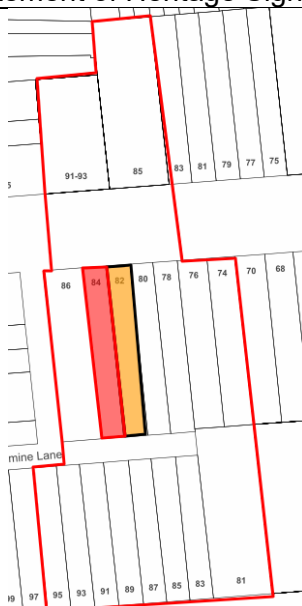




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0292
Address	82 Marlborough Street LEICHHARDT NSW 2040
Proposal	New double garage and studio at rear of site and associated works
Date of Lodgement	22 April 2022
Applicant	Mr Peter D Salt
Owner	Mr Peter D Salt Mrs Rebecca ME Salt
Number of Submissions	Initial: 4
Value of works	\$128,500.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Departure with Floor Space Ratio development standard
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 
Notified Area 	Supporters 

1. Executive Summary

This report is an assessment of the application submitted to Council for new double garage and studio above at the rear of site and associated works at 82 Marlborough Street Leichhardt.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Departure with Floor Space Ratio development standard pursuant to the Leichhardt Local Environmental Plan 2013
- Visual Bulk and Scale

The departure from the Floor Space Ratio (FSR) development standard has been assessed to be acceptable as the proposal meets all heads of consideration under the provisions of Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* including the relevant zone and development standard objectives.

The proposal is otherwise generally compliant with the other planning controls applicable to the development.

Accordingly, the application is recommended for approval, subject to recommended conditions.

2. Proposal

The proposal seeks the construction of a new double garage and studio above at the rear of the site adjoining Currymine Lane with associated landscaped works to the rear. In addition, a new pergola and privacy screens are proposed to service the stair connection the rear yard to the garage and studio above.

3. Site Description

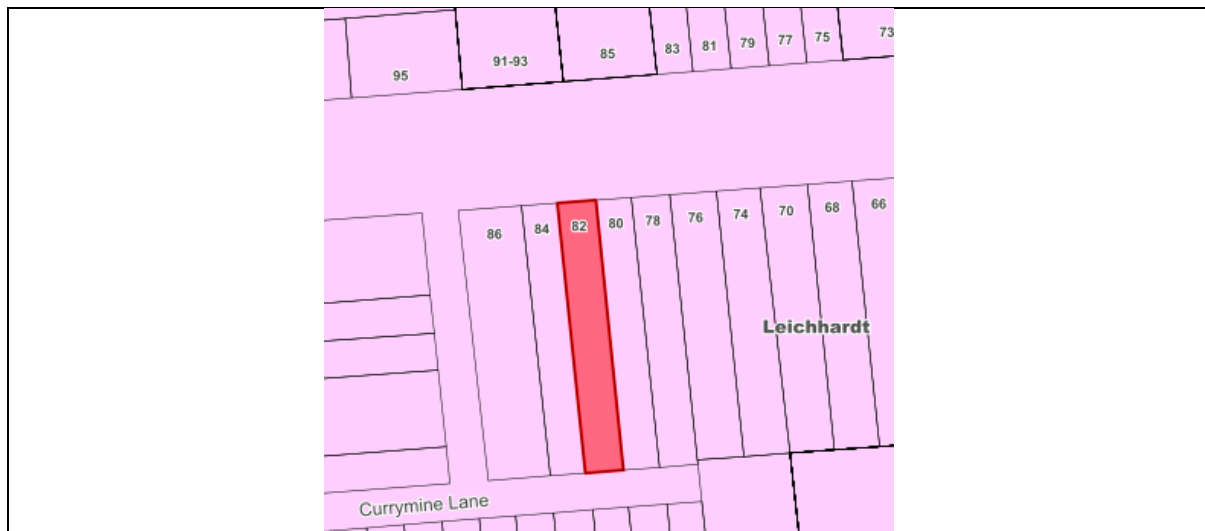
The subject site is located on the southern side of Marlborough Street. The site consists of one (1) allotment and is generally rectangular in shape with a total area of 267.4 sqm.

The site has a frontage to Marlborough Street of 6.095 metres and a rear lane frontage of 6.095 metres to Currymine Lane.

The site supports two-storey dwelling house.

The adjoining properties to the east and west support single storey dwellings.

The property is located within a heritage conservation area.



Zoning map indicating location within the R1 – General Residential zone

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/2021/0221	New double garage and studio at rear of site	Advice Letter Issued – 9/7/2021
M/2019/117	Modification of Development Consent D/2018/100 which seeks various internal and external changes, including: alterations to internal layout and adjustment to openings.	Approved – 17/7/2019
D/2018/100	Alteration and additions to existing dwelling, and associated works, including general landscaping, altered front fence, and new hardstand and associated access to rear lane.	Approved – 17/5/2018
PRED/2017/233	Ground and first floor alterations and additions to existing residence, and associated works, including new on-site car parking provision to replace existing.	Advice Letter Issued – 27/10/2017

Surrounding properties**84 Marlborough Street**

Application	Proposal	Decision & Date
D/2011/2	Demolition of existing carport and laundry at rear of site and replacement with new garage, laundry and studio	Approved – 3/2/2011

80 Marlborough Street

Application	Proposal	Decision & Date
M/2009/17	Section 96 application to modify D/2005/206 which approved alterations and additions to the dwelling and new garage. Modifications entail glazing to western wall within courtyard, removal of northern wall on garage, relocation of skylights to above kitchen and internal amendments.	Approved – 7/3/2009
D/2005/206	Alterations and additions to existing dwelling. Demolition of existing garage and construction of new garage.	Approved – 23/11/2005

4(b) Application history

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

Date	Discussion / Letter / Additional Information
10/11/2022	Revised Cost Summary assessment provided
9/11/2022	Applicant emailed Council a copy of the BASIX Certificate.
09/11/2022	Revised Cost Summary assessment requested
8/11/2022	Council requested a BASIX Certificate is to be provided.
7/11/2022	Applicant provided updated Elevation plans that included the east and west elevation.
4/11/2022	Council emailed the applicant advising that the east and west elevation plans are missing and are required to be submitted.
11/9/2022	Applicant provided updated C4.6 Variation to FSR
18/8/2022	Council advised the applicant that the updated C4.6 is not well founded and that an updated C4.6 Variation request to FSR exceedance is required to be submitted.
4/8/2022	Applicant submitted an updated C4.6 Variation to FSR as per Council's request.
14/7/2022	Council emailed the applicant requesting an updated C4.6 Variation request to FSR.

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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

- *Leichhardt Local Environmental Plan 2013.*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

“(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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

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

5(a)(ii) *Leichhardt Local Environment Plan 2013 (Leichhardt LEP 2013)*

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of Floor Space Ratio and Site Area
- Clause 4.6 - Exceptions to Development Standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater Management
- Clause 6.8 - Development in Areas Subject to Aircraft Noise

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

Standard	Proposal	Non compliance	Complies
Landscape Area Minimum permissible: 20%	20%	N/A	Yes
Site Coverage Maximum permissible: 60%	58.58%	N/A	Yes
Floor Space Ratio Maximum permissible: 0.7 or 187.18sqm	0.88:1 or 235.11sqm	47.93sqm or 25.61%	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the *Leichhardt Local Environment Plan 2013* by 25.61% or 47.93sqm.

