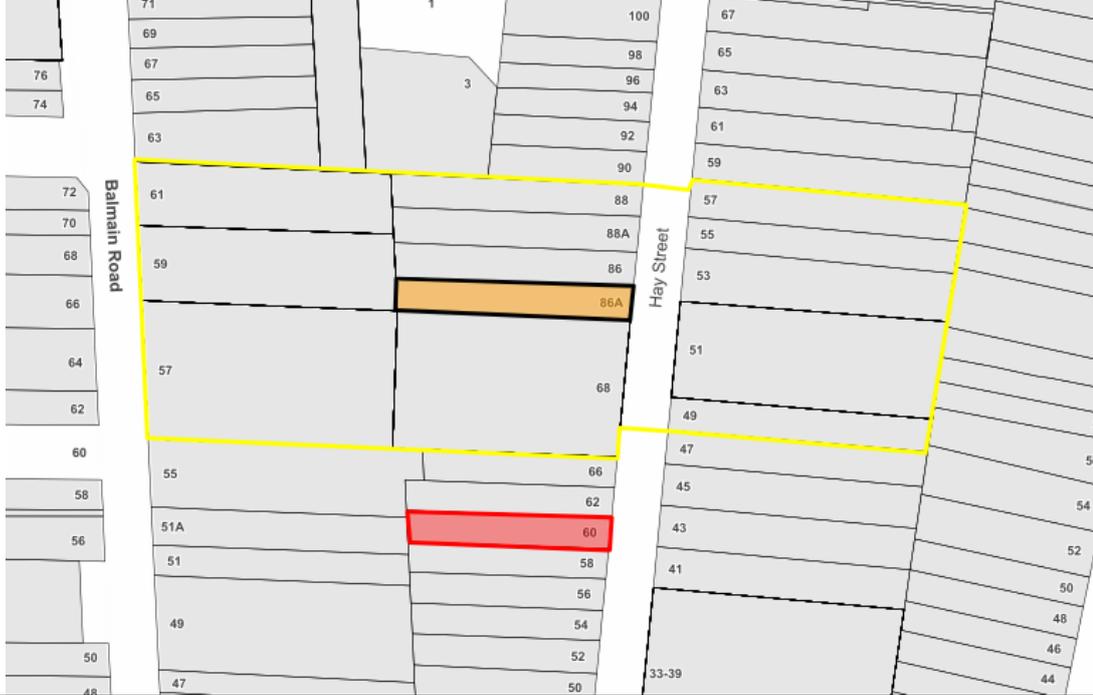


 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2022/1146			
Address	86A Hay Street LEICHHARDT NSW 2040			
Proposal	Alteration and addition to existing dwelling with first floor addition and conversion of garage into secondary dwelling.			
Date of Lodgement	30 December 2022			
Applicant	Mr Govinda Pathak			
Owner	Mr Govinda Pathak; Ms Surbhi Verma			
Number of Submissions	Initial: 2 (one in support)			
Value of works	\$300,000.00			
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%			
Main Issues	BLZ, Visual privacy			
Recommendation	Approved with Conditions			
Attachment A	Recommended conditions of consent			
Attachment B	Plans of proposed development			
Attachment C	Section 4.6 Exception to Development Standards			
				
LOCALITY MAP				
Subject Site		Objectors		 N
Notified Area		Supporters		
Note: Due to scale of map, not all objectors could be shown.				

1. Executive Summary

This report is an assessment of the application submitted for alterations and additions to an existing dwelling with first floor additions and conversion of the garage into a secondary dwelling at 86A Hay Street, Leichhardt.

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

The non-compliances are acceptable and therefore the application is recommended for approval.

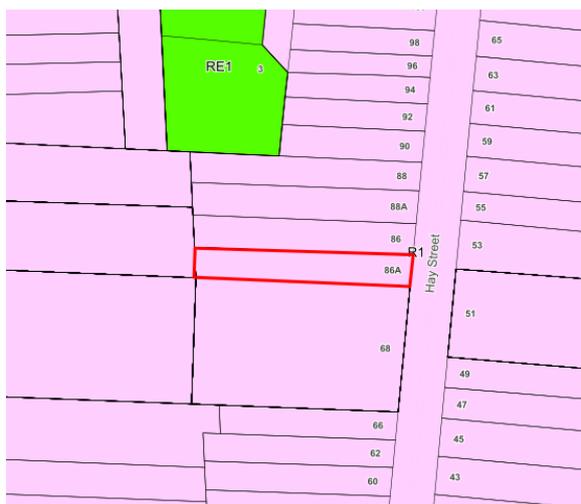
2. Proposal

Alterations and additions to existing dwelling with first floor addition and conversion of garage into secondary dwelling. Specifically, the proposal involves the following works/use:

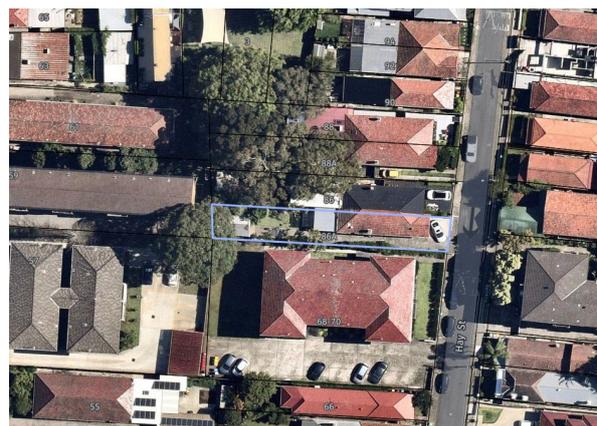
- Partial demolition of the ground floor to accommodate a new bedroom, bathroom, living/dining room extension and alfresco area;
- Construction of a new first floor dwelling to accommodate bedroom, ensuite and walk-in-robe;
- Conversion of garage into a secondary dwelling;
- Construction of a carport within the southern side setback

3. Site Description

The subject site is located on the western side of Hay Street, between Prospect Street and Paramatta Road. The site area is approximately 325.6sqm. An existing single storey dwelling with detached garage is located on the site. Surrounding land uses are predominantly single storey dwelling houses, with a three and four storey RFB located to the south and adjacent to the subject site.



Land zoning map extract, subject site outlined in red



Aerial of the subject site, subject site outlined in blue

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.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
22/02/2023	Request for updated BASIX Certificate
23/02/2023	Basix Certificate provided
28/02/2023	Request for Clause 4.6 to vary the Housing SEPP
8/03/2023	Clause 4.6 to vary the Housing SEPP provided

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 (EPA 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*
- *State Environmental Planning Policy (Housing) 2021*

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)(ii) 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)(iii) State Environmental Planning Policy (Housing) 2021

Chapter 3 Diverse housing, Part 1 Secondary dwellings

Despite the secondary dwelling being a permissible form of development under the R1 – General Residential Zone in the Local Environmental Plan, the provisions of Schedule 1 of the Affordable Rental Housing SEPP are applicable and have been considered in the table below:

Clause	Standard	Proposed
50 – Application of Part	This part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.	The site is zoned R1 General Density Residential under the IWLEP 2022. Dwelling houses are permitted with consent on land zoned R1 under the IWLEP 2022.
51 – No subdivision	Development consent must not be granted for the subdivision of a lot.	No subdivision is proposed.
52 (2)(a) – development may be carried out with consent	No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	The proposal seeks to convert the existing detached garage into a secondary dwelling. No further dwellings beyond the existing and proposed dwelling are proposed.
52 (2)(b) – development may be carried out with consent	The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	A maximum FSR of 0.6:1 or 195.4sqm applies to the land. The proposal results in an FSR of 0.5:1 or 162.7sqm and complies with Clause 4.4 of the IWLEP 2022.
52 (2)(c)(i) – development may be carried out with consent	The total floor area of the secondary dwelling is no more than 60sqm.	The total internal floor area of the proposed secondary dwelling does not exceed 60sqm.
53 (2)(a)	For a detached secondary dwelling a minimum site area of 450m ² .	The total site area is 325.6sqm which is less than the minimum site area requirement. See discussion under Section 4.6 of the IWLEP 2022.
53 (2)(b)	(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	There is one existing parking space on the site. The proposal to reconstruct and provide one new parking space does not alter this arrangement.

