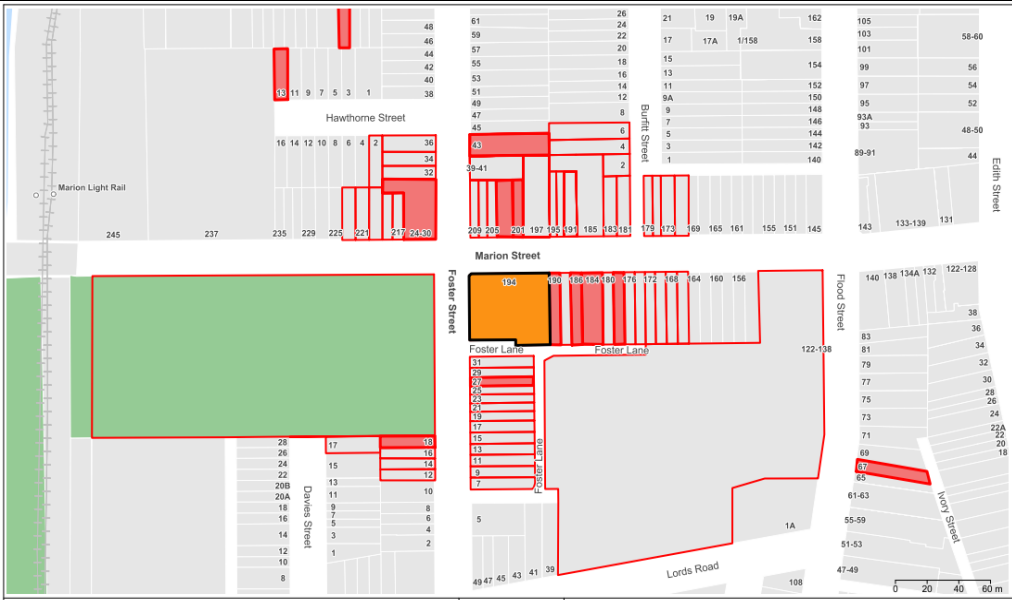




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/0110
Address	194 Marion Street LEICHHARDT NSW 2040
Proposal	Demolition of all existing structures and redevelopment of the site to contain a four (4) storey mixed use development with basement and lower ground parking, retail shops and 23 apartments, landscaping and associated site works.
Date of Lodgement	10 March 2021
Applicant	Benson McCormack Architecture
Owner	Mrs Maria A Settineri
Number of Submissions	Initial: 12 After Renotification: 9
Value of works	\$15,959,134.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% Number of submissions SEPP 65
Main Issues	Flooding Stormwater Floor Space Ratio variation Voluntary Planning Agreement ADG / SEPP 65 Non compliance
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Draft conditions of consent should consent be granted
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	
<p><u>Note:</u> Due to scale of map, not all objectors could be shown.</p>	

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of all existing structures and redevelopment of the site to contain a four (4) storey mixed use development with basement and lower ground parking, retail shops and 26 apartments, landscaping and associated site works at 194 Marion Street, Leichhardt NSW 2040.

The application was notified to surrounding properties and twelve (12) submissions were received in response to the initial notification. During the assessment of the application the plans were amended. Nine (9) submissions were received in response to renotification of the application.

The main issues that have arisen from the application include:

- Flooding
- Stormwater
- Non-compliance with Clause 4.4 - Floor Space Ratio development standard
- Voluntary Planning Agreement

A formal written request for an exception to the development standard under Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* (LLEP 2013), was submitted. However, insufficient environmental planning grounds have been provided, justifying the non-compliance with the development standard given the proposal fails to demonstrate acceptable stormwater management and flood mitigation measures for the site and results in adverse bulk and scale and amenity impacts. As a result, the application is recommended for refusal.

2. Proposal

The proposal involves demolition of all existing structures and redevelopment of the site to contain a four (4) storey mixed use development with basement and lower ground parking, containing a total of 5 retail tenancies and 23 residential units.

Amended plans were submitted during the assessment of the application and are the subject of this assessment report. The plans propose the following on each level of the development:

Demolition

The application seeks approval for demolition of all existing structures across the subject site.

Road Widening

Foster Lane will be widened to create a 6.5m wide laneway along the frontage of the site.

Sydney Water Infrastructure

The existing Sydney Water underground channel is to be deviated. In the process, the pipes/channel are to be upgraded in capacity.

Basement Level 2

- Residential parking is provided at this level and will accommodate 24 residential spaces (including 2 accessible) and 3 residential visitor spaces.
- 14 x bicycle spaces are provided (12 x residential, 2 x visitor).
- 2 x residential motorcycle spaces are provided.
- A residential car wash bay is provided along the southern wall.
- Plant rooms, utility rooms, bulk and general residential unit storage, and the residential waste room are also provided.

- Fire stairs and lifts are proposed which offer access between levels.
- A service lift is also provided.

Basement Level 1

- 23 x commercial parking spaces are proposed (including 2 accessible). A loading bay is located in the south-eastern corner of this level with a service lift allowing items to be taken to the level above.
- 2 x bicycle spaces are provided. 2 x motorcycle spaces are provided.
- A flood storage is proposed in the south-western corner of the level.
- Plant rooms, substation, utility rooms, and commercial waste rooms are proposed across this level.

Lower Ground Floor

- 3 x retail tenancies are proposed with the following floor areas: 275sqm, 191sqm and 338.2sqm.
- Commercial and residential waste storage rooms
- 12 x bicycle spaces
- Various services and a commercial back of house area including bathrooms are located on the level.
- Vehicle access and is provided via Foster Lane within the south-eastern corner of the site.

Upper Ground Floor

- 2 x retail tenancies are proposed with the following floor areas: 85.5sqm and 118.1sqm.
- Separate retail and residential lobby areas are provided off Marion Street.
- Various services and a commercial back of house area including bathrooms and fan room.

Level 1

- The level will consist of a total of 8 units including:
 - 4 x 2-bedroom units
 - 3 x 3-bedroom units
 - 1 x dual key 2-bedroom unit which can be adapted to a 1 bed and studio unit.
- Communal Open Space is proposed, totalling 440.2sqm.

Level 2

- The level will consist of a total of 9 units including:
 - 1 x 1-bedroom unit
 - 6 x 2-bedroom units
 - 1 x 3-bedroom unit
 - 1 x dual key 2-bedroom unit which can be adapted to a 1 bed and studio unit.

Level 3

- This level will consist of a total of 6 units including:
 - 4 x 2-bedroom units
 - 1 x 3-bedroom unit
 - 1 x dual key 2-bedroom unit which can be adapted to a 1 bed and studio unit.
- Communal Open Space is proposed, totalling 158.8sqm.

General

Vehicular access is proposed via Foster Lane in the south-eastern corner of the subject site. Photovoltaic panels are proposed on the roof of the units facing north, to Marion Street. A number of AC units are also located on the roof.

Planting is proposed on structures to the communal area and seven street trees are proposed across the Marion and Foster Street frontage.

Voluntary Planning Agreement

The proposal includes a Voluntary Planning Agreement (VPA) which was submitted with the development application. The details of the VPA are contained within a formal letter of offer to Council.

3. Site Description

The subject site is located on the southern side of Marion Street, at the corner of its intersection with Foster Street. Foster Lane adjoins the site to the south. The subject site is legally defined as Lot 13 and 29 in Deposited Plan 655895 and Lots 10, 11, 12 in Deposited Plan 5422. The site is generally square shaped with a total area of 1759sqm and is commonly known as 194-202 Marion Street, Leichhardt.

The site has a frontage to Marion Street of 45.65 metres and a secondary frontage of approximate 37.19 metres to Foster Street. The site has an approximate fall of 3.8m from Marion Street (north eastern corner) to Foster Lane (south eastern corner). The site is affected by a Sydney Water easement for drainage which traverses the south-western portion of the site.

The site supports a single storey brick commercial building fronting Marion Street which contains a restaurant, and 2 single storey brick and metal warehouse along its eastern boundary which support a hardware store and fruit shop.

The subject site is not listed as a heritage item nor is it located within a Heritage Conservation Area. However, the site is identified as a flood prone lot.

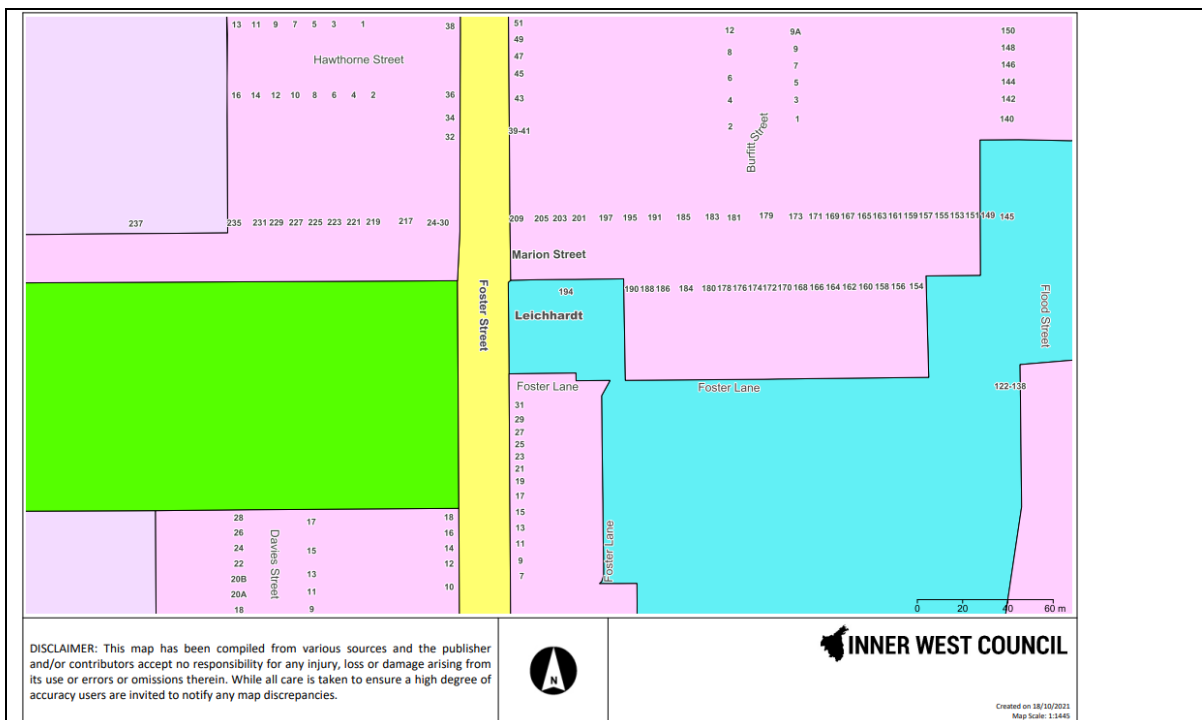


Figure 1: Zoning Map

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
PDA/2020/0239	Demolition of existing structures and construction of a 2-3 storey mixed use building with basement level parking	10/09/2020 - Advice Issued

Surrounding properties

Not applicable

4(b) Application history

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

Date	Discussion / Letter / Additional Information
8 June 2021	A request for further information was issued to the applicant outlining concerns in relation to the proposal.
22 June 2021	Council met with applicant to discuss additional information request letter
29 June 2021	Amended plans and additional information submitted
8 July 2021	Notification of amended plans
15 September 2021	Council indicated to the applicant that the proposal would not be supported and suggested withdrawal of the application. Request to withdraw letter issued.
24 September 2021	Applicant submitted a letter in response to Council's request to withdraw and requested a meeting with Council to discuss the application.
10 October 2021	Council met with applicant to discuss request to withdraw letter and outstanding concerns with the application. Council indicated that in its current form, based on the information provided, the application would not be supported.

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 No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

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 been used in the past for activities which could have potentially contaminated the site. A Detailed Site Investigation (DSI) was submitted and based on the findings of the investigation the report concluded that widespread, or gross, contamination was not present at the site. The land is considered suitable for the proposed (mixed use commercial and residential) development, in accordance with State Environmental Planning Policy 55 (SEPP 55) - Remediation of Land and will not require remediation in accordance with the provisions of SEPP 55.

5(a)(ii) *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). SEPP 65 prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is not acceptable having regard to the nine design quality principles.

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP certain requirements contained within LDCP2013 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Comment: The site has a total area of 1,758sqm, and therefore requires 439.5sqm of communal open space. A total of 599sqm of communal open space is provided on Level 1 and Level 3 and complies with this requirement. However, the proposal does not achieve a minimum 50% direct sunlight to the open space area for 2 hours. Notwithstanding this the development is considered acceptable with respect to the objectives of this Part in that most residential units have access to a balcony greater than the minimum area requirements.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m ²	-	7%
650m ² - 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

Comment: The site has a total area of 1,758sqm, and therefore requires 123.06sqm of deep soil planting. The proposed development seeks to build boundary to boundary and provides no areas of deep soil planting on the site. Given the location of the site within the West Leichhardt Distinctive Neighbourhood, the fall on the site and the need to provide rear lane vehicular and waste access and services, the site is unable to provide deep soil planting in compliance with this part. Planting on structures is sought to offset the lack of landscaping at ground level and soften the appearance of the proposal at the upper levels. Furthermore, traditionally sites that have a dual frontage within the distinctive neighbourhood area are constructed boundary to boundary with limited to nil deep soil planting accommodated on site.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

Comment: The proposal does not achieve compliance with the numerical requirements under this Part of the ADG, particularly, with regards to setbacks, building envelope, building separation, privacy and building height transition. The bulk and scale of the development is concentrated along Foster Street and Marion Street frontages to enable adequate separation to the adjoining single storey residential dwellings to the east and south. However, in doing so creates an overwhelming 4 storey built form with nil setbacks to each frontage. While the architectural expression of the design helps to soften the visual bulk impacts to street level, the additional gross floor being pursued at the upper level is a key contributor to the streetscape impacts of the building. This is illustrated in the nil setback proposed along the eastern boundary of the site and the four storey building mass (approximately 13m wall height) located immediately adjacent to a single storey residential dwelling at No. 190 Marion Street.

Council's Architectural Excellence Panel (AEP) raised concern regarding the highly visible eastern side boundary wall from within the Marion Street public domain which will remain a visible blank facade until the adjoining sites are redeveloped. The AEP noted that the existing planning controls do not yet facilitate the renewal of these adjoining sites. However, that the side boundary requires refinement in terms of design, setback, composition and material selection and that any boundary walls should be capable of being built, cleaned and maintained from within the site, without relying on access from the adjacent property.

In terms of visual and acoustic privacy it is noted that the location of balconies on level one and level two do not achieve a minimum 6m building separation from the eastern side boundary and the rear yard of No. 190 Marion Street.

While amended plans were received which reduced the wall height along the eastern boundary of the site by 1m and changes were made to the treatment of this wall, it is considered that the bulk, scale massing and separation of the building has not been appropriately designed to provide for a transitional building height or soften the visual bulk to the street.

The variations under this Part of the ADG are not supported as they contribute to the FSR variation which is a reason for refusal. Furthermore, it is unclear whether the proposed stormwater and flood mitigation measures on the site as they relate to Council and Sydney Water assets would affect the design of the proposal and further compound the impacts identified above, as detailed information has not been provided with application demonstrating the feasibility of the design.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.

- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Comment: The six (6) west facing units to Foster St do not receive direct solar access to living rooms or balconies until 1.00pm in mid-winter. It is unclear whether the requisite 2 hours of solar access is achieved to these areas given the recessed nature of the living rooms and that the balconies to these apartments contain blade walls. Overall, it has not been demonstrated that a minimum of 1sqm of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes to these apartments which receive the least direct solar access in mid-winter due to their orientation. It is considered that the proposal has not been appropriately designed to provide an acceptable degree of amenity to these dwellings.

The development does not achieve compliance with this Part of the ADG as eleven (11) out of twenty-three (23) or 48% of apartments in the building receive a minimum of 2 hours solar access.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

Comment: The development complies with the above requirement.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

Comment: The development complies with the above requirement.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m ²
1 Bedroom apartments	50m ²
2 Bedroom apartments	70m ²
3 Bedroom apartments	90m ²

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Comment: The studio apartments within the dual-key arrangement do not receive a minimum floor area of 35sqm and the proposal is inconsistent with the requirements under this Part of the ADG. This concern was raised by the AEP who recommended that the dual key apartments (1 bedroom + studio) be amended to 2 bedroom apartments, as the current configuration results in a significant shortfall (9sqm) in the apartment area required and results in poor amenity. The application is not supported for other reasons discussed throughout this report and it is considered this aspect of the proposal may be conditioned to address Council's concerns.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Comment: The development complies with the above requirement.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m ²	-
1 Bedroom apartments	8m ²	2 metres
2 Bedroom apartments	10m ²	2 metres
3+ Bedroom apartments	12m ²	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3 metres.

Comment: The development complies with the above requirement. The POS areas have

been orientated to Marion Street and Foster Street where possible, with the remainder being orientated to Foster Lane.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Comment: A maximum of 9 units on Level 2 rely on a single circulation core however, all other levels comply with the above requirements. The proposal is considered acceptable with regard to satisfying this Part of the ADG.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m ³
1 Bedroom apartments	6m ³
2 Bedroom apartments	8m ³
3+ Bedroom apartments	10m ³

Note: At least 50% of the required storage is to be located within the apartment.

Comment: The development complies with the above requirement.

5(a)(iii) 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.