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 *Leichhardt Local Environment Plan 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Leichhardt Local Environment Plan 2013* justifying the proposed contravention of the development standard which is as follows:

- *In order to avoid duplication, reference is made to the environmental planning grounds in relation to whether the proposal achieves the objectives to the standard, particularly in relation to the bulk, form and scale compatible with desired future character of the locality. In this regard, the proposal is:*
 - i. *compliant with the site coverage requirement;*
 - ii. *compliant with the landscaped area requirement;*
 - iii. *generally consistent with the Council's building siting controls in relation to building location zone;*
- *Approximately 50% of the non-compliance is attributed to the proposed double garage. The proposed garage and it's siting are consistent with the prevailing pattern of development in the locality. The remaining 50% of the noncompliance is attributed to the first-floor studio.*
- *The proposal provides a form of development that is immediately adjacent to a laneway boundary. Therefore, it is required to be assessed in accordance with the C1.18, Laneways of the DCP.*

- *The proposal has been designed in accordance with the DCP controls for medium lanes. The specific controls are aimed to provide an acceptable building envelope in rear lanes. The floor space emanating from the envelope is numerically inconsequential. Nonetheless, despite not complying with the standard, the proposal performs well from an environmental perspective and in particular satisfies the objectives of the control as follows:*

O1 Development:

- a) respects the existing and desired future use, form and character of the laneway consistent with the laneway hierarchy as shown in Table C11 Laneway hierarchy;*
 - b) achieves an appropriate level of amenity, access, security and landscaping; and*
 - c) enhances the permeability of the neighbourhood by providing direct, safe and attractive pathways for vehicles, pedestrians and cyclists*
- *The proposal is in keeping with the bulk, scale and mass of surrounding development.*
 - *The proposal provides for an excellent amenity of the future occupants of the development consistent with the Aims of the Leichhardt LEP.*
 - *The proposal does not result in any unreasonable amenity impacts on adjoining and nearby residential properties.*

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 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 standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the LR1 zone, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- The development will continue to provide for the housing needs of the community where the works will improve the amenity of the existing dwelling for occupants;
- The proposal retains the existing dwelling house and low density development and thus will continue to provide a variety of housing types in the LGA;
- The proposal will improve opportunity to work from home;
- Will be compatible with the character, style, orientation and pattern of surrounding buildings and broader streetscape context; and
- Will not adversely impact upon the amenity of neighbouring properties.

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 *Leichhardt Local Environment Plan 2013* for the following reasons:

- The development will be compatible with the character, style, orientation and pattern of surrounding buildings and broader streetscape context where the garage/studio are oriented towards the rear of the site and not visible from the main streetscape;
- The proposal will not adversely impact upon the amenity of neighbouring properties, with particular regard to bulk and scale, visual and acoustic privacy and solar access
- The development provides sufficient landscaped areas that are balanced with the proposed built form.

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 *Leichhardt Local Environment Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard, and it is recommended that the Clause 4.6 exception be granted.

Clause 5.10 - Heritage Conservation

The subject property at 82 Marlborough Street, Leichhardt, is a contributory dwelling located within the West Leichhardt Distinctive Neighbourhood. *Clause 5.10: Heritage Conservation* from the *Leichhardt LEP 2013* and *Parts C1.18: Laneways* and *C.2.2.3.4: West Leichhardt Distinctive Neighbourhood* from the Leichhardt DCP 2013 applies to the proposal.

The drawings prepared by CJR Achitecture, dated 3 June 2021, were reviewed by Council's Heritage Specialist as part of this assessment who provided the following comments.

The proposal includes a new double garage and studio over at rear of site and associated works.

Pre-DA advice was sought for the proposed New double garage and studio at rear of site at 82 Marlborough Street, Leichhardt (PDA/2021/0221). The application was referred to council's heritage specialist who supported the proposal, subject to the amendments below. Additional commentary is provided in respect to the drawings submitted with the DA.

1. *It is recommended that the design be amended to incorporate the following design changes:*

- a. *The form of the proposed building be amended in accordance with the following:*

- i. *a maximum side wall height of 3.6m;*
- ii. *a 45° building envelope taken from the top of the side wall; and*
- iii. *a maximum roof height of 6m.*

Comment: *The proposed wall height is 4.1m. This is generally acceptable as the overall height of the structure is proposed to be 6m.*

- b. *A skillion type dormer may be considered providing they are designed in accordance with the following:*

- i. *set a minimum 300mm below the ridgeline;*
- ii. *set a minimum of 500mm from the side walls; and*
- iii. *set a minimum of 200mm up from the rear wall plate*

Comment: *A skillion dormer has not been included.*

- c. *Large expanses of glass are not to be used in areas visible from the public domain (the rear elevation). Openings must be vertically proportioned, employing traditional design (timber sash) and materials (timber frame).*

Comment: *Windows to the south elevation are vertically proportioned. The Finishes / Material Sample Board specifies timber framed windows to Currymine Lane.*

2. *A colours and materials schedule will need to be submitted for consideration and in accordance with the following:*

- a. *the proposed wall cladding is to be replaced with face brickwork, similar to complementary brickwork in the laneway for the construction of the walls of the building. Lightweight materials, such as horizontally laid weatherboard or FC cladding may be considered.*
- b. *A pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby"; and*
- c. *Greys and blacks are not acceptable and must be avoided. Light, warm, earthy, tones are to be used.*

Comment: The Finishes / Material Sample Board specifies “Gull Grey” for the roofing. Though not specified on the Colorbond website, the example provided is generally acceptable as it is a shade or 2 lighter than Colorbond colours “Windspray” or “Wallaby”. Other colours and materials proposed are acceptable.

In summary, the proposal is acceptable from a heritage perspective as it will not detract from desired future character of the West Leichhardt Distinctive Neighbourhood and is in accordance with Clause 5.10 Objectives 1(a) and (b) in the *Leichhardt LEP 2013* and the relevant objectives and controls in the Leichhardt DCP 2013. The proposal is not visible from the primary street frontage and is considered to be appropriately scaled and its form is responsive to its laneway context.

5(a)(iii) Inner West Local Environmental Plan 2022

The *Inner West Local Environment Plan 2022 (IWLEP 2022)* was gazetted on 12 August 2022. As per Section 1.8A – Savings Provisions, of this plan, as the subject Development Application was made before the commencement of this Plan, the application is to be determined as if the *IWLEP 2022* had not commenced.

Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 requires consideration of any Environmental Planning Instrument (EPI), and (1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. At the time the subject application was lodged on 15 May 2022 the IWLEP, known as Draft Inner West Local Environmental Plan 2020, was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Changes to the Zone Objectives which 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 provide residential development that maintains the character of built and natural features in the surrounding area.

The proposed development raises no issues that will be contrary to the above objectives.

The proposal is considered acceptable with regard to the Inner West Local Environmental Plan 2022 (previously known as the Draft Inner West Local Environmental Plan 2020).

5(b) Draft Environmental Planning Instruments

There are no draft Environmental Planning Instruments relevant to the proposal.

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 (Leichhardt DCP 2013).

Leichhardt DCP 2013	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	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion under Clause 5.10 of the <i>Leichhardt LEP 2013</i>
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	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes - subject to standard parking conditions as recommended by Council's Engineers which are included in the recommendation
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes – see discussion
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	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see discussion

C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	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
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	
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	N/A
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
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
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.14 Tree Management

A site inspection undertaken has revealed that an orange tree is located to the rear of the property near the eastern boundary fence. The submitted plans or the survey plans submitted as part of this application has failed to depict this fruit tree, however, it is noted that the existing

orange tree is being retained. In addition, it is noted under C7 of this Provision that the removal of a fruit tree can be undertaken as a tree minor works request.

As such, the proposal will not result in adverse impacts to any significant trees on the subject site.

C1.18 Laneways

Currymine Lane has a width of approximately 6m which classifies it as a Medium Lane in the Laneway Hierarchy criteria prescribed in this clause.

Control C6 of this Clause requires that structures fronting on Medium Lanes have maximum side wall heights of 3.6m, provide a 45 degree building envelope taken from the top of the side walls (i.e. have a gable roof), and have a maximum height of 6m.

The studio will have a gable roof springing from side wall heights of 4.2m – 4.3m and will achieve a maximum height of 6m. The non-compliance with the maximum wall height is considered acceptable from both a planning and heritage perspective as the development will result in acceptable visual bulk and scale and streetscape impacts on the Heritage Conservation Area.

In addition to the above, design amendments as per Council's PREDA advice letter dated 9/7/2021 have been carried out and the proposal generally complies with the relevant laneway controls.