5(a)(iv) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.4 – Controls relating to miscellaneous permissible uses
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management

Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

The application proposes alterations and additions to an existing **dwelling house** as well the conversion of an existing garage to a **secondary dwelling**. All works proposed on site are permissible with consent in the R1 General Residential zone.

The development meets the objectives of the R1 General Residential zone

Section 4 Principal Development Standards

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

Control	Proposed		Compliance
Section 4.3C (3)(a) Landscaped Area	Minimum	20% or 65.1sqm	Yes
	Proposed	20.5% or 66.8sqm	
Section 4.3C (3)(b) Site Coverage	Maximum	60% or 195.4sqm	Yes
	Proposed	176.8sqm or 54.2%	
Section 4.4 Floor space ratio	Maximum	0.6:1 or 195.4sqm	Yes
	Proposed	0.5:1 or 162.7sqm	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes
Section 5.4 Controls relating to miscellaneous permissible uses	Section 5.4(9) states that secondary dwellings are limited to a maximum floor area of 60sqm, or 35% of the total floor area of the principal dwelling, whichever is greater, excluding any area used for parking. The proposed secondary dwelling is 26.3sqm in area and is therefore acceptable with regard to this Section.		Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 53(2)(a) – Non-discretionary development standards – the Act, s 4.15 of the Housing SEPP.		See below

Section 4.6 Exceptions to Development Standards

As outlined above, the proposal results in a breach of the Section 53(2)(a) – Non-discretionary development standards – the Act, s 4.15 of the Housing SEPP.

The applicant seeks a variation to the non-discretionary development standards under Section 53(2)(a) for the minimum site area of 450sqm for a detached secondary dwelling by 27.6% (124.4sqm).

Section 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 Section 4.6 of the IWLEP 2022 below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *“The secondary dwelling does not require any excavation or building works that would result in environmental impacts or adversely affect the amenity of surrounding properties;*
- *The development maintaining an appropriate level of solar access to adjoining living and private open space areas through the incorporation of suitable setback distances to the side and rear property boundaries;*
- *The proposed development achieves compliance across all applicable provisions of the IWLEP 2022 and the LDCP 2013 including maximum building height, floor space ratio, setback distances, landscaping, private open space, solar access, visual and acoustic privacy;*
- *The final development is highly compatible with the adjoining dwelling at 86 Hay Street, Leichhardt and the surrounding streetscape in terms of bulk, scale and visual aesthetic when viewed from the public domain”*

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 R1 General Residential zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *To provide for the housing needs of the community.*
Comment The proposed secondary dwelling will provide additional housing to serve the community.
- *To provide for a variety of housing types and densities.*
Comment: The proposed secondary dwelling will contribute to the housing variety typology within the area.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
Comment: The proposal has been skilfully designed to ensure that it meets the day to day needs of the primary and secondary dwelling of the site.

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

Comment: The proposal seeks to retain the existing building within the rear setback to accommodate a secondary dwelling on site, the proposed scale of the works is consistent with the pattern of the development.

It is considered the development is in the public interest because it is consistent with the objectives of the non-discretionary development standard for secondary dwellings under the *Housing SEPP*, in accordance with Section 4.6(4)(a)(ii) of the IWLEP 2022 for the following reasons:

- *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Comment: The proposal seeks to vary the minimum site area for a detached secondary dwelling of the Housing SEPP by 27.6% (124.4sqm). Varying this standard does not result in the consent authority requiring a more onerous standard to be met. The proposal does not offend the intent of the objective

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the IWLEP 2022. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Section 53(2)(a) of the Housing SEPP and it is recommended the Section 4.6 exception be granted.

5(d) Development Control Plans

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

LDPC2013	Compliance
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.3 Piperston Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – See discussion
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	No – See discussion
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes

C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	Yes
Part D: Energy	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
Part E: Water	
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2 Water Management	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

Building Location Zone (BLZ)

The BLZ is to be determined on a floor-by-floor basis where works are to be reasonably expected to be built. The proposal seeks to extend the ground floor 4m to the rear, therefore aligning with the rear of the adjoining dwelling at 86 Hay Street and consistent with the BLZ requirements.

The location of the first floor addition is inconsistent with the pattern of development as established by the adjoining dwelling to the north of the site. The proposed first floor addition is to be setback approximately 20m and 29m from the front and rear boundary respectively, whilst the first floor at 86 Hay Street is setback approximately 14.2m and 21.7m from its front and rear boundary respectively. Given the proposed variation and in consideration against the objectives of the control, the following is concluded:

- Amenity (solar access/privacy): Acceptable. The location of the first-floor addition does not result in adverse visual privacy, visual bulk or overshadowing impacts to the adjoining properties.
- Streetscape & scale: Acceptable. Although the first-floor addition is setback to the rear of the first floor at 86 Hay Street, the subject proposal utilises a similar built form and ridge height so as not to adversely impact the design continuity of the adjoining semi-detached pair or detract from the streetscape
- Private open space: Acceptable. The proposed development is compliant with the minimum POS, site coverage and solar access requirements under the provisions of the LDCP 2013.
- Significant vegetation: Acceptable. The proposal seeks to retain adequate vegetation on site in compliance with the IWLEP 2022 provisions
- Visual bulk & height: Acceptable. The breach in the BLZ will not result in adverse visual bulk impacts when viewed from the adjoining POS area at 86 Hay Street or unit windows at 68 Hay Street. The proposal utilises suitable ceiling heights on the ground and first floor so that the works will match the form at 86 Hay Street and subsequently minimise visual bulk impacts.

Site boundary setbacks

The proposal seeks a nil setback to the northern boundary for the primary dwelling, contrary to the numerical requirements under this part, see table below:

Wall	Height	Required Setback	Proposed Setback
Southern	6m	1.84m	2.67m
Northern	6m	1.87m	0m

- **Building typology:** Acceptable. Semi-detached dwellings are one of a pair sharing a party wall, a roof form and with openings to the front, one side and the rear. In addition, semi-detached houses have a narrow side passageway leading to the rear garden. The new first floor addition seeks to maintain the existing nil side setback at the ground and first floor. The form and scale of the proposal and its architectural style, materials and finishes will be complementary with, and will remain consistent with the existing surrounding development and will maintain the character of the area
- **Pattern of development:** Acceptable. The first-floor addition has been designed in consideration of its adjoining semi-detached dwelling at 86 Hay Street should they wish to undertake a rear extension to their first-floor. The form and scale of the proposal and its architectural style, materials and finishes will be complementary with, and will remain consistent with the existing surrounding development and will maintain the character of the area
- **Bulk and scale:** The proposed development has been designed with consideration to the objectives of the desired future character in addition to compliance with the FSR and landscaped area development standards of the IWLEP 20202. The overall bulk of the development is modest in scale and has been minimised so as to not result in unreasonable overshadowing impacts, visual privacy impacts or view loss for the adjoining dwellings to the side and rear of the subject site respectively
- **Amenity (solar access/privacy):** The overall bulk of the development, is generally modest in scale and has been designed with consideration to minimise the visual privacy and overshadowing impacts to the adjoining properties.
- **Does not unduly obstruct adjoining properties for maintenance purposes:** Acceptable. The adjoining dwelling at 86 Hay Street has a nil setback to its southern boundary at the ground and first floor.