5(a)(iv) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)

Development with frontage to classified road (Clause 101)

The site has a frontage to Marion Street, a classified road. Under Clause 101 (2) of *SEPP Infrastructure 2007*, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The application was referred to Transport for NSW (TfNSW) for comment. TfNSW raised no objections with the application with regard to ingress and egress to the site which remains adequate to support the intended vehicle movements by road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

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

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

The application does not seek the removal of vegetation from within the site or on Council land. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

No deep soil zone included as part of the proposal; however adequate soil volume provided for 1 tree planting in the lawn area. The design of proposed awnings will need to be modified to allow for street tree growth and will be conditioned as part of any future consent.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* however, the application is not supported for reasons discussed throughout this report and recommended for refusal.

5(a)(vi) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.4 – Floor Space Ratio
- Clause 4.4A - Exception to maximum floor space ratio for active street frontages
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.21 - Flood Planning
- Clause 6.13 - Diverse Housing
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management
- Clause 6.11a - Residential accommodation in Zone B1 and Zone B2

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

The site is zoned B2 Local Centre under the LLEP 2013. The LLEP 2013 defines the development as:

“commercial premises means any of the following—

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

and

shop top housing means one or more dwellings located above ground floor retail premises or business premises.”

The development is permitted with consent within the land use table. However, the development is not consistent with the objectives of the B2 Local Centre zone.

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

Development Standard	Proposal	Non-compliance	Complies
Floor Space Ratio (FSR) Maximum permissible: 1.5:1	1.97:1 or 3468.5sqm	31.53% or 831.5sqm	No

- (ii) Clause 4.4A Exception to maximum floor space ratio for active street frontages and Clause 6.11a Residential accommodation in Zone B1 and Zone B2

The proposal as amended, is considered to have an active street frontage as defined under the LLEP 2013 and therefore benefits from a maximum FSR of 1.5:1 as noted in the above calculations.

- (iii) Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the FSR development standard under Clause 4.4A of the LLEP 2013 by 31.53% or 831.5sqm.

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 LLEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the LLEP2013 justifying the proposed contravention of the development standard which is summarised as follows:

- The development seeks to provide a public benefit in the widening of Foster Lane and the dedication of the land to Council to facilitate this.
- A Sydney Water pipe is to be diverted as part of the proposed development. Its capacity will be upgraded to assist in future proofing development on this block as envisioned through adopted Inner West Local Housing Strategy.
- The additional floor area does not create an overly bulky or excessively scaled development. Rather, the development will create a positive streetscape outcome, as detailed in the architectural plans, and create a significant development of high quality as envisioned by the desired future character statements in the DCP.
- The proposal aligns with the adopted housing strategy, assisting in meeting the future housing outcomes for the area.
- The amenity of the site and its surrounds are not unreasonably impacted by the proposed development.
- The variation would not impact upon the proposals capacity to integrate within the desired future character of the area.
- The proposal is considered to provide an appropriate bulk, scale, alignment, and architectural features which positively contribute to the West Leichhardt Distinctive Neighbourhood.

The applicant's written rationale has not adequately demonstrated that compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and

that there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant objectives of the B2 Local Centre zone are outlined below:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To ensure that development is appropriately designed to minimise amenity impacts.*
- *To allow appropriate residential uses to support the vitality of local centres.*
- *To ensure that uses support the viability of local centres.*
- *To provide a mixture of compatible land uses.*
- *To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations.*

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

- a) *to ensure that residential accommodation:*
 - (iv) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (v) *provides a suitable balance between landscaped areas and the built form, and*
 - (vi) *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 not in the public interest because it is inconsistent with the objectives of the B2 – Local Centre zone and objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The proposed development is not compatible with the desired future character of the area in relation to building bulk, massing, scale and form and the requirements of the ADG;
- The additional floor space results in adverse amenity impacts (solar access and privacy) on neighbouring properties; and,
- The proposal has not adequately demonstrated that the stormwater works, and flood mitigation measures are feasible and will not detract from the viability of the local centre.

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

The proposal thereby does not comply 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 insufficient planning grounds to justify the departure from FSR development standard and it is recommended the Clause 4.6 exception be refused.

(vii) Clause 5.21 Flood Planning and Clause 6.4 Stormwater management

As noted previously in this report, the proposal includes the widening of Foster Lane to accommodate the diversion of an existing Sydney Water underground channel. Overall, insufficient detail has been provided regarding the proposed relocation of Sydney Water

infrastructure to provide Council with some degree of certainty that the proposed stormwater diversion and flood mitigation measures are feasible and will not restrict future planned upgrade works along Foster Lane. These issues are discussed in further detail below.

Pipe Diversion

The proposal is unable to be supported due to the uncertainty with the feasibility of the proposed stormwater diversion and flood mitigation measures.

The Leichhardt Flood Risk Management Plan includes Flood Mitigation Option HC_02 to install an additional 1500mm diameter pipe along Foster Lane in addition to the existing Sydney Water pipes to address flooding within the vicinity of the site. The relocation of the existing Sydney Water pipes that currently pass through the site to Foster Lane will compromise Council's ability to undertake Flood Mitigation Option HC_02 works at a future time as the proposed new Sydney Water pipes will occupy the full width of Foster Lane.

It is noted that the proposal has been revised to include the construction of twin 2100mm x 1500mm culverts which provide the cross-sectional area equivalent of a 1500mm diameter pipe. However, this detail has been provided in concept only. There is uncertainty that the structures can be accommodated within Foster Lane and that the proposed relocation will be approved by Sydney Water.

It has not been demonstrated that the proposed pipe relocation works are feasible and/or able to be constructed as there is a lack of information regarding existing pipe sizes and locations, invert levels, grades, the extent of the works is not clear; the proximity of works to adjacent buildings (in particular 31 Foster Street), lack of detail on utility services and any subsequent impacts to TfNSW requirements as Foster Street is a classified State Road.

Architectural plans and supporting information addressing the above issues have not been provided, including long sections and cross sections of the proposed twin 2100mm x 1500mm culverts (with services plotted); the undertaking of an extensive services search; details of the extent of the proposed works; the location of inlet structures, details of transitions and any proposed surcharge structures and a hydraulic grade analysis plotted on the long section.

It is noted that although Sydney Water have stated in their letter dated 2nd July 2021 and further correspondence dated 11th August 2021, that they have no objection to the issuing of a Development Application, they do also state that complying with their requirements may require the proposed development to be amended and subsequent development consent being obtained, which does not provide confidence that the proposal can be constructed as proposed or is in fact feasible.

Furthermore, it is noted that size and type of the existing Sydney Water pipes identified on the stormwater plans do not match the pipe types and sizes identified on Council records which have been sourced from Sydney Water. Information to substantiate the size of the existing Sydney Water pipes has not been provided as part of the revised application.

Flooding

The development is located within an area of High Hazard in the 100 year flood event and is required to comply with the LDCP 2013, Part E1.3.1-Flood Risk Management Controls: C1, C3, C4, C8, C9, C10.

The proposal blocks the existing overland flow path through the site that passes between the low point on Foster Lane to the low point on Foster Street. Although the overland flow path is not active during low recurrence interval storm events the overland flow path is active during a 1 in 100 year storm, with water ponding to a level of 6.05m at the low point in Foster Lane

which then flows overland through the site to the low point in Foster Street. This low point shall be assessed for a range of recurrence interval storms to ensure that flooding is not exacerbated during more frequent storm events.

Insufficient detail and level information has been provided of the flood storage area to determine if it will allow for sufficient storage and flow of water from Foster Lane to Foster Street noting that the flood storage area is located some distance from the low point in Foster Lane. It is considered that this storage area is a critical part of the proposed flood control measures and that any blockages will impact flooding adjacent to the site. Detail of the proposed design of the screening of this storage area have not been provided and it is unclear if blockage factors have been used in modelling.

The flood report appears to suggest that the proposal will result in reduced flood levels within Foster Lane as a result of the new Sydney Water pipe relocations within Foster Lane. However, it is unclear how this is achieved considering the development blocks the existing overland flow path and no new inlets to the culverts have been proposed. In addition, as the existing downstream system is not being upgraded it will be unable to accommodate any additional flows from the new pipes/culverts resulting in surcharge of the system.

Overall, the proposal including flood modelling and flood risk management report have not adequately demonstrated that the development provides the additional cross sectional area equivalent of 1500mm diameter pipe without reliance on the additional cross-sectional area to offset flood impacts that are a direct result of the development obstructing the existing overland flow path/removing flood storage.

Stormwater

It has not been demonstrated that the drainage system will capture hydrocarbons required to meet the water treatment targets of the LDCP 2013.

(viii) Clause 6.13 Diverse Housing

The provisions contained within Clause 6.13 requires the development to satisfy the following:

(1) The objective of this clause is to ensure the provision of a mix of dwelling types in residential flat buildings and mixed use development that includes shop top housing.

(2) This clause applies to development for the purpose of a residential flat building or a mixed use development that includes shop top housing but only if the development includes at least 4 dwellings.

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

- (a) at least 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include self-contained studio dwellings or one-bedroom dwellings, or both, and (b) no more than 30% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include dwellings with at least 3 bedrooms.*

The proposal comprises of a mix of 3 x studio units, 4 x one bedroom units, 14 x two bedroom units and 5 x three bedroom units thus satisfying the requirements of this clause.

5(b) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

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

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

5(c) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	No – refer to discussion below
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	No – refer to discussion below and Section 5(a)(ii)
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No – refer to discussion below
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	Yes
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	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood C2.2.3.2(a) Industrial/Business Sub Areas	No – refer to discussion below
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – refer to discussion below
C3.2 Site Layout and Building Design	No – refer to discussion below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes – refer to Section 5(a)(ii)
C3.9 Solar Access	No – refer to discussion below and Section 5(a)(ii)
C3.10 Views	Yes
C3.11 Visual Privacy	No – refer to Section 5(a)(ii)
C3.12 Acoustic Privacy	No – refer to Section 5(a)(ii)
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	Yes
Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	No – refer to discussion below
C4.2 Site Layout and Building Design	No – refer to discussion below
C4.3 Ecologically Sustainable Development	No – refer to discussion below
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	No – refer to discussion below
C4.6 Shopfronts	Yes
C4.7 Bulky Goods Premises	N/A
C4.8 Child Care Centres	N/A
C4.9 Home Based Business	N/A
C4.10 Industrial Development	N/A
C4.11 Licensed Premises and Small Bars	N/A
C4.12 B7 Business Park Zone	N/A
C4.13 Markets	N/A
C4.14 Medical Centres	N/A
C4.15 Mixed Use	Yes
C4.16 Recreational Facility	N/A
C4.17 Sex Services Premises	N/A
C4.18 Vehicle Sales or Hire Premises And Service Stations	N/A
C4.19 Vehicle Repair Station	N/A
C4.20 Outdoor Dining Areas	N/A
C4.21 Creative Industries	N/A

Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	No – refer to Section 5(a)(vii)
E1.1.4 Flood Risk Management Report	No – refer to Section 5(a)(vii)
E1.1.5 Foreshore Risk Management Report	N/A
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	No – refer to Section 5(a)(vii)
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	No – refer to Section 5(a)(vii)
E1.2.7 Wastewater Management	Yes
E1.3.1 Flood Risk Management	No – refer to Section 5(a)(vii)
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

- (i) C1.0 General Provisions, C2.2.3.2 West Leichhardt Distinctive Neighbourhood, C3.1 Residential General Provisions and C3.2 Site Layout and Building Design

As discussed in Section 5(a)(ii) of this report, the height, bulk, scale and massing of the proposal along Foster Street and Marion Street frontages and along the eastern side boundary of the site fail to address the requirements of the ADG in terms of building separation. As noted throughout this report, the FSR variation proposed on the site contributes to the additional bulk and scale at the upper level which has not been adequately justified. The built form of the development is considered contrary to the objectives of the distinctive neighbourhood and fails to comply with the prescribed building wall height controls.

Furthermore, the following objectives and controls are applicable:

- *Site capacity*
C1 – The site shall have sufficient capacity to accommodate development, including buildings and structures, setbacks and separation distances, access, manoeuvring and parking (where required by this Development Control Plan) and landscaped open space, having regard to site characteristics such as:
 - c. site area, road frontage, width and depth;*

g. flooding and drainage.

With regard to stormwater management and flooding, the application has failed to demonstrate that the site has sufficient capacity to accommodate the relocation of Sydney Water pipes, the upgrade of Council planned infrastructure works or that the widening of Foster Lane is capable of accommodating the required services.

(ii) C1.11 Parking

The following table indicates the minimum required parking for the development under the requirements of this part:

Table C4: General vehicle parking rates

Parking Rates				
Land Use	Residents		Visitors	
	Minimum	Maximum	Minimum	Maximum
Residential				
Single dwelling house	Nil	2 spaces per dwelling house	Nil	Nil
Bed-sit / Studio	Nil	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
1 bedroom unit	1 space per 3 dwellings	0.5 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
2 bedroom unit	1 space per 2 dwellings	1 space per dwelling	1 space per 11 dwellings	0.125 spaces per dwelling
3+ bedrooms unit	1 space per dwelling	1.2 spaces per dwelling	1 space per 11 dwellings	0.125 spaces dwelling
Shops / supermarkets	1 space per 50 sqm If the premises are located on a "Recognised Shopping Street" the first 50 sqm are exempt from parking provision (Refer to Note 3)		1 space per 50 sqm	

The amended proposal generates the following parking rates as prescribed in the above table:

- 21 Retail Parking Spaces
- 24 Residential Parking Spaces
- 3 Residential Visitor Parking Spaces

The original application proposed a total of 41 retail parking spaces, 24 residential parking spaces and 3 visitor parking spaces. The proposal was amended as per Council's request to reduce the number of retail parking spaces.

The amended proposal achieves compliance with the minimum parking rates for residential and visitor components, however, proposes 23 retail spaces which exceeds the maximum requirements under this part by 2 spaces.

The traffic parking assessment provided by the applicant indicates that the traffic generation of the revised proposal is minimal and the provision of the additional 2 spaces is considered acceptable for the following reasons:

- The minor level of additional traffic associated with the subject development is not expected to result in any unreasonable impacts on the overall existing safety and efficiency of the surrounding road network.

- The laneway is expected to have a low volume of traffic and unlikely to have an impact on traffic flow.
- The proposed off-street bicycle and motorcycle parking provision is consistent with Council requirements which aim to promote alternate forms of transportation.
- The proposed reverse in manoeuvres for service vehicles into the loading dock is acceptable given the low traffic environment in Foster Lane.

The amended proposal was referred to Council's Traffic Committee who found the traffic generated by the development to be acceptable and, TfNSW who provided concurrence, subject to conditions.

It should be noted that the proposal including the basement levels and access have been designed based on the flood affectation of the site and the relocation of Sydney Water infrastructure. As noted previously, insufficient detail has been provided regarding the proposed relocation of Sydney Water infrastructure to provide Council with some degree of certainty that the proposed stormwater diversion and flood mitigation measures are feasible and will not restrict future planned upgrade works along Foster Lane.

In this regard while the proposal may be acceptable with regard to traffic and parking, the uncertainty surrounding flooding and stormwater on the site creates further uncertainty as to whether the basement will need to be redesigned and whether this will have further implications on the overall design of the development.

As such, the application is not supported and recommended for refusal.

(iii) C3.9 Solar Access

As discussed previously in this report, the ADG sets out objectives and design criteria to ensure that new dwellings receive adequate solar access to living rooms and private open space area; of which the proposal is compliant. However, the objectives and controls under this Clause of the LDCP 2013 prevail with regard to minimising solar overshadowing to neighbouring properties.

The relevant controls are as follows:

- *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.*
- *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.*
- *C16 – Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9am and 3pm to 50% of the total area during the winter solstice.*
- *C19 – Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.*

The adjoining residential properties to the east currently do not receive the requisite two hours of solar access to their rear yards in mid-winter and as such, no further overshadowing is permitted. The proposal results in additional overshadowing to No. 190 and No. 188 Marion Street between 1pm and 3pm in mid-winter which would be contrary to the controls above.

Similarly, the adjoining property to the south at No. 30 Foster Street, currently does not receive the requisite two and a half hours of solar access to their rear yard in mid-winter and as such, no further overshadowing is permitted. The proposal results in additional overshadowing to this adjoining property between 1pm and 3pm in mid-winter which would be contrary to the controls above.

It is considered that the non-compliances discussed above are attributed to the additional floor space at the upper level and the FSR variation being pursued on the site as well as the nil setback of the building along the eastern boundary of the site.

As such, it is considered that the proposal results in adverse and undue overshadowing impacts and has not been designed in accordance with the objectives and controls of this Clause.

(iv) C4.1 Objectives for Non-Residential Zones, C4.2 Site Layout and Building Design, C4.3 Ecologically Sustainable Development and C4.5 Interface Amenity

While the design merits of the proposal have been discussed under Section 5(a)(ii) of this report with regard to building height transition, setbacks, building separation and impacts on neighbouring amenity; Section 4 of the LDCP 2013 prescribes the following key objectives for development within the B2 Local Centre zone:

- *O1 – Development achieves a high level of environmental performance by:
 - a. minimising energy, water and materials consumption in the construction and operation of buildings and facilities;
 - b. incorporating water sensitive urban design to reduce stormwater quantity, improve stormwater quality and optimise the use of rainwater on site;
 - c. providing good indoor environmental quality;
 - d. building resilience to climate change, including to the increased frequency and severity of hazards;
 - e. adopting design solutions that are compatible with the streetscape and character of the neighbourhood.*
- *O4 – To achieve sustainable and climatically responsive development that maximises the environmental performance of buildings, facilities and infrastructure.*
- *O5 – To enhance the capacity of the community to meet future changes in resource availability, climate, social, economic and environmental conditions by supporting main street centres which are the focus of the community.*

Due to the uncertainty associated with stormwater management and flood mitigation measures on the site, it is considered that the application has not adequately demonstrated that the proposed development would be able to meet the objectives above and is therefore recommended for refusal.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in terms of stormwater and flooding, visual bulk and scale, setbacks and transitional building height as well as amenity impacts (solar access and privacy) to neighbouring properties.