C3.2 Site Layout and Building Design

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 studio above the garage:

Rear First Floor Studio

Elevation	Wall height (m)	Required setback (m)	Proposed setback (m)	Complies
East	4.3 - 5	0.8 – 1.2	0	No
West	4.2 – 4.8	0.8 – 1.1	0	No

As noted in the table above, the proposed rear studio will not comply with the Side Boundary Setback Graph to both the eastern and western boundaries.

Pursuant to Clause C3.2 of the Leichhardt DCP 2013, where a proposal seeks a variation to the Side Boundary Setbacks Graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the Leichhardt DCP 2013 and complies with streetscape and desired future character controls.

Comment: The proposal raises no issues in this regard.

- The pattern of development is not adversely compromised.

Comment: The proposed footprint, location and height, form and scale of the proposed works will not compromise the pattern of development within the area.

- The bulk and scale of the development has been minimised and is acceptable.

Comment: The proposed studio will be located immediately adjacent to adjoining built structures and has been provided with low (1.645m) side wall springing points with a gable roof (pitching from the sides) at the first floor to minimise bulk and scale impacts. Consequently, the proposal is of an acceptable scale and massing that complies with the maximum allowed 6m building height under the laneway controls and will not result in unreasonable visual impacts when viewed from adjoining properties.

However, the application has undergone a Pre-DA process where design amendments were recommended to the applicant so as to delete the unroofed one and half storey high pergola from future plans as it does not appear to serve an integral purpose and results in unnecessary visual bulk and scale when viewed from the rear yards of the adjoining neighbouring properties. As such, a design condition to delete this unroofed pergola is included in the recommendation to minimise visual bulk and scale impacts on adjoining properties.

- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.

Comment: Having regard to the orientation of the site the proposal will not generate additional shadows to the adjoining neighbouring properties, new windows will comply with the relevant privacy controls and will result in no view loss impacts to significant landmarks when viewed from adjoining properties.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The proposal raises no issues in this regard.

In light of the above, and in consideration of the development's impact upon the streetscape and amenity impacts for adjoining properties, the proposal is considered to be satisfactory with respect to the provisions and objectives of Part C3.2 of the Leichhardt DCP 2013.

C3.11 Visual Privacy

As the proposed rear studio above the garage provides new windows to the north and southern elevation, the following controls are applicable to the application.

- ***C1 - Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.***
 - i. *erection of screens and fencing to limit sightlines including dividing fences, privacy screens, projecting blade screens.*

- **C8** - *Glazing to proposed bathrooms must be designed to ensure that they provide privacy to the subject bathroom, through the provision of obscure glazing or screening. Note: The privacy of bathrooms is not protected under the controls relating to development on surrounding properties.*

As the proposed Window 3 on the northern elevation will be servicing a new bathroom and is opaque, it will comply with Control 8 as mentioned above. Window 2, also on the northern elevation will have minimal privacy impacts to the adjoining properties as it services the stairwell.

Windows 4 and 5 on the southern elevation will have minimal privacy impacts to the surrounding neighbouring properties and will comply with Control 1 of this provision as it is separated by Currymine Lane.

It is also noted that privacy screens are proposed to the eastern and northern end of the new stairs connecting the rear yard to the proposed garage and studio above to minimise overlooking impacts to the rear yard of No. 84 Marlborough Street.

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 the Community Engagement Framework for a period of 14 days to surrounding properties.

Four (4) submissions were received in response to the initial notification. Three (3) out of the 4 submissions received were from the same objector.

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

- The increase in visual bulk from the development – see C1.18 Laneway and C3.2 Site Layout and Building Design – In summary, the proposed rear garage studio is considered acceptable on merit.
- Privacy implications – See C3.11 Visual Privacy – In summary, the proposed new garage and studio above will comply with the applicable privacy controls. Concerns raised regarding the approved windows to the main dwelling overlooking into the rear yard of No. 84 Marlborough Street have been addressed under D/2018/100.
- Proposal exceeding the maximum allowed FSR – See Section 5(a)(ii) Clause 4.6 – In summary, for the reasons and justification provided in the applicants C4.6 variation documentation, the proposed FSR variation is considered acceptable.

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 issues raised in those referrals have been discussed in section 5 above.

Engineer -Acceptable subject to conditions

Heritage - Acceptable as lodged

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$642.50 would be required for the development under the following plan:

- Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020

A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

The proposed development (subject to amendments included in the recommendation), 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*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio development 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/2022/0292 for a new double garage and studio above at the rear of site and associated works at 82 Marlborough Street, LEICHHARDT 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
DA01 G	Proposed Site/Site Analysis Plan	12/4/22	cjr architecture
DA 02 G	Proposed Ground Floor Plan	12/4/22	cjr architecture
DA03 G	Proposed First Floor Plan	12/4/22	cjr architecture
DA04 G	Proposed Roof Plan	12/4/22	cjr architecture
DA05 H	Proposed Elevations & Sections	6/11/22	cjr architecture
DA10 G	Finishes / Materials Sample Board	12/4/22	cjr architecture
C1 Rev C	Concept Plan For Approval	8/4/22	Nastasi & Associates
C2 Rev C	Concept Plan For Approval	8/4/22	Nastasi & Associates
C3 Rev C	Concept Plan For Approval	8/4/22	Nastasi & Associates
C4 Rev C	Concept Plan For Approval	8/4/22	Nastasi & Associates
A480054	BASIX Certificate	9/11/2022	Craig Ridgewell

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The proposed rear unroofed pergola is to be deleted.

FEES

3. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note: Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$642.50

***Indexing of the Section 7.12 contribution payment:**

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit*

card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)). It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

4. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the 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:	Min \$2,800.00
Inspection Fee:	\$350.00

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.

5. Long Service Levy

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

GENERAL CONDITIONS

6. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

7. Stormwater Drainage System – Simple

Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, 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.

An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.

8. 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.

9. 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.

10. 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.

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

12. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

13. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the garages at the rear of Nos. 80 and 84 Marlborough Street, Leichhardt to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

14. 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.

15. 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**16. Dilapidation Report – Pre-Development – Minor**

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

17. Changes to Levels

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans incorporating the following amendments:

- a. A 150 mm step down must be provided between the finished floor level of the internal room and the finished surface level of the external area.

18. Parking Facilities - Domestic

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a. The garage slab or driveway must rise within the property to be 170 mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;

- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
- d. The garage/carport/parking space must have minimum clear internal dimensions of 6000 mm x 5400 mm (length x width) and a door opening width of 5300 mm at the street frontage. The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- f. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- g. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- h. The external form and height of the approved structures must not be altered from the approved plans.

19. 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

20. 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

21. 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.

22. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE

23. Public Domain Works

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

- a. Light duty concrete vehicle crossing(s) at the vehicular access location(s); and
- b. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

24. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

25. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

26. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

27. 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.

ADVISORY NOTES**Permits**

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 veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Public Domain and Vehicular Crossings

The vehicular crossing works are required to be constructed by your contractor. You or your contractor must complete an application for *Design of Vehicle Crossing and Public Domain Works – Step 1* form and *Construction of Vehicle Crossing and Public Domain Works – Step 2* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. 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 at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

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*.