C3.6 Fences

No front fence is proposed as part of the application. To ensure that the proposal includes streetscape improvements, a condition is included in recommendation requiring that a suitably scaled 1.2 metre high front fence is installed on the subject site.

C3.11 Visual Privacy

The elevated rear verandah proposed includes a full height wall at the northern elevation and full height privacy screens at the southern elevation to mitigate direct overlooking across the side boundaries. The first-floor windows at the southern elevation are to service a bathroom and stairway landing, whilst these are not primary living areas within the dwelling, they are not offset to the north facing windows at 68-70 Hay Street. To mitigate direct overlooking a condition is included in the recommendation requiring that the bathroom window and stairwell window have opaque glazing to a minimum height of 1.6m above the FFL of the first floor.

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. Two submissions were received in response to the initial notification, one being in support of the proposal.

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

Issue: Loss of carparking

Comment: The proposal seeks to retain two car parking spaces on site within the southern side boundary. No new car parking is required to be provided for the secondary dwelling

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 below.

Referral Body	Comment
Engineering	The carport as proposed is not supported as the posts will further reduce the width available for parking, given this it is recommended as part of any consent issued that the carport be deleted from the proposal, however the hard stand parking within the side setback can be retained. Additionally, to prevent vehicles parking at an angle within the front setback it is recommended on any consent issued that a front fence be installed. A condition to this effect is included in the recommendation.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions 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 \$15,399 would be required for the development under the:

- Leichhardt LGA Developer Contributions Plan No.1 – Open Space & Recreation.
- Leichhardt LGA Developer Contributions Plan No.2 – Community Services and Facilities.
- Leichhardt Developer Contributions Plan – Transport & Access.

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 *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to clause 4.6 of the *Inner West Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Section 53 (2)(a) – Minimum site area of the *State Environmental Planning Policy (Housing) 2021* 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/2022/1146 for alterations and additions to the existing dwelling with first floor additions and the conversion of the garage into a secondary dwelling at 86A Hay Street, LEICHHARDT subject to the conditions listed in Attachment A.

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
INHAUS-03, Rev E	Site Plan	15/12/2022	Inhaus Designs
INHAUS-05, Rev E	Proposed Ground Floor Plan	15/12/2022	Inhaus Designs
INHAUS-07, Rev E	Proposed Backyard Plan	15/12/2022	Inhaus Designs
INHAUS-08, Rev E	Proposed First Floor Plan	15/12/2022	Inhaus Designs
INHAUS-10, Rev E	Proposed Roof Plan	15/12/2022	Inhaus Designs
INHAUS-12, Rev E	Elevations - East/West	15/12/2022	Inhaus Designs
INHAUS-13, Rev E	Elevations - North/South	15/12/2022	Inhaus Designs
INHAUS-14, Rev E	Elevations - East/North/West/South	15/12/2022	Inhaus Designs
INHAUS-15, Rev E	Sections	15/12/2022	Inhaus Designs
INHAUS-16, Rev E	Vehicle Access	15/12/2022	Inhaus Designs
INHAUS-17, Rev E	Demolition Plan	15/12/2022	Inhaus Designs

INHAUS-18, Rev E	Parking Plan/Driveway Profile	15/12/2022	Inhaus Designs
INHAUS-29, Rev E	Landscape Plan/Maintenance Plan	15/12/2022	Inhaus Designs
INHAUS-30, Rev E	Materials and Finishes	15/12/2022	Inhaus Designs
A482618	Basix Certificate - Alterations and Additions	1/12/2022	Inhaus Designs NSW Pty Ltd
1364051S	Basix Certificate - Single Dwelling	19/12/2022	Inhaus Designs NSW Pty Ltd
C000-C301, Rev 2	Stormwater Concept Plans	19/12/2022	AVN Infinity

As amended by the conditions of consent.

FEES

2. 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:	\$5,600.00
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.

3. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$15,399 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access has been paid to the Council.

The above contribution is the contribution applicable as at 22 February 2023.

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

Local Infrastructure Type:	Contribution \$
Community Facilities and Services	\$2,042.00
open Space	\$13,357.00
TOTAL	\$15,399.00

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

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

Payment methods:

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

minimum of 2 business days for the invoice to be issued before payment can be accepted.

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

4. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

GENERAL CONDITIONS

5. 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.

6. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating Window NW06 (first floor bathroom window) and NW05 (first floor stair landing) being amended in the following manner:

- a. Obscure glazing to window any part below 1.6 metre floor level

7. 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.

8. 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.

9. 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.

10. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**11. 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.

12. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining property at 86 Hay 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.

13. 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.

14. 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

15. 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.

16. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The stormwater drainage concept plan on Drawing No. C100 version (1) prepared by AVN INFINITY and dated 22 December 200, must be amended to comply with the following:
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks as necessary.
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- e. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 years ARI storm are restricted to the pre-development flows for the 5 years ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI).

- f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use.
- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks.
- h. Where a combined OSD/OSR is proposed, only roof water is permitted to be connected to the storage tank. The overflow from the OSD/OSR must be connected by gravity to the kerb and gutter of a public road.
- i. Details of the 100-years ARI overflow route in case of failure/blockage of the drainage system must be provided
- j. An overland flow path must be provided within the setback to the southern between the rear and the Hay Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flow path. The existing overland flow path at the rear of northern boundary must be retained unobstructed.
- k. A minimum 150 mm step up shall be provided between all external finished surfaces and adjacent internal floor areas.
- l. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- m. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but it must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design.
- n. No nuisance or concentration of flows to other properties.
- o. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- p. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- q. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- r. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- s. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of

4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm.

- t. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- u. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- v. No impact to street tree(s).

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 up must be provided between the finished surface level of the external area and the finished floor level of the internal room.

18. Amended Architectural Plans to Reflect Requirements of this condition.

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the following recommendations:

1. The carport as proposed is not supported as the posts will further reduce the width available for parking. However, no objection is raised to the existing parking spaces to be retained subject to compliance with the following:
 - a. The parking space must have minimum clear internal dimensions of 11400 mm x 2647 mm (length x width). 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.
2. A 1.2 metre high fence matching the shall be constructed at the front boundary to prevent vehicles from angle parking in the front setback.

19. Front Fence

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details of any front fence, including materials, height, finishes and colours are consistent with the age of the dwelling. In the absence of historic photographs, the fence is to be designed in accordance with the standard detail for picket fences for the particular era of residence. Further information is contained in "*Getting the Details Right – Restoring Australian Houses 1890s – 1920s*", by Ian Evans.

A fence shall be constructed at the front boundary to prevent vehicles from angle parking in the front and to comply with the following requirements:

- a) Have a maximum height of 1.2m
- b) The front boundary fence retaining wall of the site shall be designed such that any necessary sub soil drainage system installed behind the wall discharges to the site stormwater drainage system and all components of the wall are fully within the property boundary. No weep holes are permitted to Councils footpath.
- c) Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.
- d) Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.
- e) No adverse impact on surrounding properties including Council's footpath and road.
- f) If any gates are to be installed, these are to operate wholly within the property boundary

20. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Structural Certificate from a practising structural engineer which verifies that the structural integrity of the existing "Party Walls" are adequate to accept the additional loads imposed thereon by the proposal. A copy of the Structural Certificate must be provided to all owners of the party wall/s.

21. Structural Certificate for retained elements of the building

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

22. 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

23. 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.

PRIOR TO OCCUPATION CERTIFICATE

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. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built

details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

27. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

28. 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.

ON-GOING

29. Operation and Management Plan

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

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.

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.