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

It is considered that the proposal will have an adverse impact on the adjoining properties and desire future character of the area and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. A total of twelve (12) submissions were received in response to the initial notification and nine (9) submissions were received in response to renotification of the application.

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

- Compliance with SEPP65 and the ADG – refer to Section 5(a)(ii)
- Solar Access and Overshadowing – refer to Section 5(a)(ii)
- Visual and acoustic privacy – refer to Section 5(a)(ii)
- Overdevelopment (FSR) – refer to Section 5(a)(vii)
- Height, Bulk and Scale – refer to Section 5(a)(ii) and Section 5(c)
- Building Transition and Setbacks – refer to Section 5(a)(ii) and Section 5(c)
- Traffic and Parking – refer to Section 5(c)
- Insufficient landscaping / trees – refer to Section 5(a)(vi)
- Inconsistent with the desired future character – refer to Section 5(a)(ii)
- Validity of the Voluntary Planning Agreement – refer to Section 7

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

- Issue: Depreciation of Property Values
Comment: There is no evidence to suggest that the proposal would reduce property values of neighbouring development.
- Issue: Loss of outlook views to Lambert Park
Comment: The view loss provisions of the LDCP2013 protect significant and/or landmark views rather than outlook or district views. The proposal is not considered to result in the loss of any views which would be contrary to the LDCP2013.
- Issue: Errors and omissions in documentation submitted with the application
Comment: Noted, however, notwithstanding any errors contained within the document submitted, an assessment of the application has been undertaken by Council as detailed throughout this report.
- Issue: Materials and finishes not appropriate
Comment: The proposed materials, finishes and colours are considered acceptable with regard to the provisions of the LDCP 2013.
- Issue: Disturbance/damage during demolition and construction
Comment: Suitable standard conditions are imposed on development consents to ensure a construction traffic management plan is adhered to. However, the application is not supported for other reasons outlined in this report.
- Issue: Viability of retail premises
Comment: It is considered that ground floor retail premises have been appropriately redesigned to improve the ground floor connectivity to both Marion Street and

Foster Street by providing through pedestrian site access and lowering the tenancies to closely match the footpath levels. While the application is not supported for other reasons outlined in this report, the design of the retail premises is considered acceptable with regard to promoting the viability of future tenancies.

5(g) The Public Interest

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

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Development Engineering
- Urban Forest
- Environmental Health
- Urban Design
- Building
- Waste
- Architectural Excellence Panel
- Traffic Committee
- Waste Management

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid
- Transport for NSW (TfNSW)
- Sydney Water

7. Section 7.11 Development Contributions

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area and Section 7.11 contributions are payable for the development. While the application is recommended for refusal, should consent be granted, the monetary contribution equals **\$460,000.00** in accordance with the Leichhardt Developer Contributions Plan No.1 – *Open Space and Recreation*; Developer Contributions Plan No.2 – *Community Facilities and Services (2005)*; and Leichhardt Developer Contributions Plan – *Transport and Access*.

8. Voluntary Planning Agreement (VPA)

On 16 February 2021, the Applicant submitted a letter of offer to enter into a Voluntary Planning Agreement (VPA) to acquire a development uplift in the form of an increase of 0.5:1 FSR on the site in return for the additional work and expense created by the increase in the capacity of the Sydney Water pipe and the dedication of a portion of the site related to the laneway widening.

Section 4.15(1)(iia) requires a consent authority when determining a development application, to take into consideration, so far as is relevant to the proposed development, any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4.

However, as at the date of this report it is understood that the agreed value of the VPA has not been determined nor has Council agreed to accept the offer to enter into a VPA.

9. Conclusion

The proposal does not comply with a number of aims, objectives and design parameters contained in the *Leichhardt Local Environmental Plan 2013* and Leichhardt Development Control Plan 2013.

The development which exceeds the FSR, and varies the setback, building envelope, building separation, and building height transition controls of the ADG, would result in significant impacts on the amenity of the adjoining properties. In addition, the feasibility of the proposed stormwater and flood mitigation measures has not been adequately demonstrated and would result in significant impacts on the viability of the local centre and is not considered to be in the public interest.

Insufficient environmental planning grounds have been provided to justify the noncompliance with the development standard.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

10. Recommendation

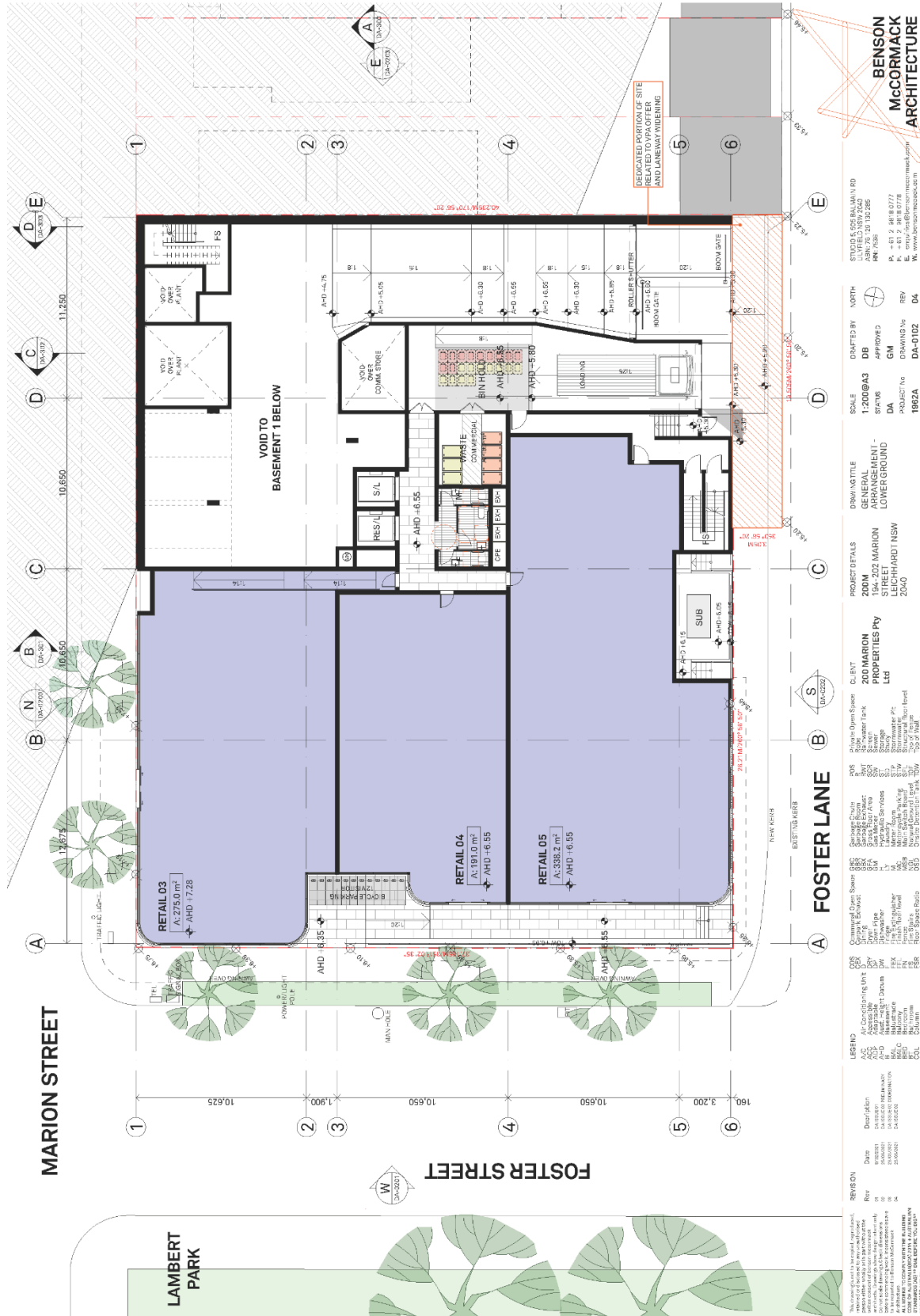
- A. The applicant has made a written request pursuant to Clause 4.4A of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standard and of the zone in which the development is to be carried out. **CB**
- 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*, refuse Development Application No. DA/2021/0110 for Demolition of all existing structures and redevelopment of the site to contain a four (4) storey mixed use development with basement and lower ground parking, retail shops and 26 apartments, landscaping and associated site works at 194 Marion Street LEICHHARDT NSW 2040 for the reasons listed in Attachment A below.

Attachment A – Reasons for refusal

REASONS FOR REFUSAL

1. The proposal has not demonstrated compliance with the *State Environmental Planning Policy – 65 (Design Quality of Residential Apartment Development) 2002* pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*.
2. The proposal has not demonstrated compliance with the following Clauses of the *Leichhardt Local Environmental Plan 2013* pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 – Aims of Plan
 - b. Clause 2.3 – Zone objectives and Land Use Table (Zone R1 General Residential)
 - c. Clause 4.4 – Floor Space Ratio
 - d. Clause 4.4A – Exception to maximum floor space ratio for active street frontages
 - e. Clause 4.6 – Exceptions to development standards
 - f. Clause 5.21 – Flood Planning
 - g. Clause 6.4 – Stormwater management
3. The proposal has not demonstrated compliance with Clause 4.6(3) of the *Leichhardt Local Environmental Plan 2013* pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*.
4. The proposal has not demonstrated compliance with the following Parts of the *Leichhardt Development Control Plan 2013*, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Part C – Section 1 – C1.0 General Provisions
 - b. Part C – Section 1 – C1.5 Corner Sites
 - c. Part C – Section 1 – C1.11 Parking
 - d. Part C – Section 1 – C2.2.3.2 West Leichhardt Distinctive Neighbourhood
 - e. Part C – Section 3 – C3.1 Residential General Provisions
 - f. Part C – Section 3 – C3.2 Site Layout and Building Design
 - g. Part C – Section 3 – C3.9 Solar Access
 - h. Part C – Section 3 – C3.11 Visual Privacy
 - i. Part C – Section 3 – C3.12 Acoustic Privacy
 - j. Part C – Section 4 – C4.1 Objectives for Non-Residential Zones
 - k. Part C – Section 4 – C4.2 Site Layout and Building Design
 - l. Part C – Section 4 – C4.3 Ecologically Sustainable Development
 - m. Part C – Section 4 – C4.5 Interface Amenity
 - n. Part E – Section 1 – E1.1.3 Stormwater Drainage Concept Plan
 - o. Part E – Section 1 – E1.1.4 Flood Risk Management Report
 - p. Part E – Section 1 – E1.2.4 Stormwater Treatment
 - q. Part E – Section 1 – E1.2.6 Building in the vicinity of a Public Drainage System
 - r. Part E – Section 1 – E1.3.1 Flood Risk Management
5. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
6. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.

8. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.
9. A properly constituted Voluntary Planning Agreement has not been entered upon by Council and the Applicant, and failure to do so is contrary to the public interest, pursuant to Section 4.15(1)(iia) and (e) of the *Environmental Planning and Assessment Act 1979*.



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 DA
 PROJECT NO: 1982A
 DRAWING NO: DA-0102
 DATE: 04

SCALE: 1:200@A3
 STATUS: DA
 PROJECT: 1982A

PROJECT DETAILS
 200M MARION STREET
 154-202 MARION STREET
 2040

GENERAL ARRANGEMENT - LOWERGROUND
 DRAWN: N.WITTE
 PROJECT: 1982A

200 MARION STREET
 200 MARION STREET
 2040

CL. ELEV
 200 MARION STREET
 200 MARION STREET
 2040

LEGEND
 A/C: All-Conditioning Unit
 A/D: Air Duct
 A/S: Air Supply
 B: Balustrade
 B/L: Balcony Ledge
 C/D: Column
 C/W: Comm. Waste Room
 D: Door
 D/C: Downcast
 E: Exhaust
 F: Floor
 F/C: Floor Covering
 F/S: Floor Slab
 G: Glass
 G/S: Glass Slab
 H: Handrail
 H/W: Hand Wash
 I: Insulation
 I/C: Insulation Core
 J: Joist
 K: Kitchen
 L: Lintel
 L/C: Lintel Core
 M: Masonry
 M/C: Masonry Core
 N: Niche
 O: Opening
 P: Partition
 P/C: Partition Core
 R: Recess
 R/C: Recess Core
 S: Stair
 S/C: Stair Core
 T: Terrace
 T/C: Terrace Core
 U: Utility
 U/C: Utility Core
 V: Void
 V/C: Void Core
 W: Window
 W/C: Window Core
 X: X-ray
 X/C: X-ray Core
 Y: Y-axis
 Y/C: Y-axis Core
 Z: Z-axis
 Z/C: Z-axis Core

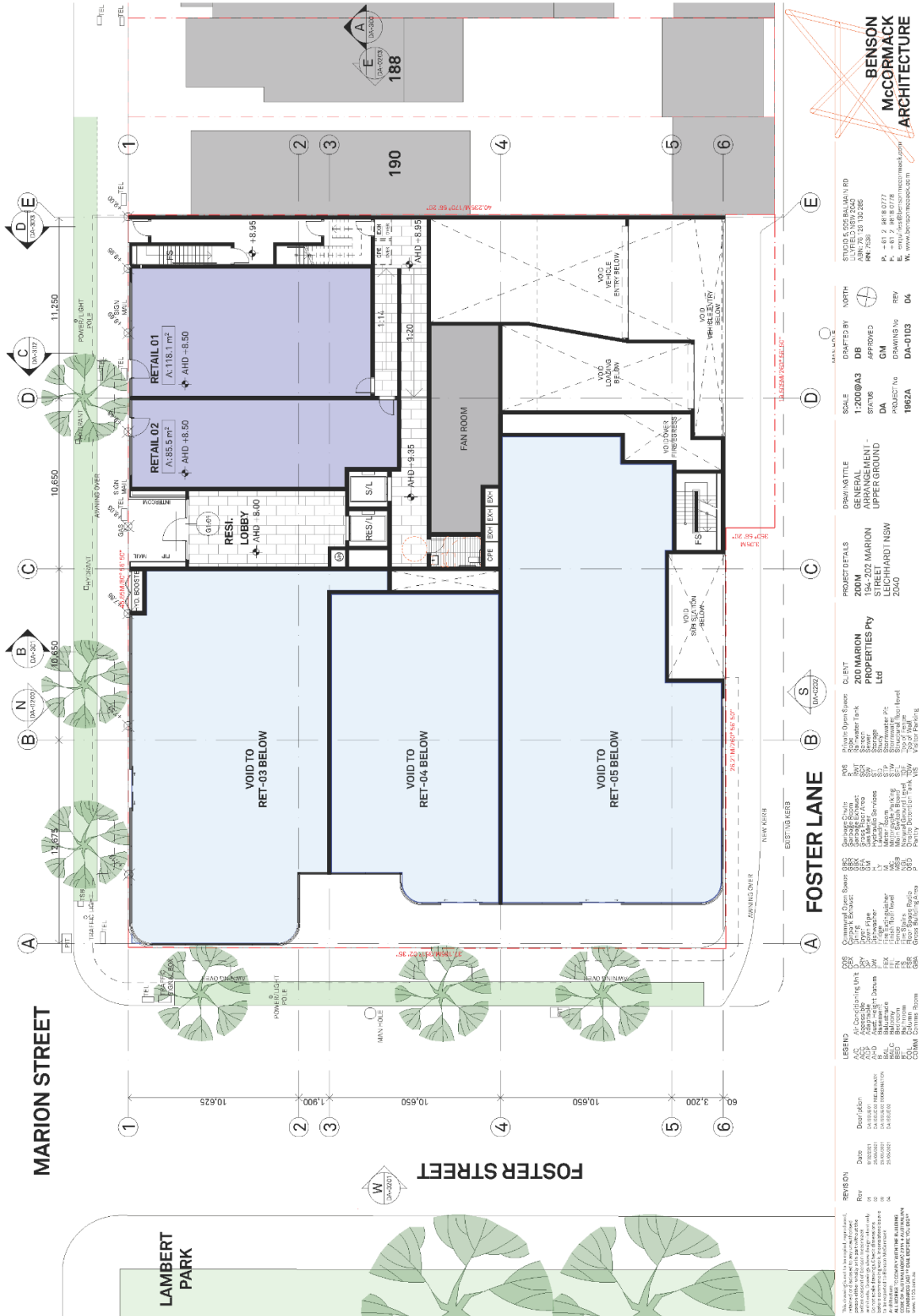
REVISIONS
 Rev No. Description
 01 Initial Design
 02 Final Design
 03 Final Design

DATE: 10/01/2023
 DRAWN: N.WITTE
 CHECKED: N.WITTE
 APPROVED: GM

PROJECT NO: 1982A
 DRAWING NO: DA-0102
 DATE: 04

200 MARION STREET
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SCALE: 1:200@A3
 DRAWN TITLE: GENERAL ARRANGEMENT - LEVEL 1
 PROJECT DETAILS: 200M 154-202 MARION STREET PH AND NSW 2040

