
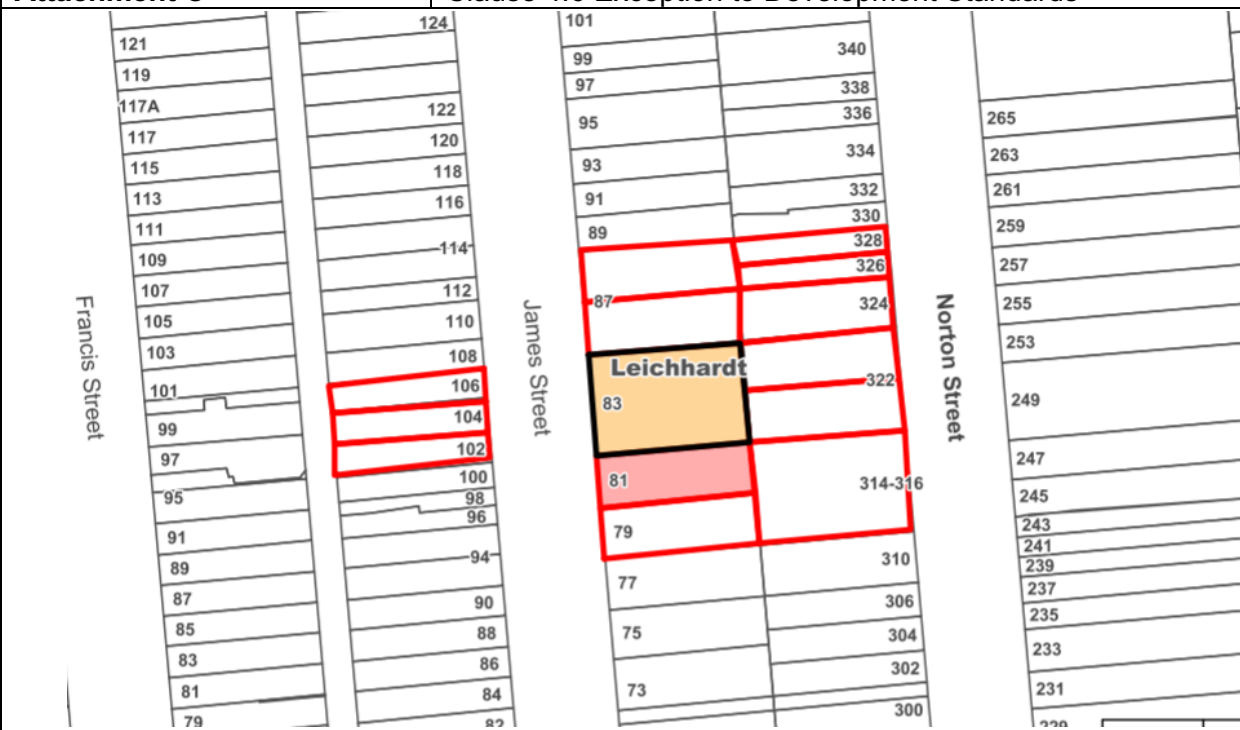







| <br>DEVELOPMENT ASSESSMENT REPORT |   |
|---|---|
| <b>Application No.</b>  | DA/2020/0450  |
| <b>Address</b>  | 83 James Street LEICHHARDT NSW 2040   |
| <b>Proposal</b>   | Alterations and additions to first floor of each townhouse  |
| <b>Date of Lodgement</b>  | 15 June 2020  |
| <b>Applicant</b>  | Christopher Jordan Architecture   |
| <b>Owner</b>  | The Owners of Strata Plan No 45194  |
| <b>Number of Submissions</b>  | 1   |
| <b>Value of works</b>   | \$200,000.00  |
| <b>Reason for determination at Planning Panel</b>   | Clause 4.6 variation exceeds 10%  |
| <b>Main Issues</b>  | Additional breaches to the FSR<br>Bulk and Scale of development<br>Reduction of Solar Access  |
| <b>Recommendation</b>   | Approval 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   |

## 1. Executive Summary

This report is an assessment of the application submitted to Council for Alterations and additions to first floor of each townhouse at 83 James Street, Leichhardt. The application was notified to surrounding properties and 1 submission was received in response.

The main issues that have arisen from the application include:

- The additional breach of FSR with proposal
- The Additional bulk as viewed from southern neighbour
- The proposed reduction for solar access

The non-compliances are acceptable given the proposed works do not result in any additional bulk to the public domain, and results in acceptable amenity outcomes for subject site and neighbouring properties, therefore the application is recommended for approval.

## 2. Proposal

This application seeks consent for alterations and additions to the existing 2 storey multi dwelling housing. Proposed works include additional 1<sup>st</sup> floor area and reconfiguration of first floor for greater amenity to each of the 3 units on the site. New Works are to include:

Lot 1- (83C James Street)

- First floor addition to south of existing bedroom 2
- Infill southern window to Bedroom 2
- Infill eastern window to previous Bedroom 3
- Demolition of roof over Dining Room for 1st floor addition location
- New structural timber floor and associated floor lining to match the existing first floor
- New skylight window opening to serve the previous Bedroom 3 proposed as study with these alterations.

Lot 2 - (83B James Street)

- First floor addition to the north of existing bedroom 2
- Infill northern window to Bedroom 2
- Infill eastern window to Bedroom 3
- Demolition of roof over Dining Room for 1st floor addition location
- New structural timber floor and associated floor lining to match the existing first floor
- New skylight window opening to serve the previous Bedroom 3 proposed as study with these alterations.

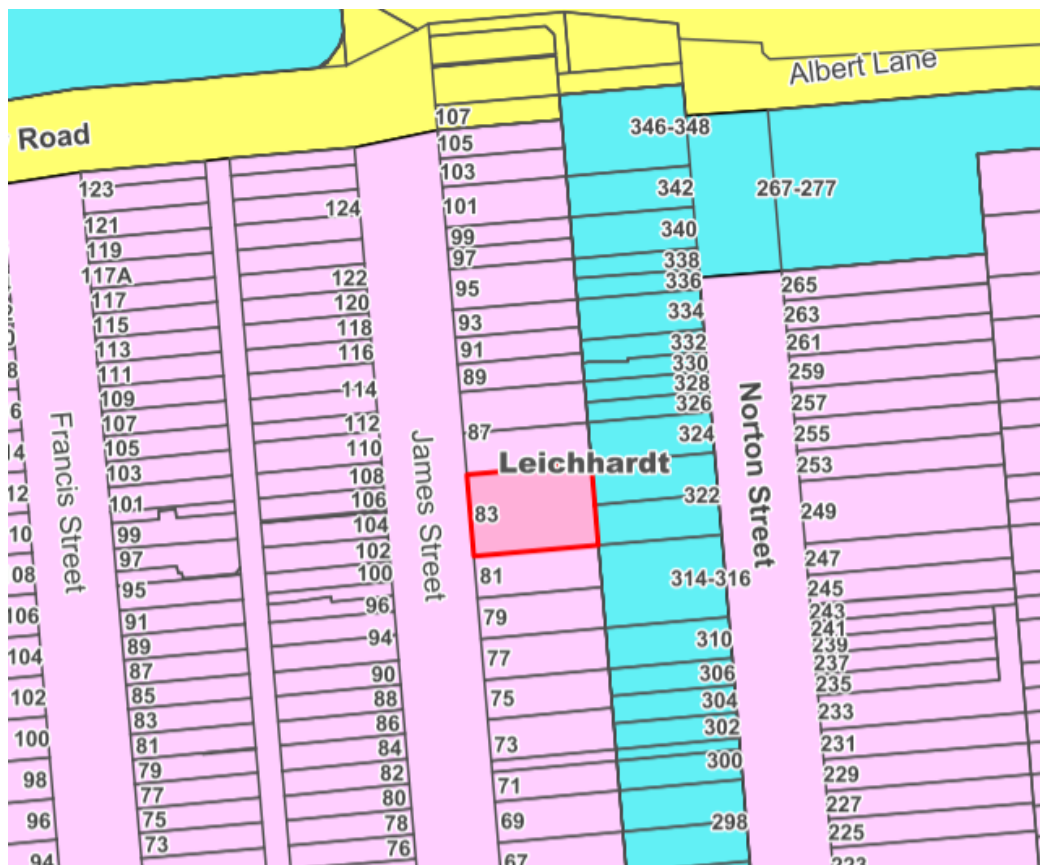
Lot 3 - (83A James Street)