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.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

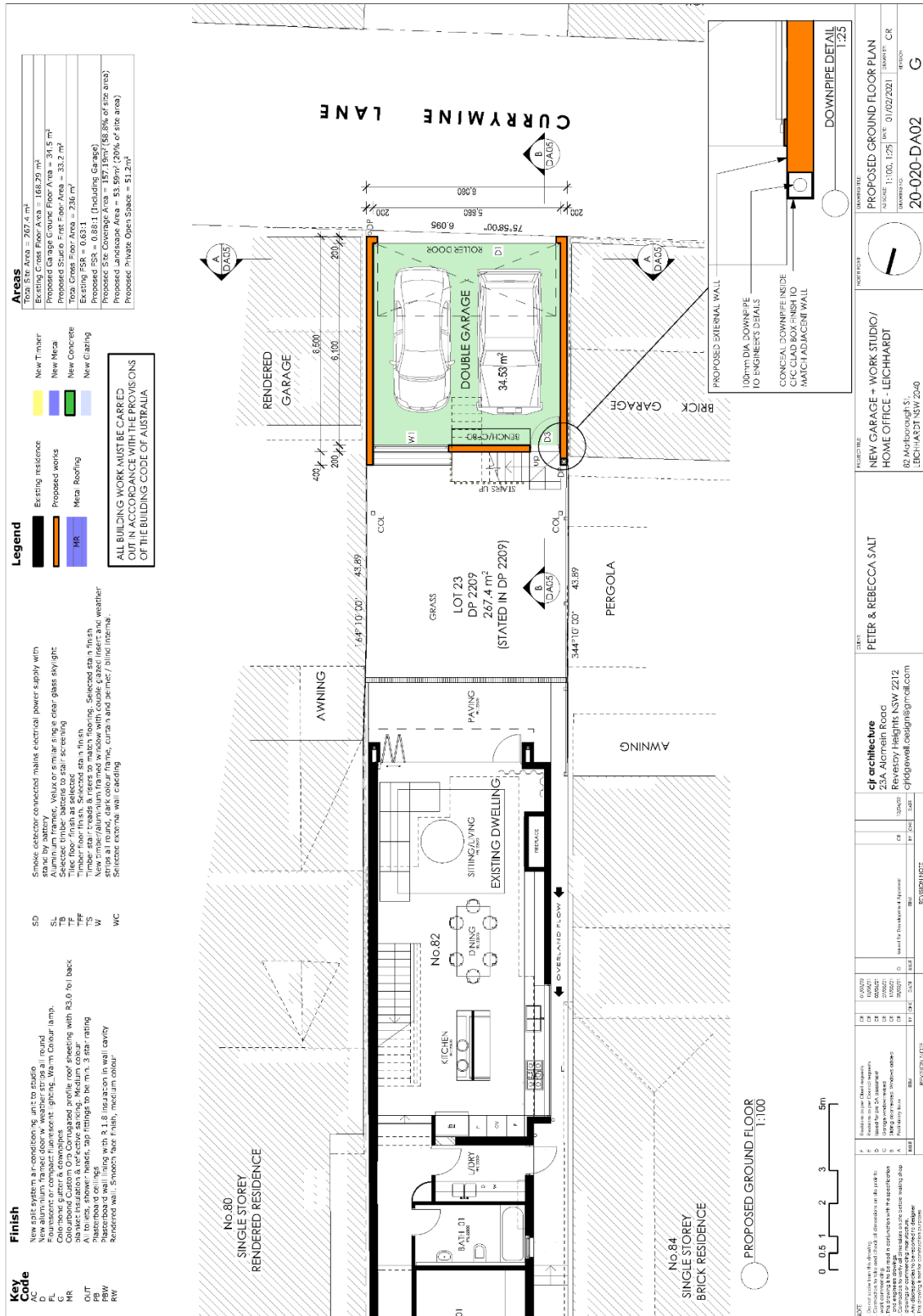
Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