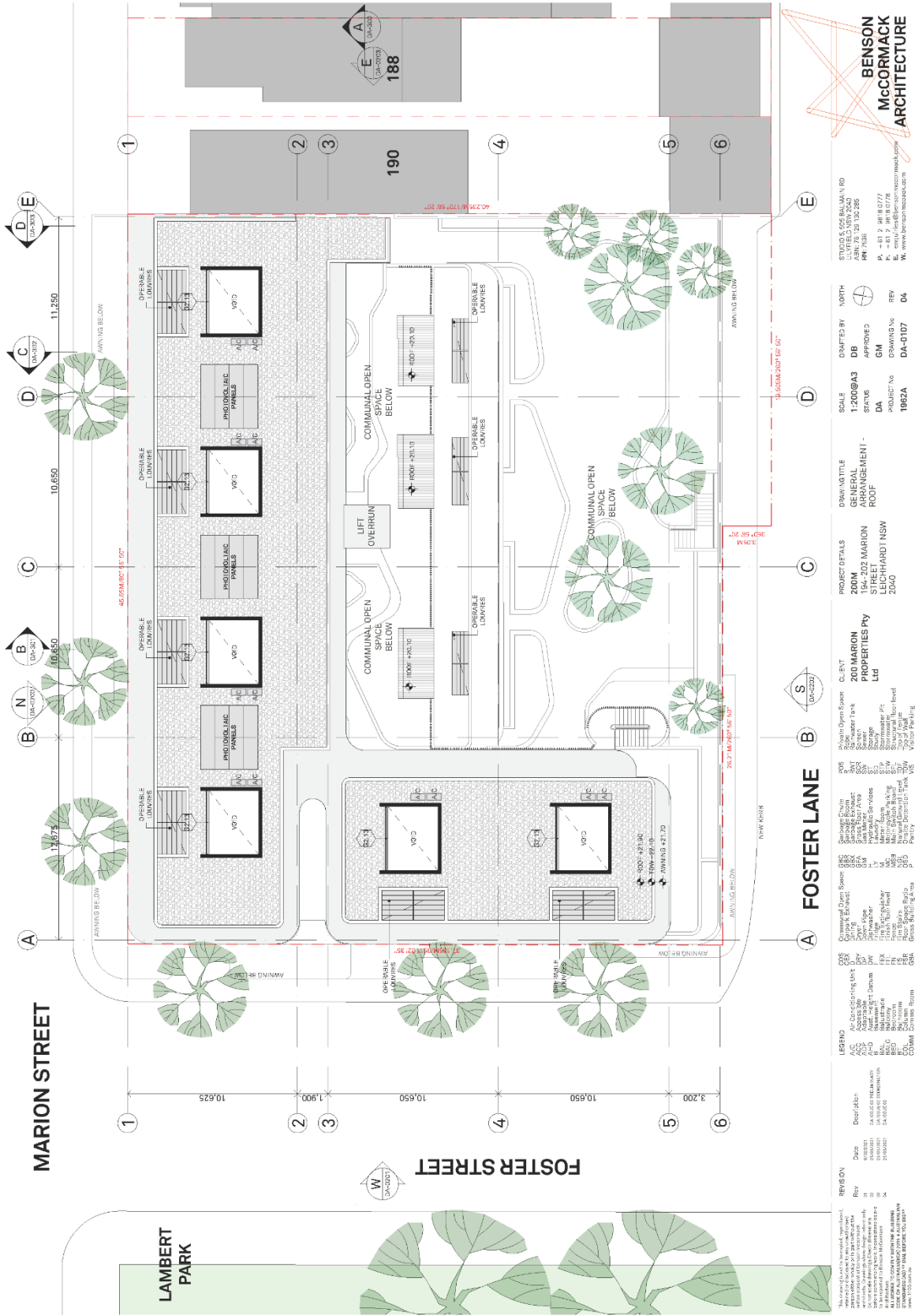
CLIENT: 200 MARION PROPERTIES Pty Ltd
 PROJECT: 200 MARION STREET PH AND NSW 2040

CONTRACTOR: COMMERCIAL DESIGN SERVICES
 ARCHITECT: BENSON McCORMACK ARCHITECTURE
 ENGINEER: CIVIL ENGINEERING CONSULTANTS
 LANDSCAPE ARCHITECT: LANDSCAPE ARCHITECTURE
 STRUCTURAL ENGINEER: STRUCTURAL ENGINEERING
 ELECTRICAL ENGINEER: ELECTRICAL ENGINEERING
 MECHANICAL ENGINEER: MECHANICAL ENGINEERING
 PLUMBING ENGINEER: PLUMBING ENGINEERING
 FIRE ENGINEER: FIRE ENGINEERING
 CIVIL ENGINEER: CIVIL ENGINEERING
 COMMUNITY CONSULTANT: COMMUNITY CONSULTANTS

LEGEND:
 A/C: AIR CONDITIONING UNIT
 A/D: AIR DUCT
 A/S: AIR SUPPLY
 B: BALCONY
 B/L: BALCONY LANDING
 B/S: BALCONY STAIR
 C/D: COMMON CORRIDOR
 C/ST: COMMON STAIR

REVISIONS:
 REV: DATE: DESCRIPTION
 1: 10/01/2023: AS SHOWN
 2: 10/01/2023: AS SHOWN
 3: 10/01/2023: AS SHOWN

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DRAFTED BY: NORTH
 DB
 APPROVED: GM
 DA
 PROJECT NO: 1882A
 DRAWING NO: DA-0107
 REVISION: DA

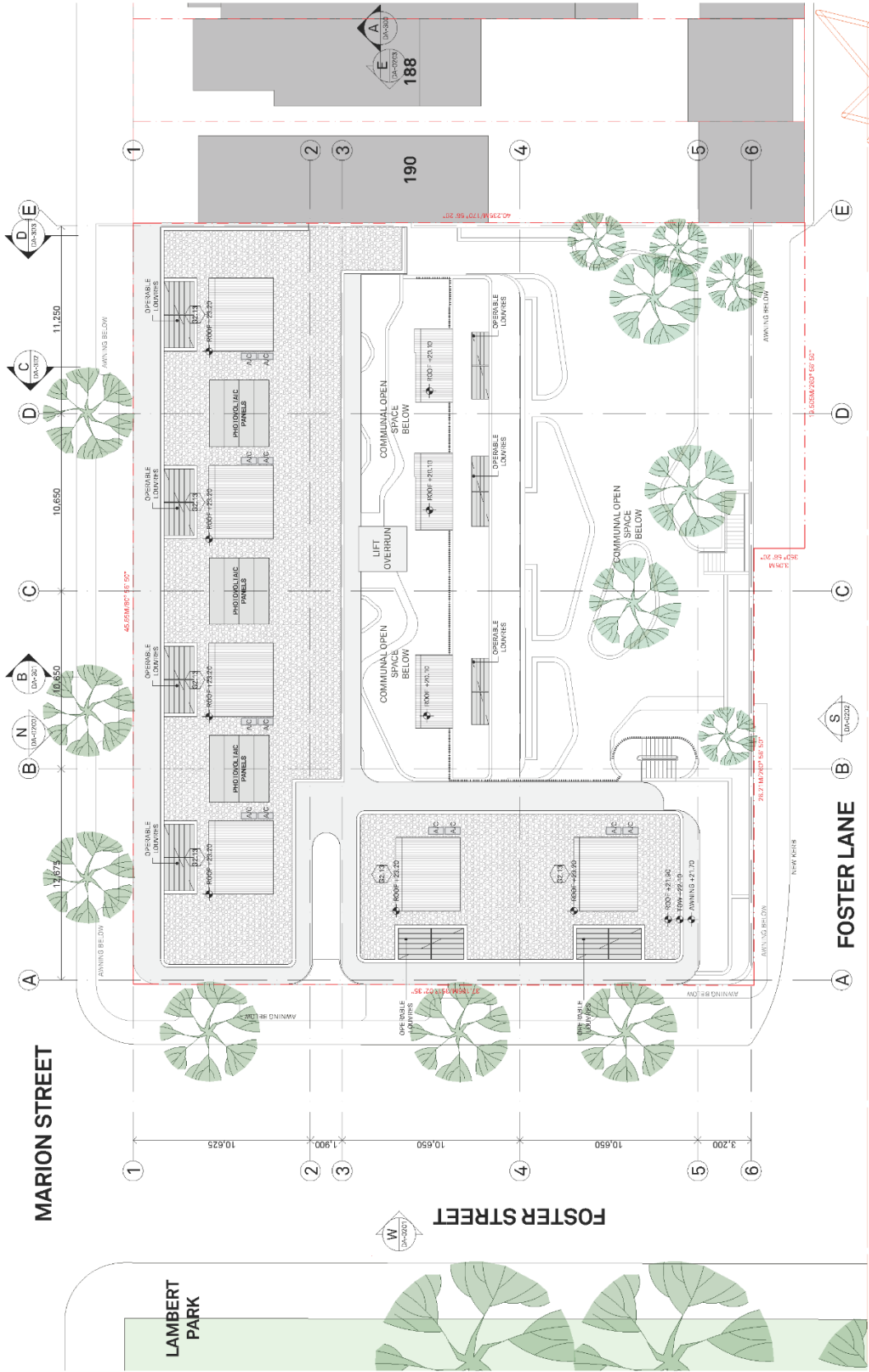
SCALE: 1:200@A3
 STATUS: DA
 PROJECT: 1882A

PROJECT DETAILS
 200M MARION STREET
 154-202 MARION STREET
 2040

CLIENT
 200 MARION PROPERTIES Pty Ltd

LEGEND
 A/C Air Conditioning Unit
 A/D Air Duct
 A/S Air Supply
 B/B Balcony
 B/L Balustrade
 B/P Balcony Panel
 B/S Balcony Slab
 B/W Balcony Wall
 C/C Communal Core
 C/O Communal Open Space
 C/W Communal Wall

REVISION
 Rev No Description
 01 Initial Design
 02 Final Design
 03 Final Design
 04 Final Design



REVISION

Rev	Date	Description
01	16/03/2021	ISSUED FOR PERMIT
02	16/03/2021	ISSUED FOR PERMIT
03	16/03/2021	ISSUED FOR PERMIT

LEGEND

Symbol	Description
A/C	Air Conditioning Unit
A/D	As Detailed
A/S	As Specified
B	Boundary
BAL	Balustrade
BL	Blank
CD	Column
CDL	Column Line
COMM	Common Room

CONS

Code	Description
CCS	Commercial Clean Space
CS	Coverage
CSA	Coverage Area
CSK	Coverage Skirt
CSL	Coverage Skirt Line
CSM	Coverage Skirt Material
CSO	Coverage Skirt Opening
CSR	Coverage Skirt Radius
CSV	Coverage Skirt Volume
CSW	Coverage Skirt Width
CSX	Coverage Skirt Extension
CSY	Coverage Skirt Yield
CSZ	Coverage Skirt Zone
CSAA	Coverage Skirt Area
CSAB	Coverage Skirt Area Base
CSAC	Coverage Skirt Area Cap
CSAD	Coverage Skirt Area Deck
CSAE	Coverage Skirt Area Edge
CSAF	Coverage Skirt Area Floor
CSAG	Coverage Skirt Area Ground
CSAH	Coverage Skirt Area Height
CSAI	Coverage Skirt Area Inlet
CSAJ	Coverage Skirt Area Joint
CSAK	Coverage Skirt Area Kerb
CSAL	Coverage Skirt Area Level
CSAM	Coverage Skirt Area Material
CSAN	Coverage Skirt Area Noise
CSAO	Coverage Skirt Area Opening
CSAP	Coverage Skirt Area Path
CSAQ	Coverage Skirt Area Quality
CSAR	Coverage Skirt Area Rain
CSAS	Coverage Skirt Area Slope
CSAT	Coverage Skirt Area Trench
CSAU	Coverage Skirt Area Under
CSAV	Coverage Skirt Area Vent
CSAW	Coverage Skirt Area Wall
CSAX	Coverage Skirt Area X-axis
CSAY	Coverage Skirt Area Y-axis
CSAZ	Coverage Skirt Area Z-axis

PROJECT DETAILS

PROJECT: 200M 154-202 MARION STREET PHOTOPV PANELS 2040

CLIENT: 200 MARION PROPERTIES Pty Ltd

SCALE: 1:200@A3

STATUS: DA APPROVED

DATE: 16/03/2021

PROJECT NO: 1822A

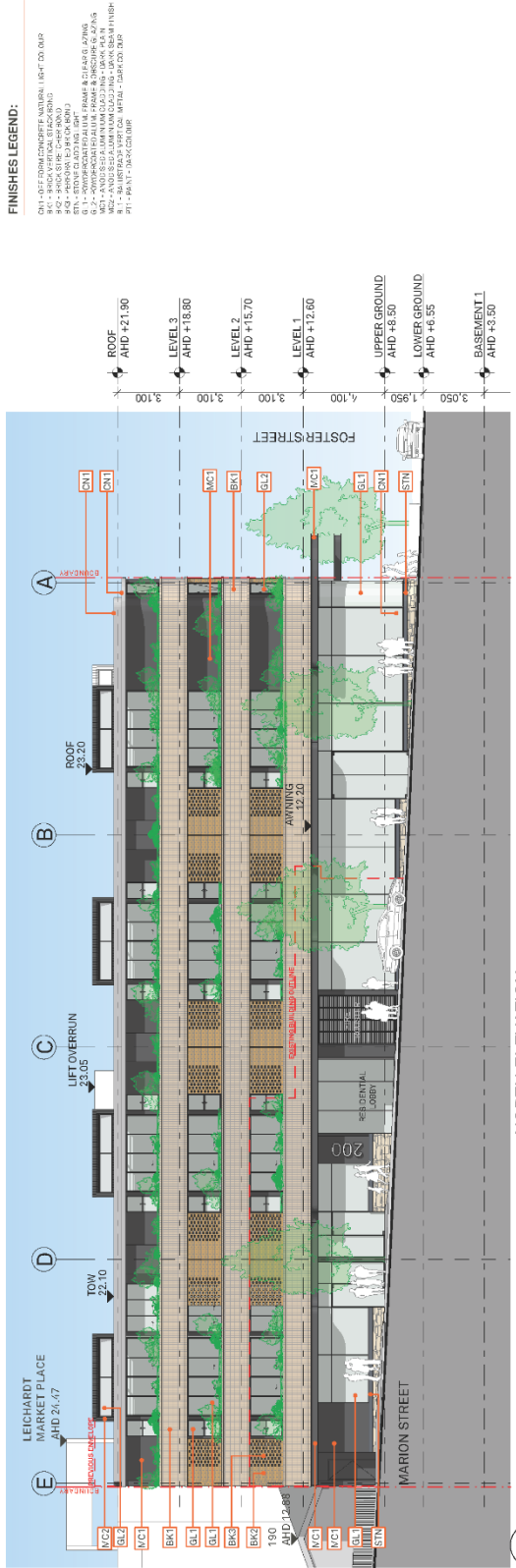
DRAWING NO: DA-0108

DATE: 16/03/2021

GENERAL ARRANGEMENT - NEW ROOF

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BENSON MCCORMACK ARCHITECTURE



NORTH ELEVATION
1:200

FINISHES LEGEND:

- DN1 - OFF FORM CONCRETE NATURAL LIGHT COOL GRIP
- DN2 - POLISHED CONCRETE
- DN3 - BRICK SLIP CLAY BRICK
- DN4 - BRICK SLIP CLAY BRICK
- DN5 - BRICK SLIP CLAY BRICK
- DN6 - BRICK SLIP CLAY BRICK
- DN7 - BRICK SLIP CLAY BRICK
- DN8 - BRICK SLIP CLAY BRICK
- DN9 - BRICK SLIP CLAY BRICK
- DN10 - BRICK SLIP CLAY BRICK
- DN11 - BRICK SLIP CLAY BRICK
- DN12 - BRICK SLIP CLAY BRICK
- DN13 - BRICK SLIP CLAY BRICK
- DN14 - BRICK SLIP CLAY BRICK
- DN15 - BRICK SLIP CLAY BRICK
- DN16 - BRICK SLIP CLAY BRICK
- DN17 - BRICK SLIP CLAY BRICK
- DN18 - BRICK SLIP CLAY BRICK
- DN19 - BRICK SLIP CLAY BRICK
- DN20 - BRICK SLIP CLAY BRICK