- First floor addition to south of existing bedroom 2
- Infill southern window to Bedroom 2
- Infill eastern window to Bedroom 3
- Demolition of roof over Dining Room for 1st floor addition location
- New structural timber floor and associated floor lining to match the existing first floor
- New skylight window opening to serve the previous Bedroom 3 proposed as study with these alterations.

## 3. Site Description

The subject site is located on the eastern side of James Street, and site is approximately 613.1sqm in area, with a frontage of 20.115m to James Street.

The site supports a multi dwelling housing being 2-storeys in scale over a basement carpark. The adjoining properties support single and two storey dwellings. The site is located within the distinctive neighbourhood of Helsarmel, Leichhardt. The subject site is not a heritage item or located in a conservation area.



#### 4. Background

##### 4(a) Site history

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

##### Subject Site

| Application | Proposal  | Decision & Date       |
|-------------|---|-----------------------|
| D/2017/581  | New store room within existing subfloor space and associated excavation | Approved - 16/02/2018 |

##### Surrounding properties

| Application                  | Proposal  | Decision & Date       |
|------------------------------|---|-----------------------|
| D/2019/298 - 79 James Street | Demolition of existing dwelling and outbuilding, and construction of two-storey residential dwelling with pool and associated site and landscaping work | Approved - 08/11/2019 |
| D/2017/283 - 93 James Street | Ground and first floor alterations and additions to existing residence  | Approved - 25/08/2017 |

#### 4(b) Application history

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

| Date       | Discussion / Letter / Additional Information                                  |
|------------|---|
| 17/06/2020 | Development Application received.   |
| 08/09/2020 | Letter from Council sent requesting additional information and design change. |
| 30/9/2020  | Addition information and amended design received from applicant.              |

### 5. Assessment

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

#### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

- *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*.

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

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

- *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

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

The site is zoned R1 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

*multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building*

The development is permitted with consent within the zone. The development is consistent with the objectives of the R1 zone.

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

| Standard   | Proposal                       | Non-compliance       | Complies |
|--|--------------------------------|----------------------|----------|
| <b>Floor Space Ratio</b><br>Maximum permissible: 0.5:1 or 306.55 sqm | 0.70:1 or 429.43m <sup>2</sup> | 122.88 sqm or 40.08% | No       |
| <b>Landscape Area</b><br>Minimum permissible: 20% or 122.62 sqm      | 23.39% or 143.4m <sup>2</sup>  | N/A                  | Yes      |
| <b>Site Coverage</b><br>Maximum permissible: 60% or 367.86 sqm       | 40.86% or 250.5m <sup>2</sup>  | N/A                  | Yes      |

(i) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard by 40.08% or 122.88sqm (being an increase of 40sqm or a further 13.04% from the existing variation).

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 or 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 *LLEP 2013* below.

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 development standard which is summarised as follows:

2. *The proposal retains the existing architectural presentation to the street.*
3. *The proposed additions do not hinder any views of city landmarks and local features.*
4. *The proposal retains the existing street trees.*
5. *The proposal retains the existing front and rear landscape area.*
6. *The proposed additions are not visible from the public domain and shall only be visible to neighbours at 81 James Street. The additions as seen from 81 James Street are in a low scale building form including, floor-to-ceiling heights reduced to their minimum compliant heights*
7. *The additions are within the Building Location Zone.*

The applicant's written rationale adequately demonstrates that 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.

The Objectives of the R1-General Residential zone are:

8. *To provide for the housing needs of the community.*
9. *To improve opportunities to work from home.*
10. *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
11. *To provide landscaped areas for the use and enjoyment of existing and future residents.*
12. *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 zone, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

13. *The proposal will increase the amenity of housing in the community.*
14. *The alteration retains the existing character of the neighbourhood.*
15. *The proposal does not result in any adverse amenity impacts.*
16. *Proposal retains the existing front and rear landscaping areas for the use and enjoyment of residents.*
17. *The proposal does not result in adverse amenity impacts*

The objectives of the Floor Space Ratio development standard are:

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

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standards, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

18. *The additional bulk proposed is within the existing approved building envelope the proposal has no additional height and maintains the existing rear and side setbacks.*
19. *The proposal will provide a suitable balance between landscaped areas and the built form as the proposal complies with the landscaping control as set out in the Leichhardt*

LEP 2013. Given this, a reduction in gross floor area would not result in an increase in landscape area

20. This is because a building that fully complied with FSR would result in dwellings of poorer internal amenity with no additional benefit for the adjoining properties or streetscape as addition is not visible from the public domain

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio development standard and it is recommended the Clause 4.6 exceptions be granted.

(ii) Clause 6.8 - Development in areas subject to aircraft noise

The proposal is for alterations and additions to an existing residential unit within the ANEF 25-30 Contour, the additions will increase the number of bedrooms. Therefore, it is considered that the requirements of Development in areas subject to aircraft noise are applicable in this instance. It is recommended that A condition has be included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015

### 5(b) Draft Environmental Planning Instruments

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

- Draft SEPP Environment
- Draft Inner West Local Environmental Plan 2020 (*Draft IWLEP 2020*)