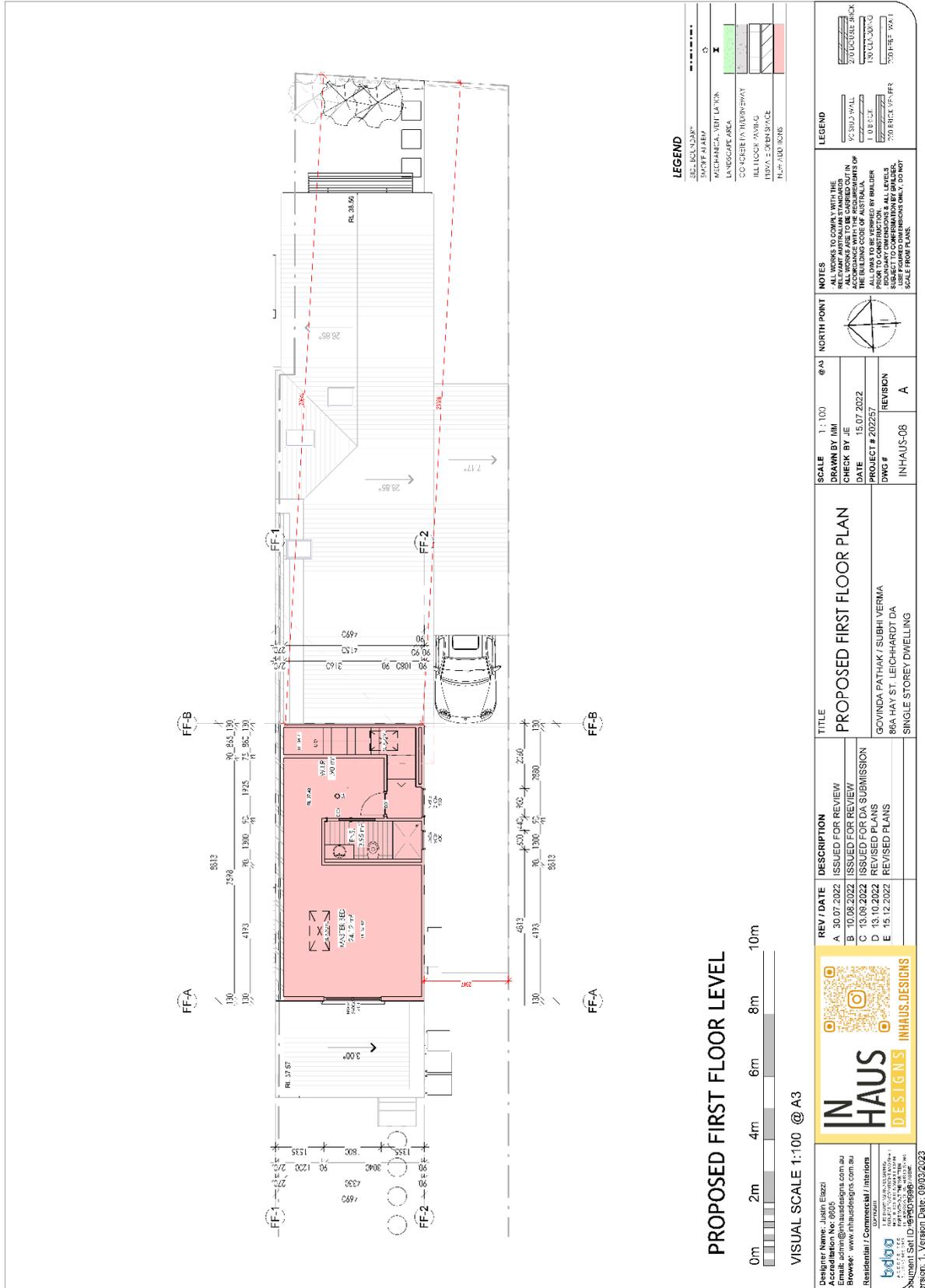
Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

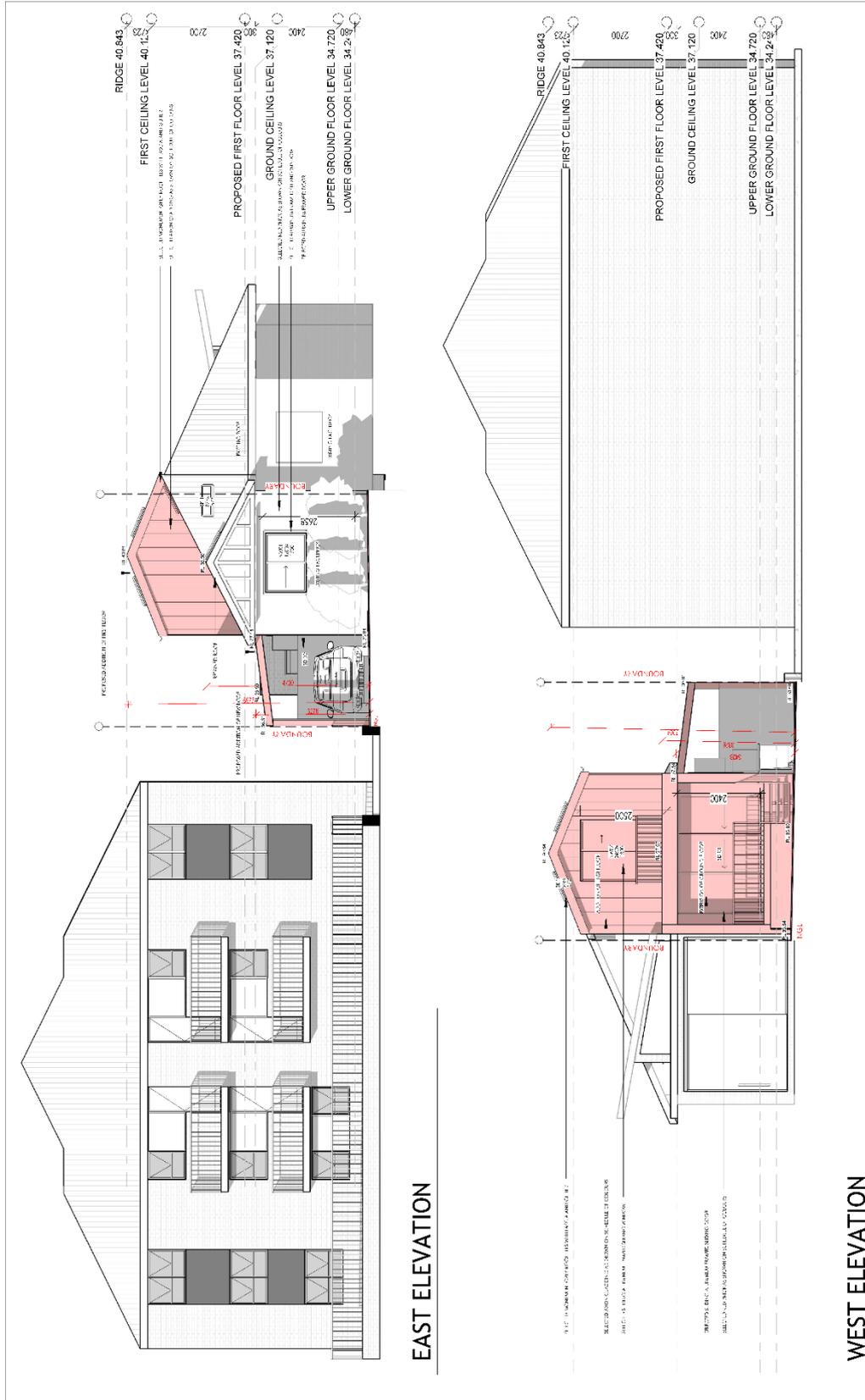
Noise

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.