**BENSON
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PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

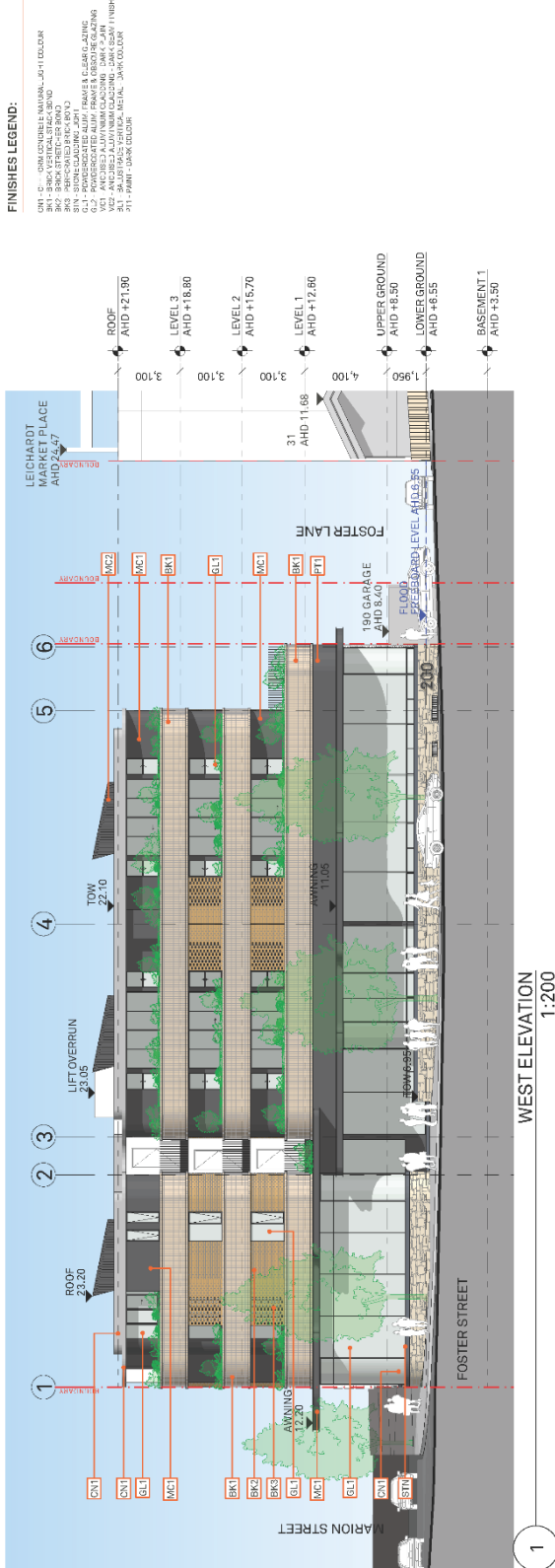
PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04

PROJECT No 1982A
 DRAWING No DA-0200
 REVISION 04



FINISHES LEGEND:

- DN1 - C - ONA CONTINUE NATURAL JAH-HI COLOR
- DN2 - C - ONA CONTINUE NATURAL JAH-HI COLOR
- BK1 - BRICK STRETCHER BOND
- BK2 - BRICK STRETCHER BOND
- GL1 - POWDER COATED ALUM. FRAMES & GLASS GLAZING
- GL2 - POWDER COATED ALUM. FRAMES & GLASS GLAZING
- GL3 - POWDER COATED ALUM. FRAMES & GLASS GLAZING
- MO1 - METAL CLADDING
- MO2 - METAL CLADDING
- MO3 - METAL CLADDING
- PT1 - PAINT - DARK COLOR
- PT2 - PAINT - DARK COLOR
- PT3 - PAINT - DARK COLOR



WEST ELEVATION
1:200



**BENSON
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CREATED BY	DB	SCALE	1:200@A3
APPROVED	GM	ELEVATION - WEST	57x12.5
DRAWING No	DA-0201	ELEVATION	DA
PROJECT No	1962A	PROJECT No	1962A
			04

PROJECT DETAILS

200A MARION STREET LEICHHARDT NSW 2040

CLIENT
200 MARION PROPERTIES Pty Ltd

AS1	AS2	AS3	AS4	AS5	AS6	AS7	AS8	AS9	AS10	AS11	AS12	AS13	AS14	AS15	AS16	AS17	AS18	AS19	AS20	AS21	AS22	AS23	AS24	AS25	AS26	AS27	AS28	AS29	AS30	AS31	AS32	AS33	AS34	AS35	AS36	AS37	AS38	AS39	AS40	AS41	AS42	AS43	AS44	AS45	AS46	AS47	AS48	AS49	AS50	AS51	AS52	AS53	AS54	AS55	AS56	AS57	AS58	AS59	AS60	AS61	AS62	AS63	AS64	AS65	AS66	AS67	AS68	AS69	AS70	AS71	AS72	AS73	AS74	AS75	AS76	AS77	AS78	AS79	AS80	AS81	AS82	AS83	AS84	AS85	AS86	AS87	AS88	AS89	AS90	AS91	AS92	AS93	AS94	AS95	AS96	AS97	AS98	AS99	AS100
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REVISION

Rev	Date	Description
01	14/02/2021	Issue for 10/10/2020
02	15/02/2021	Issue for 10/10/2020
03	16/02/2021	Issue for 10/10/2020

LEGEND

AS1	AS2	AS3	AS4	AS5	AS6	AS7	AS8	AS9	AS10	AS11	AS12	AS13	AS14	AS15	AS16	AS17	AS18	AS19	AS20	AS21	AS22	AS23	AS24	AS25	AS26	AS27	AS28	AS29	AS30	AS31	AS32	AS33	AS34	AS35	AS36	AS37	AS38	AS39	AS40	AS41	AS42	AS43	AS44	AS45	AS46	AS47	AS48	AS49	AS50	AS51	AS52	AS53	AS54	AS55	AS56	AS57	AS58	AS59	AS60	AS61	AS62	AS63	AS64	AS65	AS66	AS67	AS68	AS69	AS70	AS71	AS72	AS73	AS74	AS75	AS76	AS77	AS78	AS79	AS80	AS81	AS82	AS83	AS84	AS85	AS86	AS87	AS88	AS89	AS90	AS91	AS92	AS93	AS94	AS95	AS96	AS97	AS98	AS99	AS100
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SECTION BB
1:200



REVISION

Rev	Date	Description
01	10/02/20	ISSUED FOR COMMERCIAL
02	10/02/20	ISSUED FOR COMMERCIAL
03	10/02/20	ISSUED FOR COMMERCIAL

LEGEND

Code	Description
CC25	Commercial Open Space
CC26	Commercial Open Space
CC27	Commercial Open Space
CC28	Commercial Open Space
CC29	Commercial Open Space
CC30	Commercial Open Space
CC31	Commercial Open Space
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CC96	Commercial Open Space
CC97	Commercial Open Space
CC98	Commercial Open Space
CC99	Commercial Open Space
CC100	Commercial Open Space

CLIENT

200 MARION PROPERTIES Pty Ltd

PROJECT DETAILS

200M 134-202 MARION LEICHHARDT NSW 2040

SCALE

1:200@A3

DRAWING TITLE

SECTION - SECTION BB

STATUS

DA

PROJECT NO

1982A

DRAWING NO

DA-301

REV

03

PROJECT DETAILS

200M 134-202 MARION LEICHHARDT NSW 2040

SCALE

1:200@A3

DRAWING TITLE

SECTION - SECTION BB

STATUS

DA

PROJECT NO

1982A

DRAWING NO

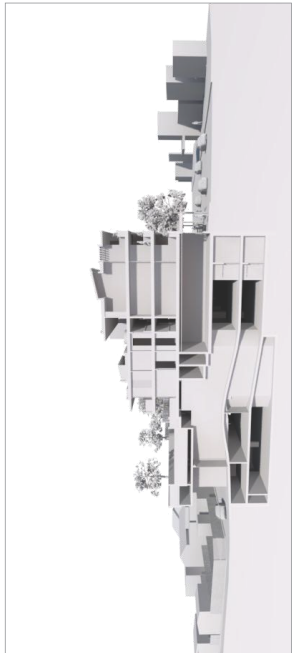
DA-301

REV

03

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PROJECT DETAILS
200M MARION PROPERTIES Pty Ltd
194-202 MARION STREET HAROLD NSW 2040

DRAWING TITLE
SECTION - SECTION CC

SCALE
1:200@A3

STATUS
DA

PROJECT No
1982A

DRAWING No
DA-302

REV
03

LEGEND

REV	Date	Description
01	20/02/21	ISSUED FOR PERMIT
02	20/02/21	ISSUED FOR PERMIT
03	20/02/21	ISSUED FOR PERMIT

REVISION

REV	Date	Description
01	20/02/21	ISSUED FOR PERMIT
02	20/02/21	ISSUED FOR PERMIT
03	20/02/21	ISSUED FOR PERMIT

CLIENT
200 MARION PROPERTIES Pty Ltd

PROJECT DETAILS
200M MARION PROPERTIES Pty Ltd
194-202 MARION STREET HAROLD NSW 2040

DRAWING TITLE
SECTION - SECTION CC

SCALE
1:200@A3

STATUS
DA

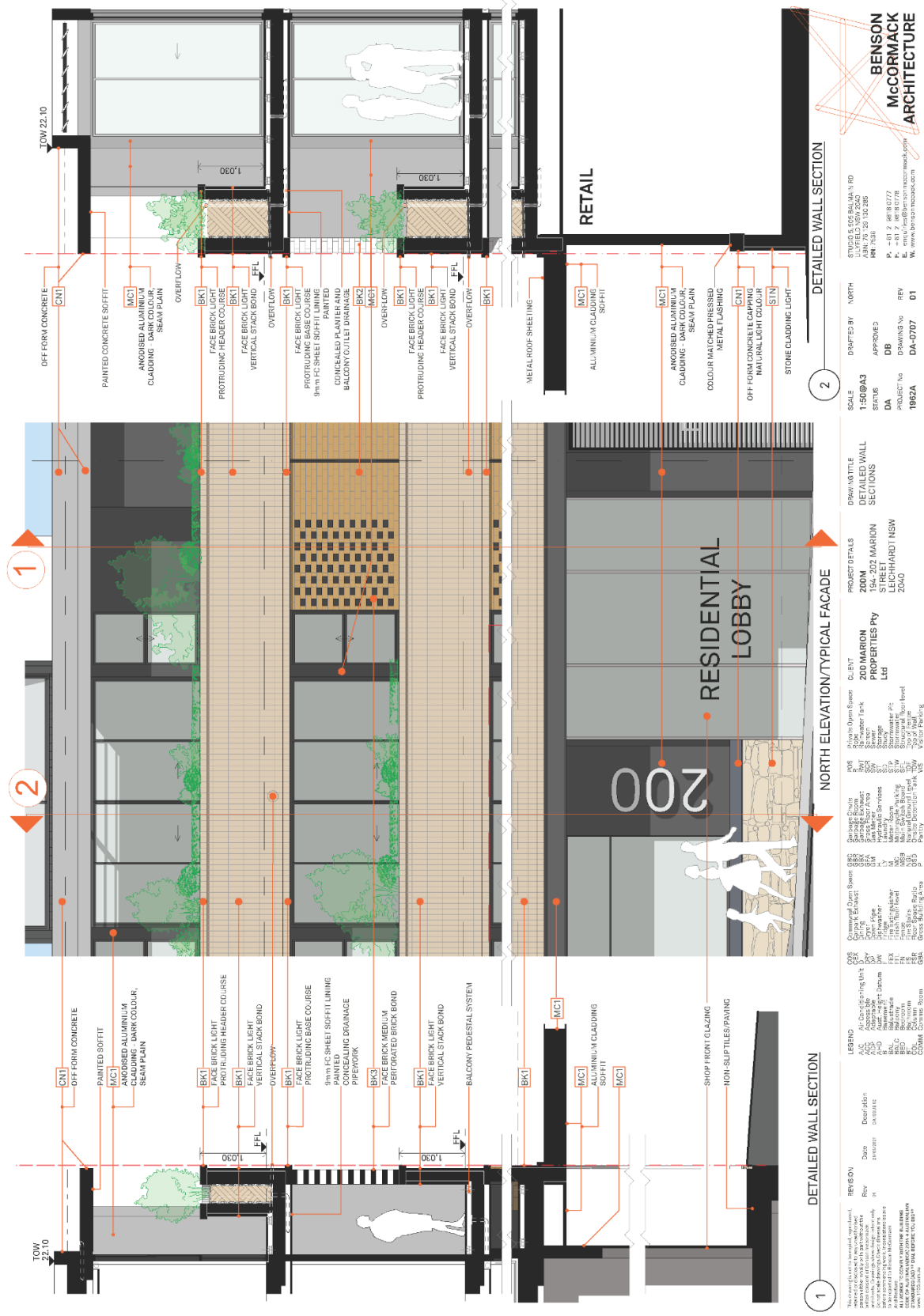
PROJECT No
1982A

DRAWING No
DA-302

REV
03

LEGEND

REV	Date	Description
01	20/02/21	ISSUED FOR PERMIT
02	20/02/21	ISSUED FOR PERMIT
03	20/02/21	ISSUED FOR PERMIT



**BENSON
McCORMACK
ARCHITECTURE**

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PROJECT: 1982A
DRAWING NO: DA-0707
REVISION: 01

2
DETAILED WALL SECTION

SCALE: 1:50 @ A3
STATUS: APPROVED
DATE: 19/08/2020
PROJECT: 1982A

1
DETAILED WALL SECTION

SCALE: 1:50 @ A3
STATUS: APPROVED
DATE: 19/08/2020
PROJECT: 1982A

NORTH ELEVATION/TYPICAL FACADE

PROJECT DETAILS
200M MARION STREET
194-202 MARION STREET
2040

CLIENT: 200 MARION PROPERTIES Pty Ltd

REVISION

REV	DATE	DESCRIPTION
01	19/08/2020	ISSUED FOR PERMIT

LEGEND

CODE	DESCRIPTION
ALC	ALUMINIUM CLADDING
ALC-S	ALUMINIUM CLADDING - SOFFIT
BK1	FACE BRICK LIGHT
BK2	FACE BRICK MEDIUM
BK3	FACE BRICK DARK
CON	CONCRETE
GL	GLASS
MS	METAL SHEETING
STN	STONE

REVISION

REV	DATE	DESCRIPTION
01	19/08/2020	ISSUED FOR PERMIT

ELEVATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
DESCRIPTION	1. ADDN. TO EXISTING	2. CLEAR GLAZING IN POWDERCOATED METAL FRAME	3. CLEAR GLAZING IN POWDERCOATED METAL FRAME	4. CLEAR GLAZING IN POWDERCOATED METAL FRAME	5. CLEAR GLAZING IN POWDERCOATED METAL FRAME	6. CLEAR GLAZING IN POWDERCOATED METAL FRAME	7. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	8. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	9. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	10. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	11. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	12. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	13. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	14. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	15. DISCOURE GLAZING IN POWDERCOATED METAL FRAME
W H SIZE	1,400x1,700	1,800x2,700	2,200x2,700	2,500x2,700	3,000x1,000	3,500x2,700	4,000x2,700	4,000x700	4,500x2,700	5,000x2,700	5,500x2,700	6,000x2,700	6,500x2,700	7,000x2,700	7,500x2,700
REQUIREMENTS															
NOTES															
QTY	1	42	3	3	3	1	1	1	1	1	1	1	1	1	1

ELEVATION	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
DESCRIPTION	16. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	17. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	18. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	19. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	20. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	21. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	22. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	23. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	24. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	25. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	26. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	27. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	28. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	29. DISCOURE GLAZING IN POWDERCOATED METAL FRAME	30. DISCOURE GLAZING IN POWDERCOATED METAL FRAME
W H SIZE	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700	4,000x2,700
REQUIREMENTS															
NOTES															
QTY	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1



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DRAFTED BY: NORTH
 APPROVED BY: DB
 STATUS: DA
 PROJECT NO: 1982A
 DRAWING NO: DA-0910
 REV: 03

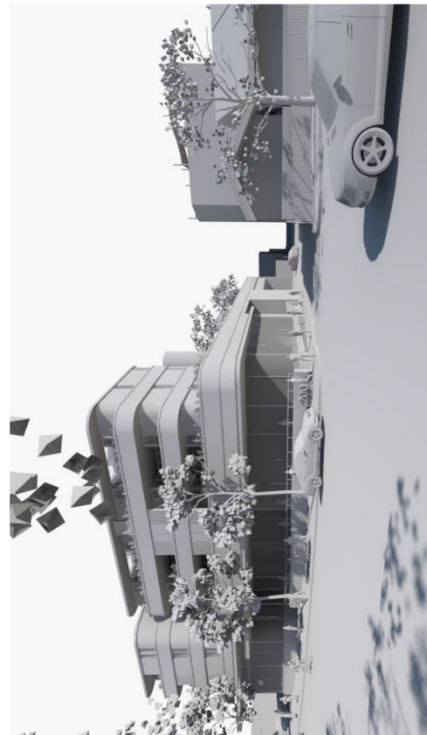
SCALE: @A3
 DRAWN BY: WATTLE
 WINDOW/GLAZED DOOR SCHEDULE

PROJECT DETAILS
 200M 154-202 MARION STREET WARRIWOOD NSW 2040

CLEVT 200 MARION PROPERTIES Pty Ltd

LEGEND
 A.C. All Components
 A.S. All Structural
 A.D. All Drains
 S. All Services
 R. All Recesses
 P. All Profiles
 C. All Columns
 C.O. All Columns
 C.M. All Columns

REVISION
 Rev No Date Description
 01 15/08/2018 Initial Design
 02 20/08/2018 Final Design
 03 25/08/2018 Final Design



The drawings shall be prepared, executed, sealed and signed by a registered professional architect or engineer who is a member of the relevant professional body in NSW. The drawings shall be prepared in accordance with the provisions of the Building Act 2016 and the Building Regulation 2016. All drawings shall comply with the Building Act 2016 and the Building Regulation 2016. The drawings shall be prepared in accordance with the provisions of the Building Act 2016 and the Building Regulation 2016.

