped area. There are no changes to the bulk and scale of the property.

In order for council to consider a variation the proposal must be consistent with the zone objectives:

**1 Objectives of zone**

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

Christopher Jordan Architecture & Design

Page 2

44 North Street, Leichhardt

- 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 subject proposal satisfies the stated residential objectives given that:

- The amenity is enhanced by the development due to space being better utilized in providing for a bedroom.
- The proposal is compatible with the grain of the surrounding development due to the retention of the existing façade.
- The proposal will enhance the long term amenity of the neighbourhood, compatible with the desired character of the area yet sympathetic to its past use.
- The proposal retains the existing soft landscaped area which is 25.4% of site area.

It is considered that the minor variation to the site coverage standard in this case is reasonable and should be accepted by council as the proposed development does not have an adverse impact on the surrounding environment and the design is within the guidelines outlined in the Leichhardt LEP 2013 and DCP.

Yours Sincerely,



Christopher Jordan, Director

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Christopher Jordan Architecture & Design

Page 3

Document Set ID: 33867421  
Version: 1, Version Date: 13/08/2020



30.06.2020

## Clause 4.6 - Variation Request

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

#### 44 North Street, Leichhardt

### 1. Introduction

This Variation Statement has been in support of a development application for the redevelopment of 44 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 206.6m<sup>2</sup>. 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**).

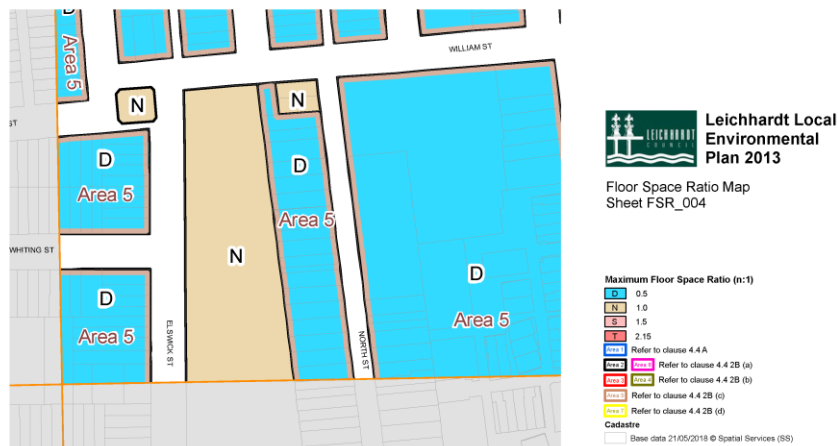


Figure 1: Extract of Floor Space Ratio Map (FSR Sheet 4 – Leichhardt LEP 2013)

### 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 by 12.04m<sup>2</sup>, resulting in a total floor space of 190.49m<sup>2</sup>, and a FSR of 0.92:1. 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 12.04m<sup>2</sup>, resulting in a total floor space of 190.49m<sup>2</sup>, and a FSR of 0.92:1. 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 31.7%.

## 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](http://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?**

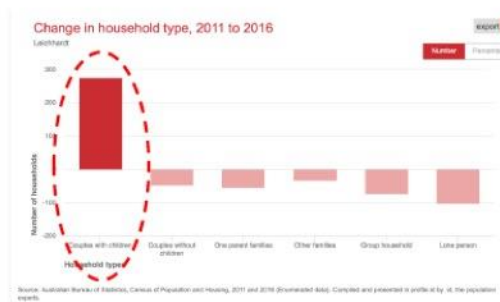
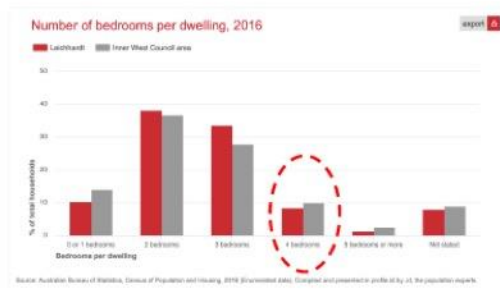
The Objectives of the R1 – General Residential zone are:

- 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 regards 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](http://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.profiles.id](http://www.profiles.id) for InnerWest Council).

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