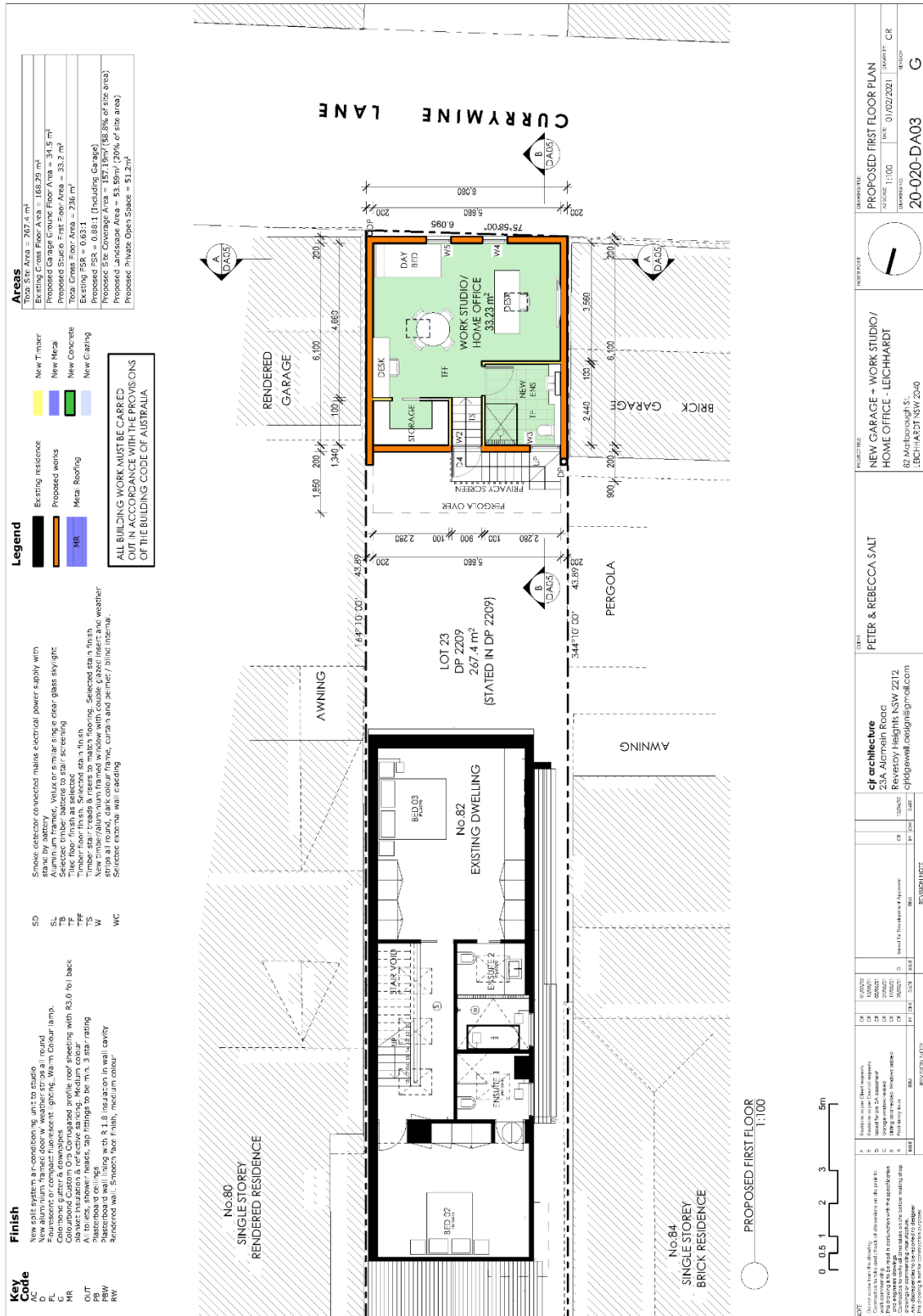
Useful Contacts

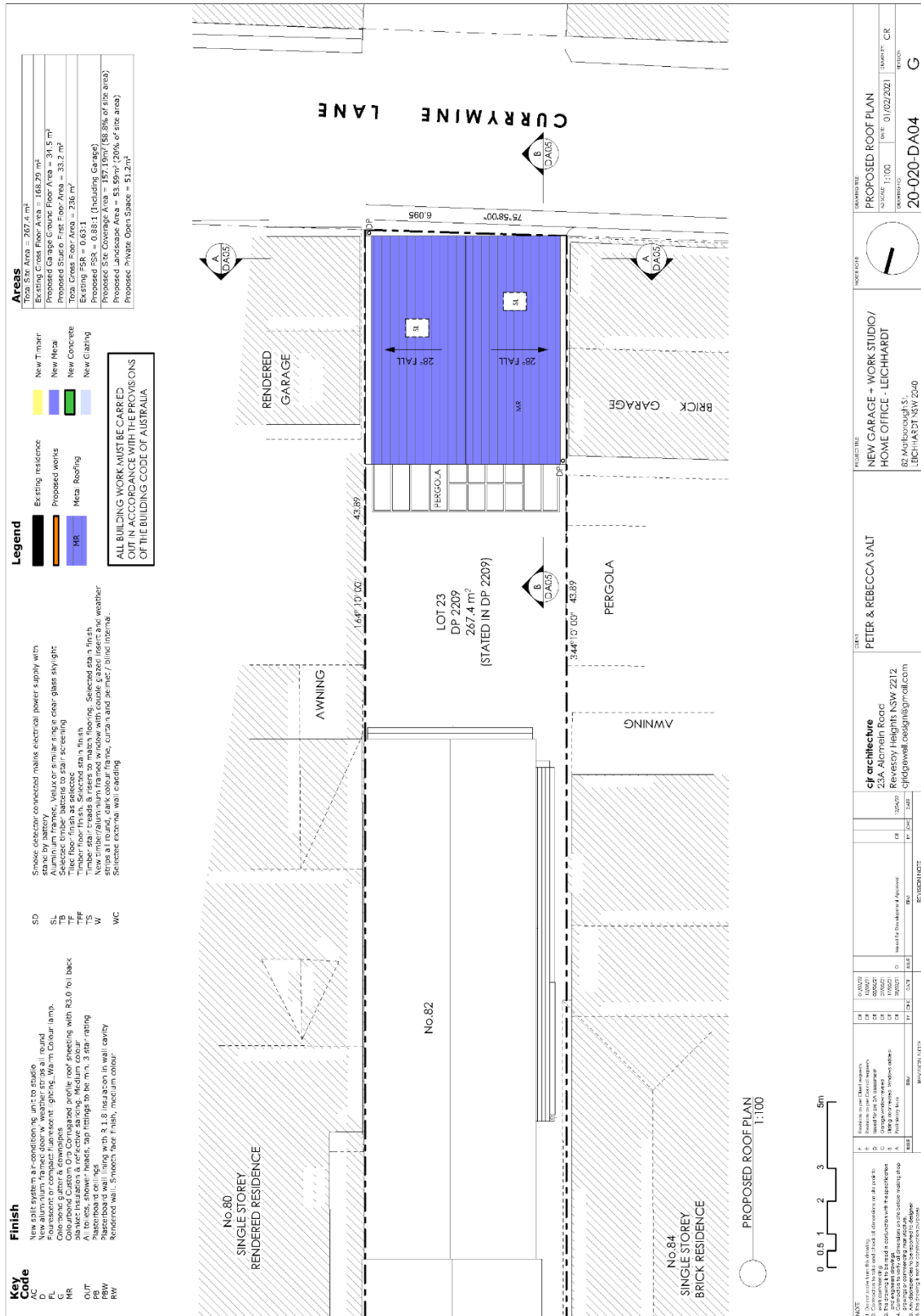
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

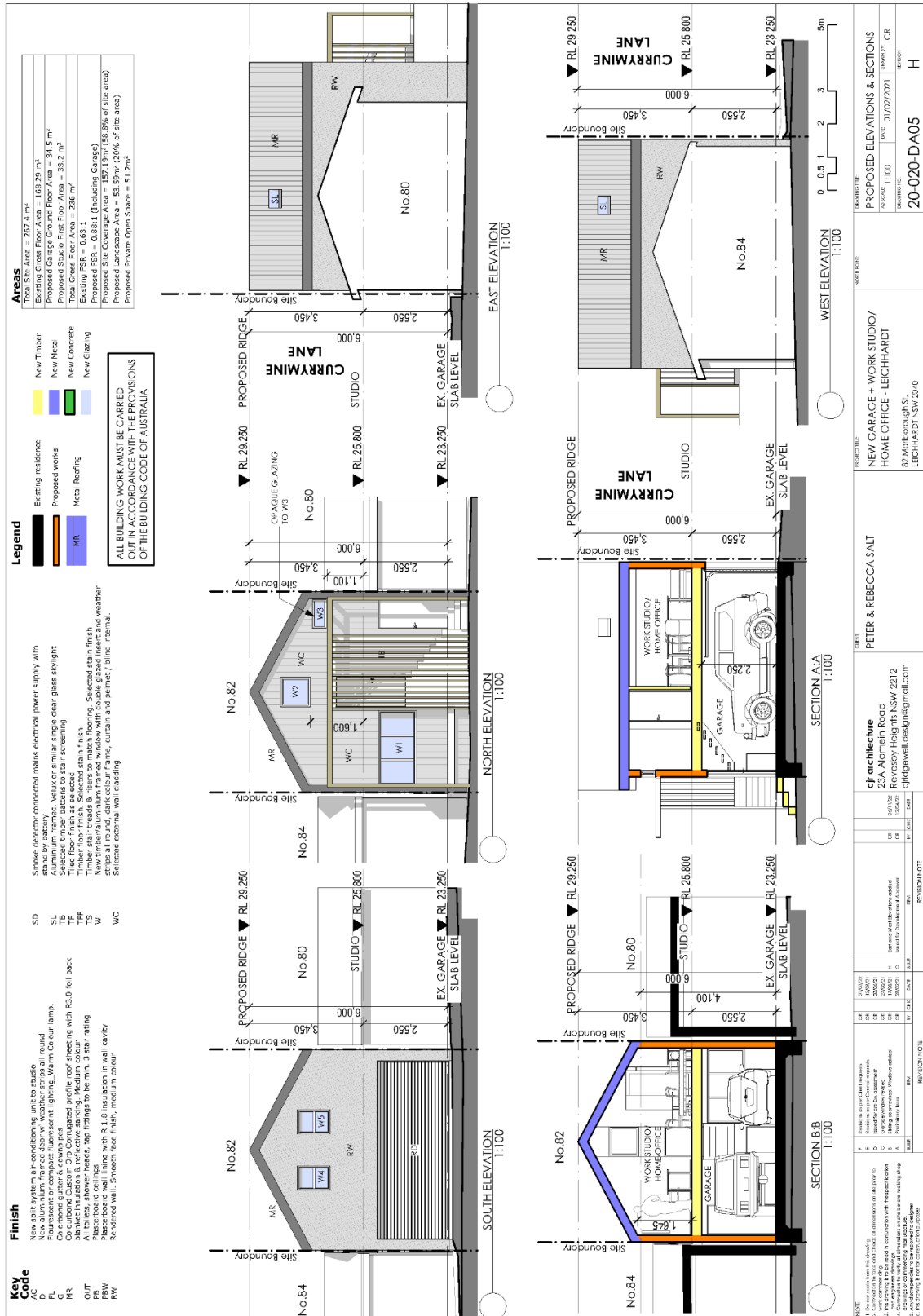
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au 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.sydneypwater.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.

[illegible]









RW

MR

TB

WC

W

Recycled hardwood timber battens to stair screening & open pergola

Gull Grey (or similar) colorbond metal roofing, downpipes and fascia capping

Powdercoat aluminium windows and door frames facing existing rear yard. Timber window frames facing Currymine Lane

Rendered external walls (South, East & West elevations). Smooth face, medium colour finish

New profiled FC panel wall cladding to external walls (North elevation)

PROJ. 2201.W.2

NEW GARAGE + WORK STUDIO / HOME OFFICE - LEICHHARDT

82 Marlborough St,
LEICHHARDT NSW 2040

FINISHES / MATERIAL SAMPLE BOARD

DATE: 01/02/2021

BY: G.R.

20-020-DA10

G

ALL BUILDING WORK MUST BE CARRIED OUT IN ACCORDANCE WITH THE PROVISIONS OF THE BUILDING CODE OF AUSTRALIA

REVISION NOTE		REVISION NOTE	
NO.	DESCRIPTION	NO.	DESCRIPTION
1	Issue 1: Initial design	1	Issue 1: Initial design
2	Issue 2: Client requirements	2	Issue 2: Client requirements
3	Issue 3: Design development	3	Issue 3: Design development
4	Issue 4: Final design	4	Issue 4: Final design
5	Issue 5: Construction	5	Issue 5: Construction
6	Issue 6: Completion	6	Issue 6: Completion
7	Issue 7: Handover	7	Issue 7: Handover
8	Issue 8: Final inspection	8	Issue 8: Final inspection
9	Issue 9: Final approval	9	Issue 9: Final approval
10	Issue 10: Final completion	10	Issue 10: Final completion

NOTE:

- Do not start work until the following conditions are met:
- The design is approved by the relevant authority.
- The design is approved by the relevant authority.
- The design is approved by the relevant authority.
- The design is approved by the relevant authority.
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- The design is approved by the relevant authority.