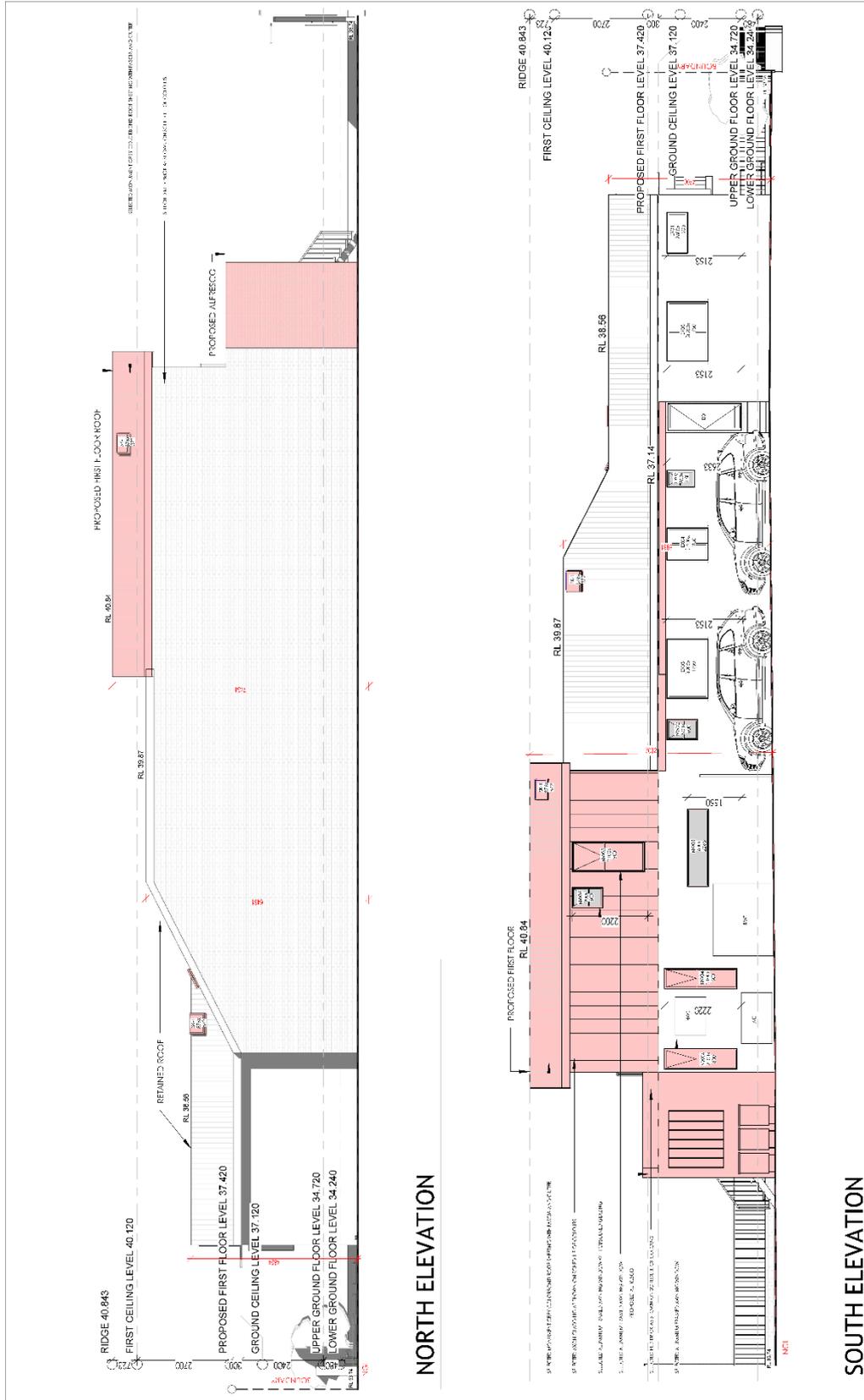




EAST ELEVATION

WEST ELEVATION

Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Website: www.inhausdesigns.com.au Residential / Commercial / Interiors 1/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000	TITLE ELEVATIONS GOVINDA PATHAK / SUBHI VERMA 86A HAY ST. LEICHHARDT DA SINGLE STOREY DWELLING	SCALE 1:100 DRAWN BY JM CHECK BY JE DATE 15.07.2022 PROJECT # 202257 DWG # INHAUS-12 REVISION A	NORTH POINT 	NOTES DRAWINGS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND TO BE CONSTRUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA PRIOR TO CONSTRUCTION BY BUILDER BOUNDARY DIMENSIONS & ALL LEVELS TO BE VERIFIED BY SURVEYOR JUST FIGURED DIMENSIONS ONLY, DO NOT SCALE FROM PLANS.	LEGEND 1/2 BRICK WALL 150 CEILING 150 CEILING 200 BRICK V.F. FR 200 SQUARE BRICK 150 CEILING 200 BRICK V.F. FR



<p>Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Website: www.inhausdesigns.com.au</p> <p>Residential / Commercial / Interiors 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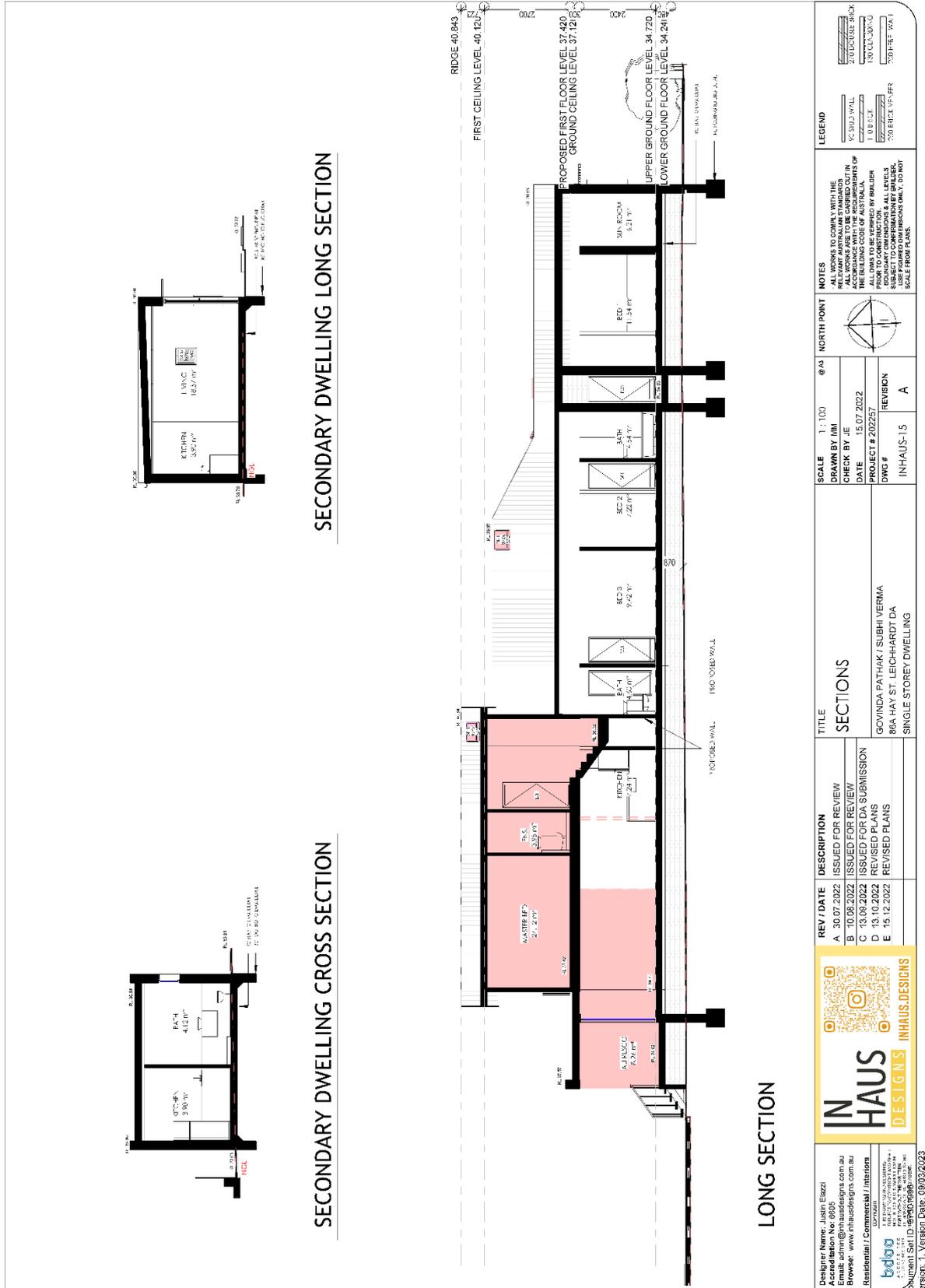
EAST ELEVATION.