#### Draft SEPP Environment

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

#### Draft Inner West Local Environmental Plan 2020

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

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

## 5(c) Development Control Plans

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

| <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  | Yes  |
| C1.2 Demolition   | Yes  |
| C1.3 Alterations and additions  | Yes  |
| C1.4 Heritage Conservation Areas and Heritage Items                             | N/A  |
| C1.5 Corner Sites   | N/A  |
| C1.6 Subdivision  | N/A  |
| C1.7 Site Facilities  | Yes  |
| C1.8 Contamination  | Yes  |
| C1.9 Safety by Design   | N/A  |
| C1.10 Equity of Access and Mobility   | N/A  |
| C1.11 Parking   | Yes  |
| C1.12 Landscaping   | Yes  |
| C1.13 Open Space Design Within the Public Domain                                | N/A  |
| C1.14 Tree Management   | Yes  |
| 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>                                |  |
| C2.2.3.4 Helsarmel Distinctive Neighbourhood, Leichhardt                        | The proposal includes changes to the rear of the dwelling within existing side and rear setbacks. No change to streetscape or scale is proposed. as such, is consistent with the desired future character of the locality. |
|   |  |



|   |                           |
|---|---------------------------|
| <b>Part C: Place – Section 3 – Residential Provisions</b>                 |                           |
| C3.1 Residential General Provisions                                       | Yes                       |
| C3.2 Site Layout and Building Design                                      | Yes – see discussion      |
| C3.3 Elevation and Materials  | Yes                       |
| C3.4 Dormer Windows   | N/A                       |
| C3.5 Front Gardens and Dwelling Entries                                   | Yes - Remain as existing. |
| C3.6 Fences   | Yes                       |
| C3.7 Environmental Performance  | Yes                       |
| C3.8 Private Open Space   | Yes                       |
| C3.9 Solar Access   | Yes – see discussion      |
| C3.10 Views   | Yes - No views impacted   |
| C3.11 Visual Privacy  | Yes                       |
| C3.12 Acoustic Privacy  | Yes                       |
| C3.13 Conversion of Existing Non-Residential Buildings                    | N/A                       |
| C3.14 Adaptable Housing   | N/A                       |
|   |                           |
| <b>Part C: Place – Section 4 – Non-Residential Provisions</b>             | <b>N/A</b>                |
|   |                           |
| <b>Part D: Energy</b>   |                           |
| Section 1 – Energy Management   | Yes                       |
| Section 2 – Resource Recovery and Waste Management                        | Yes                       |
| D2.1 General Requirements   | Yes                       |
| D2.2 Demolition and Construction of All Development                       | Yes                       |
| D2.3 Residential Development  | Yes                       |
| D2.4 Non-Residential Development  | N/A                       |
| D2.5 Mixed Use Development  | N/A                       |
|   |                           |
| <b>Part E: Water</b>  |                           |
| Section 1 – Sustainable Water and Risk Management                         |                           |
| E1.1 Approvals Process and Reports Required With Development Applications | N/A                       |
| E1.1.1 Water Management Statement   | Yes                       |
| E1.1.2 Integrated Water Cycle Plan  | N/A                       |
| E1.1.3 Stormwater Drainage Concept Plan                                   | Yes                       |
| E1.1.4 Flood Risk Management Report                                       | N/A                       |
| E1.1.5 Foreshore Risk Management Report                                   | N/A                       |
| E1.2 Water Management   | Yes                       |
| E1.2.1 Water Conservation   | N/A                       |
| E1.2.2 Managing Stormwater within the Site                                | Yes                       |
| E1.2.3 On-Site Detention of Stormwater                                    | N/A                       |
| E1.2.4 Stormwater Treatment   | Yes                       |
| E1.2.5 Water Disposal   | Yes                       |
| E1.2.6 Building in the vicinity of a Public Drainage System               | N/A                       |
| E1.2.7 Wastewater Management  | N/A                       |
| E1.3 Hazard Management  | N/A                       |
| E1.3.1 Flood Risk Management  | N/A                       |
| E1.3.2 Foreshore Risk Management  | N/A                       |
|   |                           |
| <b>Part F: Food</b>   | <b>N/A</b>                |
|   |                           |
| <b>Part G: Site Specific Controls</b>                                     | <b>N/A</b>                |

The following provides discussion of the relevant issues:

### C3.2 Site Layout and Building Design

The development proposes to increase the wall to the southern elevation of the dwelling known as 83A. This increase is to the rear only and has a maximum height of 5.2m, reducing to 4.8m in response to the site slope towards the front of the dwelling (James Street).

Using the highest wall height proposed with this application, the DCP under control C7 states a setback of 1.38m is required. The proposal maintains the existing setback 1.52m being compliant with the side setback controls.

The proposed development maintains the existing rear setback for the subject site. The proposal is therefore considered to meet the site layout and building design requirements of the LDCP 2013.

### C3.9 Solar Access

The subject site and adjoining properties are orientated east-west, and therefore, the following controls are applicable:

- 5(a)(i) *C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.*
- 5(a)(ii) *C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted. Retaining solar access to neighbouring dwellings private open space.*
- 5(a)(iii) *C18 Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*
- 5(a)(iv) *C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

#### Adjoining Openings:

The proposal reduces solar access to the north-facing glazing of No. 81 James Street, which includes 2 sections of glazing, one servicing the dining area and kitchen. As outlined in Appendix A of the LDCP 2013, whilst kitchens and dining rooms are described as living areas, these are not listed in the definition of 'Main Living room'. Further, No. 81 James Street has its main recreation area serviced by the second window located at the rear with access to the rear private open space. The rear window for 81 James Street will continue to receive in excess of 2 hours of sunlight between the hours of 9am and 12pm. As a result, the proposal is not contrary to control C12.

#### Adjoining Private Open Space:

The proposal results in minor additional overshadowing to the private open space (POS) for 81 James Street in the morning. However, the POS of 81 James Street still receives sufficient solar access – in keeping with Control C18 greater than 50% of the rear POS receives solar access between 11am and 2pm during the winter solstice.

The shadow diagrams provided by the applicant confirm a minor net increase in the shadows cast on No. 81 James Street including glazing, POS and solar panels. However, the overshadowing is still compliant with the Solar Access controls contained within LDCP 2013 and is considered acceptable.

### 5(e) **The Likely Impacts**

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

#### 5(f) The suitability of the site for the development

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

#### 5(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. 1 submission was received in response to the initial notification.

The following issues raised in submissions have been discussed in this report:

- The impact of proposal on solar access to north facing windows and solar panels – see section 5(c) above

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: The rear setback along the southern boundary has already been legally determined including discussions regarding the impact on solar access

Comment: This application has been assessed on its merits and with regard to the objectives, controls and policies which govern development within the Inner West as described within this report.

#### 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 specialist 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/7.12 levies are not payable for the proposal.

## 8. Conclusion

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

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* to vary Clause 4.4 Floor Space Ratio of the *Leichhardt Local Environmental Plan*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning 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/2020/0450 for Alterations and additions to first floor of each townhouse at 83 James 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:

| <b>Project No, Dwg No. , Revision</b> | <b>Plan Name</b>         | <b>Date Issued</b> | <b>Prepared by</b> |
|---------------------------------------|--------------------------|--------------------|--------------------|
| SP45194-477, 02, A                    | Site/Roof Plan           | 12/03/2020         | Christopher Jordan |
| SP45194-477, 03, A                    | Ground Floor Plan        | 12/03/2020         | Christopher Jordan |
| SP45194-477, 04, A                    | First Floor Plan         | 12/03/2020         | Christopher Jordan |
| SP45194-477, 05, A                    | North & South Elevations | 12/03/2020         | Christopher Jordan |
| SP45194-477, 06, A                    | East & West Elevations   | 12/03/2020         | Christopher Jordan |
| SP45194-477, 07, A                    | Section A & B            | 12/03/2020         | Christopher Jordan |
|                                       | Schedule of Finishes     |                    | Christopher Jordan |

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.

