





	
DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/1088
Address	7/236 Johnston Street ANNANDALE NSW 2038
Proposal	Alterations and additions to existing townhouse, including the raising of one side of the roof
Date of Lodgement	04 November 2021
Applicant	Tadas Marininas
Owner	Tadas Marininas Alina Marininas
Number of Submissions	Nil
Value of works	\$50,000.00
Reason for determination at Planning Panel	Floor Space Ratio variation greater than 10% within Strata Scheme
Main Issues	Floor Space Ratio development standard variation
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing townhouse, including the raising of one side of the roof, at unit 7/236 Johnston Street ANNANDALE NSW 2038.

The application was notified to surrounding properties and no submissions were received in response to the notification of the proposal.

The main issues that have arisen from the application include:

- Proposed Floor Space Ratio variation exceeds 10% within a Strata Scheme

As discussed later in this report, the proposed non-compliances are acceptable given that there will be minimal to no undue adverse amenity impacts to the surrounding neighbouring properties or the streetscape and Heritage Conservation Area. Further, the proposal is considered acceptable as it complies with the aims and objectives of the *Leichhardt Local Environmental Plan 2013* and Clause 4.6 Exceptions have been submitted to Council to vary the Floor Space Ratio and Landscaped Area development standards which are satisfactory and supportable. On this basis, approval of the application is recommended subject to conditions.

2. Proposal

The proposal involves the part demolition of the rear roof of the existing townhouse to allow the raising of the roof to provide a skillion roofed dormer style addition comprising an en-suite bathroom and walk in wardrobe in the attic (third floor) level. In addition, two skylights are proposed to be located on the roof of the new rear skillion addition.

3. Site Description

The overall site is a multi-dwelling, residential redevelopment under a Strata Scheme. The subject site is located on the western side of Johnston Street, between Piper Lane and Johnston Street. The site has a total area of 1042.36 sqm and is legally described as Lot 7 in Strata Plan 15329 - 7/236 Johnston Street ANNANDALE NSW 2038.

The site has a frontage to Johnston Street of 20.115 metres.

The site supports 7, three storey town houses. The adjoining properties support a single storey residential dwelling.

The property is located within a Heritage Conservation area. The site is not heritage listed.

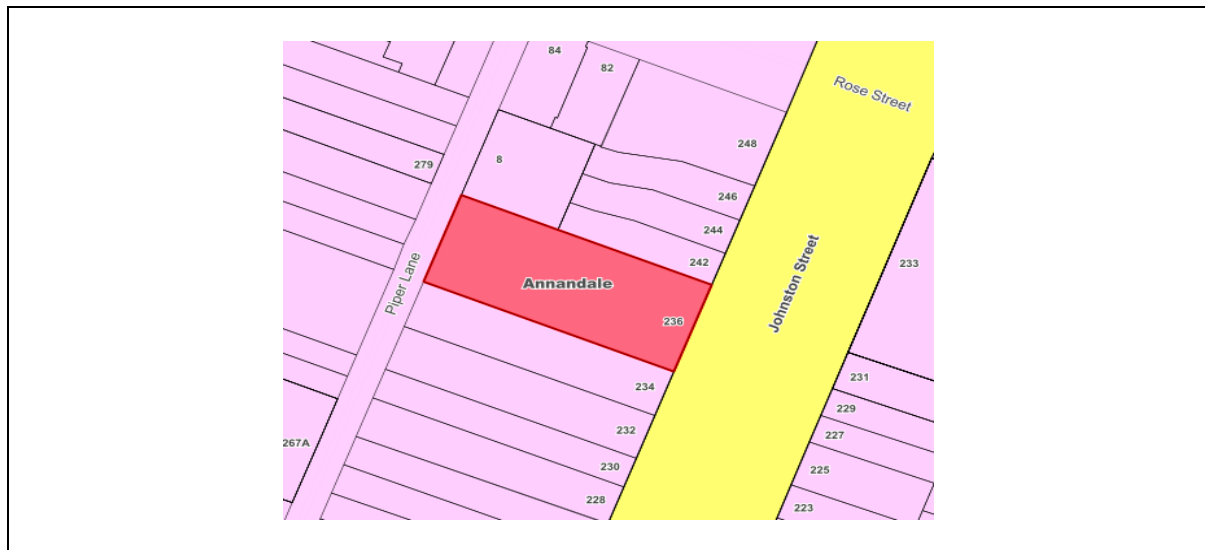


Figure 1: R1 – General Residential Zone – Heritage Conservation Area

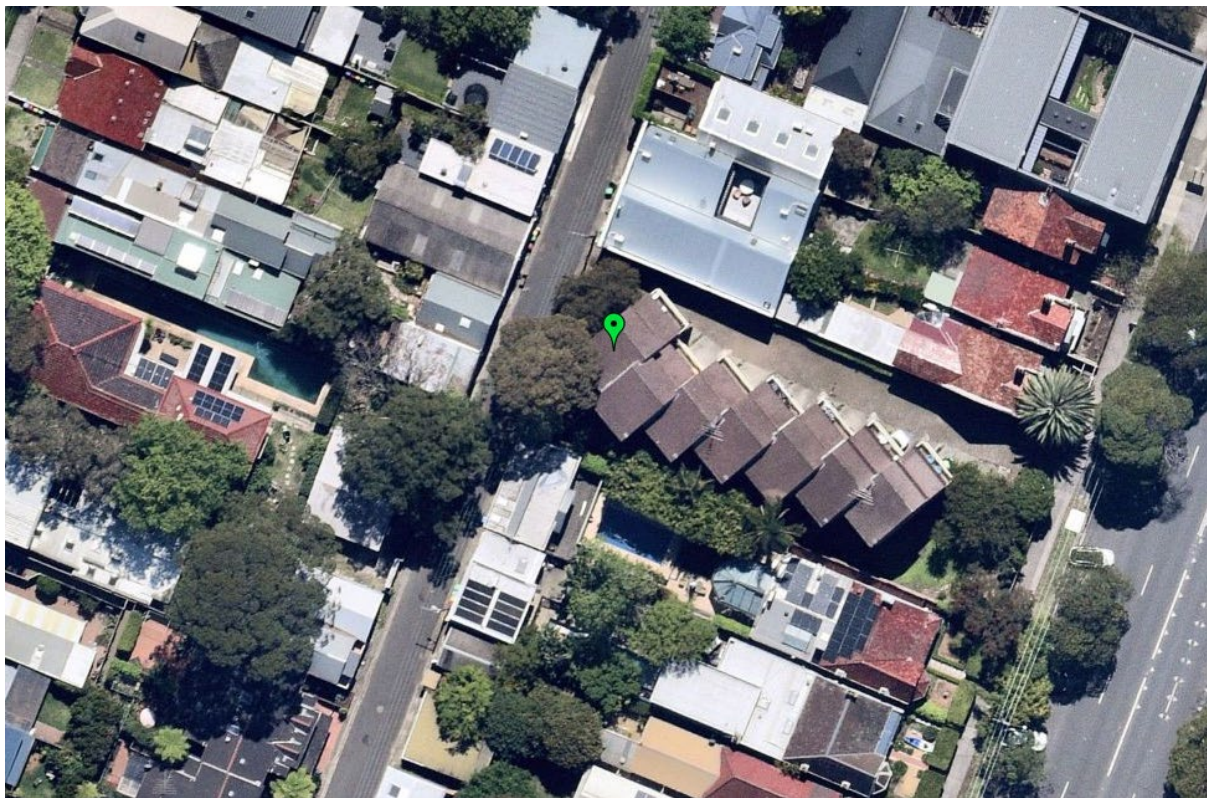


Figure 2: Aerial Image of Subject Site

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/2020/0151	Alterations to existing townhouse	Advice Letter issued – 23/6/2020

Surrounding properties

Application	Proposal	Decision & Date
MOD/2021/0533 – 234 Johnston Street Annandale	Section 4.55(1A) Modification of Development Consent DA/2020/0590 which approved alterations and additions to rear of house and studio over garage outbuilding. Seeking various changes, including new, added and deleted openings, alter existing parapet wall to match roofline and ridge height of additions, and changes to external wall finish to additions to outbuilding	Approved – 28/1/2021
DA/2020/0590 – 234 Johnston Street Annandale	Alterations and additions to rear of house. Studio over garage outbuilding.	Approved – 9/11/2020
D/2018/231 – 8 Piper Lane Annandale	Alterations and additions to existing warehouse dwelling and associated works at 8 Piper Lane.	Approved – 17/8/2018

4(b) Application history

Date	Discussion / Letter / Additional Information
2/2/2022	Council sent an email to the applicant requesting missing Roof and Stormwater Plans.
3/2/2022	Applicant emailed to Council the requested Roof and Stormwater Plans.
2/3/2022	Council sent an email to the applicant requesting a Clause 4.6 Variation to existing Landscaped Area non-compliance.
3/3/20200	Applicant emailed to Council the requested Clause 4.6 variation to Landscaped Area.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

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

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

5(a)(ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate for 7/236 Johnston Street was submitted with the application and will be referenced in any consent granted.

5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment or open space and recreation facilities.

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

The application was assessed against the following relevant clauses of *the Leichhardt Local Environment 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 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

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

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

The development is permitted with consent within the land use table. The development as proposed and as conditioned is consistent with the objectives of the R1 - General Residential zone.

(i) Clause 2.7 – Demolition

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

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

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

Entire Strata Scheme U1-7/ 236 Johnston Street Annandale

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 0.6:1 or 625.416 sqm	0.75:1 or 777.82 sqm <i>*(Existing 0.74:1 or 768.95sqm)</i>	152.404sqm or 24.37% <i>*143.53sqm or 22.95%</i>	No
Landscape Area Minimum permissible: 20% or 208.472sqm	17.38% or 181.15sqm <i>(No change to existing)</i>	27.322sqm or 13.11% <i>(No change to existing)</i>	No
Site Coverage Maximum permissible: 60% or 625.416sqm	29.69% or 309.45sqm	N/A	Yes

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards of the *LLEP 2013*:

- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

Whilst the proposal does not amend the existing non-compliance with the Landscaped Area development standard, the proposal will increase the breach of the existing non-compliance with the Floor Space Ratio development standard.

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the *LLEP 2013* by 24.37% (1.42% when compared to the existing) or 152.404sqm (8.874sqm when compared to existing).

