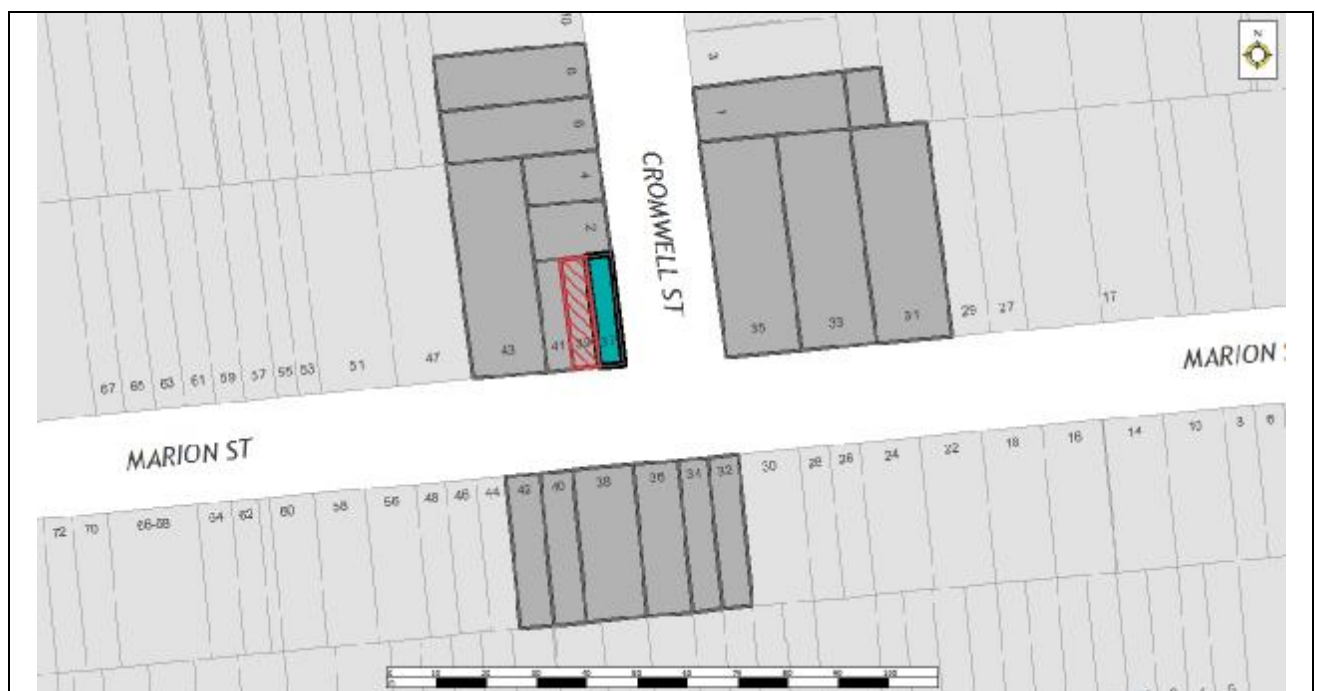








DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2017/466
<b>Address</b>	37 Marion Street, LEICHHARDT NSW 2040
<b>Proposal</b>	Alterations and additions to existing dwelling.
<b>Date of Lodgement</b>	8 September 2017
<b>Applicant</b>	Mr S Jovcevski
<b>Owner</b>	Mr S Jovcevski
<b>Number of Submissions</b>	1 Submission
<b>Value of works</b>	\$117,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variations exceeds officer delegation
<b>Main Issues</b>	Site Coverage and Floor Space Ratio Breaches Bulk and Scale Solar Access
<b>Recommendation</b>	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing dwelling at No.37 Marion Street, Leichhardt. The application was notified to surrounding properties and one [1] submission was received.

The main issues that have arisen from the application include:

- Clause 4.6 Variation to Site Coverage and Floor Space Ratio development standards
- Bulk and Scale
- Solar Access

The non-compliances are acceptable given the existing site conditions and surrounding pattern of development and therefore the application is recommended for approval.

## 2. Proposal

The proposal seeks alterations and additions to the existing dwelling to include -

- Alterations and additions to the dwelling at ground floor including:
  - Replace existing window frames to the Marion and Cromwell Street elevations;
  - Ground floor rear living room addition and construction of a staircase to the first floor;
- Raising of the front and side walls to the front portion of the existing cottage to be retained and the addition of a first floor addition to the dwelling comprising two bedrooms and a bathroom, contained within a raised and extended (rearward) hipped roof with two skylights fronting Cromwell Street, and gabled form addition fronting Cromwell Street (over the internal stairs and hall to the first floor); and
- New rear gate to Cromwell Street.

## 3. Site Description

The subject site is located on the northern side of Marion Street, at its intersection with Cromwell Street. The site consists of one allotment and is generally rectangular with a total area of 108.80m<sup>2</sup> and is legally described as Lot C DP 379099.

The site has a frontage to Marion Street of 4.85 metres and a secondary frontage of approximate 22.67 metres to Cromwell Street.

The site supports a single storey dwelling. The adjoining properties at No. 39 Marion Street and No. 2 Cromwell Street support similar single storey dwellings.

The following trees are located on the site and within the vicinity:

- *Sapium sebiferum* (Chinese Tallowwood) located at the rear of the property (Cromwell Street frontage).

## 4. Background

### 4(a) Site history

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

**Subject Site**

N/A

**Surrounding properties****39 Marion Street**

Application	Proposal	Decision & Date
PREDA/2016/54	Alterations and additions to the existing dwelling including construction of a first floor level.	Advice Letter Issued 11/05/2016
PREDA/2016/180	Change layout of existing living area and additional storey with bedroom and ensuite.	Advice Letter Issued 17/10/2016

**4(b) Application history**

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

Date	Discussion / Letter/ Additional Information
17/10/2017	Council – wrote to the applicant requesting additional information
01/11/2017	Applicant – lodged additional information – amended plans
21/11/2017	Council – wrote to the applicant requesting additional information
23/11/2017	Applicant – lodged additional information – amended plans

**5. Assessment**

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

**5(a) Environmental Planning Instruments**

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

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

**5(a)(ii) State Environmental Planning Policy No 55—Remediation of Land–**

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

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

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

A BASIX Certificate was submitted with the application and the commitments are detailed on the architectural plans and as such the requirements of the SEPP have been met.

### 5(a)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

### 5(a)(v) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid Sulphate 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:

#### Clause 4.3A and Clause 4.4 – Landscaped Area, Site Coverage and Floor Space Ratio

Standard (maximum)	Proposal	% of non compliance	Compliance
<b>Floor Space Ratio</b> (0.8:1 or 87.04m <sup>2</sup> )	0.94:1 102.1m <sup>2</sup>	17.27%	No
<b>Landscape Area</b>	0%	100%	No
<b>Site Coverage</b> (60% or 65.28m <sup>2</sup> )	78.35% or 85.244m <sup>2</sup>	30.58%	No

The following provides further discussion of the relevant issues:

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1

- Clause 4.4 – Floor Space Ratio

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

The application requests that development consent be granted for the development even though the proposal will contravene the minimum landscaped area and maximum site coverage and floor space ratio development standards prescribed under Part 4 of Leichhardt local Environmental Plan 2013.

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

The applicant has submitted a written request outlining why compliance with the development standards is unnecessary and unreasonable in this case, and has provided sufficient environmental planning grounds to justify a variation to the development standards.