**3. Security Deposit**

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

|                          |            |
|--------------------------|------------|
| <b>Security Deposit:</b> | \$2,209.00 |
| <b>Inspection Fee:</b>   | \$236.70   |

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

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

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

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

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

**GENERAL CONDITIONS**

**4. Waste Management Plan**

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

#### **5. Erosion and Sediment Control**

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

#### **PRIOR TO ANY DEMOLITION**

#### **6. Construction Fencing**

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

#### **PRIOR TO CONSTRUCTION CERTIFICATE**

#### **7. Structural Certificate for retained elements of the building**

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

#### **8. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

#### **9. Dilapidation Report – Pre-Development – Minor**

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

**10. Aircraft Noise – Acoustic Report (ANEF20-25 or Greater)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report that meets the relevant provisions of Australian Standard AS 2021:2000 Acoustics – Aircraft noise intrusion – Building siting and construction. The recommendations of the report are to be indicated on the architectural plans and / or specifications.

**DURING DEMOLITION AND CONSTRUCTION****11. 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.

**12. Stormwater Drainage System**

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

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

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

**13. Survey Prior to Footings**

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



**14. Compliance with BASIX Certificate**

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate Nos. A370123, A370125, and A370126 is to be complied with. Any subsequent version of these BASIX Certificate will supersede all previous versions of the certificate.

**PRIOR TO OCCUPATION CERTIFICATE****15. Aircraft Noise –Alterations and Additions**

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

**16. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

**ADVISORY NOTES****Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and

- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

**National Construction Code (Building Code of Australia)**

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

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

**Permits from Council under Other Acts**

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

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

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

**Noise**

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

**Amenity Impacts General**

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

**Lead-based Paint**

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

**Dial before you dig**

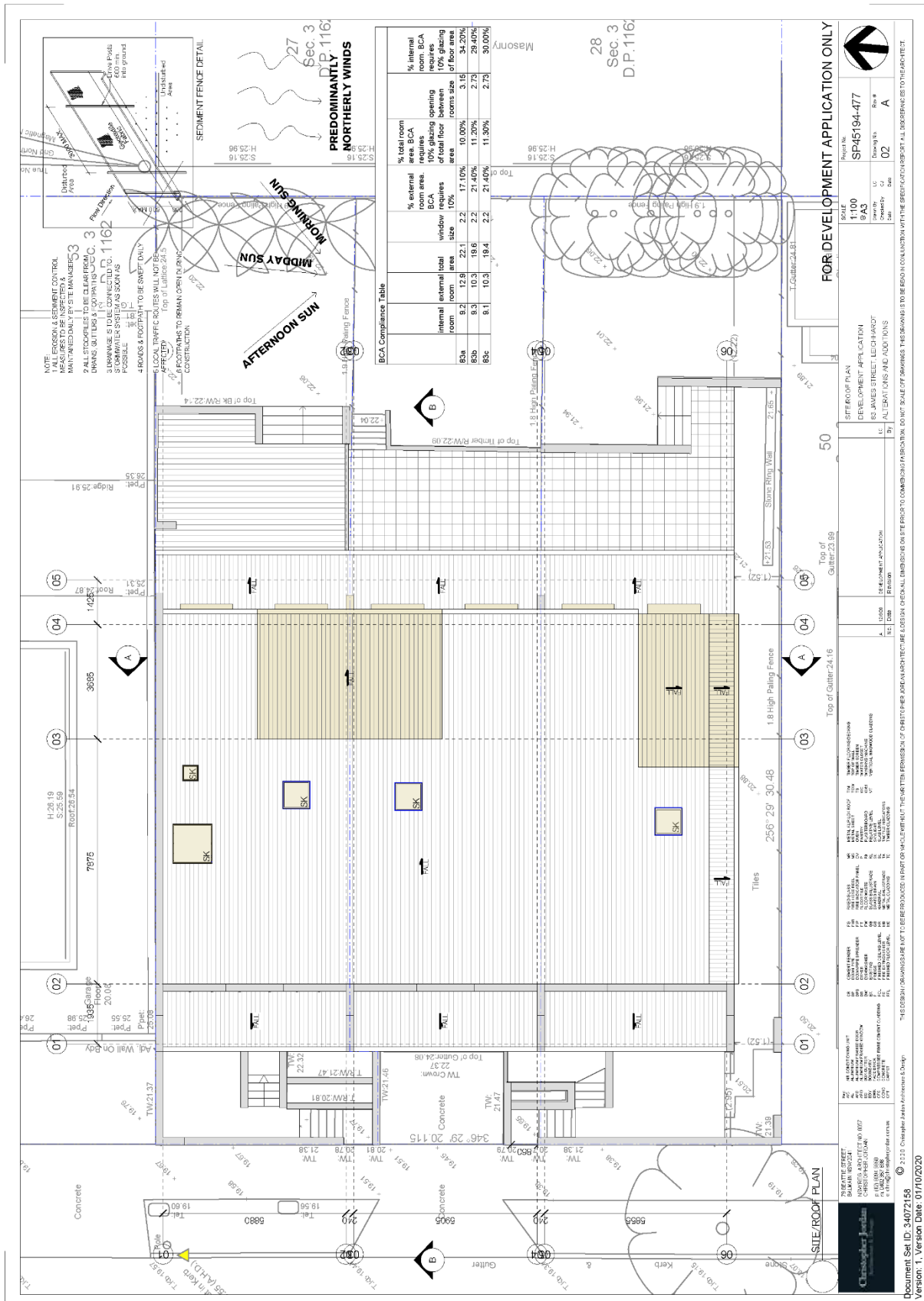
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