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 *LLEP 2013* justifying the proposed contravention of the development standard which is summarised as follows:

Clause 4.3A(3)(a) – Landscaped Areas for residential accommodation in Zone R1

The applicant relies upon a Clause 4.6 exceptions request for a variation to this standard as the Landscaped Area is currently in breach, however, is unchanged as part of the proposal and the applicant's Clause 4.6 submission has provided the following reasons in support of a variation in the standard:

- The architectural plans submitted with the Development Application at 7/236 Johnston Street, Annandale for the "alterations and additions to an existing dwelling" indicate that the proposed development has a Landscaped Area of 181.15m² or 17.38% of the site, resulting in a 13.11% variation to the development standard and non-compliance of 27.322m².
- The proposal is of a reasonable scale and provides a high quality and durable alterations and additions to an existing dwelling which will assist in meeting the high demand for high quality housing in the Annandale locality. The development is commensurate in scale and character with other properties in the streetscape, measuring three storeys and complying with the maximum building height prescribed for the site. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.
- The development has been designed to complement the existing scale and character of surrounding development. The height and building envelope of the building is compliant with LEP and DCP controls.
- The proposal does not seek to alter the existing height and overall scale of the development. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The objectives of the R1 General Residential Zone are as follows:

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

The objectives of the Landscaped Area development standard are as follows:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,
- (b) to maintain and encourage a landscaped corridor between adjoining properties,

- (c) to ensure that development promotes the desired future character of the neighbourhood,
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,
- (e) to control site density,
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal will continue to provide housing for the community and contribute to the variety of housing types and densities of the area.
- The townhouse will continue to provide opportunities to work from home.
- The development as proposed will be compatible with the desired future character and pattern of similar development in the area in terms of building bulk, form and scale, and will have acceptable streetscape impacts, and will not reduce Landscaped Area on the site;
- The proposal will continue to provide a suitable balance between the existing Landscaped Areas and the built form and continues to provide sufficient Landscaped Area and private open space on the site.
- The proposed additions and works will not extend outside the existing building footprint and is in a location where it can be reasonably assumed that development can occur; and
- The proposed non-compliance does not result in any undue adverse amenity impacts to the surrounding properties.

It is also considered that the development is in the public interest because it is consistent with the objectives of the Landscaped Area development standard in accordance with Clause 4.6(4)(a)(ii) of the *LLEP 2013* for the following reasons:

- The proposal does not seek to alter the existing situation/non-compliance to the Landscaped Area or private open space provision on the site, and the development provides a suitable balance between Landscaped Areas and the built form to each townhouse on the site;
- The development as proposed is compatible with similar development in the street and the desired future character of the area in relation to building bulk, form and scale; and
- The proposed addition will be contained within the existing building footprint.

Clause 4.4 – Floor Space Ratio

The applicant relies upon a Clause 4.6 exceptions request for a variation to this standard as the proposal will increase the breach of the existing non-compliance with the Floor Space Ratio development standard, and the applicant's Clause 4.6 submission has provided the following reasons in support of a variation in the standard:

- The development is consistent with the scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.
- The proposal involves the minor alterations and additions to the existing attic space adding only 2.72 square meters of floor space or a 0.4% increase to the existing FSR. This minor change will have a negligible impact on the overall bulk, form, and scale of

the development which is currently in line with the desired future character of the Annandale locality in terms of its overall aesthetic and street appeal.

- Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The objectives of the R1 general Residential zone are outlined above under the Landscaped Area assessment.

The objectives of the FSR development standard are as follows:

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

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for reasons discussed above under the Landscaped Area development standard assessment.

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

- The development is consistent with the scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.
- The development provides a suitable balance between landscaped areas and the built form.
- The development is acceptable with regard to the bulk and scale of the building.
- The proposal does not result in any adverse unacceptable amenity impacts to the surrounding properties.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *LLEP 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the landscaped area and floor space ratio development standards, and it is recommended that the Clause 4.6 exceptions be granted.

(i) Clause 5.10 - Heritage Conservation

The subject site is not listed as a heritage item on the *LLEP 2013*. It is a non-contributory item to the 'Annandale Heritage Conservation Area' (C1).

It is in close proximity of the following heritage item; however, no impact will arise from the proposal:

- “Street Trees Brush Box” along Johnston Street (I66)

The subject site is occupied by a row of contemporary townhouses that are non-contributory to the heritage conservation area.

The statement of significance of the HCA is available on Council's website: <https://www.innerwest.nsw.gov.au/develop/planning-controls/heritage-andconservation/heritage-conservation-areas>

The application has undertaken a PREDA process where the following heritage comments were provided to the proposal to PDA/2020/0151.

Acceptable with the following amendments to the application:

- 1. The following design changes must be made to ensure the proposed addition is in the form of a skillion dormer:*
 - a. set in at least 300mm from the party walls;*
 - b. locate the springing point of the roof over the skillion dormer at least 300mm below the main ridge line, measured on the slope of the roof;*
 - c. set the dormer back a minimum of 200mm from the rear wall plate;*
 - d. Colours and materials of windows and the structure must match those on the existing building;*
 - e. front lining boards, fascias and barge boards must be painted timber to match existing;*
 - f. window openings, proportions and glazing must match that in the existing building;*
 - g. side walls (cheeks) are to be weatherboards, shingle or fibre cement sheet with battens over joints and edges.*
- 2. A full set of architectural drawings must accompany any future application, including elevations and a site plan.*
- 3. A colours and materials schedule will need to be submitted for consideration. Materials must be the same as, or complement, the existing materials.*

Council's Heritage Specialist has reviewed the proposal and advised that the proposal will not have adverse impact on significant fabric and will have acceptable impacts on the streetscape and Heritage Conservation Area and that the changes suggested at Pre-DA have been generally followed.

Given the above, the proposal is considered acceptable from a heritage perspective as it will not detract from the heritage significance of the Annandale Heritage Conservation Area or adversely impact on the significance or setting of the heritage items in the vicinity. The proposal as submitted is in accordance with Clause 5.10 Objectives 1(a) and (b) in the *LLEP 2013* and the relevant objectives and controls in the Leichhardt DCP 2013.

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	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes – See Discussion
C1.4 Heritage Conservation Areas and Heritage Items	Yes – Refer to Section 5(a)(iv) above.
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A

Part C: Place – Section 2 Urban Character	
C2.2.1.3 Johnston Street Distinctive Neighbourhood	Satisfactory
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes and No - establishment of new third floor Building Location Zone – See discussion
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
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes – Standard Acoustic Conditions to be imposed in any consent granted.
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes

E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	N/A
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

The following provides discussion of the relevant issues:

C1.3 Alterations and Additions

As the proposal involves a new rear skillion dormer within the existing attic space, the following Controls are applicable.

C14 - Any first floor and above additions attached to the rear of the existing roof form is to: a. be subordinate to that roof form;

- i. where attached to the existing roof form, be set 300mm below the ridgeline;*
- ii. enable the original roof form to be apparent from the public domain by:*
 - setting the additions back from the external face of the existing side roof plane (so the gable, hip or original parapet roof form is retained);*

As mentioned previously in this report, the rear skillion addition located on the rear roof plane of the main roof form complies with the above Control. In addition, the design changes recommended in the PDA/2020/0151 letter dated 23/6/2020 has been undertaken through this application. As such, the proposal is considered acceptable from a Planning and Heritage perspective.

C3.2 Site Layout and Building Design

Building Location Zone

The proposed rear skillion dormer to the existing attic space will establish a new rear third floor Building Location Zone (shown in Yellow). Pursuant to Part C3.2 of the LDCP 2013, where a proposal seeks to vary, or establish a new BLZ, in order to determine acceptability, various tests need to be met - an assessment of the proposal against the relevant tests is discussed below.



- a) amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;

Comment: As discussed in further detail below, the proposal will comply with applicable solar access controls. The proposal will have no privacy or view loss implications.

- b) the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;

Comment: The proposed rear skillion dormer as previously mentioned in this report is considered to have minimal streetscape impacts to the Heritage Conservation Area and is

considered to be compatible with the existing pattern of development of the area. As such, the proposal satisfies this test.

- c) the proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping;*

Comment: The proposal will not alter the existing POS and Landscaped Area of the subject site.

- d) retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and*

Comment: The proposal will not result in the removal of any significant vegetation on the subject site.

- e) the height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.*

Comment: Satisfied - The proposed rear skillion roofed addition is of a low scale in bulk and height as it set below the main ridge line of the main roof and provides a 300mm side setback from the side walls to reduce visual bulk and scale when viewed from adjoining properties.

It is considered that the proposed rear third floor skillion dormer will meet the objectives of the above clause objectives and can be supported on merit.

Side Setbacks

The following is a compliance table assessed against the Side Setback Control Graph prescribed in Part C3.2 of the Leichhardt DCP 2013 relating to the proposed additions (adjacent to No. 234 Johnston Street):

Elevation	Wall height (m)	Required setback (m)	Proposed setback (m)	Complies
South West – TF	10.5	4.45	7.3-9.2	Yes

The proposal complies with the side setback Control.

C3.9 Solar Access

The subject site or the land is oriented east west, however, the town houses on the site are all orientated north, south with a south facing rear private open space. The immediate south adjoining neighbouring property is oriented east west. As a result, Controls 16, 18 and 19 of this part of the Leichhardt DCP 2013 apply to the adjoining properties which states the following:

- 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.
- 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.

- C19 – Where surrounding *dwelling*s currently receive less than the required amount of solar access to their *private open space* between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.

The submitted shadow diagrams suggest that no additional overshadowing will impact the rear private open areas of No. 234 Johnston Street and Unit 6 of 236 Johnston Street. All of the new shadows cast from the proposal will be over roof structures and the swimming pool at No. 234 Johnston Street at 3pm during mid-winter only. As a result, the proposal complies with the above applicable solar access controls of this provision.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with Council's policy for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and no issues have been raised in those referrals.

- Heritage Officer

6(b) External

The application was referred to the following external body and no issues raised have been raised.

- Ausgrid – Advisory note regarding overhead powerlines provided. These will be referenced with any consent granted.

7. Section 7.12 Levy

As the proposed cost of works are \$50,000.00, no Levy is applicable as per Schedule 2 shown below:

Schedule 2: Summary schedule of levies

Type of development	Levy (% of development costs) *
All forms of development (unless exempted under the provisions of this plan)	0% under \$100,000
	0.5 % \$100,001 to \$200,000
	1.0% for all developments over \$200,000

* In accordance with Clause 25K of the Environmental Planning and Assessment Regulation 2000 (as amended).

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* to vary Clause 4.4 of the Plan. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/1088 for Alterations and additions to existing townhouse, including the raising of one side of the roof at 7/236 Johnston Street, Annandale subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent**CONDITIONS OF CONSENT****DOCUMENTS RELATED TO THE CONSENT****1. Documents related to the consent**

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Page 1	Site, Roof and Stormwater Discharge Plan	24/9/2021	Ruta Gostautiene
Page 4	Ground Floor Layout	24/9/2021	Ruta Gostautiene
Page 5	1 Floor Layout	24/9/2021	Ruta Gostautiene
Page 6	2 Floor Layout	24/9/2021	Ruta Gostautiene
Page 7	Attic Layout	24/9/2021	Ruta Gostautiene
Page 2	Elevations Materials and Finishes	24/9/2021	Ruta Gostautiene
Page 3	Section A-A	24/9/2021	Ruta Gostautiene
A437678	BASIX Certificate	29 October 2021	Brian Telpicanec Consultancy
835-SR02_A	Dilapidation Report	30.06.2020	Halina Engineers Pty Ltd
J000449	Heritage Impact Statement	October 2020	Corona Projects

As amended by the conditions of consent.