Document Set ID: 38249433
Version: 1, Version Date: 06/01/2022

PAGE 204







Attachment C- Clause 4.6 Exception to Development Standards



10 September 2022

The General Manager
Inner West Council
7-15 Wetherill Street
LEICHHARDT NSW 2040

**Re: 82 Marlborough Street, Leichhardt
Development Application No: D2022/0292**

Reference is made to the above-mentioned property and the submission of a development application for the erection of a new double garage with studio above on the land.

This document provides a revision of the Clause 4.6 submission with respect to the non-compliance with Clause 4.4, Floor space ratio of the Leichhardt Local Environmental Plan 2013 (the LEP).

Clause 4.4, Floor space ratio, provides objectives and a standard for floor space ratio. The objectives of this clause are:

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

The land is located within Area 5 of the FSR map and under clause 4.4.2B(c) land greater than 150m² but less than 300m² in size is allowed a 0.7:1 FSR.

The site is 267.4m² in size and the gross floor area allowed with a 0.7:1 FSR is 187.18m².

The architect advises that the proposal will have a gross floor area of 236m² which is equivalent to a 0.88:1 FSR and a non-compliance of 48.82m².

Therefore, **the proposal does not comply with the standard** and a submission pursuant to Clause 4.6 is required.

Clause 4.6, Exceptions to development standards, states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - (b) *to achieve better planning outcomes for and from development ` by allowing flexibility in particular circumstances*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *there are sufficient environmental planning grounds to justify contravening the development standard [and]*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Clause 4.4, Floor Space Ratio is a development standard not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Initial Action v Woollahra Municipal Council* [2018] NSWLEC118, the submission addresses the requirements of clause 4.6 in turn.

FLOOR SPACE RATIO**Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The

subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime.

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

As set out below, the proposed development will achieve objective (a) of the standard notwithstanding numerical non-compliance.

The objectives of the floor space ratio standard are set out in clause 4.4 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.*

NON-COMPLIANCE

The Architect has calculated that the proposal results in a gross floor area of 236m², on a site 267.4m² in size, which is equivalent to a 0.88:1 FSR and the proposal does not comply with the standard. The proposal exceeds the standard by 48.82m² which is equivalent to a 26% non-compliance.

THE OBJECTIVES

compatible with the desired future character of the area in relation to building bulk, form and scale

The 26% non-compliance with the standard is numerically significant. However, the non-compliance is equally shared between the proposed garage and the first-floor studio (on the footprint of the existing hardstand slab). Despite the non-compliance, the proposed development will be compatible in the local context because it provides a garage in a manner that is compatible with the neighbours and provides a laneway development that is anticipated under the current planning controls.

In preparing this submission, I have reviewed the Council's electronic records of development (including the Council's DA Tracking) in the locality to determine the context and character of the locality. Council's development application assessment for D/2019/100 on p. 1, Section titled History (Surrounding properties) confirms the following properties in the locality did not comply with the floor space ratio development standard:

ADDRESS	DA No	VARIATION
No. 68 Marlborough Street	2012/642	31%
No. 79 Marlborough Street	2014/288	11%
No. 70 Marlborough Street & subsequent s.455	2019/100	4.3%

However, a review of Council's consent register also confirms the following applications in the same neighbourhood approved with variations to the FSR standard.

117 Elswick Street (lot 1)	D/2009/296	24%
118 Elswick Street (lot 2)	D/2009/296	28%
81 Marlborough Street	D/2011/564	34%
83 Marlborough Street	D/2013/35	16%
29 Marlborough Street	D/2009/168	34%
25 Marlborough Street	D/2010/588	42%
37 Marion Street	D/2017/466	32%
23 Marlborough Street	D/2014/246	8%
2 Carlisle Street	DA/2020/0512	6%
75 Carlisle Street	D/2012/376	7%

I have also observed the building forms in the locality and it is noted that character of development in the lane is diverse and ranges from double garages serving single dwellings to a garage serving a boarding house. The boarding house addresses Marion Street to the rear and a residential flat building is nearby.

Although there is local non-compliance with the standard, it is relevant to compare development similar to the proposal.

However, it noted that the proposal's non-compliance with the standard is equally shared between the floor area of the proposed double garage and the studio above. However, it is acknowledged that the non-compliance would be less without the studio.

Garages either in single or double form are a characteristic feature of the lane. To this end, the proposed garage is consistent with this feature.

Similar local development

There are many double garages in the lane, however, none with a first-floor studios nearby although they are relatively common throughout the local government area and in particular the former Leichhardt Council area.

However, Council's recent approval for No. 70 Marlborough included a two-storey outbuilding comparable to the proposal. A picture of the completed building was provided in the applicants original Clause 4.6 submission and provided below.



No. 70 Marlborough Street is situated a short distance to the east of the site and in the vicinity of a larger two, part three-storey boarding house and a 3-storey residential flat building (69 Marion Street). However, the two-storey outbuilding is a large structure on the rear boundary with two habitable floors but it is not situated on the rear lane. It is notable that its form is comparable to the proposal and it did not comply with the FSR standard.

It is also my opinion that a realistic expectation must exist for all development having dual frontage to Marlborough Street and Currymine Lane, to provide for off-street parking from Currymine Lane and the typical building form for that off-street parking is by way of double garaging. This is evident in aerial images of the site and locality.

However, the new double garage incorporates a first-floor studio which is novel in Currymine Lane at the rear of the site.

Development should not only be reflective of its locality but it should also be a form anticipated expressed through its controls for future development i.e. desired future character- not just a requirement to mirror existing development.

There are many garages with studios above in the municipality and Council's DCP anticipates development of this nature in rear lanes and provides controls for their desired future character. These controls are found in Part C: Place, Section 1-General Provisions, C1.18 Laneways. The background to the control states as follows:

This section applies to the portion of development that is immediately adjacent to a laneway boundary, or that is visible from, or within close proximity to a laneway.

The objectives are as follows:

- O1 *Development:*
- a. *respects the existing and desired future use, form and character of the laneway consistent with the laneway hierarchy as shown in Table C11 Laneway hierarchy;*

- b. achieves an appropriate level of amenity, access, security and landscaping; and
- c. enhances the permeability of the neighbourhood by providing direct, safe and attractive pathways for vehicles, pedestrians and cyclists.

The lane is approximately 6-metres in width and, therefore, Control C2 for medium lines applies as follows.

- C2 *If development is adjacent to a Medium Lane (refer to Table C11 Laneway hierarchy) which has a width of 5.1 ± 8m:*
- a. additional lane fronting dwellings may be provided where other lane fronting dwellings are located within 15m of the boundaries of the proposed dwelling, and if safe pedestrian access can be provided; and
 - b. the service function and character of the lane is to be protected and enhanced

Comment: The proposal does not involve a dwelling and it maintains the service function and character of the lane is protected and enhanced.

In addition, the following controls apply:

Urban form

- C4 *Buildings adjacent to a laneway have a simple form and minimal façade detailing.*

Comment: The proposal complies by providing a simple form and minimal façade detailing.

- C6 *Where fronting a Medium Lane, (refer to Table C11 Laneway hierarchy) development shall comply with a laneway envelope that has:*
- a. a maximum side wall height of 3.6m;
 - b. a 45° building envelope taken from the top of the side wall; and
 - c. a maximum roof height of 6m

Comment: The plans with the application confirm that it provides 4.1-metre side wall height (generally consistent with 3.6-m), a 45° building envelope and a maximum 6-metre roof height. The proposal generally complies with the controls.