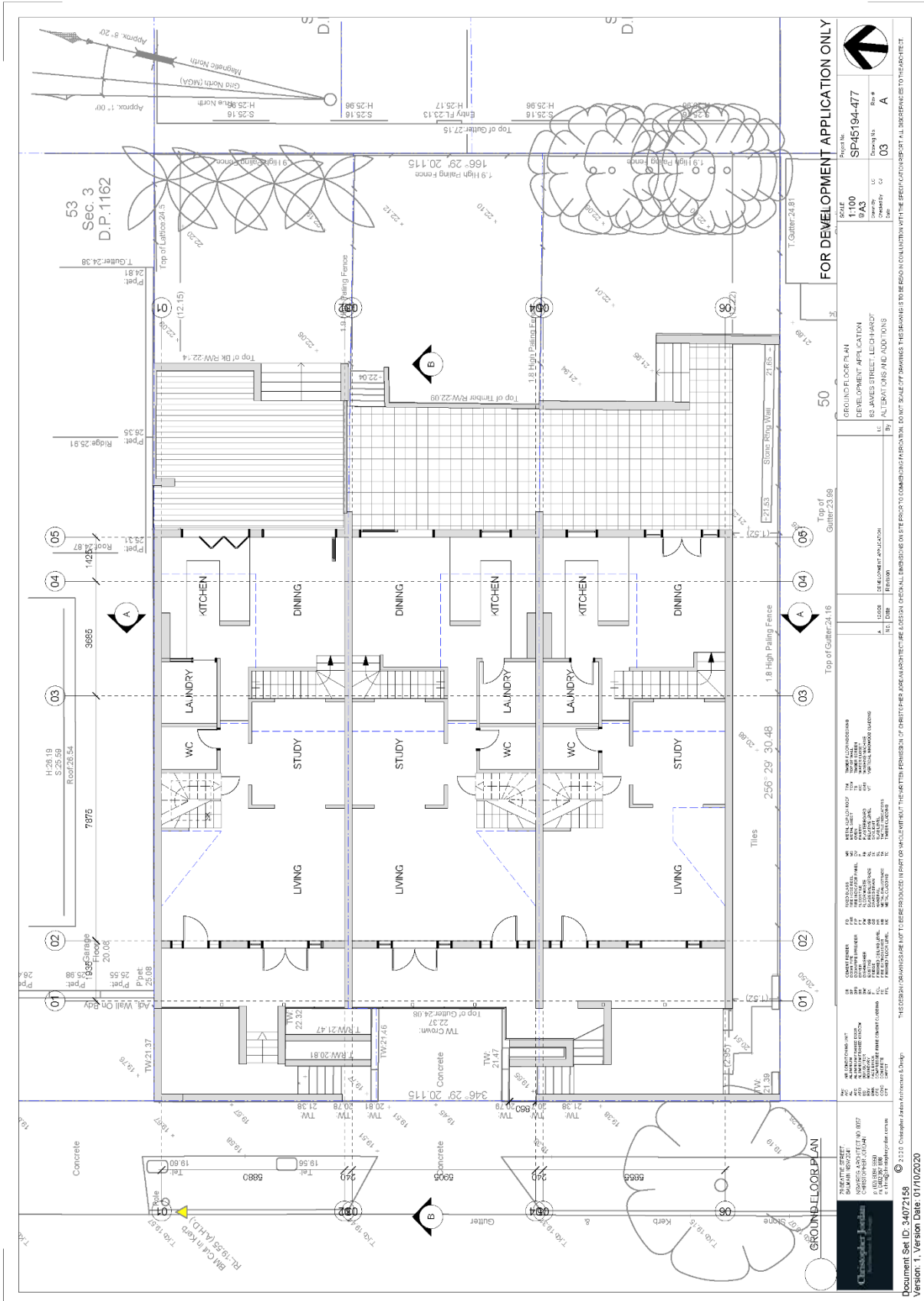
**Useful Contacts**

|                            |  |
|----------------------------|--|
| BASIX Information          | 1300 650 908 weekdays 2:00pm - 5:00pm<br><a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>  |
| Department of Fair Trading | 13 32 20<br><a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a><br>Enquiries relating to Owner Builder Permits and Home Warranty Insurance. |
| Dial Prior to You Dig      | 1100<br><a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>   |
| Landcom                    | 9841 8660<br>To purchase copies of Volume One of "Soils and Construction"  |
| Long Service Corporation   | Payments 131441<br><a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>  |
| NSW Food Authority         | 1300 552 406<br><a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>   |

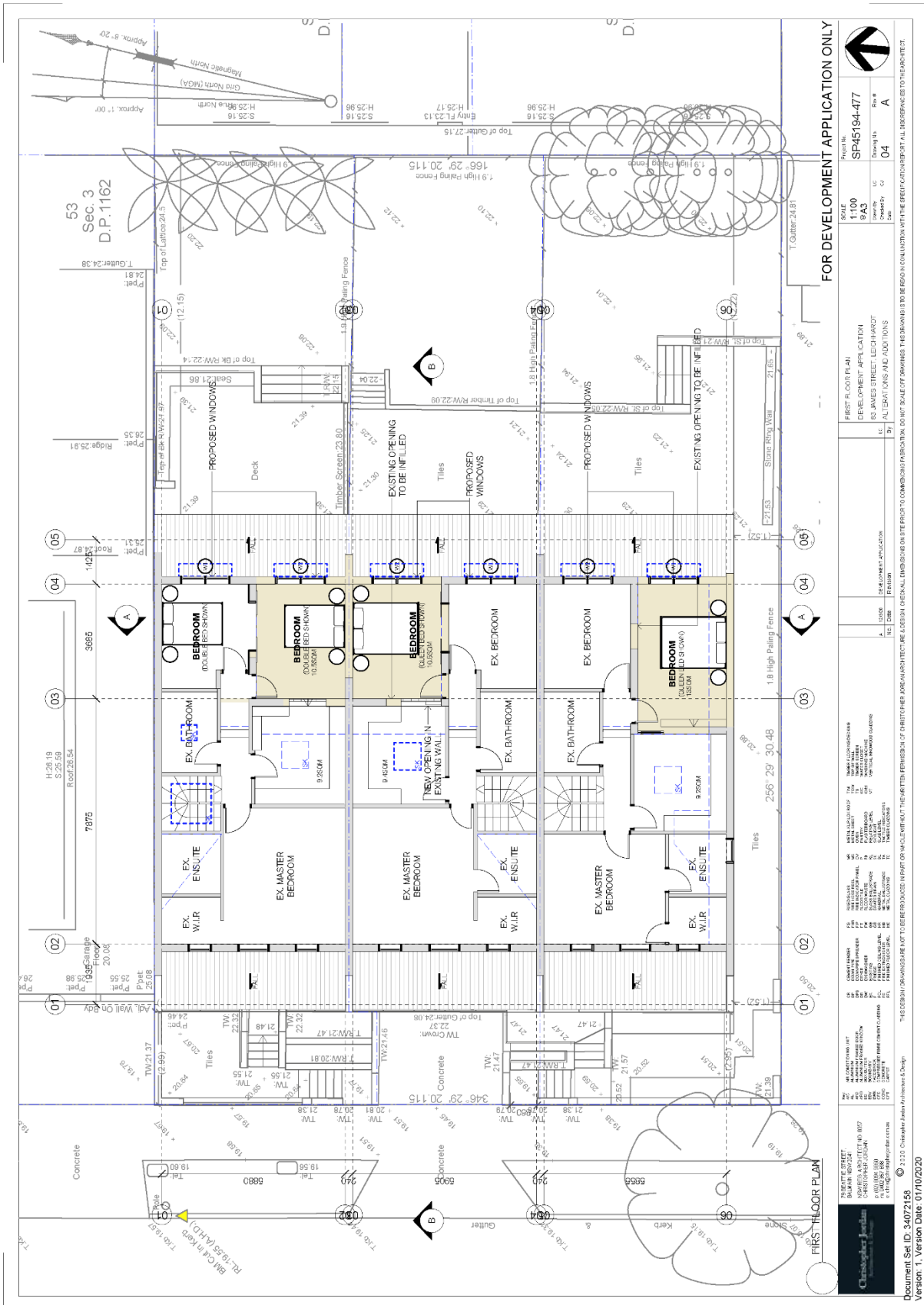
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|---|--|
| NSW Government                                  | <a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a><br><a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a><br>Information on asbestos and safe work practices. |
| NSW Office of Environment and Heritage          | 131 555<br><a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>  |
| Sydney Water                                    | 13 20 92<br><a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>   |
| Waste Service - SITA Environmental Solutions    | 1300 651 116<br><a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>   |
| Water Efficiency Labelling and Standards (WELS) | <a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>   |
| WorkCover Authority of NSW                      | 13 10 50<br><a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a><br>Enquiries relating to work safety and asbestos removal and disposal.                               |