FEES**2. Long Service Levy**

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

3. Security Deposit - Standard

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

Security Deposit:	\$2,254.00
Inspection Fee:	\$241.50

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

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

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

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

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

GENERAL CONDITIONS**4. Waste Management Plan**

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

5. Erosion and Sediment Control

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

6. 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.

7. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**8. 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 all the adjoining townhouse 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.

9. 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.

10. 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**11. Structural Certificate for retained elements of the building**

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

12. 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

13. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION**14. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

15. Stormwater Drainage System

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

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

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

PRIOR TO OCCUPATION CERTIFICATE**16. Aircraft Noise –Alterations and Additions**

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

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

ADVISORY NOTES**Prescribed Conditions**

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

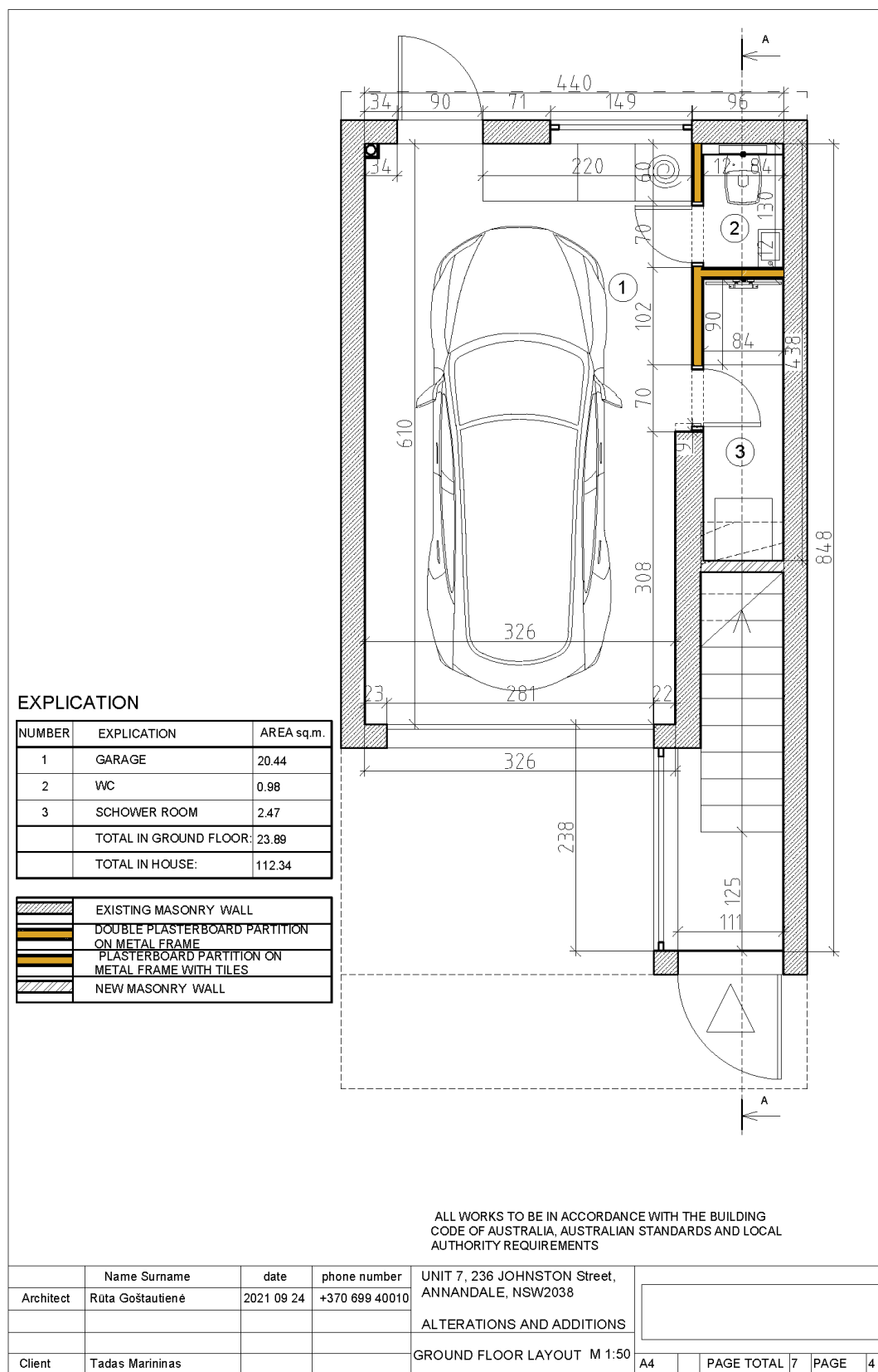
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
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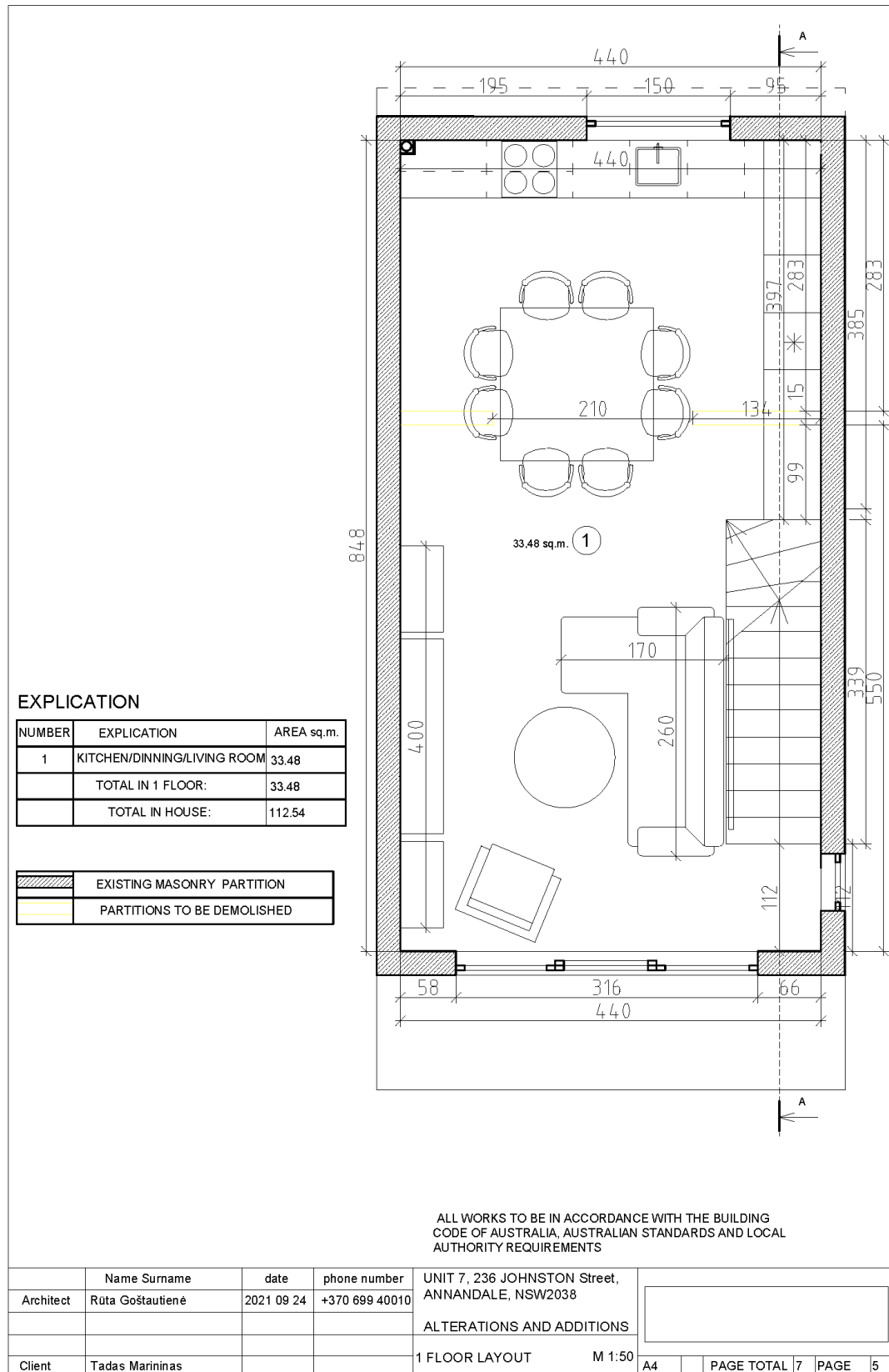
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au
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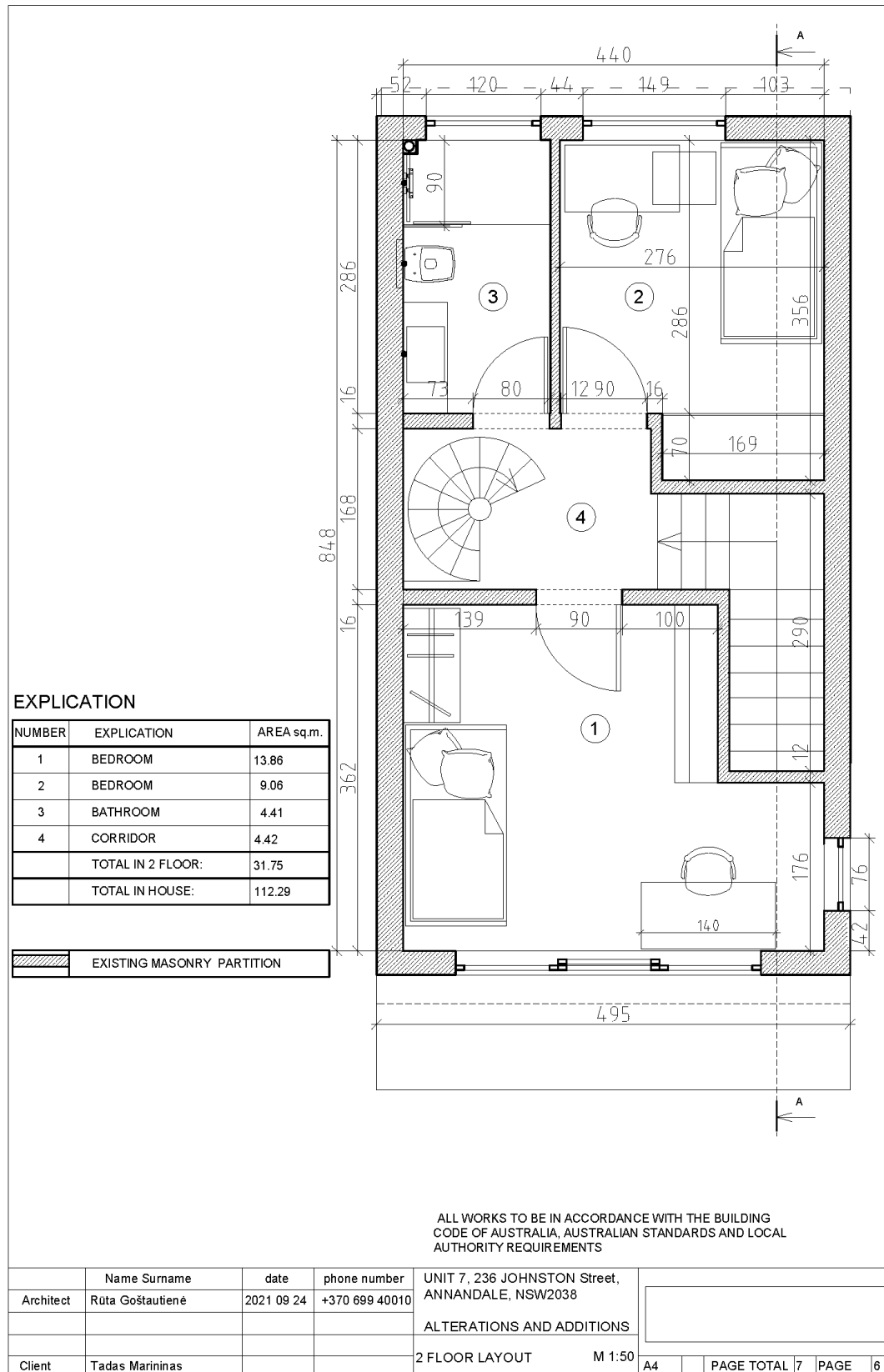
Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