*Clause 4.3A(3)(a) – Landscaped Areas for residential development in Zone R1 (Landscaped Area)*

The following justification has been provided in relation to Landscaped Area development standard:

- *Despite the variation, the proposal is consistent and compatible with the character of the surrounding area.*
- *Despite the variation, the proposal does not cause any significant adverse amenity impacts on the site or adjoining properties.*
- *The broad application of site coverage provision does not recognise the prevalence of established corner sites. The application of site coverage controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad site coverage controls to all properties in conjunction with Council's DCP provisions.*
- *The proposal has been designed to improve the dwelling's amenity for the residents and will not bear any significant impact to the amenity of the adjoining and nearby dwellings.*
- *The site coverage provision does not consider the ability for a site to accommodate floor areas for reasonably sized dwellings.*

*Clause 4.3A(3)(b) – Landscaped Areas for residential development in Zone R1 (Site Coverage)*

The following justification has been provided in relation to Site Coverage development standard:

- *The existing site does not satisfy Council's provision. It would be impracticable to remove existing built elements including the existing detached garage to meet the site coverage provision.*
- *Despite the variation, the proposal is consistent and compatible with the character of the surrounding area.*
- *The site coverage provision preference for floor area on the ground floor identified by the context of the surrounding area and DCP provisions.*
- *The broad application of site coverage provision does not recognise the prevalence of established corner sites. The application of site coverage controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad site coverage controls to all properties in conjunction with Council's DCP provisions.*
- *The proposal has been designed to improve the dwelling's amenity for the residents and will not bear any significant impact to the amenity of the adjoining and nearby dwellings.*

#### *Clause 4.4 – Floor Space Ratio*

The following justification has been provided in relation to the Floor Space Ratio development standard:

- *Despite the variation, the proposal comprises a considered design that is compatible with the character of the adjoining and surrounding properties.*
  - *Despite the variation, the proposal does not cause any adverse impacts on the amenity of the site or surrounding properties.*
  - *The broad application of the floor space ratio provision does not recognise the prevalence of established corner sites. The application of floor space ratio controls must be nuanced to consider the historical settlement patterns of corner sites in the surrounding area and the impracticability of applying broad floor space ratio controls to all properties in conjunction with Council's DCP provisions.*
  - *The floor space ratio provision does not consider the ability for a site to accommodate floor areas for reasonably sized dwellings.*
  - *The proposal is consistent with the provisions of the draft FSR.*
  - *Strict compliance with the FSR will not result in any discernible reduction in bulk or scale.*
- (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.*

The proposal is considered to satisfactorily demonstrate that application of the above development standards is unreasonable and unnecessary in this instance, and that sufficient environmental planning grounds exist to justify a variation to the above development standards.

The proposed floor space ratio and site coverage breaches do not result in any unreasonable amenity impacts to the surrounding residential properties in terms of height bulk and scale, visual privacy, view sharing or solar access, nor will be out of character with the pattern of development in the immediate vicinity and in the West Leichhardt Distinctive

Neighbourhood. Further, the proposed rear extension of the ground floor is considered to provide improved on-site amenity outcomes by providing a new living space with a direct connection between the main living space and the rear private open space.

In relation to the landscaped area non-compliance, the breach results in no off-site amenity implications and the proposal does not further advance the existing non-compliance. The site is very small and the general pattern of development at the rear of these Marion Street properties provides limited, or no landscaped area. Notwithstanding this, there is scope to condition the proposal to provide perimeter planter beds in the rear courtyard, which whilst do not technically comply with the 1m width to be considered as Landscaped Area, do assist in achieving the objectives of the Clause – a condition is recommended in this regard.

The proposed works will be complementary to the existing residence at this corner location and meets the desired future character controls, will not result in additional undue adverse amenity impacts to surrounding residential properties, and will result in improved on-site amenity outcomes. Accordingly, the application is consistent with the objectives and aims of the plan and the residential zoning and development standards, and is therefore supported in this regard.

- (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*

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

- (b) *the public benefit of maintaining the development standard, and*

The proposed variation to the development standard will not compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is no material public benefit to the enforcing of the development standards.

- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

No other matters are required to be considered before granting concurrence.

#### Clause 6.8 Development in Areas Subject to Aircraft Noise

The site located in a 20-25 ANEF aircraft noise exposure area. The proposal represents substantial alterations and additions which would result in an increase in the number of people affected by aircraft noise, due to the proposed addition of two first floor bedrooms (in addition to the one already provided on the ground floor). As a result, compliance with AS2021-2015 – *Acoustic-Aircraft noise intrusion- Building sitting and construction* is required – a condition is recommended.

#### **5(b) Draft Environmental Planning Instruments**

##### Draft Coastal Management State Environmental Planning Policy

This draft SEPP has been publicly exhibited and is therefore a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Consequently the application has been considered against the Draft SEPP for Coastal Management.

The subject site is not located within the “coastal environment area” and the “coastal use area” as identified on the maps accompanying the SEPP, and therefore, the provisions of the draft SEPP do not apply to the subject site.

### 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.

Part	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes – See Below
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	N/A
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	Yes – See Below
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – Breach of building envelope and side setback controls – See below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes
C3.5 Front Gardens and Dwelling Entries	N/A



C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – See below
C3.10 Views	N/A – See below
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	<b>N/A</b>
<b>Part D: Energy</b>	<b>Yes</b>
<b>Part E: Water</b>	<b>Yes</b>
<b>Part F: Food</b>	<b>N/A</b>
<b>Part G: Site Specific Controls</b>	<b>N/A</b>

The following provides discussion of the relevant issues:

#### C1.14 Tree Management

The proposal involves the removal of a *Sapium Sebiferum* (Chinese Tallwood) located at the rear of the property within the courtyard along the Cromwell Street frontage. The removal of this tree is supported, as per advice provided by Council’s Landscaping Advisor, the tree is dead.

#### C1.3 Alterations and Additions, C2.2.3.2 West Leichhardt Distinctive Neighbourhood and C3.3 Elevation and Materials

The proposed additions entail a minor (300mm) raising of the front and side walls to the front portion of the subject cottage to be retained, which will result in a minor breach of the envelope control applicable to the site (being 3.6m), achieving a maximum wall height of approximately 4m on Marion Street. The new first floor addition to the dwelling will be contained within a raised and extended (rearward projecting) hipped roof with two skylights fronting Cromwell Street, and gabled form addition fronting Cromwell Street - the raised roof form results in an overall increase in height of the building ridgeline by 1.9m to RL37.40 or 1.2m above the ridgeline of No.39 Marion Street (Ridge RL36.20).

The building height and building envelope of the proposal is considered acceptable given:

- While the final wall heights and maximum heights would be greater than that of the neighbouring property at No. 39 Marion Street, this is considered acceptable given that this site is located downslope of the subject site. Further, the wall heights and overall height of the development will not be out of character in this streetscape or the West Leichhardt Distinctive Neighbourhood;
- The dwelling retains a single storey form with the first floor contained within a compatible (with the dwelling and the streetscape) and extended roof form;
- The works are sited within the established BLZ for the site; and
- The proposal would not result in any undue adverse amenity impacts in terms of visual height and scale or solar access.

Further, the proposal will be conditioned to ensure compatible finishes, materials and colours are used. It is considered that in the context of the site and the streetscape, and the character of the existing building, the proposal is a suitable response to the streetscape and desired future character controls.

### C3.2 Site Layout and Building Design

#### *Side Setbacks*

The proposal does not comply with the side boundary setback graph specified in this Clause. Specifically, the western boundary shared with No. 39 Marion Street which would have a wall height of up to 3.64m where the graph permits a maximum height of 2.8 m on the boundary. The proposed height and setback are considered to be acceptable in this instance as:

- The dwelling is built predominantly from boundary to boundary thus the pattern of development in the streetscape is not compromised;
- The additions result in the minor raising of wall heights at ground floor and the new first floor contained within a slopping roof or attic form. The minimised heights ensure that the proposal would not result in undue adverse impacts for No. 39 Marion Street in terms of bulk and scale.

In summary it is considered that both the ground and first floor additions are sited appropriately within the general pattern of development along this section of Marion Street and as a result are acceptable as proposed.

### C3.8 Private Open Space

The existing dwelling does not meet the provisions of this Clause as private open space is not directly connected to the principal indoor living areas. The proposal involves the rear extension of the existing dwelling, enclosing the existing patio and establishing a new living area connected to the rear courtyard. While the rear extension would reduce the size of the courtyard by 2m and 2.8m in depth (inclusive of the area under the rear patio), the proposal meets the provisions of this Clause in maintaining 17.4m<sup>2</sup> of private open space where a minimum area of 16m<sup>2</sup> is required, with a minimum dimension of 3.68m where a minimum dimension of 3m is required.

### C3.9 Solar Access

The following solar access controls and assessment are:

#### All Development

- *C5 – All habitable rooms shall have access to natural daylight regardless of provision of skylights or similar. Daylight shall be provided via:  
a. an outdoor facing window; or  
b. a window facing a light-well or courtyard that is open to the sky.*

**Comment:** The proposed addition of a new first floor does not comply with Control C5 as the bedrooms rely on skylights for light and ventilation. However, the non-compliance can be supported in this instance given that the design as proposed minimises streetscape implications on this corner block arising from a first floor addition, and given the acceptable on-site amenity outcomes to be reinforced by condition i.e. compliance with the BCA, as well as the requirement that clear glazed and centrally pivoted skylights be provided to the bedrooms to ensure that they result in acceptable light, outlook and ventilation to the bedrooms that also prevent and minimise / prevent rainwater ingress.