REVISION	Rev	Date	Description
	1	10/01/2024	ISSUED FOR PERMIT
	2	10/01/2024	ISSUED FOR PERMIT

LEGEND	Description
A/C	Architect
A/E	Architectural Engineer
A/D	Architectural Designer
B/L	Building
B/S	Building Services
C/L	Consultant
C/F	Contractor
C/H	Client
C/M	Contract Manager

CD	Description
CD1	Commonwealth Open Space
CD2	Commonwealth Open Space
CD3	Commonwealth Open Space
CD4	Commonwealth Open Space
CD5	Commonwealth Open Space
CD6	Commonwealth Open Space
CD7	Commonwealth Open Space
CD8	Commonwealth Open Space
CD9	Commonwealth Open Space
CD10	Commonwealth Open Space

POS	Description
POS1	Private Open Space
POS2	Private Open Space
POS3	Private Open Space
POS4	Private Open Space
POS5	Private Open Space
POS6	Private Open Space
POS7	Private Open Space
POS8	Private Open Space
POS9	Private Open Space
POS10	Private Open Space

CLIENT
200 MARION
PROPERTIES Pty
Ltd

PROJECT DETAILS
200M
134-202 MARION
LEICHHARDT NSW
2040

DRAWING TITLE
3D MASSING 2/2

SCALE
@A3
STATUS
DA
PROJECT No
1982A

DRAWING No
DA-1001
REV
02

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UNIT TABLE

RET	1BR	2BR	3BR	T
LOWER GROUND	80	20	0	0
UPPER GROUND	203	0	0	0
LEVEL 01	0	5	3	8
LEVEL 02	1	7	1	9
LEVEL 03	0	5	1	6
TOTAL	1	17	5	23

% RATE 4.3 23.9 21.8

NOTE: 2X 2H DUAL KEY APARTMENTS PROVIDED, CAPABLE OF ADAPTATION TO 2X 1B AND 2X STUDIO DWELLINGS

GFA CALCULATION

LAND ZONING:	B2
SITE AREA:	1785.0 M ²
FLOOR SPACE RATIO:	1.81
PROPOSED RATE:	1.86/1

PERMISSIBLE GFA:

LEP RATE:	2837 M ²
PROPOSED RATE:	3444 M ²

LOWER GROUND 910.6

UPPER GROUND 339.9

LEVEL 1 830.8

LEVEL 2 817.6

LEVEL 3 516.4

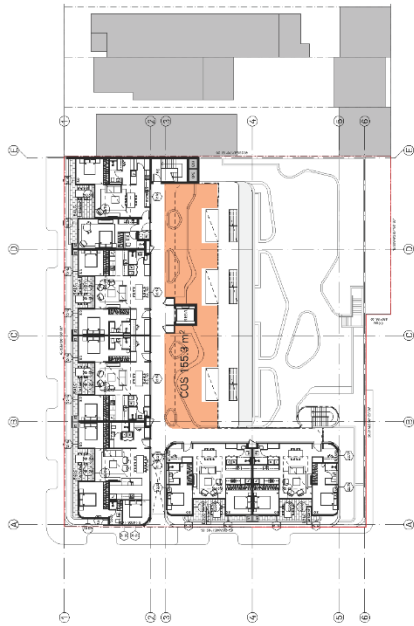
SUBTOTAL 3415.3 m²

SURPLUS PARKING 23.16 M²

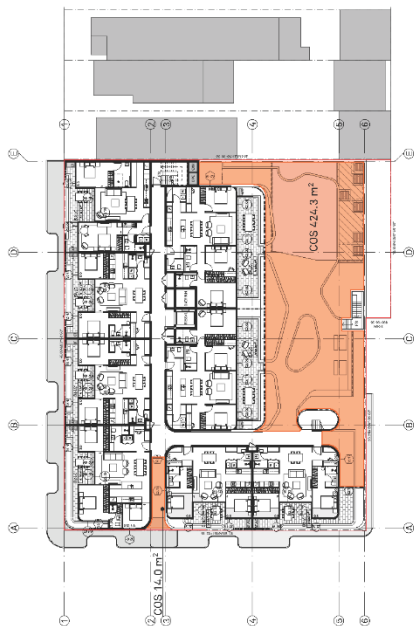
TOTAL 3438.46 M²

FSR 1.96/1





1 COMMUNAL OPEN SPACE AREA - LEVEL 2



1 COMMUNAL OPEN SPACE AREA - LEVEL 1

107 COMMUNAL OPEN SPACE	
REQUIRED COMMUNAL OPEN SPACE (REQUIRED-ADD)	439.5 m ²
PROV-ADD COMMUNAL OPEN SPACE (LEVEL 1)	439.3 m ²
COMMUNAL OPEN SPACE (LEVEL 2)	150.3 m ²
TOTAL	589.6 m ²

This report is to be used for informational purposes only. It does not constitute a contract or any other legal document. The user of this report is advised to consult with a qualified professional for advice on the appropriate use of this report. All figures are approximate and subject to change without notice. The user of this report is advised to verify the accuracy of the information contained herein.

REVISION

Rev	Date	Description
01	06/2021	ISSUED
02	06/2021	ISSUED

LEGEND

Code	Description
A/C	Architectural
A/D	Approved
B	Boundary
B/C	Boundary Condition
B/D	Boundary Detail
C	Column
C/C	Column Core
C/S	Column Structure
D	Door
D/C	Door Core
D/S	Door Structure
E	Elevator
E/C	Elevator Core
E/S	Elevator Structure
F	Floor
F/C	Floor Core
F/S	Floor Structure
G	Grid
G/C	Grid Core
G/S	Grid Structure
H	Handicap
H/C	Handicap Core
H/S	Handicap Structure
I	Interior
I/C	Interior Core
I/S	Interior Structure
J	Joinery
J/C	Joinery Core
J/S	Joinery Structure
K	Kitchen
K/C	Kitchen Core
K/S	Kitchen Structure
L	Lift
L/C	Lift Core
L/S	Lift Structure
M	Mechanical
M/C	Mechanical Core
M/S	Mechanical Structure
N	Natural
N/C	Natural Core
N/S	Natural Structure
O	Other
O/C	Other Core
O/S	Other Structure
P	Parking
P/C	Parking Core
P/S	Parking Structure
R	Ramp
R/C	Ramp Core
R/S	Ramp Structure
S	Stair
S/C	Stair Core
S/S	Stair Structure
T	Trunking
T/C	Trunking Core
T/S	Trunking Structure
V	Visitor
V/C	Visitor Core
V/S	Visitor Structure

COMMUNAL OPEN SPACE

Category	Area (m ²)
Garage	100.0
Storage	50.0
Office	20.0
Workshop	10.0
Plant Room	5.0
Electrical	5.0
Water	5.0
Sanitary	5.0
Other	5.0
TOTAL	210.0

PROJECT DETAILS

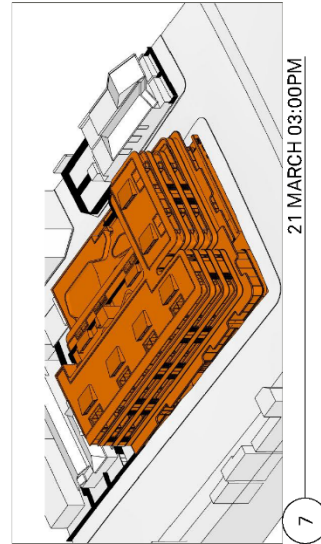
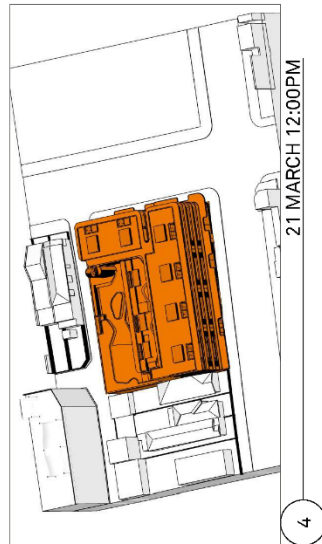
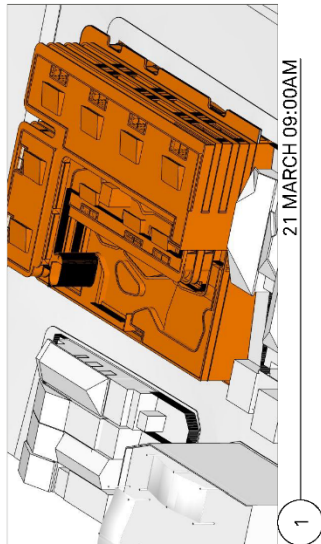
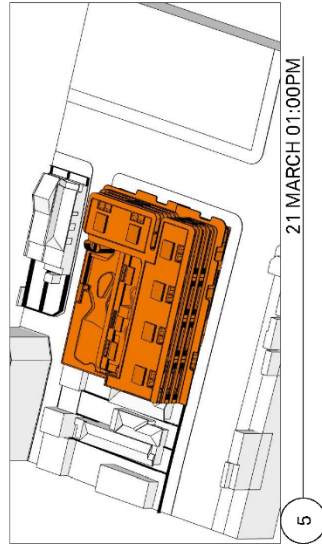
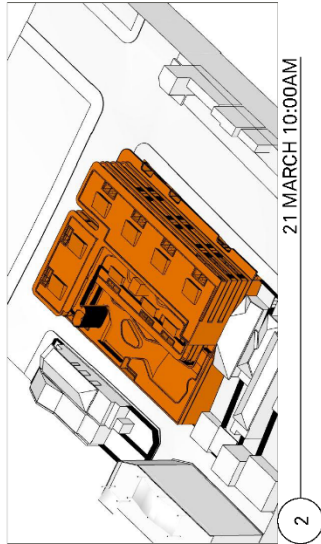
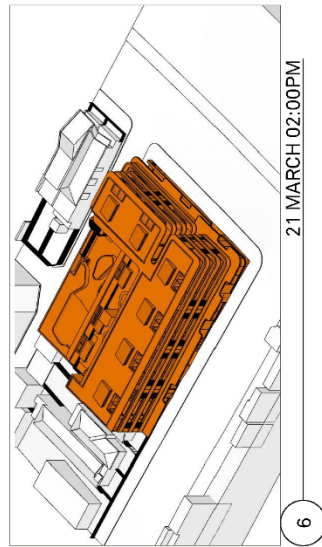
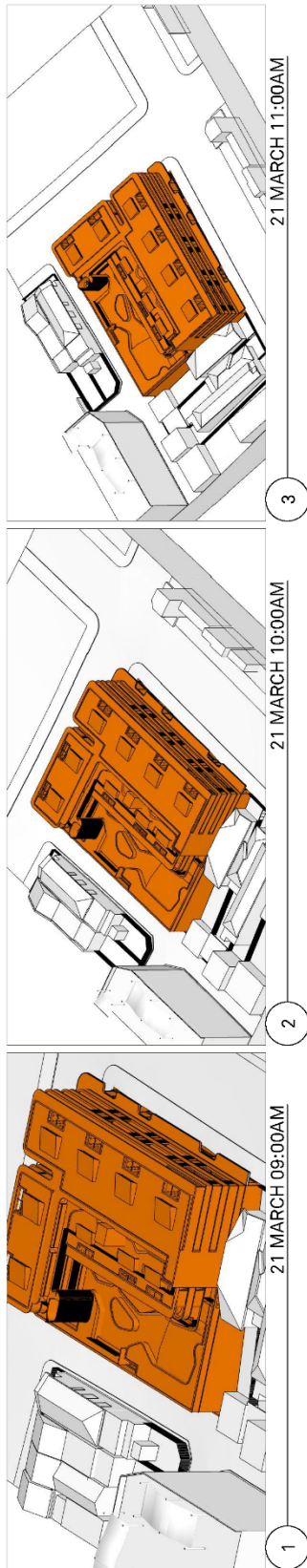
200M STREET	154-202 MARION STREET
PROJECT NO.	1982A
DATE	DA-1013
REVISION	02

COMMUNAL OPEN SPACE AREA (COS)

SCALE	1:500@A3
STATUS	DA
PROJECT NO.	1982A
DATE	DA-1013
REVISION	02

BENSON McCORMACK ARCHITECTURE

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SOLAR ANALYSIS METHODOLOGY
THE VIEW FRAME CAMERA POSITION AND ORIENTATION IS APPROXIMATE AND ANY HOURLY INTERVAL ESTIMATION THAT CAN BE SEEN WILL DEPEND ON THE POSITION OF THE SUN FROM VIEWERS IN SHADE.

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DRAWN BY: DB
APPROVED: GM
PROJECT No: 1862A
DRAWING No: DA-1033
REV: 02

SCALE: @A3
STATUS: DA
PROJECT No: 1862A

DRAWING TITLE: SOLAR ACCESS (MAY/SEPT/1)
PROJECT DETAILS: 200M 194-202 MARION STREET SYDNEY NSW 2040
C. INT: 200 MARION PROPERTIES Pty Ltd
CLIENT: 200 MARION PROPERTIES Pty Ltd
CLIENT ADDRESS: 200 MARION STREET SYDNEY NSW 2040
CLIENT CONTACT: [REDACTED]
CLIENT PHONE: [REDACTED]
CLIENT EMAIL: [REDACTED]
CLIENT WEBSITE: [REDACTED]
CLIENT SOCIAL MEDIA: [REDACTED]

CONTRACTOR: [REDACTED]
CONTRACTOR ADDRESS: [REDACTED]
CONTRACTOR CONTACT: [REDACTED]
CONTRACTOR PHONE: [REDACTED]
CONTRACTOR EMAIL: [REDACTED]
CONTRACTOR WEBSITE: [REDACTED]
CONTRACTOR SOCIAL MEDIA: [REDACTED]

REF/SON: [REDACTED]
REV: [REDACTED]

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Attachment C- Clause 4.6 Exception to Development Standards



29 June 2021

The General Manager
Inner West Council
PO Box 14
PETERSHAM NSW 2049

Attention: Chirag Bhavan, Town Planning,

Dear Chirag

RE: DA/2021/0110 - 194-202 MARION STREET, LEICHHARDT

**REVISED CLAUSE 4.6 VARIATION TO CLAUSE 4.4A - EXCEPTION TO
MAXIMUM FLOOR SPACE RATIO FOR ACTIVE STREET FRONTAGES OF
THE LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013**

1. Introduction

This variation letter seeks a variation to Clause 4.4A of the Leichhardt Local Environmental Plan 2013, which relates to Exception to maximum floor space ratio for active street frontages.

This submission has been prepared with regard to a development application seeking demolition of all existing structures and redevelopment of the site to contain a four (4) storey mixed use development with basement and lower ground parking, landscaping and associated site works at 194-202 Marion Street, Leichhardt.

This revised Clause 4.6 follows an additional information letter from Inner West Council dated 8 June 2021. The proposal has undergone amendments in response to the items raised in Council's letter, which has modified the proposed FSR sought from 2.15:1 to 1.96:1. However, a variation remains proposed.

Revised architectural plans prepared by Benson McCormack Architecture have formed the basis of this submission.

As detailed in this written request for a variation to exception to maximum floor space ratio for active street frontages under the Leichhardt Local Environmental Plan 2013, the development meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

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TOWN PLANNERS • BASIX/ENERGY ASSESSORS

2. Site Background

The subject site is located on the southern side of Marion Street at the corner of its intersection with Foster Street. Foster Lane adjoins the site to the south. The subject site is legally defined as Lot 13 and 29 in Deposited Plan 655895 and Lots 10, 11, 12 in Deposited Plan 5422. The site is commonly known as 194-202 Marion Street, Leichhardt.

The site is a corner allotment and provides a frontage of 45.650m to Marion Street and a frontage length of 37.185m to Foster Street. The sites eastern most boundary measures 40.235m in length with the rear splayed property boundary offering a total length of 48.765m to Foster Lane. Overall, the site provides for an area of 1,759m².

The site has a general fall of approximately 3.8m from Marion Street (north eastern corner) to Foster Lane (south eastern corner).

Reference should be made to Figure 1 – Site Location Map.



Figure 1 – Site Location Map

Source: <https://maps.six.nsw.gov.au/>

Located on the subject site at present is a single storey brick commercial building which contains a restaurant "Little Sicily". The site also contains a brick and metal shed toward its southern portion along with a brick and metal warehouse built form occupied by a hardware store and fruit store.

Vehicle access to the subject site is provided via Foster Lane along the southern property boundary, however, there is a vehicle crossing to the site along Marion Street which offers direct access into the warehouse form at the site.

Development in the area is typically characterised by a mix of commercial and residential uses. Residential land uses are located to the north, south and east of the site which is reflective of the surrounding R1 General Residential Land zoning. These are typically of an older housing stock, however, there are examples of more contemporary alterations and additions in the locality.

Immediately adjoining the site to the east is a 1 and 2 storey brick dwelling at No. 190 Marion Street, Leichhardt. To the south of the site, on the opposite side of Foster Lane, is a brick dwelling at No. 31 Foster Street, Leichhardt.

Lambert Park which is located on the opposite side of Foster Street to the west of the site provides for valuable and quality open space within the locality. The proposal will offer an enhanced visual connection to this space.

Adjoining the subject site to the south-east is Leichhardt Marketplace, a substantial shopping centre which provides for an array of local goods, services and amenities which service the immediate locality and beyond.

Kegworth Public and High School are located to the south of the subject site at an approximate distance of 170m.

The site is well serviced by public transport with several bus stops located within walking distance along Marion Street with Marion Light Rail Station located 350m walking distance west of the site. Each of which provide connections to the broader locality and to a more expansive public transport network.

It should be noted there is a stormwater drainage channel along with a drainage easement and Restriction which traverses through the site in the south-western most portion. The site is also identified as a flood control lot. The proposal has been designed in consideration of these site restrictions.