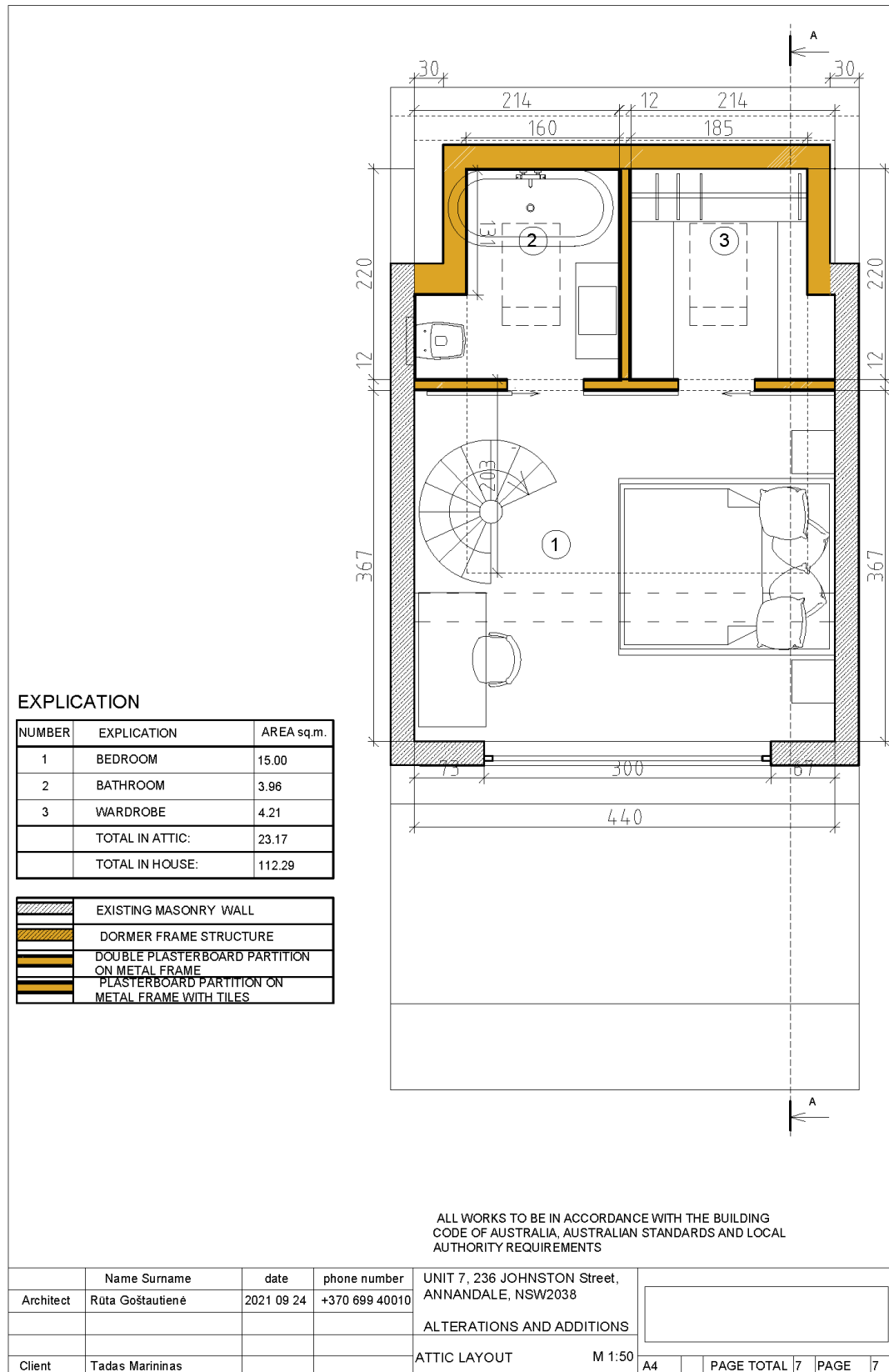
Dial Prior to You Dig	1100	
		www.dialprior.toyoudig.com.au
Landcom	9841 8660	
		To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	
		www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	
		www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro
		www.diySAFE.nsw.gov.au
		Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	
		www.environment.nsw.gov.au
Sydney Water	13 20 92	
		www.sydneywater.com.au
Waste Service - SITA	Environmental Solutions 1300 651 116	
		www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	
		www.workcover.nsw.gov.au
		Enquiries relating to work safety and asbestos removal and disposal.

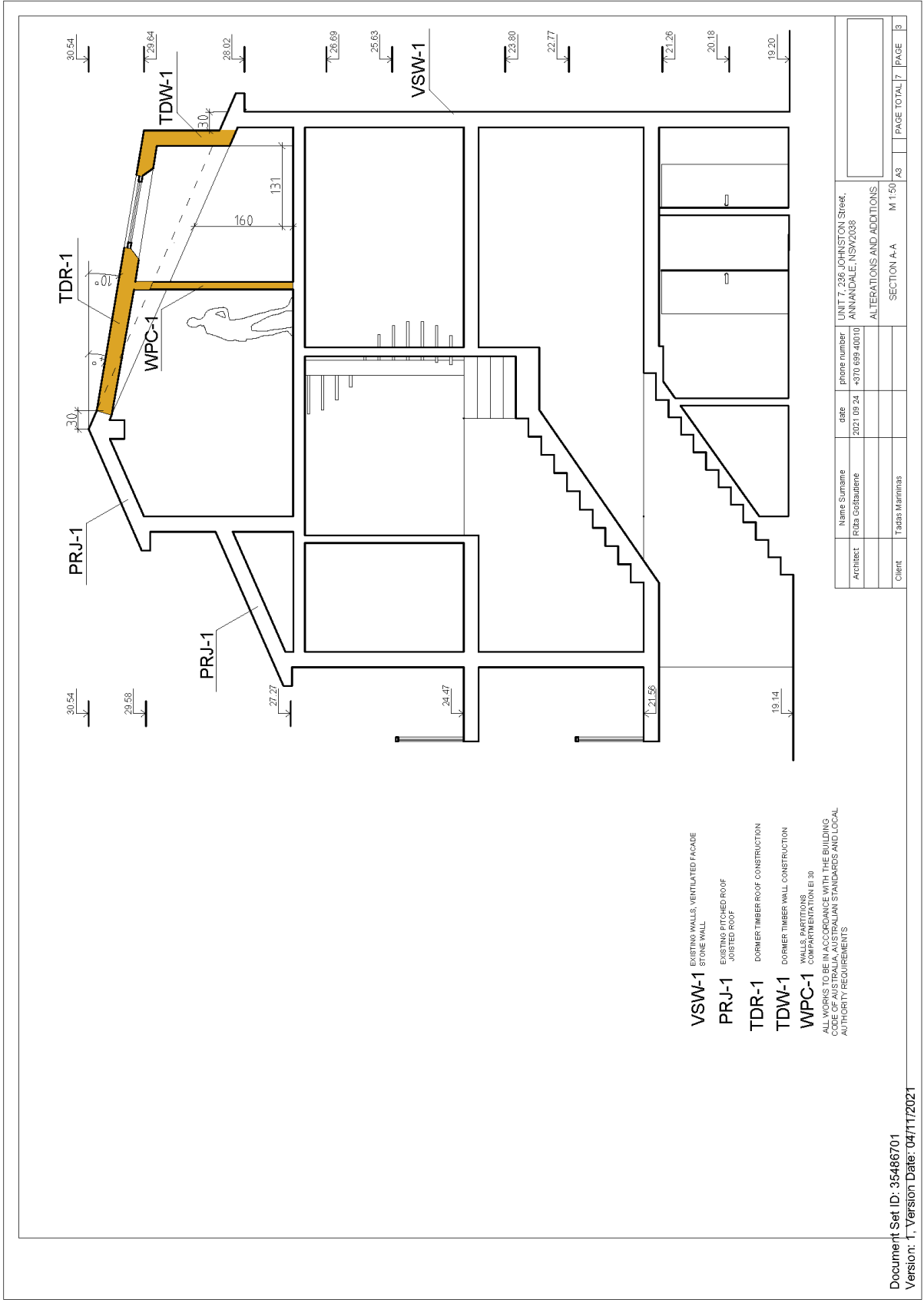
Attachment B – Plans of proposed development











The figure displays architectural drawings for a building facade, including three elevation views and a materials and finishes schedule.