NORTH ELEVATION.

WEST ELEVATION.

SOUTH ELEVATION.

<p>Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Website: www.inhausdesigns.com.au</p> <p>Residential / Commercial / Interiors</p> <p>inhaus DESIGNS</p> <p>Version: 1, Version Date: 09/03/2023</p>		<p>REV / DATE DESCRIPTION</p> <p>A 30.07.2022 ISSUED FOR REVIEW</p> <p>B 10.08.2022 ISSUED FOR REVIEW</p> <p>C 13.08.2022 ISSUED FOR DA SUBMISSION</p> <p>D 13.10.2022 REVISED PLANS</p> <p>E 15.12.2022 REVISED PLANS</p>	<p>TITLE</p> <p>ELEVATIONS</p> <p>GOVINDA PATHAK / SUBHI VERMA 86A HAY ST. LEICHHARDT DA SINGLE STOREY DWELLING</p>	<p>SCALE 1:100</p> <p>DRAWN BY JM</p> <p>CHECK BY JE</p> <p>DATE 15.07.2022</p> <p>PROJECT # 202257</p> <p>DWG #</p> <p>REVISION</p> <p>INHAUS-14 A</p>		<p>NOTES</p> <p>PLANS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND REGULATIONS AND TO ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA PRIOR TO CONSTRUCTION BY BUILDER.</p> <p>BOUNDARY DIMENSIONS & ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE NOTED. LISTED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS.</p>	<p>LEGEND</p>
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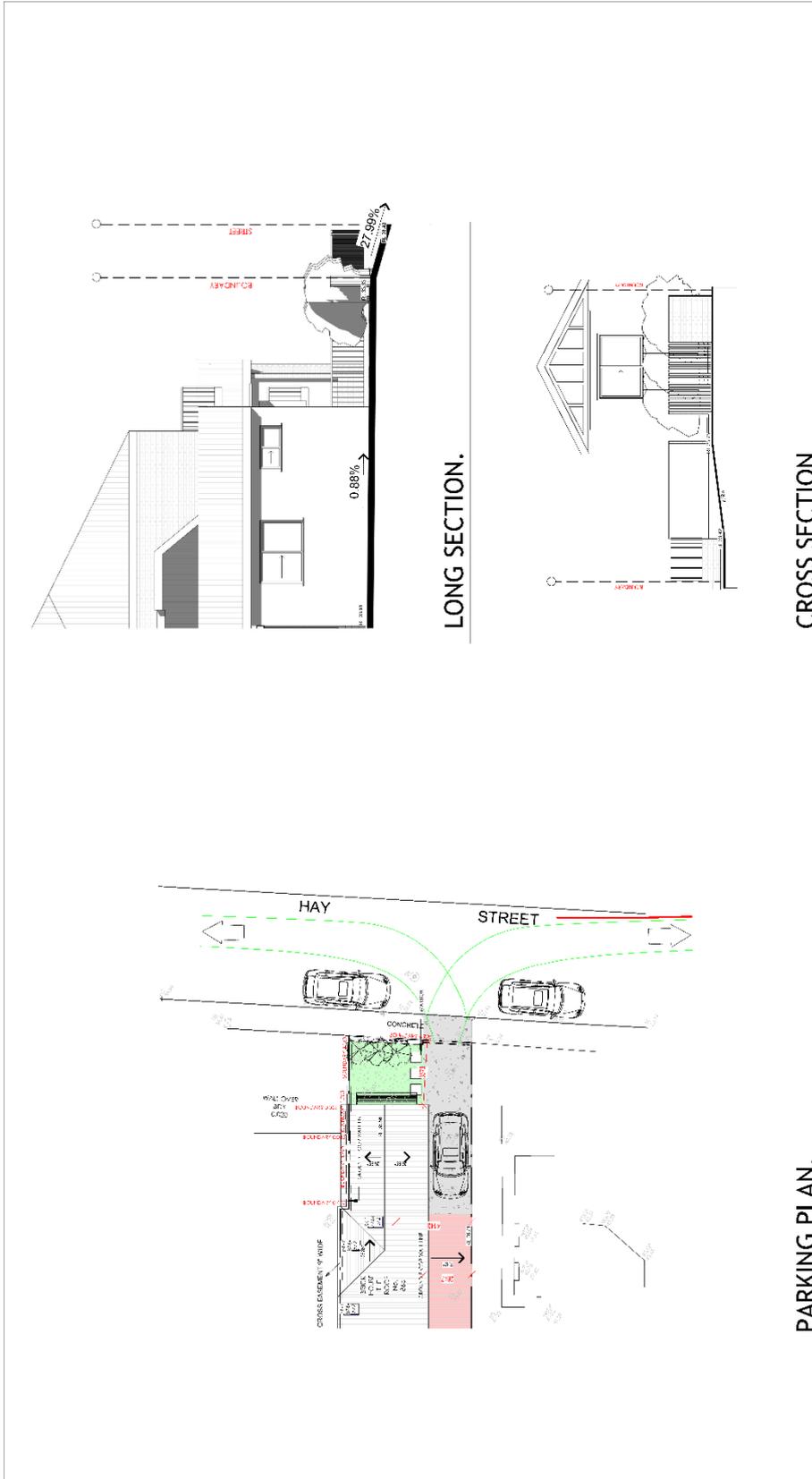