Attachment B – Plans of proposed development



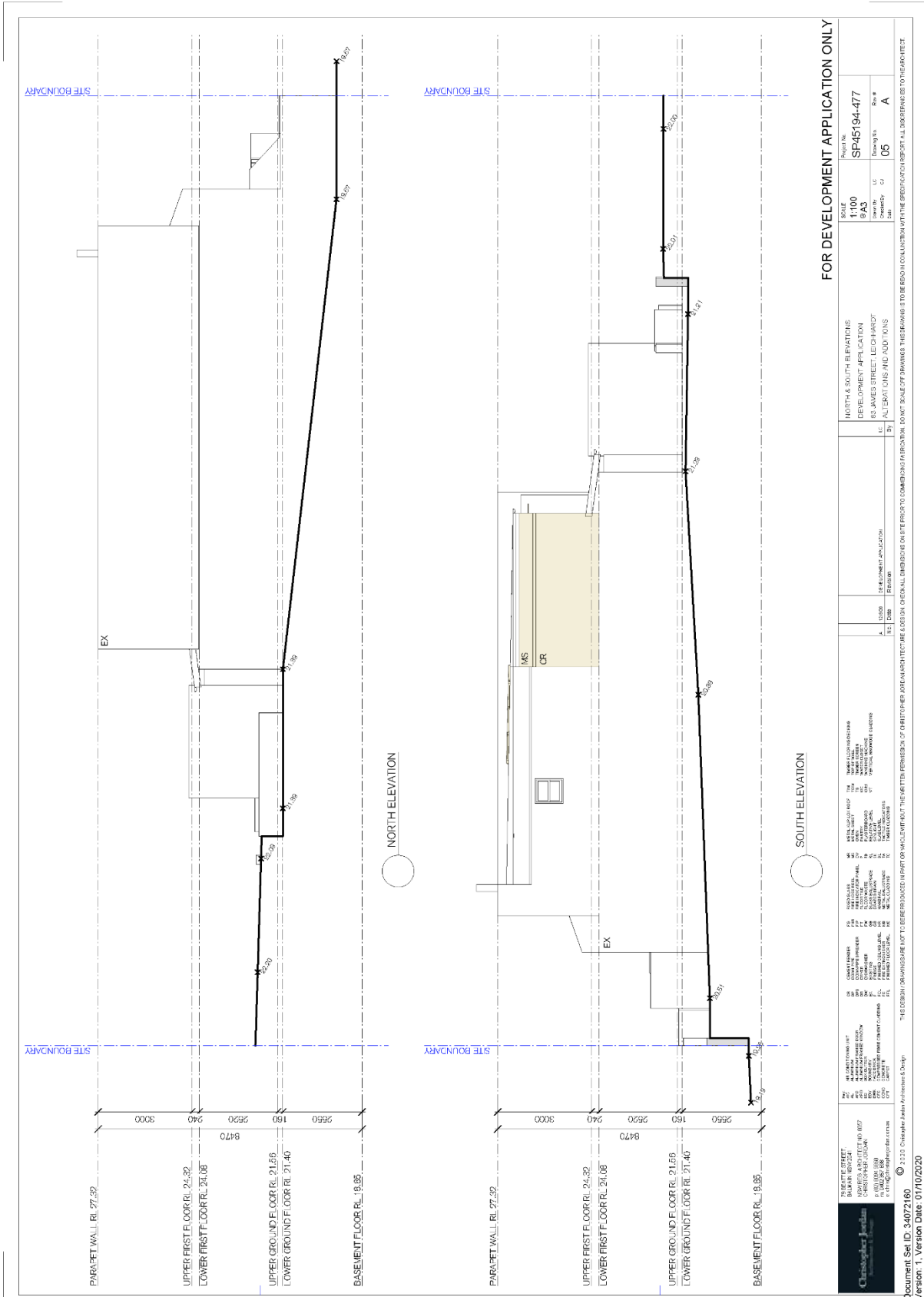






FOR DEVELOPMENT APPLICATION ONLY

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| <b>Project No.</b> SP45194-477<br><b>Scale</b> 1:1000<br><b>Sheet No.</b> 04<br><b>Date</b> 04/2020                                |  |  |
| <b>Project Name</b> DEVELOPMENT APPLICATION<br><b>Address</b> 85 JAMES STREET, LEICHHARDT<br><b>City</b> ALL BAYONIS AND ADJOINING |  |   |
| <b>Client</b> [Redacted]   |  |   |
| <b>Architect</b> [Redacted]  |  |   |
| <b>Engineer</b> [Redacted]   |  |   |
| <b>Structural Engineer</b> [Redacted]  |  |   |
| <b>Electrical Engineer</b> [Redacted]  |  |   |
| <b>Mechanical Engineer</b> [Redacted]  |  |   |
| <b>Plumbing Engineer</b> [Redacted]  |  |   |
| <b>Fire Engineer</b> [Redacted]  |  |   |
| <b>Other</b> [Redacted]  |  |   |
| <b>Document Set ID:</b> 34072158 © 2020 Christopher James Thomas & Design<br>Version 1, Version Date: 01/10/2020                   |  |   |