Elevation Views:

- North Elevation:** Shows the front facade with a gabled roof. The roof is labeled with 'WC-1' and 'FB-1'. The elevation includes height markers on the left (23.24, 23.06, 22.87, 22.69, 22.51, 22.33, 22.15, 21.97, 21.79, 21.61, 21.43, 21.25, 21.07, 20.89, 20.71, 20.53, 20.35, 20.17, 19.99, 19.81, 19.63, 19.45, 19.27, 19.09, 18.91, 18.73, 18.55, 18.37, 18.19, 18.01, 17.83, 17.65, 17.47, 17.29, 17.11, 16.93, 16.75, 16.57, 16.39, 16.21, 16.03, 15.85, 15.67, 15.49, 15.31, 15.13, 14.95, 14.77, 14.59, 14.41, 14.23, 14.05, 13.87, 13.69, 13.51, 13.33, 13.15, 12.97, 12.79, 12.61, 12.43, 12.25, 12.07, 11.89, 11.71, 11.53, 11.35, 11.17, 10.99, 10.81, 10.63, 10.45, 10.27, 10.09, 9.91, 9.73, 9.55, 9.37, 9.19, 9.01, 8.83, 8.65, 8.47, 8.29, 8.11, 7.93, 7.75, 7.57, 7.39, 7.21, 7.03, 6.85, 6.67, 6.49, 6.31, 6.13, 5.95, 5.77, 5.59, 5.41, 5.23, 5.05, 4.87, 4.69, 4.51, 4.33, 4.15, 3.97, 3.79, 3.61, 3.43, 3.25, 3.07, 2.89, 2.71, 2.53, 2.35, 2.17, 1.99, 1.81, 1.63, 1.45, 1.27, 1.09, 0.91, 0.73, 0.55, 0.37, 0.19, 0.01, -0.17, -0.35, -0.53, -0.71, -0.89, -1.07, -1.25, -1.43, -1.61, -1.79, -1.97, -2.15, -2.33, -2.51, -2.69, -2.87, -3.05, -3.23, -3.41, -3.59, -3.77, -3.95, -4.13, -4.31, -4.49, -4.67, -4.85, -5.03, -5.21, -5.39, -5.57, -5.75, -5.93, -6.11, -6.29, -6.47, -6.65, -6.83, -7.01, -7.19, -7.37, -7.55, -7.73, -7.91, -8.09, -8.27, -8.45, -8.63, -8.81, -8.99, -9.17, -9.35, -9.53, -9.71, -9.89, -10.07, -10.25, -10.43, -10.61, -10.79, -10.97, -11.15, -11.33, -11.51, -11.69, -11.87, -12.05, -12.23, -12.41, -12.59, -12.77, -12.95, -13.13, -13.31, -13.49, -13.67, -13.85, -14.03, -14.21, -14.39, -14.57, -14.75, -14.93, -15.11, -15.29, -15.47, -15.65, -15.83, -16.01, -16.19, -16.37, -16.55, -16.73, -16.91, -17.09, -17.27, -17.45, -17.63, -17.81, -17.99, -18.17, -18.35, -18.53, -18.71, -18.89, -19.07, -19.25, -19.43, -19.61, -19.79, -19.97, -20.15, -20.33, -20.51, -20.69, -20.87, -21.05, -21.23, -21.41, -21.59, -21.77, -21.95, -22.13, -22.31, -22.49, -22.67, -22.85, -23.03, -23.21, -23.39, -23.57, -23.75, -23.93, -24.11, -24.29, -24.47, -24.65, -24.83, -25.01, -25.19, -25.37, -25.55, -25.73, -25.91, -26.09, -26.27, -26.45, -26.63, -26.81, -26.99, -27.17, -27.35, -27.53, -27.71, -27.89, -28.07, -28.25, -28.43, -28.61, -28.79, -28.97, -29.15, -29.33, -29.51, -29.69, -29.87, -30.05, -30.23, -30.41, -30.59, -30.77, -30.95, -31.13, -31.31, -31.49, -31.67, -31.85, -32.03, -32.21, -32.39, -32.57, -32.75, -32.93, -33.11, -33.29, -33.47, -33.65, -33.83, -34.01, -34.19, -34.37, -34.55, -34.73, -34.91, -35.09, -35.27, -35.45, -35.63, -35.81, -35.99, -36.17, -36.35, -36.53, -36.71, -36.89, -37.07, -37.25, -37.43, -37.61, -37.79, -37.97, -38.15, -38.33, -38.51, -38.69, -38.87, -39.05, -39.23, -39.41, -39.59, -39.77, -39.95, -40.13, -40.31, -40.49, -40.67, -40.85, -41.03, -41.21, -41.39, -41.57, -41.75, -41.93, -42.11, -42.29, -42.47, -42.65, -42.83, -43.01, -43.19, -43.37, -43.55, -43.73, -43.91, -44.09, -44.27, -44.45, -44.63, -44.81, -44.99, -45.17, -45.35, -45.53, -45.71, -45.89, -46.07, -46.25, -46.43, -46.61, -46.79, -46.97, -47.15, -47.33, -47.51, -47.69, -47.87, -48.05, -48.23, -48.41, -48.59, -48.77, -48.95, -49.13, -49.31, -49.49, -49.67, -49.85, -50.03, -50.21, -50.39, -50.57, -50.75, -50.93, -51.11, -51.29, -51.47, -51.65, -51.83, -52.01, -52.19, -52.37, -52.55, -52.73, -52.91, -53.09, -53.27, -53.45, -53.63, -53.81, -53.99, -54.17, -54.35, -54.53, -54.71, -54.89, -55.07, -55.25, -55.43, -55.61, -55.79, -55.97, -56.15, -56.33, -56.51, -56.69, -56.87, -57.05, -57.23, -57.41, -57.59, -57.77, -57.95, -58.13, -58.31, -58.49, -58.67, -58.85, -59.03, -59.21, -59.39, -59.57, -59.75, -59.93, -60.11, -60.29, -60.47, -60.65, -60.83, -61.01, -61.19, -61.37, -61.55, -61.73, -61.91, -62.09, -62.27, -62.45, -62.63, -62.81, -62.99, -63.17, -63.35, -63.53, -63.71, -63.89, -64.07, -64.25, -64.43, -64.61, -64.79, -64.97, -65.15, -65.33, -65.51, -65.69, -65.87, -66.05, -66.23, -66.41, -66.59, -66.77, -66.95, -67.13, -67.31, -67.49, -67.67, -67.85, -68.03, -68.21, -68.39, -68.57, -68.75, -68.93, -69.11, -69.29, -69.47, -69.65, -69.83, -70.01, -70.19, -70.37, -70.55, -70.73, -70.91, -71.09, -71.27, -71.45, -71.63, -71.81, -71.99, -72.17, -72.35, -72.53, -72.71, -72.89, -73.07, -73.25, -73.43, -73.61, -73.79, -73.97, -74.15, -74.33, -74.51, -74.69, -74.87, -75.05, -75.23, -75.41, -75.59, -75.77, -75.95, -76.13, -76.31, -76.49, -76.67, -76.85, -77.03, -77.21, -77.39, -77.57, -77.75, -77.93, -78.11, -78.29, -78.47, -78.65, -78.83, -79.01, -79.19, -79.37, -79.55, -79.73, -79.91, -80.09, -80.27, -80.45, -80.63, -80.81, -80.99, -81.17, -81.35

Attachment C- Clause 4.6 Exception to Development Standards

**Corona Projects**

ABN: 33 122 390 023
Suite 106, L1, 35 Spring Street, Bondi Junction, 2022
PO Box 1749 Bondi Junction NSW 1355
Ph: 0419 438 956
Email: info@coronaprojects.com.au

22nd October 2021

The General Manager
Inner West Council
7-15 Wetherill Street
Leichhardt, 2040

Dear Sir/Madam,

7/236 Johnston Street

Clause 4.6: Exceptions to Development Standards

Floor Space Ratio (Clause 4.4) – Leichhardt Local Environmental Plan 2013

1. Introduction

Clause 4.4 of Leichhardt Local Environmental Plan (LLEP) 2013 relates to the maximum **floor space ratio (FSR)** requirements and states that "the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map". The Floor Space Ratio map stipulates that the maximum FSR for 7/236 Johnston Street is 0.6:1.

The architectural plans submitted with the Development Application at 7/236 Johnston Street for the "alterations and additions to the attic space" indicate that the proposed development has a Gross Floor Area (GFA) of 740.73 square meters, and a subsequent floor space ratio (FSR) of 0.711:1, resulting in a 18.4% variation to the development standard and non-compliance of 115.314m². However, it is to be noted that the existing building has a GFA of 738.01sqm and a subsequent FSR of 0.708:1. As such the proposal only involves a minor 2.72sqm or a 0.4% increase to the existing approved gross floor area.

The proposal is of a reasonable scale and provides a high quality and durable alterations and additions to the attic level which will assist in meeting the high demand for additional housing in the Annandale locality. The development is commensurate in scale and character with other properties in the streetscape, measuring only two storeys and complies with the maximum building height. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

2. Clause 4.6

An application to vary a development standard can be made under Clause 4.6 of LLEP 2013.

The objectives of Clause 4.6 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.

Clause 4.6(3) specifies that:

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.

Clause 4.6(4) specifies that:

Development consent must not be granted for development that contravenes a development standard unless:

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

These matters are considered below.

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

Paragraph 27 of the judgement states:

'Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(iii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the R1 – General Residential zone under the Leichhardt Local Environmental Plan 2013.

The objectives of the zone are:

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

The development is compatible with the zone objectives as it:

- The proposed alterations and additions of 7/236 Johnston Street will see a substantial increase in residential amenity that will complement the existing uses within the local residential centre of Annandale.
- The proposal increases the functional space within the dwelling, providing additional space for occupants to work from home further benefiting the community as a whole.
- Maintains entirely the existing landscaped area on site for the use and enjoyment of the existing and future residents.
- The existing façade and bulk of the dwelling is to be largely maintained so to maintain the character, style and orientation of the dwelling.

The variation to the floor space ratio does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

'The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.'

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the floor space ratio controls as specified in Clause 4.4 are:

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

The variation is supportable in relation to the aforementioned objectives.

Objective (a) (i) – The proposal is considered compatible with its context as:

- The development is consistent with the scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.
- The proposed 0.4% increase in GFA or 18.4% variation from the maximum FSR is comparable in comparison to nearby sites. The below table demonstrates that properties within the same locality with R1 – General Residential zoning who exceed their maximum FSR, as stipulated by Clause 4.4 of the LLEP 2013. This highlights that the area is characterised by similar densities to that of the proposal.

Clause 4.6 Variation Request Report
7/236 Johnston Street, Annandale

Site address	Extent of Variation from Maximum FSR
53 / 334 Young Street, Annandale	10%
114 Ferris Street, Annandale	50%
41 Annandale Street, Annandale	29%
92 Ryan Street, Lilyfield	53.97%
231 Norton Street, Leichhardt	25%
8 / 165 Lilyfield Road, Lilyfield	18.24%
17 Toelle Street, Rozelle	19.72%
52 Wells Street, Annandale	18.52%
62 Llewellyn Street, Balmain	18.24%
33 Emma Street, Leichhardt	46%
57 Annandale Street, Annandale	7.35%

Table 1 – Nearby R1 General Residential zoned properties with approved maximum FSR variation. Information derived from the Planning Register (2017 - 2020) available on Inner West Council's website.

The proposal involves the minor alterations and additions to the existing attic space adding only 2.72 square meters of floor space or a 0.4% increase to the existing FSR. This minor change will have a negligible impact on the overall bulk, form, and scale of the development which is currently in line with the desired future character of the Annandale locality in terms of its overall aesthetic and street appeal.

Objective (a) (ii) – Landscaped area on site is remaining completely unaltered. The minor alterations to the attic level are not foreseen to affect the established balance between the overall height / built form and the landscaped area as the development is so minor on detail.

Objective (a) (iii) – The aforementioned minor changes proposed in this development will not increase the existing overall height and bulk of the building. The addition of a dormer window and alterations to the attic ceiling height will provide valuable articulation to the façade to the building, effectively opening up the space and minimising the impact of the previously closed off façade.

Objective (b) – The development is residential in character and use.

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *Four2Give Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 cases, by Commissioner Morris in *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312 and by Commissioner Tuor in *Moskovich v Waverley Council* [2016] NSWLEC 1015. This approach has recently been upheld in the case of *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386. An appeal on a point of law against this decision by Randwick Council was dismissed by Commissioner Morris on 19 February 2016: *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

In the decision of *Wehbe vs Pittwater Council*, Preston CJ established the five ways in which an objection has been well founded and that approval of the objection may be consistent with the aims of the policy:

- 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- 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.'