#### Neighbouring Living Room Glazing

- *C13 – Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice.*
- *C15 – Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

**Comment:** The proposal involves the rear extension of the existing dwelling (living area) which is adjacent to the living area of No. 39 Marion Street. The shadow diagrams provided indicate that no additional shadowing caused by the proposed extension would impact the living room glazing of the adjacent dwelling. In addition, while the adjacent property is also orientated north/south, the glazing serving the main living room is east facing and is not protected by the solar access controls specified in this Clause.

#### Neighbouring Private Open Space

- *C17 – Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice.*
- *C19 – Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

**Comment:** The proposal previously involved the extension of the existing garage at the rear of the site and the addition of a garage store above. These proposed works have been withdrawn from the application by way of amended plans. As such, the north facing private open space of the adjacent dwelling would not experience any additional overshadowing as a result of the proposed development.

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

The site is zoned R1 – General Residential. 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(f) Any submissions

The application was notified in accordance with Part A, Section 3 of LDCP 2013 for a period of 14 days to surrounding properties. A total of one [1] submission was received.

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

- The increase in visual bulk from the development – see Section 5(c) – C3.2
- Solar access implications from garage addition and rear extension of the living area – see Section 5(c) – C3.9

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

**Issue:** The gabled roof pitch of the proposed garage attic store is deemed non-compliant and would block desirable winds to our courtyard and rooms through windows to the side of our property. It would also require the removal of the existing tree canopy above our courtyard.

**Comment:** The works to the existing garage which included the extension of the western wall to the boundary and the addition of the attic store have been withdrawn from the application by way of amended plans deleting these works.

Issue: The proposed extension to the ground floor (living area) will potentially block natural light to our main bedroom, living area and bathroom; and disrupt cross-ventilation in our main bedroom and living area

Comment: A solar access impact assessment is included in Section 5(c) - C3.9. In summary the proposal is considered acceptable and would not result in undue adverse overshadowing that would affect compliance with this Clause. Regarding concerns with respect to loss of light, it is recommended that the western wall of the additions, adjacent to No. 39 Marion Street, be painted a light colour being UV proven and an effective way of maximising reflected light to a neighbouring property.

### 5(g) The Public Interest

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

The proposal is 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.

- Development Engineer
- Landscape
- Building Surveyor

### 6(b) External

The application was not required to be referred to external authorities.

## 7. Section 94 Contributions

Section 94 contributions are not payable for the proposal.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any undue adverse impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The variation to Clauses 4.3A(3)(a) - Landscape Area of the Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.

- B. The variation to 4.3A(3)(b) - Site Coverage of the Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- C. The variation to 4.4 – Floor Space Ratio of the Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- D. That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2017/466 for alterations and additions to existing dwelling at 37 Marion Street, Leichhardt subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. D/2017/466 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Drawing No: P-1720-A01 Site Plan – Amended Plans (B)	DA House Architecture + Interiors	22/11/2017
Drawing No: P-1720-A02 Floor Plans – Amended Plans (B)	DA House Architecture + Interiors	22/11/2017
Drawing No: P-1720-A03 Floor Plan Section – Amended Plans (B)	DA House Architecture + Interiors	22/11/2017
Drawing No: P-1720-A05 Elevations Proposed – Amended Plans (B)	DA House Architecture + Interiors	22/11/2017
Drawing No: P-1720-A06 Sections – Amended Plans (B)	DA House Architecture + Interiors	22/11/2017
Document Title	Prepared By	Dated
Colours and Finishes Schedule	DA House Architecture + Interiors	05/09/2017
BASIX Certificate #: A291403 Dated 04 September 2017	DA House Architecture + Interiors	04/09/2017
Drawing No: P-1720-A12 Stormwater Concept Plan	DA House Architecture + Interiors	05/09/2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

2. The demolition works approved by this consent shall strictly comply with the following conditions:
  - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
  - b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone

number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:

- i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
- ii) A *final* inspection when the demolition works have been completed.

**NOTE:** If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6.00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig [www.1100.com.au](http://www.1100.com.au) should be contacted prior to works commencing.

- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
  - i) A WorkCover licensed contractor must undertake removal of all asbestos.
  - ii) During the asbestos removal a sign “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
  - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
  - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
  - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

3. Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Sapium sebiferum</i> (Chinese Tallowwood) located at the rear of the property (Cromwell Street frontage).	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

**PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE**

- 4. In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
  - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the “Principal Certifying Authority.”
  - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
  - c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the



Building Code of Australia and the relevant Australian Standards.

5. Amended plans are to be submitted incorporating the following amendments:
- a) Finished floor level and finished ceiling level RLs (and room heights) to be marked on plans.
  - b) Perimeter planter boxes are to be constructed along the full extent of the eastern and western boundaries of the rear outdoor courtyard (with the exception of the pedestrian entrance gate) with minimum depths of 700mm.
  - c) The western walls of the addition, adjacent to No. 39 Marion Street, are to be painted in a light colour.
  - d) The skylights to the first floor bedrooms are to be clear glazed, centrally pivoted skylights designed to minimise / prevent the ingress of rainwater and stormwater and to ensure that the bedrooms achieve adequate light and ventilation in accordance with Part 3.8 of the Building Code of Australia.

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

6. As the site where the property is identified as located within ANEF 20-25 or greater, the development approved under this consent must meet the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

An acoustic report prepared by a suitably qualified person and accompanying plans demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

7. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
  - i) 10:00pm to 7:00am on Monday to Saturday: and
  - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the

acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

8. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
9. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy 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. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

10. Materials, finishes and colours must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
11. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
  - a) Must preserve and protect the adjoining building from damage
  - b) Must, at least seven (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.
  - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

12. A stormwater drainage design prepared by a Licensed Plumber or qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/ amended to make provision for the following:
  - a) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road or directly into Council's piped drainage system. Charged or pump-out stormwater drainage systems are not permitted.
  - b) A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings.

- c) The rear courtyard must be graded so that surface flows and bypass flows from the site drainage system are directed away from the dwelling to Marion Street.
- d) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS 3500.3-2003 Plumbing and Drainage – Stormwater Drainage*
- e) 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.
- f) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- g) 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 4.0mm and a section height of 100mm.
- h) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

13. A Certificate prepared by an appropriately qualified and 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 must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall 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.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

14. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

15. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
- a) A plan view of the entire site and frontage roadways indicating:
    - i) Dedicated construction site entrances and exits, controlled by a certified

traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.

- ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
  - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
  - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
  - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
- b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information.
- c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
- d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

16. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
- a) Estimated volume (m<sup>3</sup>) or weight (t) of materials that are reused, recycled or removed from site.
  - b) On site material storage areas during construction.

- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

17. Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

**PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)**

18. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below must be 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.

Security Deposit (FOOT)	\$ 2100.00
Inspection fee (FOOTI)	\$ 225.00

Payment will be accepted in the form of cash, bank cheque or 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 Council to determine the condition of the adjacent road reserve & footpath prior to & 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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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 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.

Requirements of this condition are to be met prior to works commencing or prior to

release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

19. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
- a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
  - b) A concrete pump across the roadway/footpath. – A Standing Plant permit
  - c) Mobile crane or any standing plant – A Standing Plant Permit
  - d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
  - e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
  - f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
  - g) Awning or street verandah over footpath. – Road works Application
  - h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

20. Location of any services, eg. A/C units, solar power arrays to be included on plans at CC stage.
21. Fire resisting construction where relevant in relation to Part 3.7, BCA Vol 2 to be noted on the plans at CC stage.

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

22. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

- a) location of the building with respect to the boundaries of the site;

23. The site must be 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 property 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. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

24. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

25. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt 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.
26. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
27. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
28. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
- a) Unauthorised entry to the work site is prohibited.

- b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
- c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

### **DURING WORKS**

29. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

30. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

31. The site must be appropriately secured and fenced at all times during works.
32. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority.



33. Excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

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

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

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

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

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

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

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

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

34. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
35. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
36. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
- a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element,

and

- d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
37. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
38. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
39. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

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

#### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

40. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

41. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
42. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
43. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

44. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
  - BASIX certificate (where relevant),
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.

45. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

#### **ONGOING CONDITIONS OF CONSENT**

46. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
47. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
48. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling house, is defined under the *Leichhardt Local Environmental Plan 2013*.

#### **PRESCRIBED CONDITIONS**

##### **A. BASIX Commitments**

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
- i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**B. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - 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, or
  - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

**D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

**E. Condition relating to shoring and adequacy of adjoining property**

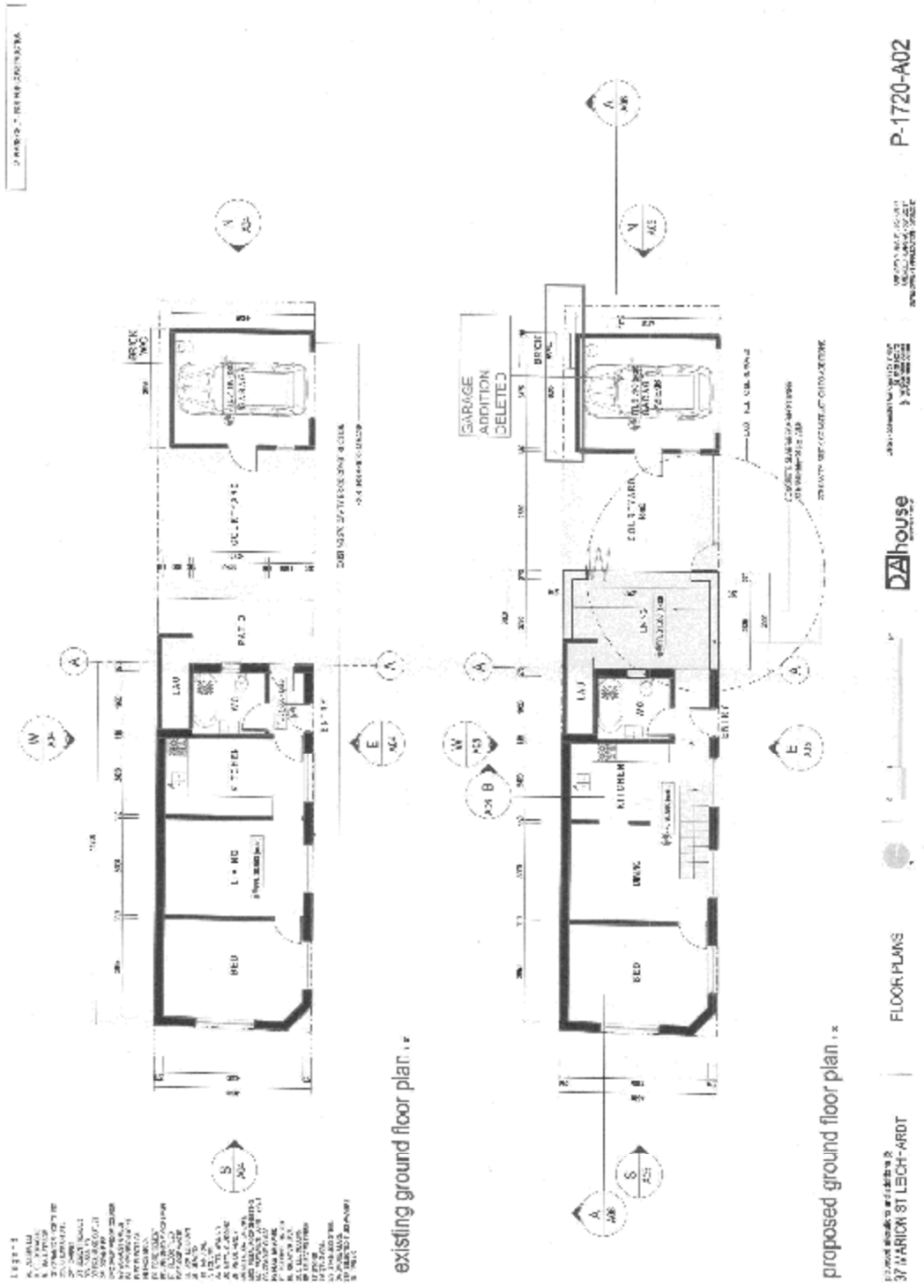
- 1) For the purposes of [section 80A](#) (11) of [the Act](#), it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**NOTES**

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 82A of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development, integrated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 82A.
3. If you are unsatisfied with this determination, Section 97 of *the Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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 96 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. 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*.

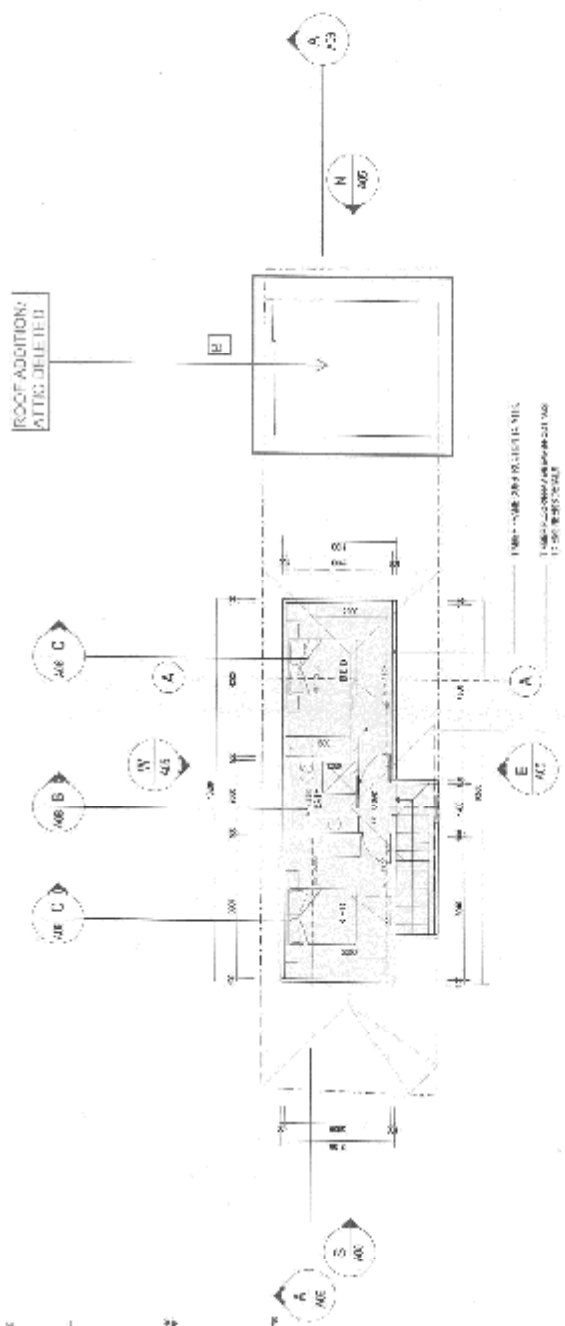
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
  - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
  - e) Application 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.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

Attachment B – Plans of proposed development



APPENDIX A - SITE INFORMATION

- 1. SITE NO.
- 2. ADDRESS
- 3. SUBURB
- 4. LOCAL GOVERNMENT
- 5. ZONING
- 6. DATE OF ZONING
- 7. DATE OF THIS PLAN
- 8. DATE OF LAST REVISION
- 9. DATE OF THIS REVISION
- 10. DATE OF THIS REVISION
- 11. DATE OF THIS REVISION
- 12. DATE OF THIS REVISION
- 13. DATE OF THIS REVISION
- 14. DATE OF THIS REVISION
- 15. DATE OF THIS REVISION
- 16. DATE OF THIS REVISION
- 17. DATE OF THIS REVISION
- 18. DATE OF THIS REVISION
- 19. DATE OF THIS REVISION
- 20. DATE OF THIS REVISION
- 21. DATE OF THIS REVISION
- 22. DATE OF THIS REVISION
- 23. DATE OF THIS REVISION
- 24. DATE OF THIS REVISION
- 25. DATE OF THIS REVISION
- 26. DATE OF THIS REVISION
- 27. DATE OF THIS REVISION
- 28. DATE OF THIS REVISION
- 29. DATE OF THIS REVISION
- 30. DATE OF THIS REVISION
- 31. DATE OF THIS REVISION
- 32. DATE OF THIS REVISION
- 33. DATE OF THIS REVISION
- 34. DATE OF THIS REVISION
- 35. DATE OF THIS REVISION
- 36. DATE OF THIS REVISION
- 37. DATE OF THIS REVISION
- 38. DATE OF THIS REVISION
- 39. DATE OF THIS REVISION
- 40. DATE OF THIS REVISION
- 41. DATE OF THIS REVISION
- 42. DATE OF THIS REVISION
- 43. DATE OF THIS REVISION
- 44. DATE OF THIS REVISION
- 45. DATE OF THIS REVISION
- 46. DATE OF THIS REVISION
- 47. DATE OF THIS REVISION
- 48. DATE OF THIS REVISION
- 49. DATE OF THIS REVISION
- 50. DATE OF THIS REVISION