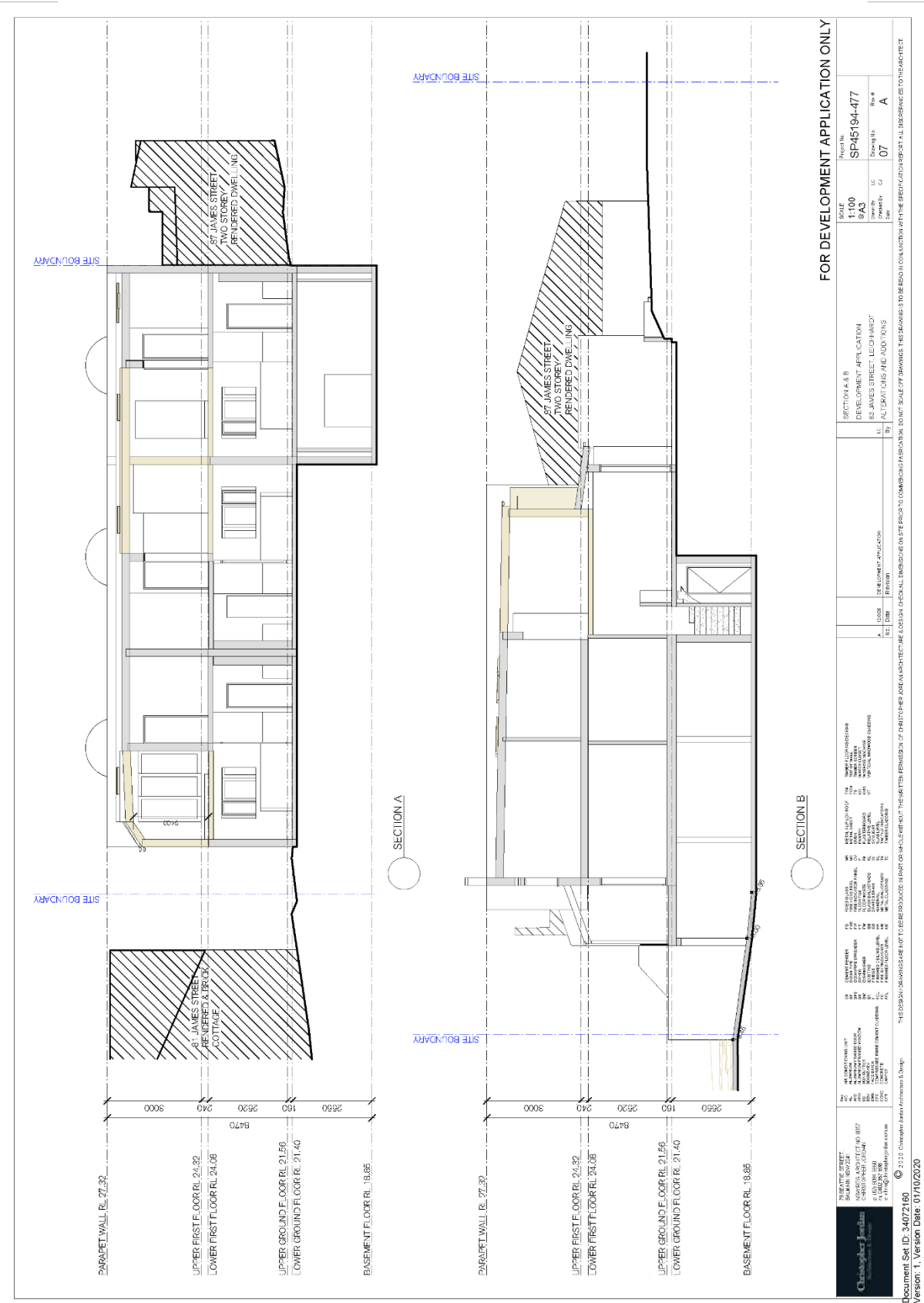


FOR DEVELOPMENT APPLICATION ONLY

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| <b>CHRISTOPHER JORDAN ARCHITECTS</b><br>1/100 WILSON STREET, WILSON, VIC 3083<br>PH: 03 9489 9888<br>WWW.CHAJARCHITECTS.COM.AU   |  | PROJECT NO: SP45194-477<br>DRAWING NO: 05<br>DATE: 05/10/2020 |  |
| NORTH & SOUTH ELEVATIONS<br>DEVELOPMENT APPLICATION<br>83 JAMES STREET, LEICHHARDT<br>ALL ELEVATIONS IN METERS   |  |   |  |
| SCALE: 1:100<br>DRAWN BY: CJ<br>CHECKED BY: CJ   |  | DEVELOPMENT APPLICATION<br>SITE NO: 12/000<br>ZONING: C1      |  |
| THE DESIGN AND CONSTRUCTION OF THIS PROJECT IS SUBJECT TO THE APPROVAL OF THE LOCAL COUNCIL. THE DESIGNER ACCEPTS NO LIABILITY FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT. THE DESIGNER IS NOT RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT. THE DESIGNER IS NOT RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF THIS PROJECT. |  |   |  |

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 Version: 1, Version Date: 01/10/2020





**Christopher Jordan**  
Architecture & Design

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83 James Street, Leichhardt  
Materials and Finishes Schedule  
To accompany a Development  
Application

EX – Existing painted brick wall finish



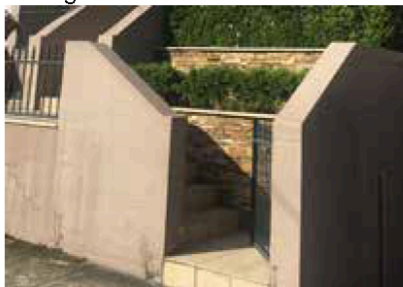
TFW – Timber framed windows. Dulux  
Painted



MS – New custom orb roofing to match  
existing. Gutters, fascias & downpipes – to  
match existing



CR - Cement Render colour to match  
existing walls



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[chris@christopherjordan.com.au](mailto:chris@christopherjordan.com.au)



## Attachment C- Clause 4.6 Exception to Development Standards



11.03.2020

### Clause 4.6 - Variation Request Floor Space Ratio Development Standard (Clause 4.4 of Leichhardt LEP 2013)

83 James Street, Leichhardt

#### 1. Introduction

This Variation Statement has been in support of a development application for the redevelopment of 83 James 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

1 / 16

- (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
  - (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 multi-unit housing development on a site area of 613.1m<sup>2</sup>. Accordingly, the Floor Space Ratio control for the site is 0.5:1 in accordance with clause 4.4 (2B)(c)(iv) (Refer to **Figure 1**).

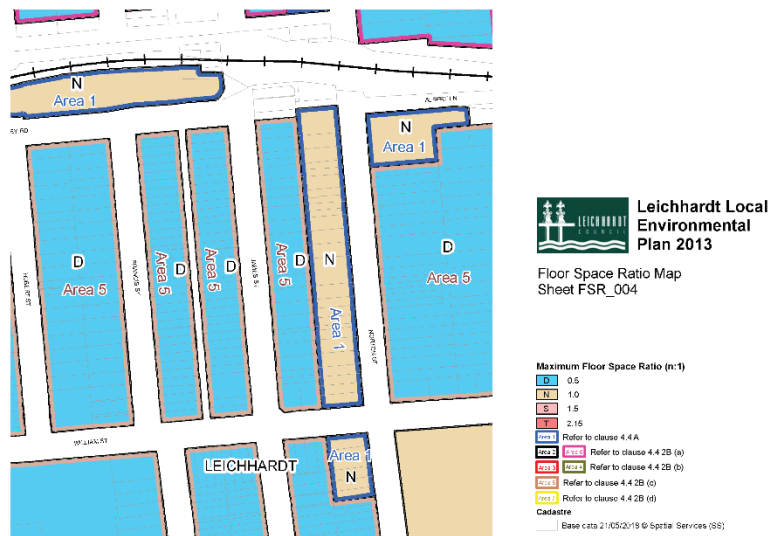


Figure 1: Extract of Floor Space Ratio Map (FSR Sheet 4 – Leichhardt LEP 2013)

### 3. Proposed Development

New first floor rear addition to 83A, 83B and 83C James Street, Leichhardt.

The proposed additions increase the floor area by 40m<sup>2</sup>, resulting in a total floor space of 459.5m<sup>2</sup>, and a FSR of 0.75:1. 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 0.5:1 in accordance with clause 4.4 (2B)(c)(iv).

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

The proposed additions increase the floor area by 40m<sup>2</sup>, resulting in a total floor space of 459.5m<sup>2</sup>, and a FSR of 0.75:1. 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 existing development has a floor space of 419m<sup>2</sup> and achieves a floor space ratio of 0.68:1, with an existing variation of 36.8%.

The proposed additions increases the floor area by 40m<sup>2</sup>, resulting in a total floor space of 459.5m<sup>2</sup>, and a FSR of 0.75:1. The proposal does not comply with the permitted maximum floor space ratio, representing a proposed percentage variation of 49.8%.

## 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,*
- (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.*

Objective (b) is not applicable to the proposed development.

In regards to Objective (a)(i), the site is located within Helsarmel Distinctive Neighbourhood in Part C2.2.3.4 of Leichhardt DCP 2013.

- C1 Maintain the character of the Helsarmel Distinctive Neighbourhood by keeping development complementary in architectural style, form and materials.

Comment: The proposal retains the existing architectural presentation to the street.

- C2 Maintain and enhance the predominant low scale 'cottage' character of the residential streets.
- C3 Preserve and enhance the weatherboard cottages and Californian bungalows scattered throughout Helsarmel Distinctive Neighbourhood.