The subject site is zoned B2 Local Centre. The proposed development is permissible with consent in this zone under the Leichhardt Local Environmental Plan 2013. Refer to Figure 2.

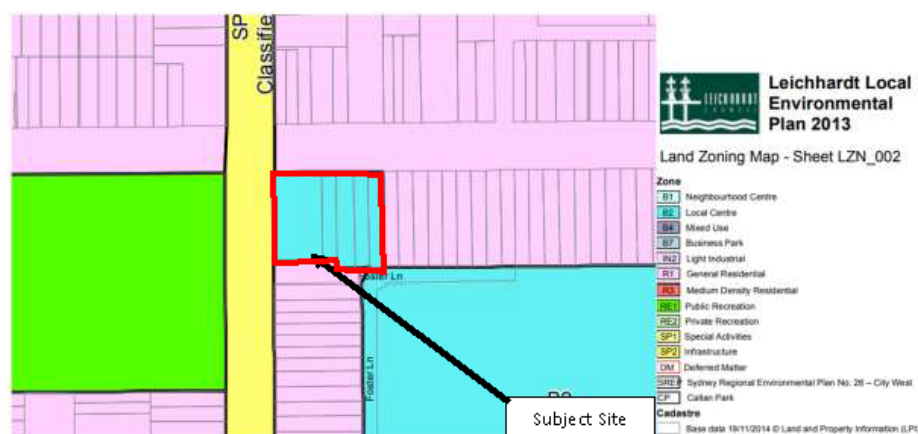


Figure 2 - Land Zoning Map

Source: Leichhardt Local Environmental Plan 2013

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 - Exceptions to development standards. Clause 4.6 states the following:

"4.6 Exceptions to development standards

{1} The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for a 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 all 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."

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(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

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five No 1)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (Four2Five No 2)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (Four2Five No 3)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

The Environmental Planning Instrument to which this variation relates is the Leichhardt LEP 2013.

The development standard to which this variation relates is to Clause 4.4A – Exception to maximum floor space ratio for active street frontages, which reads as follows:

(1) The objective of this clause is to provide floor space incentives for mixed use development that incorporates active street frontages at ground floor level in Zone B1 Neighbourhood Centre or Zone B2 Local Centre.

(2) This clause applies to land identified as "Area 1" on the Floor Space Ratio Map.

(3) Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is 1.5:1 if the consent authority is satisfied that—

(a) the building will have an active street frontage, and

- (b) the building comprises mixed use development, including residential accommodation, and
 - (c) the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.
- (4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following—
- (a) entrances and lobbies (including as part of mixed use development),
 - (b) access for fire services,
 - (c) vehicular access.
- (5) In this clause, a building has an active street frontage if all floor space on the ground floor of the building facing the street is used for a purpose other than residential accommodation

In accordance with the floor space ratio map below, the subject site has been identified in Area 1. Refer to Figure 3 below. As such, reference is made to Clause 4.4A – Exception to maximum floor space ratio for active street frontages.

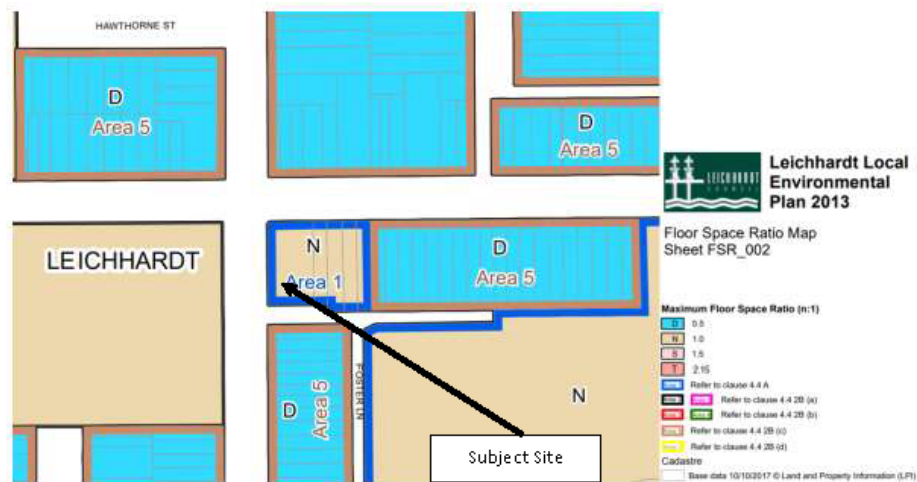


Figure 3 – Floor Space Ratio Map

Source: Leichhardt Local Environmental Plan 2013

In accordance with Clause 4.4A, the maximum floor space permitted for a site located in Area 1 of Council’s floor space ratio map is 1.5:1 if the consent authority is satisfied that the proposal meets criteria of Clause 4.4A(3). The criteria and commentary to it is provided below.

- (a) The building will have an active street frontage

The proposed development provides for an active street frontage. Clause 4.4A(5) states “In this clause, a building has an active street frontage if all floor space on the ground floor of the building facing the street is used for a purpose other than residential accommodation.” All ground floor area facing Marion Street and Foster Street is dedicated as commercial in the form of the five tenancies proposed, with the exception of separate residential lobby area, a pathway along Foster Street in front of the tenancies used to manage the level differences driven by the slope and flood affectation, and a hydrant booster cupboard. It is noted that Clause 4.4A(4) permits an active street frontage not to be required for entrances and lobbies, access for fire services and vehicular access. Therefore, the proposal meets the definition of an active street frontage.

- (b) The building comprises mixed use development, including residential accommodation, and

The development is a mixed use development including residential accommodation above and commercial floor area on the ground floor.

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

The proposal offers a suitable bulk and scale along with a sympathetic integration within the sites development context as encouraged by the applicable planning controls and the desired future character of the distinctive neighbourhood and sub area provisions. It has also had regard to the surrounding and comparable development within its zone and within the visual catchment of the site. The proposed land use is permissible and satisfies the objectives of the B2 Local Centre zone.

The development has also had regard to the Inner West Council Housing Strategy which specifically earmarks the block the site is part of, along with the Leichhardt Marketplace, as a housing growth investigation area. The density proposed is compatible with the desired future character inclusive of the potential 300-600 dwelling yield for the block estimated in the Housing Strategy.

The proposal meets the requirements of Clause 4.4A to enable usage of the 1.5:1 FSR permitted under the LEP.

A maximum GFA of 2,637m² is permitted inclusive of the bonus under Clause 4.4A, with a maximum GFA of 3,444.46m² proposed equalling an FSR of 1.96:1. A variation of 807.46m² is proposed, or 30.6%.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

4. Extent of Non-Compliance

As noted above, in accordance with Clause 4.4A of the Leichhardt Local Environmental Plan 2013 a maximum FSR of 1.5:1 is prescribed to the subject site.

A maximum GFA of 2,637m² is permitted, with a total of 3,444.46m² being sought for an FSR of 1.96:1. A variation of 807.46m² is proposed, or 30.6%.

A total of 2 retail car parking spaces above the maximum required rate have been proposed in the basement parking levels. These additional car spaces are deemed GFA as they are beyond what is required to meet Council's controls and are included in the above calculation.

Whilst a variation is sought, the proposed built form is considered to be suitable for the site and the broader locality as will be detailed within this written justification.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established

by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

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

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio standard identified in Clause 4.4A and Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standard would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4A.

(1) The objective of this clause is to provide floor space incentives for mixed use development that incorporates active street frontages at ground floor level in Zone B1 Neighbourhood Centre or Zone B2 Local Centre

The proposed development is prescribed a floor space incentive under Clause 4.4A of the Leichhardt Local Environmental Plan 2013. An active street frontage is proposed at the ground floor which addresses both street frontages of Marion Street and Foster Street. The objective of the Clause is satisfied as the proposal is considered suitable for a floor space incentive to be applied. The variation does not impede upon the application of this Clause to the proposal.

As the variation relates to floor space, in this instance it is also deemed appropriate to discuss the objectives of Clause 4.4 – Floor space ratio. Commentary is provided below which demonstrates the proposals consistency with each objective. These read as follows:

- (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*

The proposal seeks a four storey mixed use development on the site.

In terms of the additional car parking provided, its provision is occurring entirely below ground. If deleted, the 2 additional retail car spaces would not reduce the degree of excavation. This additional floor area has no impact on the bulk, form and scale of the development. Rather, it assists in future proofing the development from a potential significant retail/commercial tenant that would require car parking above the minimums in the DCP. It will also help further reduce the burden on on-street parking.

The floor area above ground, however, does expand the building envelope. The character area, as outlined in Section 2, is predominantly single and two storey dwellings and two storey commercial/mixed use buildings. However, the majority of the land around the site is zoned R1 General Residential, whereas the site itself is B2 Local Centre. The other land zoned B2 Local Centre on the block is Leichhardt Marketplace, a multi-storey shopping centre. The scale of development on the B2 zone is inherently different to the R1 General Residential as driven by the floor area permitted on both lands. For example, the immediate eastern and southern neighbours have a maximum permitted 0.7:1 FSR, while the site is prescribed 1.5:1.

However, as the objective relates to the desired future character, it is expected for there to be divergent visual appearance and physical bulk and scale between the immediate neighbours. The future character is of a higher density scale which is sought in this application. This is reflected in the character statement for the West Leichhardt Distinctive Neighbourhood and the desired future character controls. C2.2.3.2 of Part C – Place – Section 2 Urban Character states in the desired future character controls:

“C4 Provide for more significant development along Marion Street.”

The site is within the Industrial/Business Sub Areas under C2.2.3.2(a) which further also states:

“The surrounding development along Marion Street is both residential and commercial which could have the potential for more significant development, as the properties are located on a main road and in close proximity to a major shopping area.”

The proposed development is reflective of this vision for Marion Street, utilising its prominent corner location to create a key development. The four storey development is similar but still lesser in scale than the existing substantial Leichhardt Marketplace, and is therefore suitable in terms of bulk and scale as a comparative point to the other site zoned B2 Local Centre on the block. In terms of its setbacks and separation, significant care and regard has been given to balancing the additional floor area proposed and mitigating the impacts of that bulk and scale. As detailed in the Statement of Environmental Effects, there is a limited overshadowing impact created by the development and no visual privacy concerns. The siting of the building envelope

has had regard to the Building Location Zone control in the Leichhardt DCP which in turn reduces the visual bulk impacts as viewed from the neighbouring properties.

A high quality streetscape presentation is proposed to each frontage to set a positive precedent for new development in the B2 Local Centre zone. Meticulous design is exhibited in the street façades to ensure an articulated form which reinforces the corner while reducing the visual bulk. Refer to the submitted photomontage, elevations, materials and finishes and landscape plans.

Attention is also drawn to the Inner West Housing Strategy prepared by the Inner West Council and adopted on 3 March 2020. The Housing Strategy references the block of land bounded by Marion Street to the north, Flood Street to the east, Foster Street to the west, and Lords Road to the south, of which the site is located within and on a prominent and key corner. The Housing Strategy identifies the Leichhardt Marketplace/Marion Street precinct has a key investigation area, citing 41 residential existing dwellings and potential for 300-700 dwellings, pending the outcome an investigation into what occurs at Leichhardt Marketplace.

It is reasonable to conclude to achieve even the lower end of this estimated yield then that this land will require increased floor area and/or upzoning which is to occur in the near future in order to achieve the housing targets across the next 20 years. This development is a step toward achieving that vision through the provision of additional density toward that development potential while still balancing the existing context and relationships with the R1 General Residential properties bounding the site. The development is therefore not out of character with the desired future character in view of the adopted strategy.

The additional aboveground floor area is emphasised to Marion and Foster Streets, thereby having no significant additional impacts to the surrounding residential land. Whether the Housing Strategy vision eventuates, the bulk, scale and form of the development is one that will fit within the desired future character of Marion Street, and is consistent with the objective of the clause as well as that of the West Leichhardt Distinctive Neighbourhood and Industrial/Business Sub Area.

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

The subject site is zoned B2 Local Centre, which inherently restricts the sites capacity to provide deep soil planting through provision of nil setbacks at ground level in achieving an active street frontage and perimeter block development type. This is reflected in the existing built forms in the B2 Local Centre with nil setbacks, as well as requirements to provide active street frontages through the provision of commercial tenancies at the ground floor. This is further contributed to by the requirement to accommodate an appropriate number of car parking spaces along with services and waste areas. The additional floor area sought would not reduce the need for car parking sufficient to reduce a basement footprint, notwithstanding the provision of nil setbacks at ground level. Therefore, the additional floor space does not impact upon the sites capacity to provide deep soil landscaped areas.

Landscaped areas in the form of planting on structures is proposed extensively in the Level 1 communal open space, to assist in the provision of a balance of landscaped area and built form. The landscaping along the eastern and southern boundaries also assists in mitigating the impact of the built form to the residential properties adjoining the site, providing a green outlook to both neighbours and residents.

Landscaping is also proposed across Levels 1-3 in other locations to soften the outlook from the street and surrounds, and internally to the development.

The additional FSR does not impact on the balance of landscaping and built form proposed. The objective is considered to be achieved.

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

Any adverse impacts from the proposed bulk and scale have been mitigated in the design of the overall building and of the top level which contributes to the FSR variation. The provision of additional floor area occurs belowground for the car parking, adding no bulk and scale. The additional floor area aboveground is positioned toward Marion Street and Foster Street, providing a strong bookend on the prominent corner. The floor area is emphasised in this area also to minimise the bulk and scale of the building to the lower density residential neighbours.

The additional floor area has a negligible additional impact to overshadowing, with the impact being created primarily by Level 1 to the south and Level 1 and 2 to the east. No privacy issues are created. Visual bulk has been mitigated by the careful siting of floor area toward the street frontages and not extending beyond the rear building line of 190 Marion Street on the eastern side, to maintain and even improve the immediate interface with the private open space area.

Articulated façades of a high quality design and materials and finishes ensure the presentation of the building to the public domain will enhance the streetscape. The additional floor area does not result in an overly bulk or excessively scaled built form.

(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.

Whilst a mixed-use development is proposed, the commercial floor space has been positively integrated into the overall development scheme. Ground floor commercial space will offer a positive activation and relationship along the street frontages. The FSR variation has not restricted this outcome.

As detailed under earlier objectives, the bulk, form and scale of the building are compatible with the desired future character of the area.

Considering the above, the proposed development aligns with the objectives of Clause 4.4A and Clause 4.4.

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

6. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates there are no unreasonable environmental impacts which arise from the proposal generally. Moreover, the additional floor area does not create additional environmental impacts.

The development seeks to provide a public benefit in the widening of Foster Lane in front of the site and the dedication of the land to facilitate this. Further, a Sydney Water pipe is to be diverted as part of the proposed development. Its capacity will be upgraded to assist in future proofing development on this block as envisioned through adopted Inner West Local Housing Strategy, reducing future works to mitigate flooding and drainage issues.

Notwithstanding this, as detailed throughout this submission there is merit to the additional floor area. The proposed variation is for an additional 807.46m² of GFA, or an increase of 30.6% above the development standard. The floor area does not create an overly bulky or excessively scaled development. Rather, the development will create a positive streetscape outcome, as detailed in the architectural plans, and create a significant development of high quality as envisioned by the desired future character statements in the DCP. It also aligns with the adopted housing strategy, assisting in meeting the future housing outcomes for the area.

It is reiterated that the 3 additional retail car parking spaces contribute no negative impact on surrounding properties as it occurs belowground, while further reducing on-street car parking burden.

It is worth noting that the amenity of the site and its surrounds are not unreasonably impacted by the proposed development. The variation would not impact upon the proposals capacity to integrate within the desired future character of the area.

Communal open space is proposed at Level 1 as it presents to the eastern and southern neighbouring properties. The usable area is setback from both the side and rear property boundary by substantial landscaping, providing a green outlook and additional separation from Levels 2 and 3. This ensures appropriate separation distances between neighbouring sites to maintain positive visual and acoustic relationships. The recessed nature of Levels 2 and 3 from the residential neighbours minimises impacts. The additional floor space has not impacted upon this positive outcome.

The proposal is considered to provide an appropriate bulk, scale, alignment, and architectural features which positively contribute to the West Leichhardt Distinctive Neighbourhood. The additional floor space has not jeopardised this outcome.

The additional floor space allows for the efficient and economic use of the land.

In this case, strict compliance with the development standard within the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

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

It is considered this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4A and Clause 4.4.

Contextually the building has regard to surrounding properties and is considered to provide a positive outcome as it pertains to developing on a prominent site bounded by lower density residential neighbours. Careful consideration has been given to the siting of the building envelope to meet the amenity targets of the development itself without sacrificing the amenity of the neighbouring properties.

It is important to also consider the objectives of the B2 Local Centre zone in relation to the development. Each objective is addressed individually to demonstrate consistency.

Zone B2 Local Centre.

Objectives of zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal provides for new commercial tenancies at the ground floor of the proposed development. This offers opportunity for diversity of uses that will service the needs of the people who live in, work, and visit the locality. The additional floor space does not impact this outcome.

Additional car parking is proposed to future proof the development should a significant tenant be interested, which would require car parking beyond that of Leichhardt DCP's minimum car parking rate. The additional floor area occurs belowground and therefore does not create negative impacts. The additional vehicles will not have a noticeable impact on the traffic network.

- *To encourage employment opportunities in accessible locations.*

The proposed commercial tenancies will encourage new employment opportunities. The site is well located to public transport facilities with the Marion Light Rail station 350m walking distance to the west and bus services running along Marion Street and Foster in proximity to the subject site. These offer connections to a broader public transport network. Additional floor space would not impede upon satisfying the objective.