proposed 1st floor attic plan

P-1720-A03

DA house

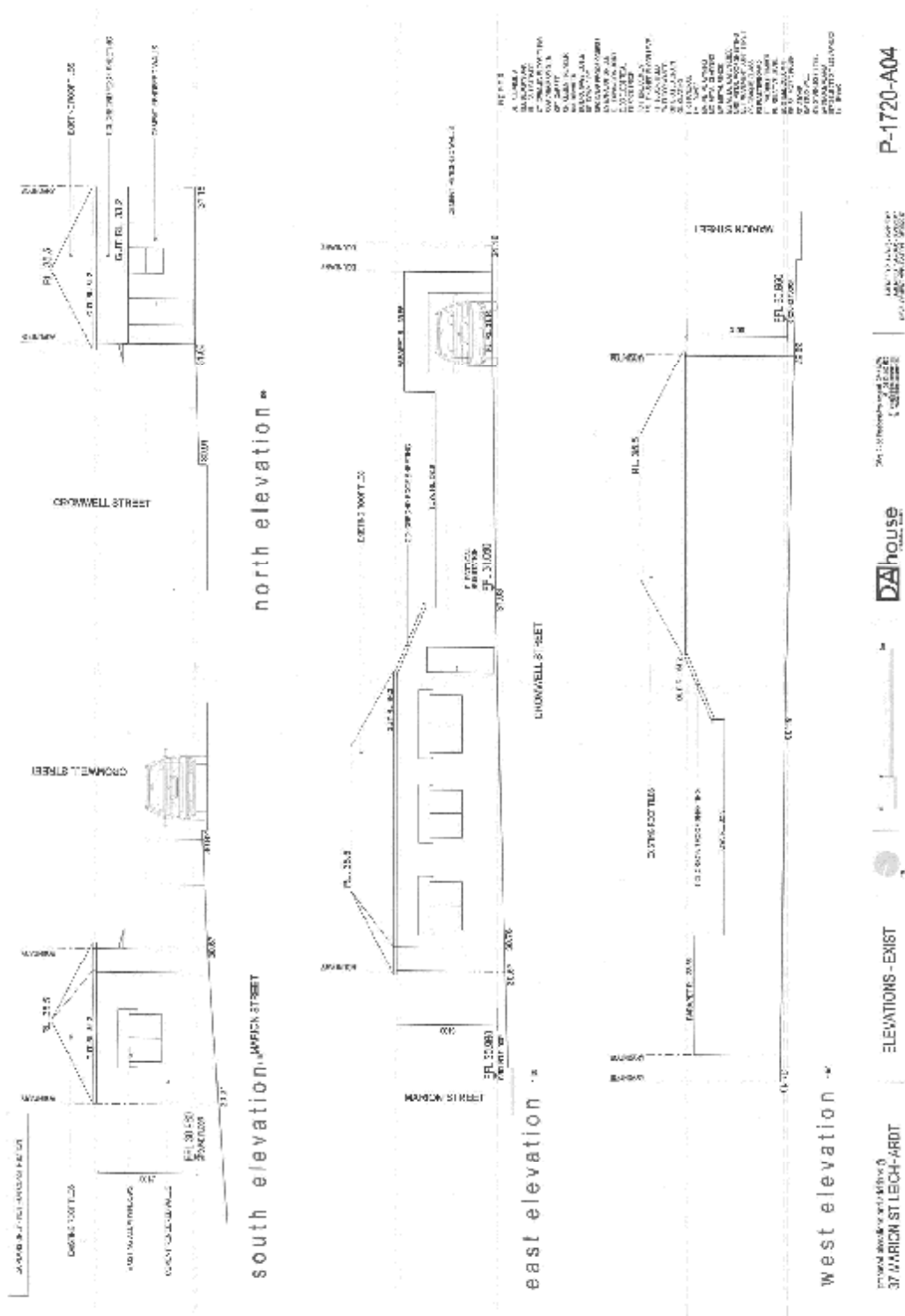
DA house

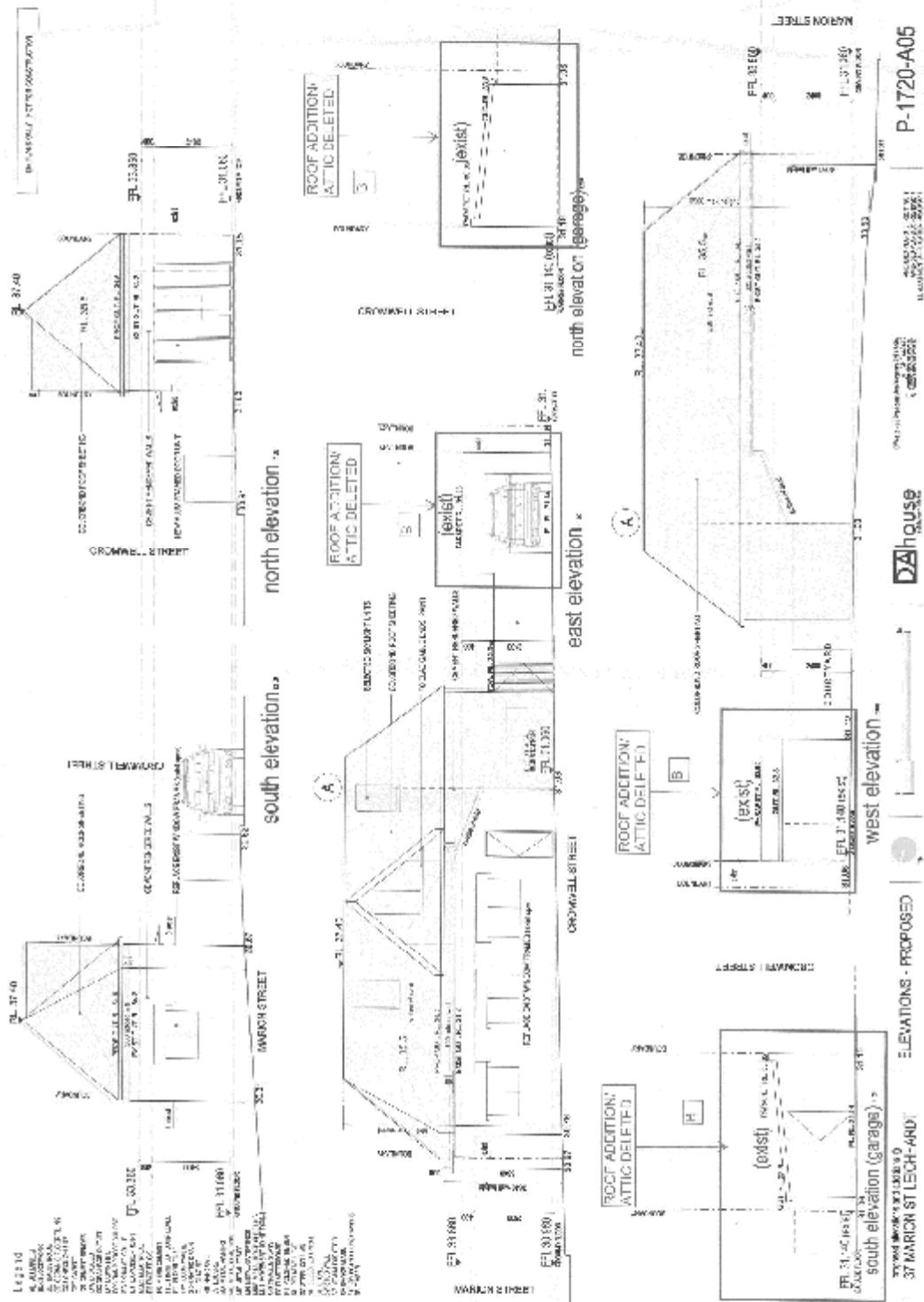


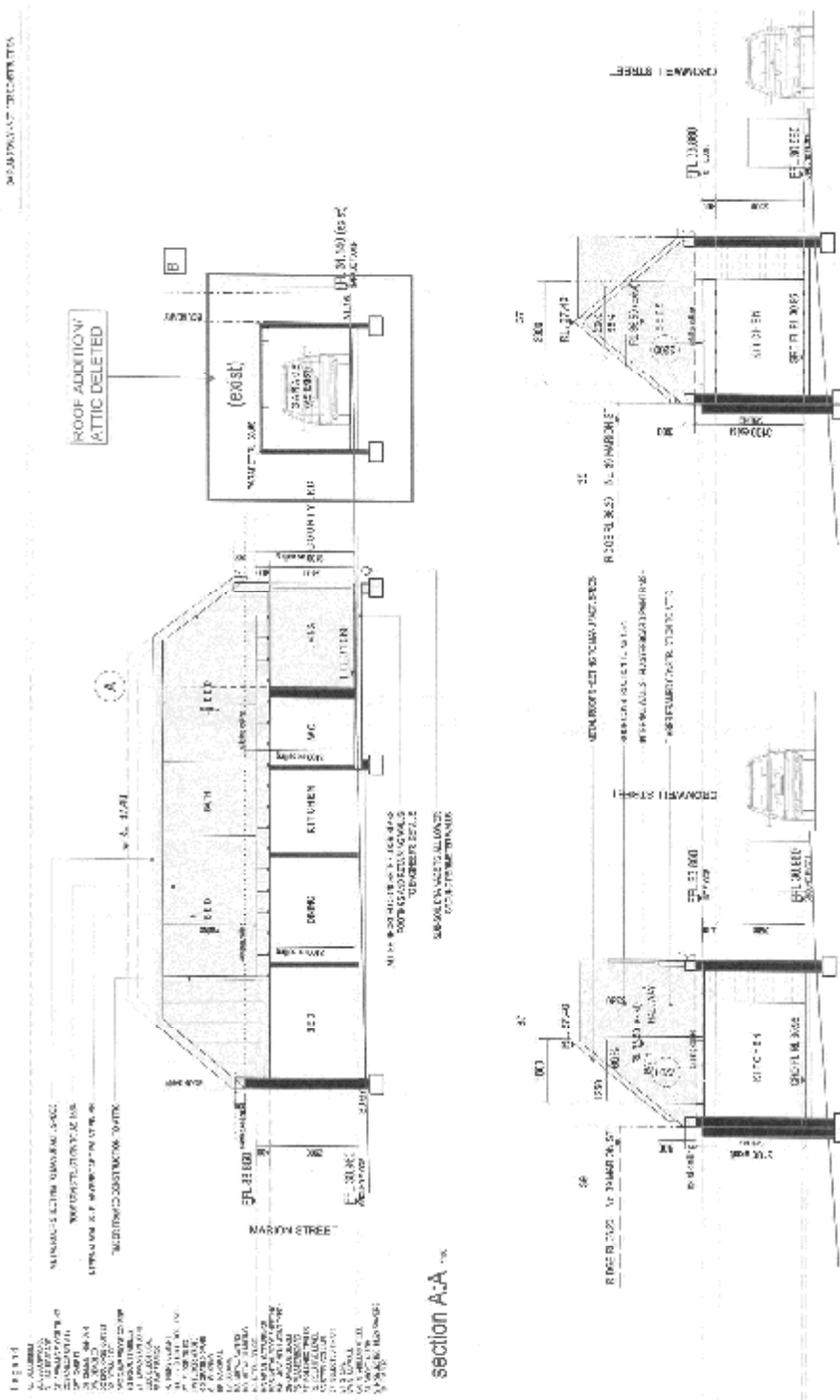
FLOOR PLAN - SECTION

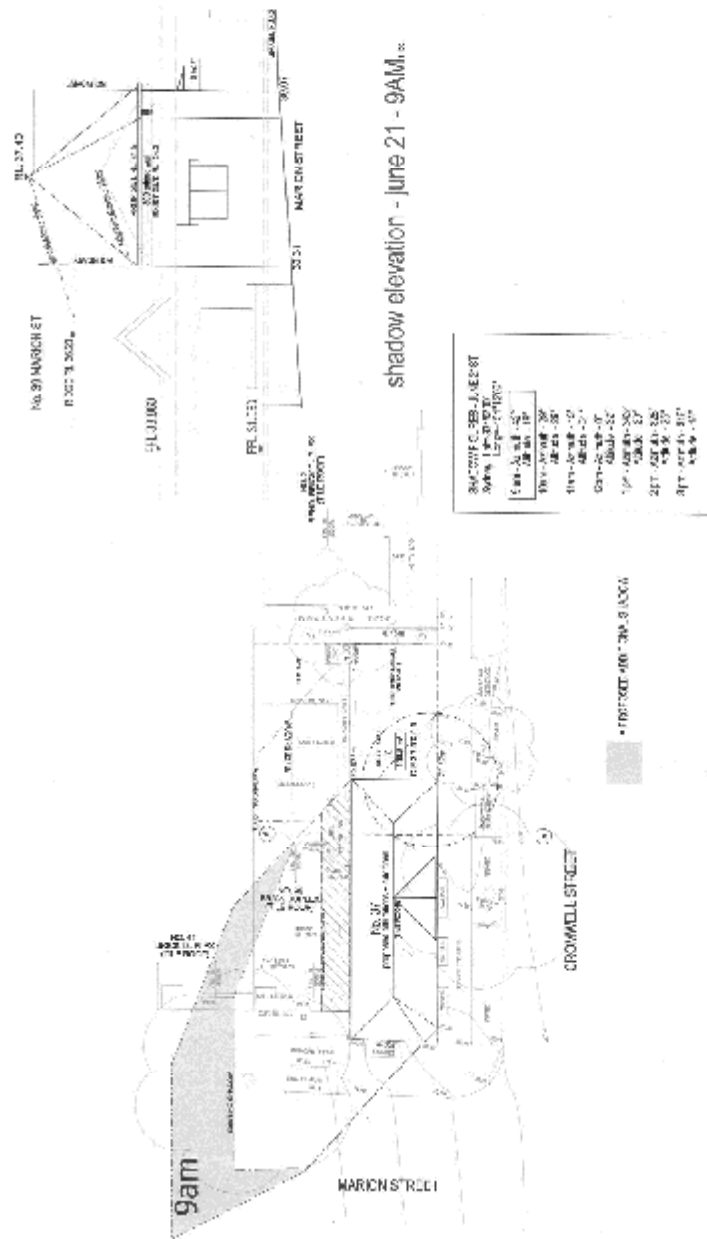