SECONDARY DWELLING LONG SECTION

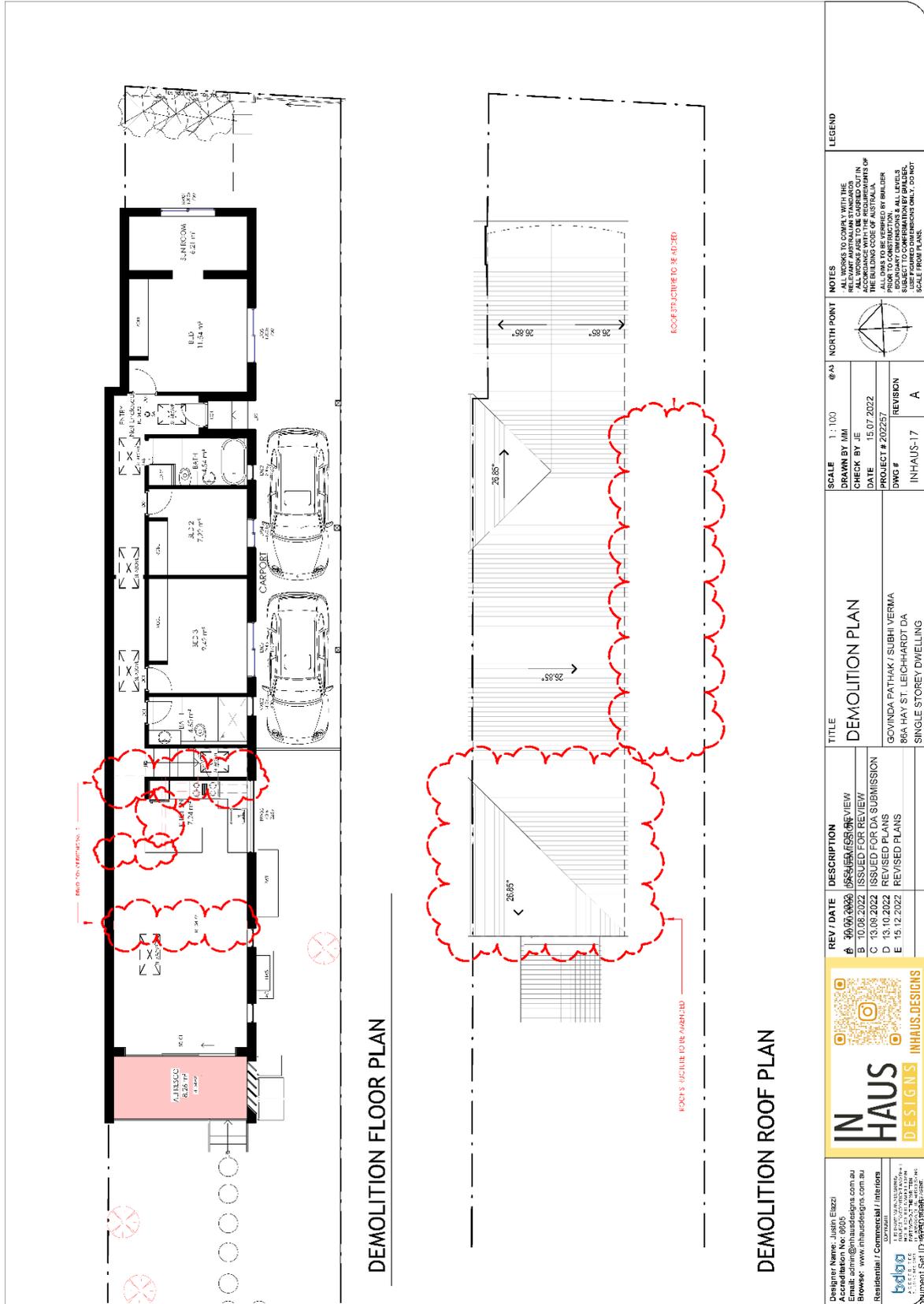
SECONDARY DWELLING CROSS SECTION

LONG SECTION

Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Browse: www.inhausdesigns.com.au Residential / Commercial / Interiors (Logos for bdba and inhaus designs)	REV / DATE A 30.07.2022 ISSUED FOR REVIEW B 10.08.2022 ISSUED FOR REVIEW C 13.08.2022 ISSUED FOR DA SUBMISSION D 13.10.2022 REVISED PLANS E 15.12.2022 REVISED PLANS	TITLE SECTIONS GOVINDA PATHAK / SUBHI VERMA 86A HAY ST. LEICHHARDT DA SINGLE STOREY DWELLING	SCALE 1:100 DRAWN BY JM CHECK BY JE DATE 15.07.2022 PROJECT # 202257 DWG # INHAUS-15 REVISION A	NORTH POINT 	NOTES DRAWINGS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND REGULATIONS AND TO BE ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. ALL DIMENSIONS TO FACE UNLESS NOTED OTHERWISE. PRIOR TO CONSTRUCTION BY BUILDER. INDUSTRY COMMISSIONS & ALL JUDGES MUST REFER TO DIMENSIONS ONLY. DO NOT SCALE FROM PLANS.	LEGEND 1/2 BRICK WALL 1/2 BRICK V/S IFR 200 SQUARE BRICK 150 CEMENT CONCRETE 150 CEMENT CONCRETE 200 BRICK V/S IFR
	Version: 1, Version Date: 09/03/2023 Document Set ID: 69c9c999-0000-4000-8000-000000000000					



Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Website: www.inhausdesigns.com.au Residential / Commercial / Interiors 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Designer Name: Justin Elazzi Email: admin@inhausdesigns.com.au Website: www.inhausdesigns.com.au Residential / Commercial / Interiors 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Attachment C- Section 4.6 Exception to Development Standards



CLAUSE 4.6 VARIATION STATEMENT

ALTERATIONS AND ADDITIONS TO SEMI-DETACHED DWELLING
HOUSE AND CONVERSION OF GARAGE TO SECONDARY
DWELLING

86A HAY STREET
LEICHHARDT NSW 2040
LOT B DP 417488

1 INTRODUCTION

This Clause 4.6 Variation Statement has been prepared by In House Town Planning. It is submitted to Inner West Council in support of a Development Application (DA) for alterations and additions to the existing dwelling house and the conversion of the existing garage to a secondary dwelling on the site located at 86A Hay Street, Leichhardt. The proposed development seeks a variation to minimum prescribed lot size for a secondary dwelling under the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Clauses 4.6 of the Inner West Local Environmental Plan 2022 (IWLEP 2022) enables Inner West Council to grant consent for development even though the development contravenes the minimum lot size requirement. The Clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- That the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant's written request has adequately demonstrated 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 particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction in respect of those matters must be informed by the objectives of Clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a).

In accordance with the IWLEP 2022 requirements, this Clause 4.6 Variation Statement identifies the following:

- The development standard to be varied.
- The variation sought.
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Demonstrates there are sufficient environmental planning grounds to justify the contravention.
- Demonstrates that the proposed variation is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- Provides an assessment of the matters the Secretary is required to consider before providing concurrence.

This Clause 4.6 Variation Statement relates to the development standard for minimum lot size under Division 2 Part 53 (2)(a) of the Housing SEPP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by In House Town Planning. This document demonstrates that compliance with the minimum lot

size provision is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This Clause 4.6 Variation Statement sufficiently demonstrates that:

- There are sufficient environmental grounds to justify the contravention. The proposed secondary dwelling does not generate any unacceptable environmental impacts in respect of overshadowing or wind and will not significantly impact on view lines and vistas from the public domain.
- There are site specific environmental grounds which justify the proposed development, due mainly to the smaller lot sizes within the locality and the existing nature of the building to be converted to the secondary dwelling.
- Notwithstanding the proposed variation, the final development remains consistent with the objectives of the development standard and the R1 – General Residential zone.
- The proposed secondary dwelling will not be perceivable from the public domain beyond what is currently there and as such the proposed development will have an appropriate impact, in terms of its scale, form and massing.
- The proposed development is in the public interest as the secondary dwelling will enable the orderly and efficient use of the land, in accordance with the objectives of the Environmental Planning and Assessment Act 1979 (EP&A Act).

2 PROPOSED VARIATION

2.1 DEVELOPMENT STANDARD TO BE VARIED

This Clause 4.6 Variation Statement seeks to justify contravention of the development standard set out in Division 2 Part 53 (2)(a) of the Housing SEPP:

Division 2 Secondary dwellings permitted with consent

53 Non-discretionary development standards—the Act, s 4.15

- 1. The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- 2. The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—*
 - a) for a detached secondary dwelling—a minimum site area of 450m²,*
 - b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

2.2 NATURE OF VARIATION SOUGHT

The final development comprises a principal dwelling and a secondary dwelling on the site and as such, a minimum site area of 450m² is required in accordance with the control above. The subject site has an area of 325.6m², therefore representing a departure from the development standard. The proposed design achieves full compliance with all other objectives and provisions of the IWLEP 2022 and the Leichhardt Development Control Plan 2013 (LDCP 2013) to ensure that any adverse impacts from the reduced lot size are alleviated and a high level of amenity is achieved on the site and for adjoining properties.