It is noted that each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in each case. Therefore, not all tests need to be met.

Test	Comment
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard	Yes — The development meets the objectives of the development standard demonstrated in part 5 of this document.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary	Not applicable — The purpose of the standard is relevant.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable	Not applicable — the development standards of FSR cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary. ¹	Not applicable — The zoning of the site is not considered to be inappropriate.

Application of the above tests thus demonstrate that strict numerical compliance is unreasonable and unnecessary for this proposal. The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide alterations to the attic level and the addition of a dormer window in a manner which meets the objectives of applicable controls. The residential townhouse development over

its economic life is consistent with the promotion and coordination of the orderly use and development of land.

8. Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

The development has been designed to complement the existing scale and character of surrounding development. The height and building envelope of the building is compliant with LEP and DCP controls. The proposal does not seek to alter the existing height and building envelope. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

9. Conclusion

The proposal seeks a variation to the floor space ratio development standard prescribed in Clause 4.4 of Leichhardt Local Environmental Plan 2013.

This submission is considered to adequately address the matters required by Clause 4.6. The proposal meets the assessment criteria set out in Clause 4.6 (3) (a) and (b) and (4) (a). As demonstrated, strict compliance with the prescribed floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case. The proposal is in the public interest because it is consistent with the objectives of the R1 – General Residential zone and the objectives for Floor Space Ratio standard. There are thus sufficient environmental planning grounds to justify the non-compliance.



Mathew Fortunato
Town Planner
Bachelor of Architecture and Environments (USYD)

Clause 4.6 Variation Request Report
7/236 Johnston Street, Annandale

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17th December 2020

The General Manager
Inner West Council
7-15 Wetherill Street
Leichhardt, 2040

Dear Sir/Madam,

7/236 Johnston Street, Annandale

Clause 4.6: Exceptions to Development Standards

**Landscaped areas for residential accommodation in Zone R1 (Clause 4.3A) - Leichhardt
Local Environmental Plan 2013**

1. Introduction

Clause 4.3A of Leichhardt Local Environmental Plan (LLEP) 2013 relates to the maximum landscaped area requirements and states that;

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

- (a) the development includes landscaped area that comprises at least—
 - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
 - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
- (b) the site coverage does not exceed 60% of the site area.

The architectural plans submitted with the Development Application at 7/236 Johnston Street, Annandale for the “alterations and additions to an existing dwelling” indicate that the proposed development has a Landscaped Area of 181.15m² or 17.38% of the site, resulting in a 13.11% variation to the development standard and non-compliance of 27.322m². Additionally, the plans indicate a site coverage calculation of 310.12 m² or 30% of the site, well within the stipulated maximum of 60% site coverage.

The proposal is of a reasonable scale and provides a high quality and durable alterations and additions to an existing dwelling which will assist in meeting the high demand for high quality housing

in the Annandale locality. The development is commensurate in scale and character with other properties in the streetscape, measuring three storeys and complying with the maximum building height prescribed for the site. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

2. Clause 4.6

An application to vary a development standard can be made under Clause 4.6 of LLEP 2013.

The objectives of Clause 4.6 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.

Clause 4.6(3) specifies that:

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.

Clause 4.6(4) specifies that:

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

Clause 4.6 Variation Request Report
7/236 Johnston Street, Annandale

- (b) the concurrence of the Secretary has been obtained.

These matters are considered below.

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

Paragraph 27 of the judgement states:

'Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the R1 – General Residential zone under the Leichhardt Local Environmental Plan 2013.

The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Clause 4.6 Variation Request Report
7/236 Johnston Street, Annandale

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The development is compatible with the zone objectives as it:

- The proposed alterations and additions of 7/236 Johnston Street will see a substantial increase in residential amenity that will complement the existing uses within the local residential centre of Annandale.
- The proposal increases the functional space within the dwelling, providing additional space for occupants to work from home further benefiting the community as a whole.
- Maintains entirely the existing landscaped area on site for the use and enjoyment of the existing and future residents.
- The existing façade and bulk of the dwelling is to be largely maintained so to maintain the character, style and orientation of the dwelling.

The variation to the landscaped area and site coverage does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

'The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.'

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the landscaped area controls as specified in Clause 4.3A are:

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

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7/236 Johnston Street, Annandale

(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

The variation is supportable in relation to the aforementioned objectives.

Objective (a) – The entirety of the existing landscaped area is to remain as existing on site. As such, substantial tree planting and sufficient space for the enjoyment of the residents is still completely achievable on site.

Objective (b) – The landscaped area of the site is being completely maintained.

Objective (c) – As the existing development will receive a substantial upgrade in residential amenity with addition of useable attic space, as such the overall bulk and aesthetic qualities will remain largely as existing. The development results in no unreasonable adverse impacts on adjoining properties. The development does not impact any neighbouring residential developments in relation to solar access or privacy. There is no view loss impact. Subsequently the development does not detract from the desired future character of the locality.

Objective (d) – The proposal only involves alterations to the attic space and as such there the site will maintain its ability to retain and absorb surface drainage water, ensuring the maintenance of the ecologically sustainable development.

Objective (e) – The existing dwelling already contains an attic space; the alterations and addition of a dormer window will have a minimal impact on the overall site density. As such, the site will maintain its current bulk and general appearance from the street.

Objective (f) – The proposal will not alter the existing building footprint. As such, the existing landscaped area and private open space is to remain as existing.

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *Four2Give Pty Ltd v Ashfield Council [2015]* NSELEC 1009 cases, by Commissioner Morris in *Mecone Pty Limited v Waverley Council [2015]* NSWLEC 1312 and by Commissioner Tuor in *Moskovich v Waverley Council [2016]* NSWLEC 1015. This approach has recently been upheld in the case of *Micaul Holdings Pty Limited v Randwick City Council [2015]* NSWLEC 1386. An appeal on a point of law against this decision by Randwick Council was dismissed

by Commissioner Morris on 19 February 2016: *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

In the decision of *Wehbe vs Pittwater Council*, Preston CJ established the five ways in which an objection has been well founded and that approval of the objection may be consistent with the aims of the policy:

- 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- 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.'

It is noted that each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in each case. Therefore, not all tests need to be met.

Test	Comment
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard	Yes — The development meets the objectives of the development standard demonstrated in part 5 of this document.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary	Not applicable — The purpose of the standard is relevant.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the	Not applicable — the development standards of landscaped area cover a wide area and whilst they are not appropriate to this site, they are

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standard and hence compliance with the standard is unnecessary and unreasonable	appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.'	Not applicable — The zoning of the site is not considered to be inappropriate.

Application of the above tests thus demonstrate that strict numerical compliance is unreasonable and unnecessary for this proposal. The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide an increase in residential amenity in a manner which meets the objectives of applicable controls. The residential development over its economic life is consistent with the promotion and coordination of the orderly use and development of land.

8. Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

The development has been designed to complement the existing scale and character of surrounding development. The height and building envelope of the building is compliant with LEP and DCP controls.

Clause 4.6 Variation Request Report
7/236 Johnston Street, Annandale

The proposal does not seek to alter the existing height and overall scale of the development. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

9. Conclusion

The proposal seeks a variation to the landscaped area development standard prescribed in Clause 4.3A of Leichhardt Local Environmental Plan 2013.

This submission is considered to adequately address the matters required by Clause 4.6. The proposal meets the assessment criteria set out in Clause 4.6 (3) (a) and (b) and (4) (a). As demonstrated, strict compliance with the prescribed landscaped area development standard is unreasonable and unnecessary in the circumstances of the case. The proposal is in the public interest because it is consistent with the objectives of the R1 - General Residential zone and the objectives for landscaped area standard. There are thus sufficient environmental planning grounds to justify the non-compliance.



Mathew Fortunato
Town Planner
Bachelor of Architecture and Environments (USYD)

Attachment D – Statement of Heritage Significance



Development Application
HERITAGE IMPACT STATEMENT

Alterations and Additions to Existing Dwelling House

7/236 Johnston Street, Annandale

October 2020

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PROJECT DETAILS

Client: Mr Tadas Marininas
Subject land: 7/236 Johnston Street, Annandale
Lot Description: 7/SP15329
Proposed development: Alterations and additions to existing dwelling house.

The report is prepared by Emma Rogerson
Bachelor of Architecture and Environments (USYD)

The report is reviewed by Crystal Pan
Bachelor of Architecture (UTS)

Project Code: J000449

I certify that the contents of the Heritage Impact Statement to the best of my knowledge, has been prepared as follows:

- In accordance with *Statements of Heritage Impact* and *Assessing Heritage Significance* published by the Heritage Branch of the NSW Office of Environment and Heritage
- In accordance with the principles contained in the most recent edition of The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance.
- To the best of my knowledge the information contained in this report is neither false nor misleading.

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1.0 INTRODUCTION

This Heritage Impact Statement has been prepared for Mr Tadas Marinaris to accompany a Development Application (DA) to Inner West Council for house alterations and additions at 7/236 Johnston Street, Annandale.

More specifically, the proposed development comprises of alterations and additions to the attic level of the dwelling. A dormer with skylights will be constructed, with the attic floor now containing a bathroom and walk in robe.

Works to the site within a Heritage Conservation Area (HCA) are being undertaken because they will provide an additional bathroom and wardrobe to further cater to the lifestyle of the residents. The bathroom and wardrobe are also easily accessible from the attic bedroom, allowing increased amenity of the site.

The purpose of this report is to analyse the heritage impact of the proposed developments on the development site, identified as a site within a Heritage Conservation Area (HCA), and adjacent to heritage item. Specifically, the Annandale Heritage Conservation Area, and heritage item, "Street Trees – Brush Box".

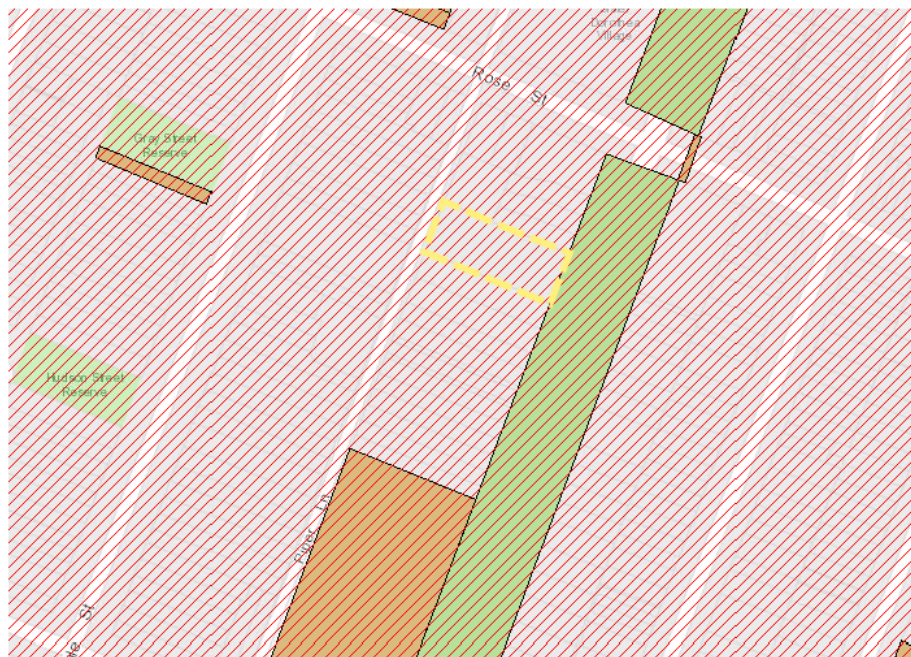


Figure 1 – Heritage Map (NSW Planning Portal)

This Statement provides an overview of the proposed development, and addresses the relevant heritage controls, including the NSW Assessing Heritage Significance Guidelines, Leichardt Local Environmental Plan 2013 (LLEP 2013) and Leichardt Development Control Plan 2013 (LDCP 2013).