37 MARION STREET-4RD1





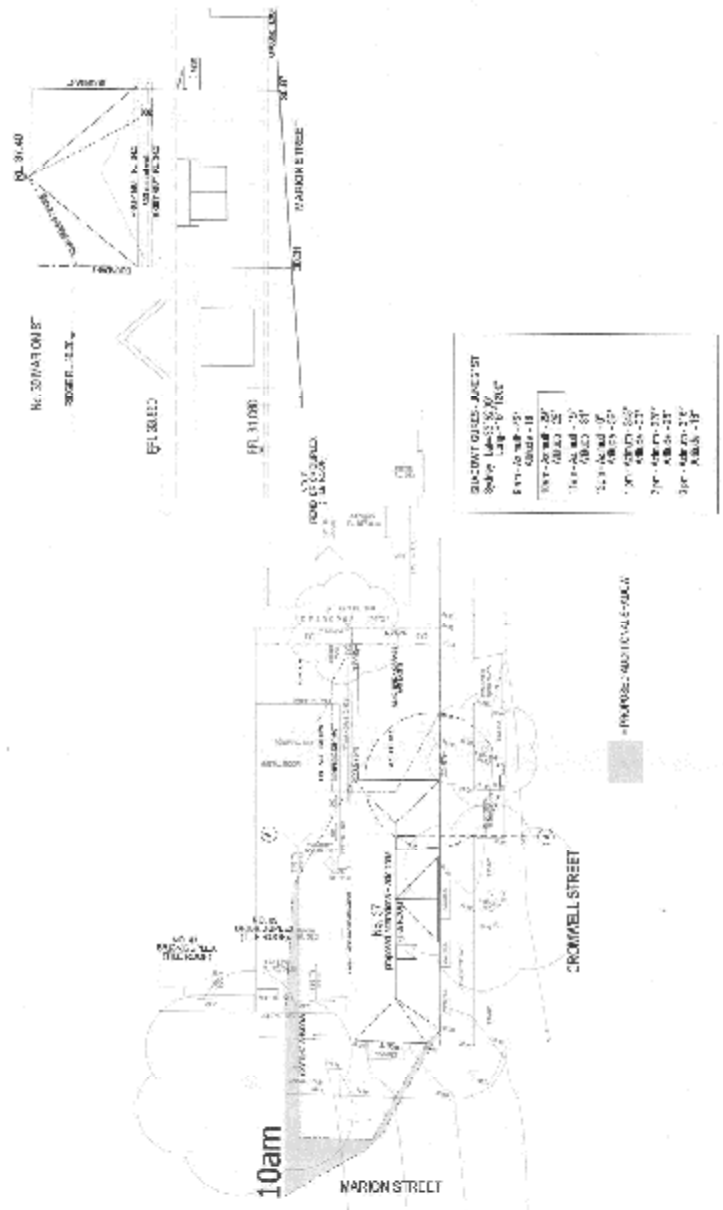






shadow diagrams - June 21 - 9AM

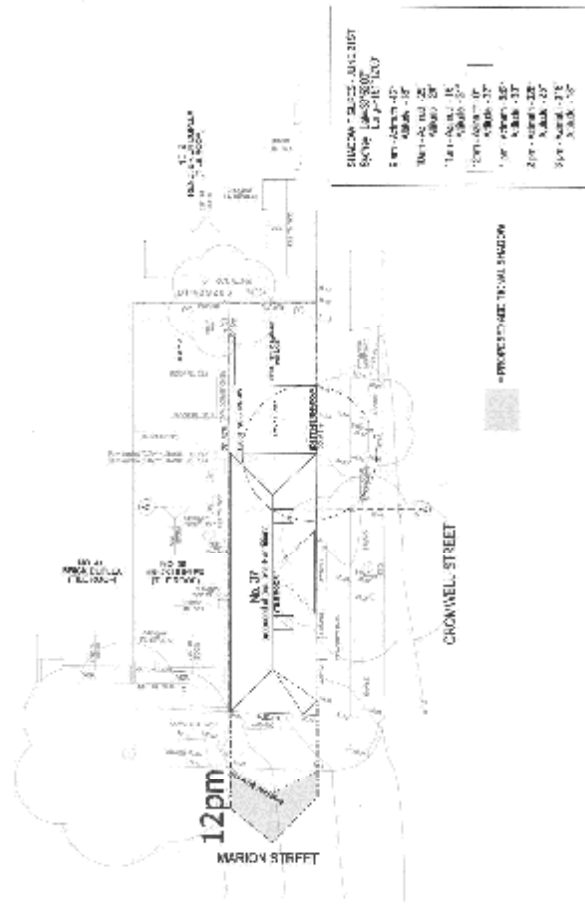
37 WARRICK STREET - ARDT | SHADOWS - JUNE | DA house | P-1720-A10