It is noteworthy that the controls do not prescribe the number of storeys or its use. Of particular relevance, is the prescriptive controls in relation to compliance with an acceptable building envelope regardless of the floor space contained therein.

From my town planning experience in the Inner West Council area, the form of development anticipated from this control provides ground floor garaging and studios above when addressing a lane.

Therefore, the focus of the assessment of the proposal should be its compliance with the controls and whether it performs acceptably from an environmental perspective, rather than compliance with the FSR standard. Furthermore, the proposal is considered to satisfy the objectives of the control which are reiterated below:

- O1 **Development:**
- a. *respects the existing and desired future use, form and character of the laneway consistent with the laneway hierarchy as shown in Table C11 Laneway hierarchy;*

- b. *achieves an appropriate level of amenity, access, security and landscaping; and*
- c. *enhances the permeability of the neighbourhood by providing direct, safe and attractive pathways for vehicles, pedestrians and cyclists*

Therefore, the proposal is considered to be consistent with the desired future character for development fronting a rear lane.

Furthermore, desired future character is commonly expressed in a DCP through a desired future character statement. Council's DCP do not expressly provide a desired future character statement, however, they are expressed through controls for local character in Part C:Place, Section 2 of the DCP. These controls aim to reinforce the compatibility of development in its local context – in this case a Neighbourhood.

The site is located in the West Leichhardt Distinctive Neighbourhood and the controls are found at p.C-235. In my opinion, the proposal performs well with respect to the relevant controls -particularly in respect to the following:

C1 Maintain and encourage the predominant use of hipped and gabled roof forms.

Comment: The proposal provides a gabled roof form which not only complies with the control but those for medium lanes as discussed earlier.

C2 Promote land uses and urban design that enhance and contribute to the character and identity of the neighbourhood whilst protecting Heritage Items and Heritage Conservation Areas that combine to help create that character.

Comment: The site is within the Whaleyborough Estate Heritage Conservation Area. The proposal is located at the rear of the site and should not be visible from the Marlborough Street public domain. The architecture, form and materials of the proposal is consistent with its immediate locality and, therefore, it is considered to be compatible with the conservation area, in particular its rear lane location.

C3 Preserve and enhance the predominant scale and character of dwellings in this precinct, consisting of mostly single storey Victorian and Federation-style dwellings, with more dense development in appropriate areas.

Comment: The proposal will not have any adverse impact on the predominant scale and character of the existing dwelling as it is a detached structure located at the rear of the site and it is generally consistent with the forms in the locality.

C4 Provide for more significant development along Marion Street.

Comment: This control is not applicable.

C5 Conserve and enhance the weatherboard cottages & the brick cottages found throughout the West Leichhardt Distinctive Neighbourhood.

Comment: This control is not applicable.

C6 Allow for contemporary development, which is complementary to the existing streetscape.

Comment: The architectural form of the proposed outbuilding is complementary to the diverse forms in the lanescape.

C7 Preserve the consistency of the subdivision pattern in this area.

Comment: This control is not applicable.

C8 Maintain existing views by stepping dwellings down contours along east/west streets.

Comment: The proposal will not have any unreasonable impact on existing views as views from the backyards of neighbouring properties are generally constrained by existing garages and other outbuildings in the locality.

C9 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.

Comment: This control is not applicable.

C10 Building wall height is to be a maximum of 3.6m, unless an alternative maximum building wall height is prescribed in the applicable Sub Area.

Comment: The building wall height control applies to the front of building (at the street frontage). The proposal has no impact on the wall height of the existing house as applied to the street front. The proposal also complies with the wall height and building envelope controls for lane development situated on medium sized lanes.

C11 Development is to be consistent with any relevant Sub Area objective(s) and condition(s)

Comment: The site is not located in a sub-area.

In my opinion, an assessment of the performance of the proposal against the controls demonstrate that the proposal is compatible with the desired future character of the locality.

provides a suitable balance between landscaped areas and the built form

The proposal complies with the landscaped area standard.

In addition, the landscaped area provided is appropriate for the site and is commensurate with the locality generally. The landscaped area is provided in the conventional manner in two parts; a generous front yard and backyard which is reflective of the proposal providing consistent front and rear building lines (and BLZ) and as a result contribute to a landscaped corridor consistent with and satisfying the objectives of the standard.

minimises the impact of the bulk and scale of buildings

Impacts on local amenity from development scale and bulk are generally manifested in terms of its visual impact as well as overshadowing and loss of privacy, traffic congestion etc.

The impact of the proposal's bulk and scale particularly that part of the proposal not complying with the standard is acceptable because the sides of the building are largely screened by the adjoining garages that sit cheek-by-jowl, confirming its appropriate siting in relation to the building lines of adjoining structures whilst complying with the DCP controls for development fronting a rear lane. The bulk and scale of the structure

as viewed from the adjoining neighbours is also acceptable because of the consistent building alignment and screening structures on adjoining land.

The site is also generally aligned on a north/south axis and, as a result, any shadows cast by the proposal is limited to the roofs of adjoining structures and the rear lane rather than private open space and/or windows of habitable living rooms.

In addition, there will not be any unreasonable privacy impacts because the outlook from the habitable level is generally limited southwards over the rear lane and garaging on the opposite side of the lane rather than into adjoining private property.

The location of the proposed garage at the rear of the site with access from Currymine Lane is consistent with the pattern of development in the locality and it will not result in any unreasonable traffic amenity issues.

2. *The objective is not relevant to the development.*

Objective (b) is not applicable to the proposal because the proposal is not a form of non-residential development.

3. *The objective would be defeated or thwarted if compliance was required.*

This criteria is not applicable to the proposal.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*

This criteria is not applicable to the proposal.

5. *The zoning of the land is unreasonable or inappropriate.*

This criteria is not applicable to the proposal.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site.

The following environmental planning grounds are relevant:

- In order to avoid duplication, reference is made to the environmental planning grounds ventilated in relation to whether the proposal achieves the objectives to the standard, particularly in relation to the bulk, form and scale compatible with desired future character of the locality. In this regard, the proposal is:
 - compliant with the site coverage requirement;
 - compliant with the landscaped area requirement;
 - generally consistent with the Council's building siting controls in relation to building location zone;
- Approximately 50% of the non-compliance is attributed to the proposed double garage. The proposed garage and its siting are consistent with the prevailing pattern of development in the locality. The remaining 50% of the non-compliance is attributed to the first-floor studio. The proposal provides a form of development that is immediately adjacent to a laneway boundary. Therefore, it is required to be assessed in accordance with the C1.18, Laneways of the DCP.

The proposal has been designed in accordance with the DCP controls for medium lanes. The specific controls are aimed to provide an acceptable building envelope in rear lanes. The floor space emanating from the envelope is numerically inconsequential. Nonetheless, despite not complying with the standard, the proposal performs well from an environmental perspective and in particular satisfies the objectives of the control as follows:

- O1 Development:
- a. *respects the existing and desired future use, form and character of the laneway consistent with the laneway hierarchy as shown in Table C11 Laneway hierarchy;*
 - b. *achieves an appropriate level of amenity, access, security and landscaping; and*
 - c. *enhances the permeability of the neighbourhood by providing direct, safe and attractive pathways for vehicles, pedestrians and cyclists*
- The proposal is in keeping with the bulk, scale and mass of surrounding development.
 - The proposal provides for an excellent amenity of the future occupants of the development consistent with the Aims of the Leichhardt LEP.
 - The proposal does not result in any unreasonable amenity impacts on adjoining and nearby residential properties.

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

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

The proposal provides an improved standard of accommodation which will assist to provide for the housing needs of the community.

- *to provide for a variety of housing types and densities*

The proposal provides for a garage with studio over that adds to the variety of housing types and density in the locality.

- *to enable other land uses that provide facilities or services to meet the day to day needs of residents*

This objective is not relevant, as the proposal is not for a non-residential use.

- *to improve opportunities to work from home*

The proposed studio should improve opportunities for current and future occupants 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*

The proposal provides a studio over a garage on the land that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes and landscaped areas as discussed earlier in this submission.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

See discussion with respect to the objectives of the standard and in particular the objective relating to a balance between landscaped area and built form.