Comment: Not applicable.

- C4 Preserve the consistency of the subdivision pattern in this area.

Comment: No change is proposed to the Torrens title subdivision layout of the locality.

- C5 Preserve and enhance the availability of views, both of city landmarks and local features.

Comment: The proposed additions do not hinder any views of city landmarks and local features.

- C6 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.
- C7 Encourage street tree planting throughout Helsarmel Distinctive Neighbourhood.

Comment: The proposal retains the existing street trees.

- C8 Encourage and enhance landscaping in the front building setback throughout Helsarmel Distinctive Neighbourhood.

Comment: The proposal retains the existing front landscape area.

- C9 Building wall height is to be a maximum of 3.6m, with the exception of development along Darley Road where there is potential for higher, more dense development, where a maximum building wall height of 6.0m shall apply.

Comment: No change to the existing front wall height is proposed.

- C10 Development is to be consistent with any relevant Sub Area objective(s) and condition(s).

Comment: The site is not located within a 'Sub Area'.

In regards to Objective (a)(ii), the proposal retains the existing quantum of landscape and built form areas of the site.

In regards to Objective (a)(iii), the impact of the bulk and scale of the new additions are minimised as follows:

- The proposed additions cannot be seen from the Street.
- The proposed additions cannot be seen from 87 James Street.
- The proposed additions cannot be seen from 320 – 324 Norton street

- The proposed additions as seen from 81 James Street are in a low scale building form that incorporates the following design features:
  - The new roof form addition is low in scale, with a simple skillion roof that extends below, and is sub-ordinate from the main roof form.
  - The additions follow the existing generous side setback of the existing building, in compliance with Council's side setback control.
  - The floor-to-ceiling heights are reduced to their minimum compliant heights.
  - The additions are within the Building Location Zone.

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 layout each dwelling within the building is representative of the existing Torrens title subdivision pattern along James Street. If the site was Torrens titled subdivided to match the current subdivision pattern of the James Street, the corresponding FSR control that would apply is 0.7:1 (Clause 4.4(2B)(C)(ii)). Taking this into account, the proposed addition to 83A James Street would be compliant with the FSR control. The proposed addition to 83B and 83C James Street would slightly exceed the FSR control by 13.91m<sup>2</sup> and 5.11m<sup>2</sup>, but the visual presentation would match exactly 83A and 83C James Street.

- The quantum and proportion of built form and landscape area is unchanged as a result of the increased floor area of the building.
- 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.
- The impact of the bulk and scale of the new additions are minimised as follows:
  - The proposed additions cannot be seen from the Street.
  - The proposed additions cannot be seen from 87 James Street.
  - The proposed additions cannot be seen from 320 – 324 Norton street
  - The proposed additions as seen from 81 James Street are in a low scale building form that incorporates the following design features:
    - The new roof form addition is low in scale, with a simple skillion roof that extends below, and is sub-ordinate from the main roof form.
    - The additions follow the existing generous side setback of the existing building, in compliance with Council's side setback control.
    - The floor-to-ceiling heights are reduced to their minimum compliant heights.
- The proposed floor space does not trigger then need to include additional parking or other site facilities on the site.
- The amenity of existing and future residents and the neighbourhood is protected for the following reasons:
  - The new window openings have an outlook towards the rear boundary, and accordingly do not result in any overlooking impacts.
  - The proposed development will maintain 3 hours of solar access to the living room of 81 James Street between 9am to 12 midday, and complies with Part 3.9(C12) of LDCP 2013.
  - The proposal retains 5.5 hours of solar access from 9am to 2:30pm to the rear private open space of 81 James Street, and complies with Part Part 3.9(C18) of LDCP 2013.
  - The impact of the bulk and scale of the new additions are minimised as follows:
    - The proposed additions cannot be seen from the street
    - The proposed additions cannot be seen from 87 James Street.
    - The proposed additions cannot be seen from 320 – 324 Norton street
    - The proposed additions as seen from 81 James Street are in a low scale building form that incorporates the following design features:
      - The new roof form addition is low in scale, with a simple skillion roof that extends below, and is sub-ordinate from the main roof form.
      - The additions follow the existing generous side setback of the existing building, in compliance with Council's side setback control.
      - The floor-to-ceiling heights are reduced to their minimum compliant heights.
- 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 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:

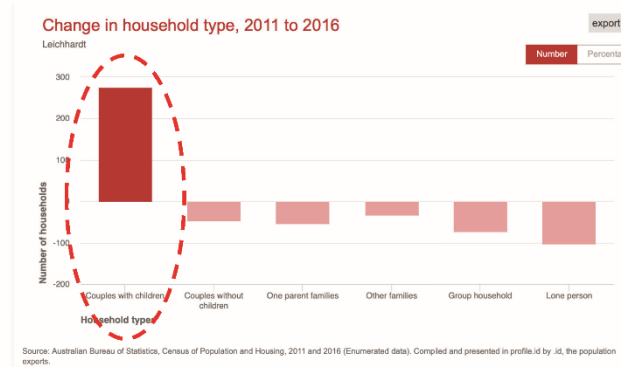
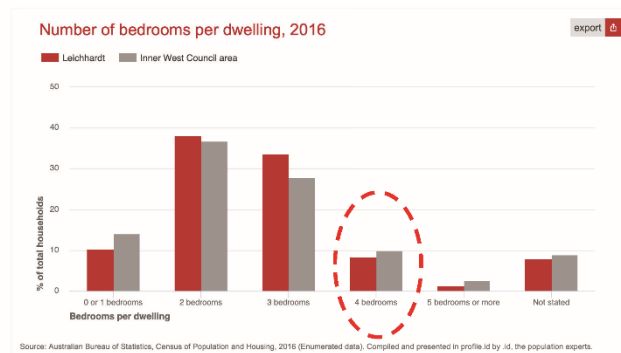
- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To improve opportunities to work from home.
- To provide housing that is compatible 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.profiles.id](http://www.profiles.id) for InnerWest Council).



- In regards to dot point 5, 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, as further demonstrated within the Statement of Environmental Effects, the amenity of existing and future residents and the neighbourhood is protected for the following reasons:
  - The new window openings have an outlook towards the rear boundary, and accordingly do not result in any overlooking impacts.
  - The proposed development will maintain 3 hours of solar access to the living room of 81 James Street between 9am to 12 midday, and complies with Part 3.9(C12) of LDCP 2013.
  - The proposal retains 5.5 hours of solar access from 9am to 2:30pm to the rear private open space of 81 James Street, and complies with Part Part 3.9(C18) of LDCP 2013.
  - the impact of the bulk and scale of the new additions are minimised as follows:

- The proposed additions cannot be seen from the street
- The proposed additions cannot be seen from 87 James Street.
- The proposed additions cannot be seen from 320 – 324 Norton street
- The proposed additions as seen from 81 James Street are in a low scale building form that incorporates the following design features:
  - The new roof form addition is low in scale, with a simple skillion roof that extends below, and is sub-ordinate from the main roof form.
  - The additions follow the existing generous side setback of the existing building, in compliance with Council's side setback control.
  - The floor-to-ceiling heights are reduced to their minimum compliant heights.
- 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.csiro.au](http://www.csiro.au) for Inner West Council.

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