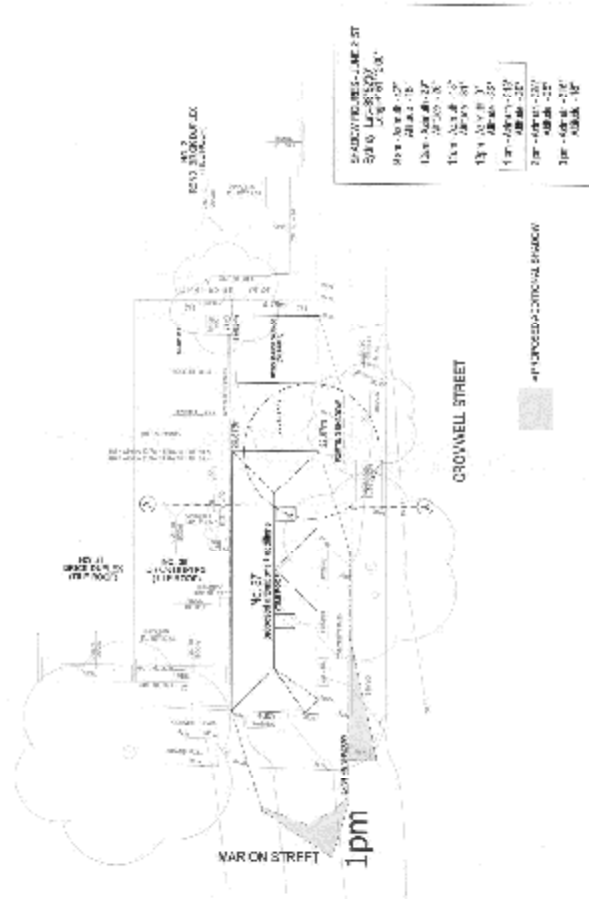
shadow diagrams - June 21 - 10AM

37 MARION ST LEICHHARDT  
 DA house  
 P-1720-A10A





shadow diagrams - june 21 - 12PM .indd



shadow diagrams - june 21 - 1PM

37 MAROON STREET - ARDT

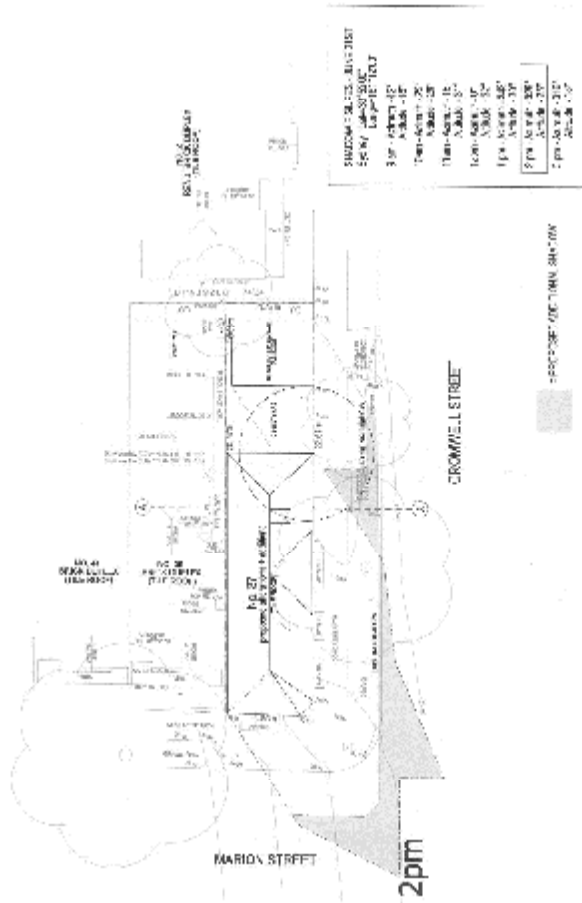
SHADOWS - JUNE