- *To maximise public transport patronage and encourage walking and cycling.*

The subject site is well serviced by public transport and provides compliant bicycle parking which will inherently encourage alternative and active modes of transport.

- *To ensure that development is appropriately designed to minimise amenity impacts.*

There is no unreasonable adverse solar access, nor visual or acoustic amenity impacts that would result from the proposal. Positive view lines to and from the proposal have been achieved, therefore reinforcing a positive amenity to neighbouring sites. The proposal has been designed of a high architectural quality and fabric which will also maximise amenity for residents and soften the impact as viewed from immediate neighbours.

- *To allow appropriate residential uses to support the vitality of local centres.*

Residential units are proposed as part of this application and will assist in supporting the viability of local centres. The additional floor space will facilitate the provision of diverse residential accommodation in proximity to local shops, services and facilities.

- *To ensure that uses support the viability of local centres.*

The proposed development is of a density that will support the viability of the local centre. The development is also consistent with the desired future character of the area, including that envisioned in the adopted Inner West Housing Strategy.

- *To provide a mixture of compatible land uses.*

The proposed land uses are considered compatible and are facilitated by the proposed floor space.

- *To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.*

The additional floor space would not undermine the capacity of the proposal to reinforce the role of the local centre through the provision of both commercial and residential land uses which remain consistent with the intended development pattern and diversity of uses in the locality. There is no deemed impact upon the viability of local centres and the intended function of which is reinforced through the proposal.

- *To integrate suitable business, office, residential, retail and other development in accessible locations.*

The proposal includes commercial tenancies and residential accommodation in an accessible location and the additional floor space would not restrict this outcome.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for the efficient use of the land and revitalisation of the overall site.

The development is a well-designed mixed-use building which has been sympathetically formed to ensure positive visual privacy and solar access outcomes are provided between the development and adjoining properties. A high quality built form outcome is to be created that is not negatively impacted by the exceedance of the standard.

It is considered that the area can support the proposed density, as earmarked by the adopted Housing Strategy but also as an independent development. Given the site's orientation, location, and context it is considered the site is well suited for the development, given its proximity to local infrastructure, shops and other amenities.

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

The departure from the floor space ratio control within the Leichhardt LEP 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 5 and 6 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied and objectives of the B2 Local Centre zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly mixed use/urban centre nature of the locality.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(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 all 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.”

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate is submitted with this application.

Clause 5.4 does not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with the maximum floor space ratio prescribed for the subject site as detailed in Clause 4.4A of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the standard does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development standard is appropriate.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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Should you have any questions, please do not hesitate to contact me.

Darren Laybutt
GAT & Associates
Plan 3794

Attachment D – Draft conditions of consent should consent be granted

CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

A. Voluntary Planning Agreement

Prior to the issue of an Operational Consent, evidence is to be supplied to the consent authority demonstrating that:

- a. A voluntary planning agreement has been entered into generally in accordance with the terms of the offer from GAT & Associates dated 16th February 2021.

B. Flooding / Stormwater

Prior to the issue of an Operational Consent, Council requires plans and documentation prepared and submitted to the satisfaction of Council's Development Engineering Officer addressing the following:

- a. Detailed drawings and information demonstrating that the proposed the construction of twin 2100mm x 1500mm culverts which provide the cross sectional area equivalent of a 1500mm diameter pipe, can be accommodated within Foster Lane and that the proposed relocation will be approved by Sydney Water. The proposed pipe relocation works must be demonstrated to be feasible and information regarding existing pipe sizes and locations, invert levels, grades, the extent of the works is to be provided.
- b. Revised plans and supporting information must be provided to address the above issues including long sections and cross sections of the proposed twin 2100mm x 1500mm culverts (with services plotted); an extensive services search must be undertaken; details of the extent of the works must be shown; location of inlet structures, transitions and any proposed surcharge structures must be detailed and a hydraulic grade analysis shall be plotted on the long section.
- c. Stormwater details demonstrating that that the drainage system will capture hydrocarbons required to meet Council's water the treatment targets.
- d. Detail level information demonstrating that the flood storage area will allow for sufficient storage and flow of water from Foster Lane to Foster Street. Detail of the proposed design of the screening of this storage area is also required as this storage area is a critical part of the proposed flood control measures and any blockages will impact flooding adjacent to the site.
- e. A revised Flood Risk Management Report and Flood modelled demonstrating that the development provides the additional cross sectional area equivalent of 1500mm diameter pipe without reliance on the additional cross sectional area to offset flood

impact that is a direct result of the development obstructing the existing overland flow path/removing flood storage.

Evidence of the above matter(s) must be submitted to Council within 2 years otherwise the Consent will not operate.

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
DA-0100	Basement 2	29/06/2021	Benson McCormack Architecture
DA-0101	Basement 1	29/06/2021	Benson McCormack Architecture
DA-0102	Lower Ground	29/06/2021	Benson McCormack Architecture
DA-0103	Upper Ground	29/06/2021	Benson McCormack Architecture
DA-0104	Level 1	29/06/2021	Benson McCormack Architecture
DA-0105	Level 2	29/06/2021	Benson McCormack Architecture
DA-0106	Level 3	29/06/2021	Benson McCormack Architecture
DA-0107	Roof Plan	29/06/2021	Benson McCormack Architecture
DA-0108	Top View Roof	29/06/2021	Benson McCormack Architecture
DA-0101	Basement 1	29/06/2021	Benson McCormack Architecture
DA-0200	North Elevation	29/06/2021	Benson McCormack Architecture
DA-0201	West Elevation	29/06/2021	Benson McCormack Architecture
DA-0202	South Elevation	29/06/2021	Benson McCormack Architecture

DA-0203	East Elevation	29/06/2021	Benson McCormack Architecture
DA-0300	Section AA	29/06/2021	Benson McCormack Architecture
DA-0301	Section BB	29/06/2021	Benson McCormack Architecture
DA-0302	Section CC	29/06/2021	Benson McCormack Architecture
DA-0303	Section DD	29/06/2021	Benson McCormack Architecture
DA-0304	Sections Access Ramps	29/06/2021	Benson McCormack Architecture
DA-0707	Detailed Wall Sections	29/06/2021	Benson McCormack Architecture
Certificate No. 1163999M_02	BASIX Certificate	30/06/2021	GAT and Associates
Job No: 220258	Statement of Compliance Access for People with a Disability	05/02/2021	Accessible Building Solutions
Reference No.: 2020-355	Acoustic Report	10/02/2021	Acoustic Noise and Vibration Solutions
REF: 20-225-7	Traffic and Parking Impact Assessment Report	JUNE 2021	Stanbury Traffic Planning
-	Arborist Report	08/02/2021	TALC
P220_481-2.1 (BCA) JR	BCA Report	09/02/2021	Design Confidence
-	Contamination Report	04/02/2021	Geo-Environmental Engineering
-	Geotechnical Report	03/02/2021	Geo-Environmental Engineering

As amended by the conditions of consent.

FEES

2. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$460,000.00 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access(“CP”) has been paid to the Council.

The above contribution is the contribution applicable as at 18/10/2021.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Local Infrastructure Type:	Contribution \$
Community Facilities and Services	\$64,714.89
Open Space and Recreation	\$379,504.17
Local Area Traffic Management	\$3,764.28
Leichhardt Town Centre Improvements	\$11,625.13
Bicycle Works	\$391.53
TOTAL	\$460,000.00

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

3. 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

4. Separation of Commercial and Residential Waste and Recycling

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

5. Noise – Consultant’s Recommendations

The recommendations contained in the acoustic report prepared by Acoustic Noise & Vibration Solution P/L, reference 2020-355 dated 10 February 2021 must be implemented.

6. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

7. Tree Protection

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

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

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

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

8. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
<i>Triadica sebifera</i> (Chinese tallow) Marion Street	Remove tree
<i>Lophostemon confertus</i> (Brush Box) Foster Street	Remove tree
<i>Lophostemon confertus</i> (Brush Box) Foster Street	Remove tree
<i>Lophostemon confertus</i> (Brush Box) Foster Street	Remove tree

The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree/s removal.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

9. Car Parking

The development must provide and maintain within the site:

- a. 51 car parking spaces must be paved and line marked;
- b. 4 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 3 visitor car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;
- d. 4 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- e. 28 Bicycle storage capacity within the site (14 residential and 14 commercial);
- f. 1 Carwash bay; and

- g. 1 Loading docks/bays.

10. Residential Flat Buildings – Hot Water Systems

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

11. Residential Flat Buildings – Air Conditioning Systems

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

12. Residential Flat Buildings – Adaptable Dwellings

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 2 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

13. 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.

14. 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.

15. Standard Street Tree Protection

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

16. Verification of Levels and Location

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared

by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

17. Works Outside the Property Boundary

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

18. Sydney Water Requirements

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with plans demonstrating that the development complies the following Sydney Water requirements:

1. Water Servicing
 - Potable water servicing should be available via a 150mm CICL watermain (laid in 1938) on Marion St, 100mm CICL watermain (laid in 1933) on Foster St, and a 100mm CICL watermain (laid in 1966) on Foster Ln.
 - Amplifications, adjustments, and/or minor extensions may be required.
2. Wastewater Servicing
 - Wastewater servicing should be available via a 225mm VC wastewater main (laid in 1908) within the property boundary.
 - Amplifications, adjustments, and/or minor extensions may be required.
3. Stormwater
 - Proponent needs to undertake a flood study and needs to determine the existing capacity of Sydney Water's two no. stormwater pipe/channel, and the impact on overland flow path.
 - Proponent needs to provide the size of the new two no. stormwater pipe/channel based on the flood study.
 - Council to accept and endorse the flood study, specifically in relation to overland flow path (as the delegated authority)
 - Council also needs to endorse the size of the proposed deviation pipe/channel to ascertain whether the proposed sizes meet their Flood Plain Management Plan/ Flood Plain Management strategy.
 - Proponent needs to undertake a comprehensive investigation to locate all the services such as water/sewer/stormwater/gas/telecom/electricity/ausgrid etc. along the proposed stormwater deviation path.
 - Based on the above service search, and the proposed new two no. stormwater pipe sizes, proponent needs to provide a report confirming that the proposed deviation of the two no. stormwater pipe/channel are practically feasible.
 - **No new buildings or permanent structures will be permitted within the Sydney Water easement or within 1m from the outside face of the new two no. stormwater channel/pipe for unlimited depth and height.**

- In the event that the deviation of Sydney Water's two no. stormwater channel/ pipe is not feasible, then the proponent needs to revise their proposed development in such a way that there are no buildings or permanent structures within the Sydney Water easement or within 1m from the outside face of the two no. stormwater pipe/channel. This requirement would apply for unlimited depth and height.

19. Transport for NSW Requirements

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with plans demonstrating that the development complies the following TfNSW requirements:

1. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property unlimited in height or depth along Marion Street and Forster Street boundary.
2. The proposed civil works along Forster Street to accommodate a widening of Forster Lane shall be designed to meet TfNSW requirements, and endorsed by a suitably qualified practitioner. The design requirements shall be in accordance with AUSTRROADS and other Australian Codes of Practice. The certified copies of the civil design plans shall be submitted to TfNSW for consideration and approval prior to the release of the Construction Certificate by the Principal Certifying Authority and commencement of road works. Please send all documentation to development.sydney@transport.nsw.gov.au. The developer is required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.
3. All vehicles are to enter and exit the site in a forward direction.
4. All vehicles are to be wholly contained on site before being required to stop.
5. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to

development.sydney@transport.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

6. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
7. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
8. A Construction Pedestrian Traffic Management Plan (CPTMP) should be submitted to TfNSW, prior to the issue of a Construction Certificate. The CPTMP needs to include, but not be limited to, the following: construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control, taking into consideration the cumulative traffic impacts of other developments in the area.
9. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Forster Street. 10. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Marion Street and Forster Street during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

PRIOR TO ANY DEMOLITION

20. Resource Recovery and Waste Management Plan - Demolition and Construction

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

21. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the adjoining properties at No. 190 Marion Street Leichhardt and No. 31 Foster Street, Leichhardt to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

22. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

23. 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**24. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Leichhardt DCP 2013 and must include doorways/entrance points of 1200mm.

25. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Leichhardt DCP 2013 and have minimum doorways of 1200mm wide to accommodate large items.

26. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point meets Workplace Health and Safety requirements including a minimum 1200mm wall-to-wall clearance, and must be slip-proof, of a hard surface, free of obstructions and at no point have a gradient exceeding 1:12.

27. Each Residential Level is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

28. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

29. 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.

30. Light Spill

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

31. Car Wash Bay – Design

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with certification confirming that all wastewater generated from the car wash bay will be discharged to the sewerage systems in accordance with the requirements of Sydney Water.

32. Tree Planting in the Public Domain

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Public Domain/Street Tree Planting Plan and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. New trees shall be located within the footpath outside the subject property, three (3) trees on Marion Street and four (4) trees on Foster Street. The species of trees selected shall be as per the Public Domain Landscape Plan, prepared by Matthew Higginson Pty Ltd, dated 5/02/2021.
- b. The trees are to be planted at ten (10) metre spacings;
- c. All planting stock size shall be minimum 200 litres;
- d. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*.
- e. The new trees shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture;
- f. The tree pit dimensions and staking detail shall be in accordance with Detail 9 on page C43 of the *Ashfield Street Tree Strategy 2015, Part C* (available online). NOTE Strata cell or vault systems are to be used, structural soil is not approved;
- g. The awning configuration must be detailed on the plan. All construction plans shall show the awnings on the two (2) street frontages setback from the street trees. The awnings must be setback a minimum of 1500mm from the back of the kerb for a minimum distance of 2000mm either side of each tree location; and
- h. It must be demonstrated that adequate soil volume can be provided for the street trees. Tree planting details, soil specification and cell vault construction details (in accordance with the manufactures specifications and details) must be submitted to the satisfaction of Council's Urban Forest Manager before the issue of a Construction Certificate. The plans must include dimensions for tree pits and details of a cell vault

style structure with a minimum of 20-30m³ available soil volume for each tree. Refer to Appendix 6.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014 for indicative detail, noting that structural soil is not approved in this case. Note: The soil vault may require a drainage system if the surrounding soil type will not naturally provide adequate drainage.

33. Enclosure of Fire Hydrant

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

34. 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

35. Fibre-ready Facilities

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

36. Consolidation of Lots

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

37. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

38. Green Roofs, Walls and Facades Report

Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a report prepared by a suitably qualified person demonstrating that the proposed landscape plan and details of any green roofs, wall and facades are consistent with [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#) including but not limited to using species selected from the suggested species list, water proofing and drainage.

DURING DEMOLITION AND CONSTRUCTION**39. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

40. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

41. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or

- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

42. 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.

43. Construction Hours – Class 2-9

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

PRIOR TO OCCUPATION CERTIFICATE

44. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority’s Noise Policy for Industry and Noise Control Manual and conditions of Council’s approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

45. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of the Acoustic Report prepared by *Acoustic Noise and Vibration Solutions* dated 10 February 2021.

46. Planting of Street Trees

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

- a. The cell vault system must be certified by a suitably qualified person confirming that installation has been undertaken in accordance with the manufactures specifications.

- b. The street trees must be maintained for a minimum period of 12 (12) months commencing on the planting date. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning and fertilising and pest and disease control.
- c. At the completion of the 12 (12) month maintenance period written approval must be obtained from Council's Coordinator Private Trees that the trees are healthy.
- d. If the street tree/s require replacement due to maintenance deficiencies during the 12 (12) month maintenance period, the 12 (12) month maintenance period will commence again from the date of the planting of the replacement tree (up to three (3) occurrences).

47. 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.

48. Verification and Maintenance of Green Roofs, Walls and Facades Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence demonstrating that the works have been carried out in accordance with the Green Roofs, Walls and Facades Report that was submitted at Construction Certificate Stage and a maintenance plan that is consistent with the [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#).

49. Section 73 Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

ON-GOING

50. Bin Storage

All bins are to be stored within the site. All bins are to be returned to the property within 12 hours of having been emptied.

51. Documentation of Businesses Waste Services

All businesses must have written evidence of all valid and current contracts and/ or tip docket for the disposal and/ or processing of all waste streams generated from the site.

52. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

53. Commercial Waste/Recycling Collection

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

54. Tree Establishment

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

55. Green Roofs, Walls and Facades Establishment

The plantings within the Green Roofs, Walls and Facades as part of this consent are to be maintained in a healthy and vigorous condition for 12 Months from the issue of an Occupation Certificate. If any of the planting are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).

ADVISORY NOTES**Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out

approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.

- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Fire Safety Certificate

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information

1300 650 908 weekdays 2:00pm - 5:00pm

			www.basix.nsw.gov.au
Department of Fair Trading		13 32 20	www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig		1100	www.dialprior toyoudig.com.au
Landcom		9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service Environmental Solutions	- SITA	1300 651 116	www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Ausgrid - Overhead Powerlines

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au.

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

Transport for NSW - Advisory Note

- a. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.
- b. It is recommended that service vehicles should enter and exit in a forward direction and that the proposed development is designed to accommodate this as it will improve pedestrian and road safety of the surrounding network.
- c. Civil works on Marion Street shall be to the satisfaction of Council.

- d. On-Site and Off-Site car parking provision should be provided to the satisfaction of Council.

REASONS FOR REFUSAL