The site was inspected and photographed by the author of this report in October 2020. The inspection was undertaken as a visual study only. The Statement does not contain an archaeological assessment.

This Statement only addresses the impacts of the proposal on the potential heritage value of the site, neighbouring heritage items, and the surrounding neighbourhood. Statutory planning considerations, including but limited to, land use permissibility, building height, floor space ratio, site coverage, overshadowing and view privacy, landscaping, stormwater, and other non-heritage related matters are not taken into consideration in this statement.

2.0 THE SITE AND ITS CONTEXT

2.1 Site Analysis

The site is located at 7/236 Johnston Street, Annandale and is legally described Lot 7 in Strata Plan 15329. The site is located on the western side of Johnston Street, between Rose Street and Piper Street. The land is zoned R1 General Residential under the provision of Leichardt Local Environmental Plan 2013 (LLEP 2013).

The site is rectangular with an approximate total area of 1051 square metres, with a 20-metre street frontage to Johnston Street. The northern and southern side boundaries measure 52 metres and the rear boundary measures 20 metres.

The site currently contains a three-storey brick townhouse building, which belongs to a row of townhouses. the rear of the site lies adjoined by Piper Lane, while the front of the site is adjacent to the heritage item, 'Street Trees-Brush Bush'. The site adjoins a two-storey rendered dwelling and a two-storey brick dwelling to the south. The site adjoins a one storey rendered dwelling with a swimming pool to the north. Vehicular access is available from Johnston Street.

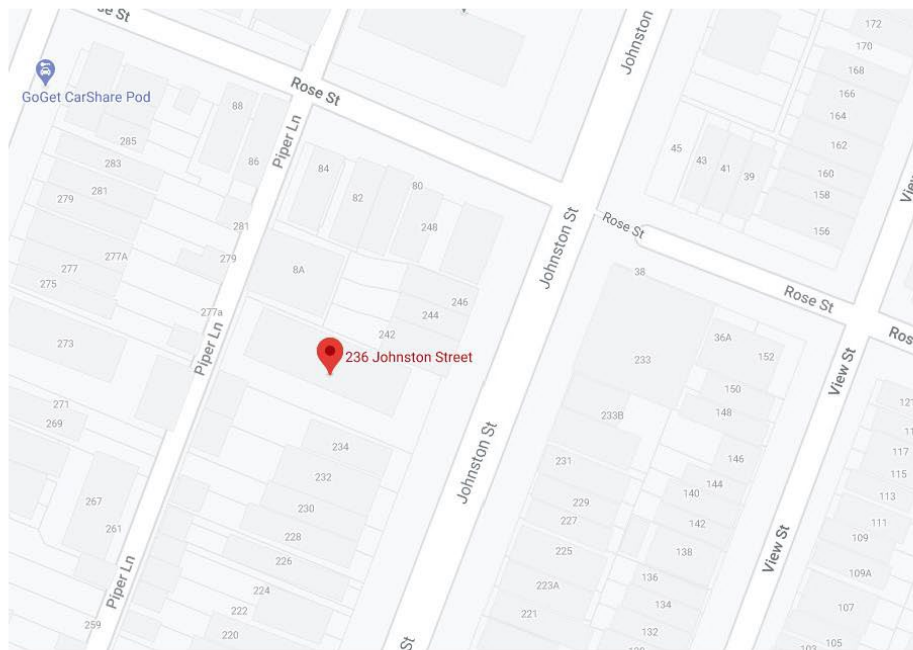


Figure 2 – Site locality map (Google Maps)



Figure 3 – Aerial map (SIX Maps)

2.2 Photographs

The following photographs provide a visual survey of the site and setting, including detail on the structural and safety concerns currently present on site.



Figure 5 – Front of subject dwelling (Google Maps, 2019)

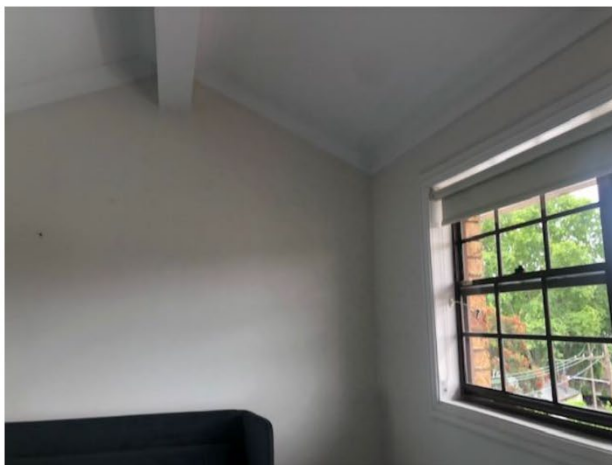


Figure 6 – Existing attic space (Corona Projects 2020)

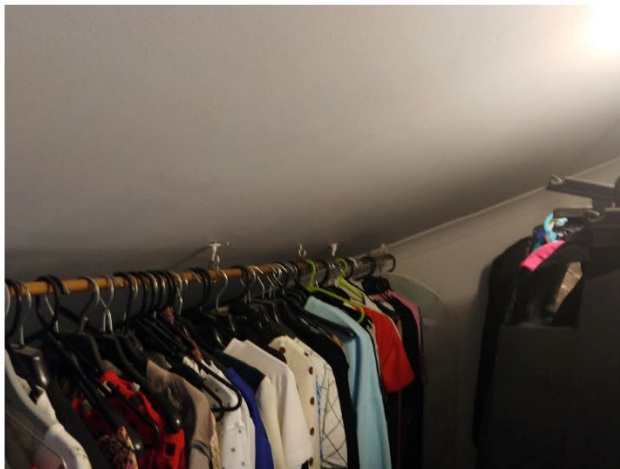


Figure 7 – Existing attic void space (Corona Projects 2020)



Figure 8 – Heritage item – Street Trees – Brush Box (Google Maps, 2019)

3.0 PROPOSED DEVELOPMENT

The Development Application proposal comprises of the alterations and additions to the attic level of the existing dwelling. A dormer with skylights will be placed to the rear of the new roof, with the attic floor now also containing a bathroom and walk in robe.

Please refer to the architectural plans prepared by Rūta Goštautienė.

4.0 HERITAGE STATUS

4.1 Listings

The site is identified to be within the 'C1 Annandale Heritage Conservation Area'. Table 1 provides this in more detail.

Table 1: Applicable heritage listings and statutory requirements

Name	Heritage listing	Heritage significance	Policy requirements
Annandale Heritage Conservation Area - (C1)	Leichardt Local Environmental Plan 2013 (LLEP 2013)	Local	Schedule 5 Environmental Heritage, LLEP 2013 (statutory); LCDCP 2013
Street trees – Brush Box	Leichardt Local Environmental Plan 2013 (LLEP 2013)	Local	Schedule 5 Environmental Heritage, LLEP 2013 (statutory); LCDCP 2013

4.2 Statement of Significance - Annandale Heritage Conservation Area

- *One of a number of conservation areas that collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area is important as a well-planned nineteenth-century suburb, and for illustrating development particularly from 1880s–1890s, aimed initially at the middle-class market. The surviving development from this period forms the major element of its identity along with an area of 1910s–1930s development at its northern end.*
- *Demonstrates the vision of John Young, architect, engineer and property entrepreneur.*
- *Demonstrates, arguably, the best and most extensive example of the planning and architectural skills of Ferdinand Reuss, a designer of a number of Sydney's Victorian suburbs, including South Leichhardt (the Excelsior Estate) and Birchgrove.*
- *Clearly illustrates all the layers of its suburban development from 1878, through the 1880s boom and resubdivision, the 1900 slump and the appearance of industry, and the last subdivision around Kentville/Pritchard Streets to the 1930s, with the early 1880s best illustrated along Johnston and Annandale Streets.*
- *Demonstrates a close relationship between landform and the physical and social fabric of the suburb.*
- *In its now rare weatherboard buildings, it can continue to demonstrate the nature of that major construction material in the fabric of early Sydney suburbs, and the proximity of the timber yards around Rozelle Bay and their effect on the building of the suburbs of Leichhardt.*
- *Displays a fine collection of large detached Victorian Italianate boom period villas with most decorative details still intact, set in gardens.*

- *Displays fine collection of densely developed Victorian commercial buildings.*
- *Through the absence/presence of back lanes, changes in the subdivision pattern, and the range of existing buildings it illustrates the evolution of the grand plan for Annandale, in response to the market, from a suburb of middle-class villas to one of terraces and semis for tradesmen and workers.*

4.3 Assessment of Significance – Annandale Heritage Conservation Area

The subject building on site is a three-storey townhouse dwelling that was constructed circa 1980. Although the site is located within the Annandale Heritage Conservation Area, it should be noted that the subject development was built outside the growth period (1871-1891) of the area. The townhouse dwelling also does not contain an architectural heritage form that is prominent within the locality. However, attempts have been made to relate to the heritage visual aspects of the locality through certain detailing and materials such as the balustrade of the veranda.

The dwelling is strongly intact and original detailing is still retained. The subject townhouse continues to visually relate to the row of townhouses it belongs to on 236 Johnston Street.

4.4 Statement of Significance – Street Trees – Brush Box

Johnston Street streetscape has local historic and aesthetic significance as it was created by Architect and Surveyor Ferdinand Reuss who won the competition organised by the Company for the best design and subdivision layout for Annandale. The 100ft wide boulevard along the main ridge, Johnston Street, was intended to be the finest street in the Colony.

The Brushbox trees are a uniform group of plants that provide shade and beautify the street. The planter boxes and other vegetation enhance the streetscape

4.5 Assessment of Significance – Street Trees – Brush Box

The relevant heritage trees along Johnston Street are relatively well preserved, with development respecting the growth of these trees. The subject townhouse is placed at the rear of the row of townhouses, allowing minimal visual impact on the heritage itemed trees.

5.0 ASSESSMENT OF HERITAGE IMPACT

5.1 NSW Assessing Heritage Significance Manual

In accordance with the NSW Office of Environment and Heritage guidelines, an assessment based on several criteria has been undertaken.