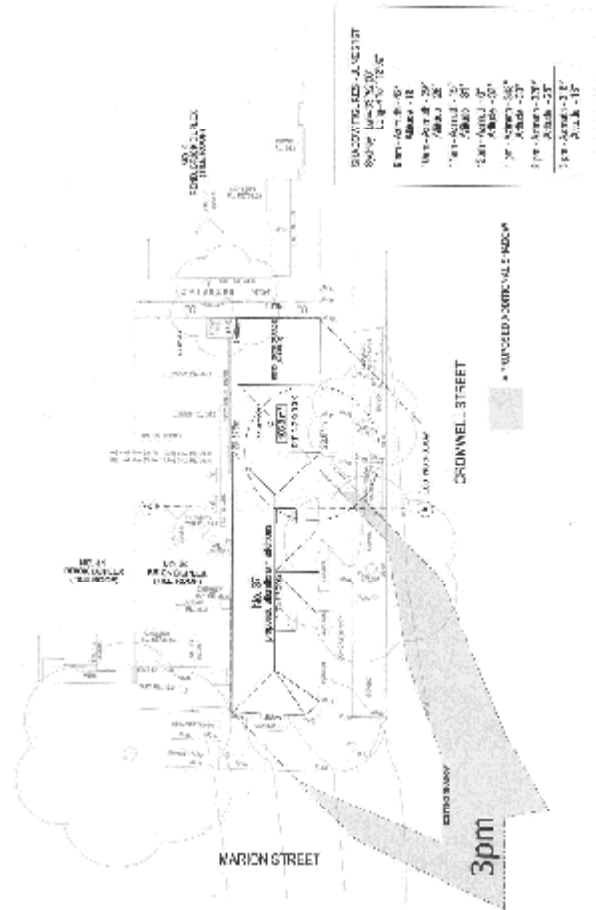
DA house

DA house

P-1720-A10D

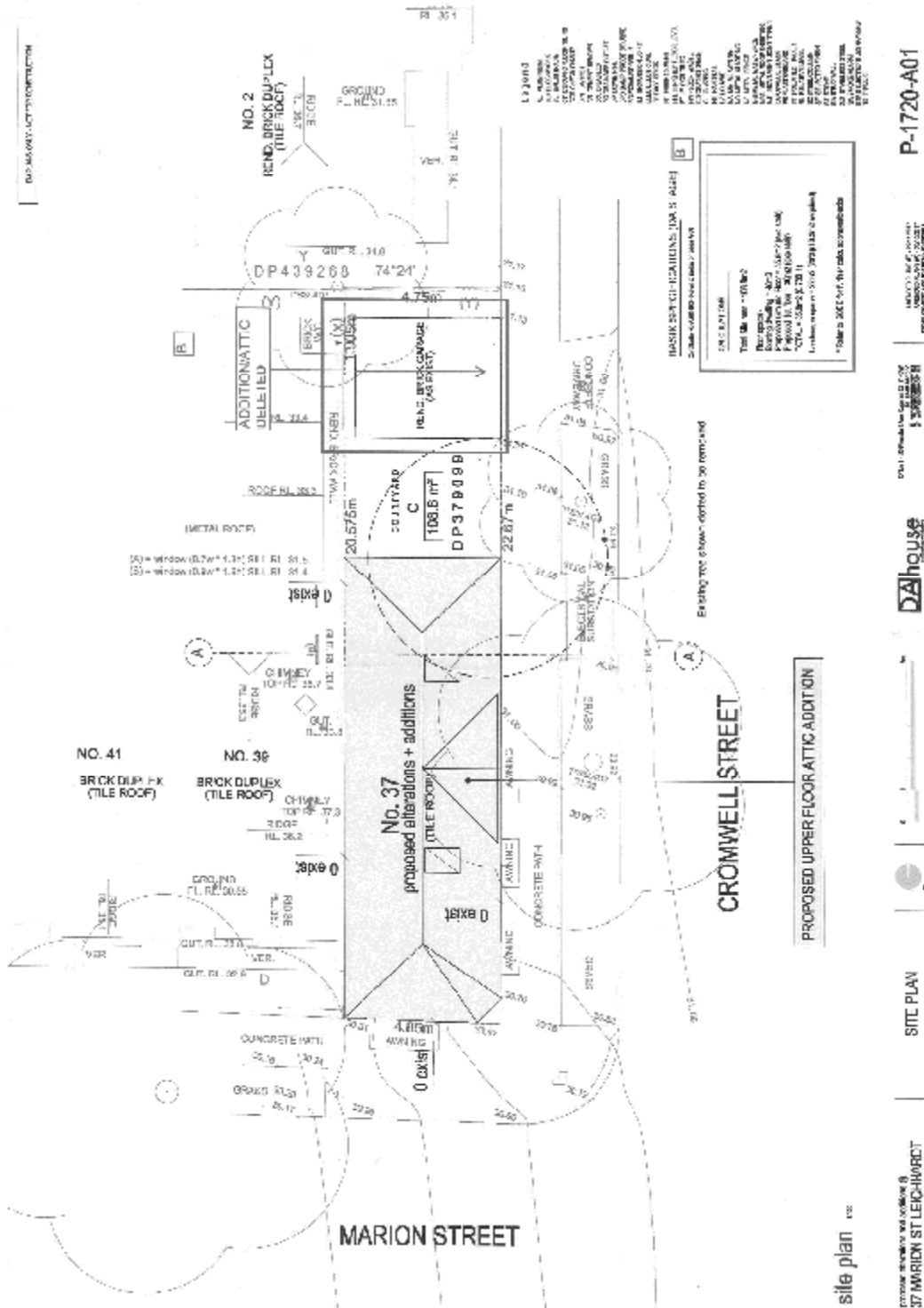


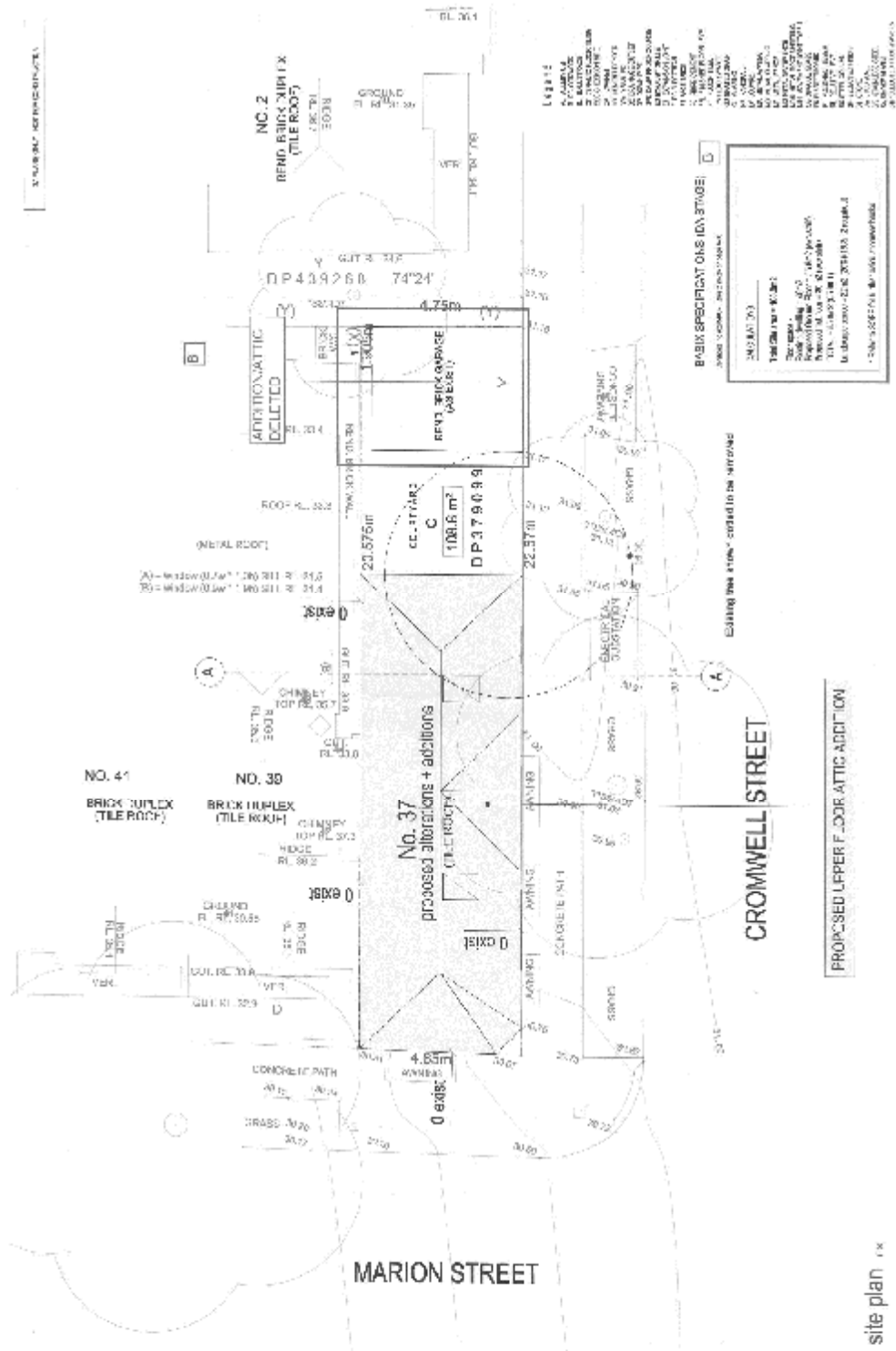




shadow diagrams - june 21 3PM

37 MARION ST LEICHHARDT | SHADOWS - JUNE | DA | house | P-1720-A10F





site plan 1:1x

**NOTES**