- *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*

This objective is not relevant, as the proposal does not involve subdivision.

- *to protect and enhance the amenity of existing and future residents and the neighbourhood*

The proposal is sited in a manner that is generally consistent with the prevailing pattern in the locality. It also has a building envelope which is generally consistent with the controls for development on medium lanes and, as a result, the externalities of a proposal such as visual scale and bulk, shading, overlooking and loss of privacy are minimised, thereby the amenity of existing and future residents and the neighbourhood will be protected and enhanced.

Concurrence of the Secretary

The concurrence of the Secretary may be assumed by Council. The implications of a development application involving a double garage with studio above on the land that does not comply with the FSR development standard of the Leichhardt LEP is local in its scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The floor space ratio is justified as set out above. The variation sought will enhance the utility of the existing development without significant adverse impacts on neighbouring amenity or the public domain.

Conclusion

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standards and with those of the R1 General Residential zone.

Yours faithfully



Kim Burrell
B. App. Sc. DURP MPIA RPIA
Town Planner

Attachment D – Statement of Heritage Significance

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Area 3 Whaleyborough Estate Conservation Area

Landform

This conservation area lies to the west of Norton Street between Marion, Elswick and Allen Streets. Land slopes gently downhill to the west of the Norton Street ridge.

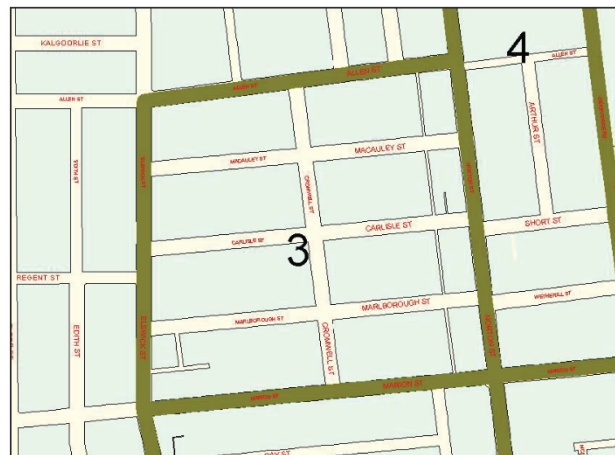


Figure 3.1 Whaleyborough Estate Conservation Area Map.

History

This area was once part of James Norton's Elswick Estate which stretched from Parramatta Road to William Street, and from Flood Street (part) to part of Balmain/Derbyshire Roads. Its subdivision by Norton's family in 1867 into four large sections accessed by surveyor-standard one chain (66ft) wide roads at Elswick, Norton and Allen Streets, and at Short Street for access to Balmain Road, established the layout of modern Leichhardt.

This conservation area was Section 2 (42 acres) of that Elswick Estate subdivision. In 1878 it was purchased by William Whaley Billyard who marked out eight sections of building allotments divided by four streets each one chain wide, with rear lane access for the allotments facing Norton Street. The 213 generous building allotments were 50ft-wide with depths of about 142ft, and were probably designed to attract a more affluent market than the more tightly subdivided Excelsior Estate to the south of Marion Street.

A number of free-standing double-fronted single-storey houses were built, mostly as one dwelling, sometimes as two semis across the 50ft wide allotments. However, the greater demand for cheaper housing saw many of these generous allotments accommodating two and sometimes three terrace houses. The most elevated part of the estate, near the Marion/Norton Streets intersection, was chosen for civic and church buildings – the Blacket-designed All Souls Church, the Primitive Methodist Chapel (1883) in Cromwell Street and the police station (1885) in Marlborough Street. Other church groups also chose sites in the Whaleyborough Estate – the Salvation Army Hall (1916) in Carlisle Street the

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Leichhardt Masonic Lodge (1924) in Marlborough Street and the Congregational Church (1911) on Elswick Street.

The allotments with back lanes facing Norton Street were taken up for commercial premises with attached dwellings.

The PWD detail survey of inner Sydney of 1888 showed 216 brick, 24 weatherboard and a few stone buildings. Most of these remain today, and more were built during the following decade such as the single-storey single-fronted terraces in Carlisle Street. An examination of the remaining buildings suggest that the area was probably fully built upon by the end of the 1930s.

Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Cusick, A 1989, 'Leichhardt West, original land grants and subdivisions', *Leichhardt Historical Journal*, No. 16.

Significant Characteristics

- A spacious low-rise residential area with wide streets and nature strips and the sense of garden space at the back of each building.
- A mixture of free-standing houses and terraces.
- A mixture of single-storey and two-storey development.
- Parapeted two storey commercial buildings and pubs along Norton Street.
- A considerable collection of ecclesiastical buildings.
- A range in the age of the buildings dating from 1880s-1930s. Most buildings belong to the nineteenth century.
- Brick is by far the most dominant building material, and is used in a variety of surfaces – as plastered brick through the 1880s, as face brick with plaster decoration during the early 1900s and as dark blue face brick into the 1930s.
- Unglazed terracotta tiles form the predominant roof cladding. There are also some slate roofs and the occasional iron roof.
- Suspended awnings along Norton Street.
- Sandstone kerbs and gutters remain for considerable sections of all streets.
- There are some original iron palisade fences.
- Crepe myrtle plantings in Carlisle Street.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas which 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 significant for its

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surviving development from the 1880s and 1890s, which gives it its particular identity. All allotments appear to have been taken up and built upon probably by the late 1930s.

- Through its wide roads, its important mixture of cottages, terraces and shops, mostly dating from the 1880s-1890s, and the form and materials of its construction this area provides an interesting built example of late nineteenth century economics where pressures for denser and cheaper accommodation have overlaid the original spacious suburban intentions.
- With the adjoining Excelsior Estate subdivision to the south, its roads, lanes and subdivision pattern defined the layout of central Leichhardt.
- It demonstrates through its range of external finishes (first plaster, then brown face brick and blue-face brick) the increasing sophistication in brick making from the 1880s.

Maintenance of Heritage Values

Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

Retain

- Existing width of streets. Avoid chicanes that diagonally cut across these wide carriageways.
- Existing laneways.
- All remaining sandstone kerbs and gutters.
- All pre-1939 buildings especially those identified on the DPW detail survey of 1888 (see LHJ No. 16).
- All shops, commercial buildings and pubs along Norton Street with awnings and original shopfront where remaining.
- All plaster finishes to external walls where it was originally applied (as a rough rule of thumb this will mostly apply to pre-1890s buildings). Reconstruct where necessary.
- All original unplastered face brick external walls.
- All original external architectural detail, including verandahs, parapets and awnings, and encourage replacement of lost elements, but only where evidence is available.
- Any remaining original iron palisade fences.
- All street planting schemes including 1960s crepe myrtle. Reinstate individual trees as part of street planting schemes where they have been lost.

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- All existing ecclesiastic or civic buildings in the area. Find new sympathetic uses for them if the original use should be closed.

Avoid

- Amalgamation of any original 50ft-wide allotment which might lead to a change in the pattern of development in the streetscape.
- Demolition of any building shown on the 1888 map (see LHJ No. 16). Reinstatement of external form and materials of any of those buildings which have suffered unsympathetic change is encouraged where evidence of former form or materials can be verified.
- Removal of any plaster or decorative plaster to external walls.
- Plastering and/or painting of original face brick walls.
- Second-storey addition to an original single-storey building.
- Additional architectural detail for which there is no evidence in the photographic record or on the building itself.
- Post-supported verandahs over footpaths, except where evidence of such structure is available.
- Inappropriate fences such as high brick fences/walls, new iron palisades on high brick bases.

Further Work

- Need to identify which buildings in the area are not identified on the detail survey of 1888, and/or which do not contribute to the continuing story of this subdivision into the 1930s. Recommend ways in which their sites could be re-used.
- Compile photographic records of the buildings of the subdivision from late nineteenth century to the 1990s as a means of ensuring appropriate reconstruction/'restoration'.