Annandale Heritage Conservation Area

Criterion		Comment
a	Historical significance	The HCA contains historical significance through displaying Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s. This area is also historically important as a well-planned nineteenth-century suburb, and for illustrating development particularly from 1880s–1890s, aimed initially at the middle-class market.
b	Associational significance	The HCA contains associational significance through relating to John Young (architect, engineer and property entrepreneur) and Ferdinand Reuss, a designer of a number of Sydney's Victorian suburbs, including South Leichhardt (the Excelsior Estate) and Birchgrove.
c	Aesthetic significance	The HCA contains various architectural buildings such as weatherboard buildings, large detached Victorian Italianate boom period villas and Victorian style commercial buildings. A variety of subdivision patterns are also present within the HCA.
d	Social significance	The HCA contains social significance through illustrating the evolution of the grand plan for Annandale, in response to the market, from a suburb of middle-class villas to one of terraces and semis for tradesmen and workers
e	Cultural significance	The HCA is not considered to be of substantial cultural significance.
f	Rarity	The HCA is considered to be rare due to the various intact heritage architectural buildings and subdivision patterns.
g	Representativeness	The HCA represents all the layers of suburban development from 1878, through the 1880s boom and resubdivision, the 1900 slump and the appearance of industry, and the last subdivision around Kentville/Pritchard Streets to the 1930s, with the early 1880s best illustrated along Johnston and Annandale Streets.

Street Trees – Brush Box

Criterion		Comment
a	Historical significance	Johnston Street streetscape has local historic significance as it was created by Architect and Surveyor Ferdinand Reuss who won the competition organised by the Company for the best design and subdivision layout for Annandale. He created the 100ft wide

		boulevard along the main ridge, Johnston Street, which was intended to be the finest street in the Colony and encouraged the symmetrical street grid pattern.
b	Associational significance	The HCA is not considered to be of substantial associational significance.
c	Aesthetic significance	The Brushbox trees are a uniform group of plants that provide shade and beautify the street. The planter boxes and other vegetation enhance the streetscape.
d	Social significance	The HCA is not considered to be of substantial social significance.
e	Cultural significance	The HCA is not considered to be of substantial cultural significance, save for its extent of intactness which displays how earlier residents lived.
f	Rarity	The HCA is not considered to be of substantial rarity significance.
g	Representativeness	The HCA is not considered to be of substantial representative significance.

5.2 NSW Heritage Office – Statements of Heritage Impact Guideline

The impact of the proposed works has been assessed in respect to the is discussed with reference to criteria raised by the NSW Heritage Office publication, Statements of Heritage Impact (2002), in respect to **‘minor partial demolition’**, **‘minor additions’**, and **‘new development adjacent to a heritage item’**.

5.2.1 Minor partial demolition

- *Is the demolition essential for the heritage item to function?*

The demolition of the rear plane of the roof and internal partitions are necessary to allow for a bathroom and walk in robe that would best suit the lifestyles of the residents, and to provide a sympathetic design that relates to the heritage characteristics of the locality.

- *Are important features of the item affected by the demolition (e.g. fireplaces in buildings)?*

Important features of the contributory item are not affected by the demolition as the front facade of the townhouse dwelling are retained. Major detailing aspects of the townhouse dwelling will be retained.

- *Is the resolution to partially demolish sympathetic to the heritage significance of the item?*

The proposed alterations and additions to the site ensure to utilise a suitable design and scale that reflect the heritage characteristics of the site. Similar materials and colour scheme have been applied to respect and sympathise with the heritage aesthetics of the locality.

- *If the partial demolition is a result of the condition of the fabric, is it certain that the fabric cannot be repaired?*

The partial demolition is not the result of the condition of the fabric.

5.2.2 Minor Additions

- *How is the impact of the addition on the heritage significance of the item to be minimised?*

The impact of the addition will be minimised through applying a sensible scale to the additions. The new roof and dormer will be of a minimal scale and will ensure to not dominate the streetscape. The suitable design would also minimise the impact of the addition through incorporating visual heritage aspects of the locality. Similar materials and colour scheme will also be utilised to relate to the existing dwelling and site.

- *Can the additional area be located within an existing structure? If no, why not?*

The new bathroom and walk in robe will be located within the existing void space of the attic. The purpose of the new roof is to increase the amenity of the attic space and ensure that there is adequate internal height to utilise the new uses of the current void space.

- *Will the additions visually dominate the heritage item?*

The additions will not visually dominate the contributory item through applying a design and scale that sympathises with the existing structure. Materials and colour scheme of a similar nature to the dwelling will be applied to relate to the streetscape and site.

- *Is the addition sited on any known, or potentially significant archaeological deposits? If so, have alternative positions for the additions been considered?*

The additions are not sited on any known, or potentially significant archaeological deposits.

- *Are the additions sympathetic to the heritage item? In what way (e.g. form, proportions, design)?*

The additions are sympathetic to the contributory item through utilising a design and scale that does not dominate the site or streetscape. The proposed materials and colour scheme will ensure to relate to the existing dwelling and enhance the visual heritage aspects of the site.

5.2.3 New Development Adjacent to a Heritage Item

- *How is the impact of the new development on the heritage significance of the item or area to be minimised?*

Due to the subject dwelling being located to the rear of the row of townhouses, the proposal will minimally impact the streetscape and the adjacent heritage item. However, major heritage features of

the front façade have been maintained, while utilising a new roof that sympathises with the heritage characteristics of the locality.

Why is the new development required to be adjacent to a heritage item?

The townhouse dwelling is an existing development adjacent to the HCA. The proposed works will incorporate sympathetic detailing and design to respect the heritage characteristics of the locality and the adjacent heritage trees.

How does the curtilage allowed around the heritage item contribute to the retention of its heritage significance?

The subject townhouse is located towards the rear of the row of townhouses. Due to the heritage item being placed along the primary street front, the proposal will respect the curtilage of the significant trees.

How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects?

The proposed roof and dormer utilise an appropriate design and scale in order to ensure that views to and from the adjacent contributory buildings are not affected.

Is the development sited on any known, or potentially significant archaeological deposits? If so, have alternative sites been considered? Why were they rejected?

The proposal is not sited on any known, or potentially significant archaeological deposits.

Is the new development sympathetic to the heritage item? In what way (e.g. form, siting, proportions, design)?

The new roof design is sympathetic to the adjacent HCA through incorporating appropriate detailing and design. The scale and location of the dormer on the roof ensures to respect the streetscape. The internal partitions proposed for the new layout will utilise suitable materials and colour scheme to relate to the existing visual features of the dwelling.

Will the additions visually dominate the heritage item? How has this been minimised?

The new roof design will not dominate the adjacent contributory item through utilising sympathetic visual features that relate to the heritage characteristics of the locality. Appropriate materials and colour scheme are applied to not dominate the site or streetscape. All other physical works are internal, thus not affecting the surrounding dwellings.

Will the public, and users of the item, still be able to view and appreciate its significance?

The public will still be able to appreciate the significance of the adjacent contributory item through the sympathetic characteristics of the proposal. A suitable scale will be applied to the dormers to not detract the visual quality of the streetscape.

5.3 Leichardt Local Environmental Plan 2013

The table below provides an assessment of the proposal against the objectives of Clause 5.10 Heritage conservation of the LLEP 2013.

Objective		Comment
a	To conserve the environmental heritage of Leichardt.	The environmental heritage of Leichardt is conserved by the proposal is sympathetic to the contributory item and locality, and is consistent with the character of the area as the streetscape view is entirely retained.
b	To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,	
c	To conserve archaeological sites	Not applicable to this development
d	To conserve aboriginal objects and Aboriginal places of heritage significance	Not applicable to this development

5.4 Leichardt Development Control Plan 2013

The table below provides an assessment of the proposal against the controls under the LDCP 2013.

Control		Comment	Compliance
Part C – Section 1 - Place			
C1.4 Heritage Conservation Areas and Heritage Items			
1	Development maintains the characteristics and is consistent with the objectives and controls for the relevant building type contained in Appendix B ± Building Typologies of this Development Control Plan.	The subject townhouse contains an architectural form that is not significant within the HCA. However, the proposed works ensure to sympathise with surrounding heritage items through a suitable design and size.	Yes
2	The fabric of an existing building is to be the subject of appropriate conservation practices including: a. retention of original detail and finishes such as: i. original face brick which should not be painted over or rendered; ii. original decorative joinery and iron work which is not to be removed; b. conservation of original elements; c. reconstruction or restoration of original elements where deemed appropriate; d. retention of the original cladding material of original roofs where viable; e. consideration of suitable replacement materials should be based on original material, and where a property is part of a group or row,	Significant heritage aspects and detailing of the development will be retained. The proposed works will utilise appropriate materials to best sympathise with the site.	Yes

Control		Comment	Compliance
	replacement materials should have regard to the integrity of the group.		
3	Development of dwellings within Heritage Conservation Areas must: a. not include the demolition of the internal walls and roof form, including any existing chimneys, of the front two rooms of the dwelling; b. retain the major form, scale and materials of the existing structure as described in (a); c. be for a rear addition which does not dominate the existing building or substantially change the relationship of the building to the street when viewed from the street; and d. retain significant, established gardens and plantings including early fences.	Although various internal partitions and the rear plane of the existing roof will be demolished, it should be noted that these items contribute minimally to the heritage significance of the site. The new roof design and dormer will allow the site to further sympathise with the surrounding heritage contributory items. Major heritage aspects of the site will be retained. The proposed works are located towards the rear of the site to minimally disrupt the streetscape.	Acceptable upon merit.
5	Consideration of roofing materials for additions should have regard for compatibility with the original roof, as well as for the context of the setting (such as if a dwelling is part of a group of similar dwellings).	The new roof will utilise roofing materials similar to the existing and neighbouring townhouses.	Yes
6	Within Heritage Conservation Areas, whole roof forms should be retained where possible and roofs of additions should be subservient to the main roof (in scale, form, location and materials). Changes to the form of the existing roof or extension of the ridge cannot be supported.	The design of the new rear plane of the roof will be of a similar nature to the existing roof and will utilise a suitable form and design. The dormer is appropriately located and does not dominate the site visually.	Acceptable upon merit.

6.0 CONSERVATION MANAGEMENT TECHNIQUES

The significance of the Annandale Heritage Conservation Area is high. As such, the following conservation policies and management techniques, necessary to maintain the significance of the subject site at 7/236 Johnston Street, Annandale should be followed:

1. Archival Recording

The current house be photographically archivally recorded in accordance with the Heritage Division guidelines for digital capture and the record lodged with a suitable archive (Leichardt Library).

7.0 CONCLUSION

The subject site at 7/236 Johnston Street, Annandale is a three-storey townhouse dwelling with an attic level. The site is located within the Annandale Heritage Conservation Area and adjacent to the heritage item, "Street Trees- Brush Box".

The proposal is sympathetic to the contributory item and locality, and is consistent with the character of the area as the streetscape view is entirely retained. The minor and changes are designed with appropriate scale, colour, detailing and finishes to maintain the integrity of the nearby contributory items. The proposed development is carefully crafted to complement the contributory items next door too and contribute to their amenity and visual appearance. It will not bring any detrimental impact to the Heritage significance of the site or wider locality, and therefore the development is considered to be acceptable at location.