3 JUSTIFICATION FOR CONTRAVENTION OF THE STANDARD

Clause 4.6(3) of the IWLEP 2022 provides that:

1. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4)(a) of the IWLEP 2022 provides that:

2. *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.*

Assistance in the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

- *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The relevant matters contained in Clause 4.6 of the IWLEP 2022 with respect to the maximum building height development standard, are each addressed below, including with regard to these decisions.

3.2 CLAUSE 4.6(3)(a): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE AND UNECESSARY IN THE CIRCUMSTANCES OF THE CASE

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. The five methods outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the first method listed above. There are no specific objectives for secondary

dwelling development under the Housing SEPP. Instead, it is demonstrated below that the proposal achieves the Principles of the Policy under Chapter 1 Part 3 of the Housing SEPP.

- a) *enabling the development of diverse housing types, including purpose-built rental housing,*

The proposed development enables and supports the provision of affordable housing within the locality by providing two different forms of housing that will suit a range of household needs and will be a cost-effective way of downsizing or renting whilst remaining in the community.

- b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

The proposed secondary dwelling provides additional housing on the site to service the needs of the residents and will allow them to age in place or support family members if needed. Two different living options are provided on the site that will appeal to a range of household types and socioeconomic requirements into the future.

- c) *ensuring new housing development provides residents with a reasonable level of amenity,*

The proposed development involves the conversion of an existing building to a secondary dwelling. As a result, the secondary dwelling will not have any adverse impacts on adjoining properties or the principal dwelling beyond what is currently experienced on the site. The single storey form of the building ensures that there are no opportunities for overlooking and the building will be completely screened from adjoining properties by fencing and landscaping within the site setbacks. The overall development achieves a high level of amenity on the site for the benefit of the residents.

- d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

The subject site is within close proximity to infrastructure such as schools, shops, transport and recreational facilities. As a result, the site is considered to be in an ideal location that enjoys ease of access to a variety of services that promote social and economic activity within Leichhardt.

- e) *minimising adverse climate and environmental impacts of new housing development,*

The proposed development is contained to within the established building envelope on the site and will not generate adverse climate or environmental impacts.

- f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

The nature of the development and location at the rear of the site ensures that it does not dominate the streetscape but rather integrates seamlessly with the existing form and architectural styling of the dwelling house and the adjoining semi-detached dwelling at 86 Hay Street, Leichhardt. The development maintains the existing building setback distances to the front and side boundaries. The first-floor addition to the principal dwelling is recessed significantly behind the front building line of the ground floor level to minimise its visual impact. The secondary dwelling maintains the single storey form of the existing building and will be completely screened from the public domain and adjoining properties by fencing and landscaping.

- g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

The proposed development provides opportunities for short-term rental accommodation in the future, enabling to different housing types of the site that will suit a range of needs.

- h) *mitigating the loss of existing affordable rental housing.*

The proposed development will contribute to affordable housing in the locality.

3.3 CLAUSE 4.6(3)(b): ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The following site-specific environmental grounds further justify the proposed variation to the maximum height control:

- The proposed development involves the conversion of the existing garage to a secondary dwelling, with all works contained to within the existing building envelope on the site. The secondary dwelling does not require any excavation or building works that would result in environmental impacts or adversely affect the amenity of surrounding properties.
- The final development including principal and secondary dwelling will not generate any unacceptable adverse environmental impacts in respect of overshadowing or wind impacts. This is clearly demonstrated by the Shadow Diagrams submitted with this application, with the development maintaining an appropriate level of solar access to adjoining living and private open space areas through the incorporation of suitable setback distances to the side and rear property boundaries. The single storey form of the secondary dwelling ensures that there are no overshadowing impacts.
- Notwithstanding the proposed variation, the final development continues to satisfy the principles of the Housing SEPP as demonstrated above.
- The proposed development achieves compliance across all applicable provisions of the IWLEP 2022 and the LDCP 2013 including maximum building height, floor space ratio, setback distances, landscaping, private open space, solar access, visual and acoustic privacy.
- The proposed variation will not result in a development that is out of character with that envisioned by Inner West Council. The final development will have minimal impacts on the visual appearance of the site when viewed from the public domain.

Furthermore, there are examples of rear studios and secondary dwellings in the immediate vicinity of the site and in the surrounding streetscapes, demonstrating that this form of development is characteristic of the locality. Of note, the adjoining site at 86 Hay Street, Leichhardt contains a semi-detached dwelling house with a detached studio at the rear. The studio is shown at Figure 1 below. The studio contains a living space and bathroom in a similar configuration to that proposed under this application.



Figure 1: View of Detached Studio at 86 Hay Street, Leichhardt

The final development is highly compatible with the adjoining dwelling at 86 Hay Street, Leichhardt and the surrounding streetscape in terms of bulk, scale and visual aesthetic when viewed from the public domain. The location of the works at the rear of the built form, retaining the existing façade, will ensure that the addition and proposed secondary dwelling are subordinate to the existing dwelling house and will not adversely impact on the building's presentation to the streetscape or contribution to the visual quality of the area. The design of the development is sympathetic to the significance of the streetscape and will not compete with the integrity of the locality or set an undesirable precedence for future development.

3.4 CLAUSE 4.6(3)(a)(ii): IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD

The proposed development is in the public interest as it achieves the objectives of the R1 – General Residential zone by contributing to a form of low impact residential development to meet the housing and amenity needs of the residents. The proposed development does not require the removal of significant trees or vegetation from the site and has been sensitively designed to respond to the natural topography of the land to minimise unnecessary excavation. The design of the development is in keeping with the existing semi-detached dwelling house, the adjoining semi-detached dwelling house and the residential characteristics of the locality and will not adversely impact on the sites presentation to the streetscape as a result of sympathetic architecture combined with appropriate landscaping works. The final development will set a desirable precedence for future development in Leichhardt.

4 OTHER MATTERS FOR CONSIDERATION

Under clause 4.6(5) of the IWLEP 2022, in deciding whether to grant concurrence, the Director-General must consider the following matters:

1. *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.*

These matters are addressed in detail below.

4.2 CLAUSE 4.6(5)(a): WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING

The variation of the maximum height development standard does not raise any matter of significance for State or Regional planning.

4.3 CLAUSE 4.6(5)(b): THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

There is no public benefit in maintaining the development standard in terms of State and Regional planning objectives. As noted in the preceding sections, the additional height proposed generally reflects the height of development throughout the locality and the non-compliance is largely due to the sloping nature of the site. The development will not appear out of character when viewed from the public domain and does not give rise to any significant adverse environmental impacts.

4.4 CLAUSE 4.6(5)(c): ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE DIRECTOR-GENERAL BEFORE GRANTING CONCURRENCE.

There are no other relevant matters requiring consideration.

6 CONCLUSION

The assessment above sufficiently demonstrates that compliance with the minimum lot size development standard contained in Division 2 Part 53 (2)(a) of the Housing SEPP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, in accordance with the Principles of Policy. The final development has been designed in harmony with the existing buildings on the site to ensure that the proposed works do not compete with the integrity of the streetscape.

This Clause 4.6 Variation Statement demonstrates that, notwithstanding the non-compliance with the maximum height development standard, the proposed height variation:

- Is consistent with the Principles of the Policy under the Housing SEPP.
- Is consistent with the guiding principles of *Tenacity Consulting v Warringah Council* in terms of view loss.
- Will not impact on the visual quality of the streetscape or the amenity of adjoining properties.
- Will promote the orderly and efficient use of land, in accordance with the objectives of the Act.

It is therefore demonstrated that the application may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the IWLEP 2022.

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