



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2019/270
<b>Address</b>	33 Whites Creek Lane, LEICHHARDT
<b>Proposal</b>	Change of use of existing building to a residential dwelling.
<b>Date of Lodgement</b>	17-Jul-2019
<b>Applicant</b>	PAD Group Pty Ltd
<b>Owner</b>	PAD Group Pty Ltd
<b>Number of Submissions</b>	Objections from 1 Property
<b>Value of works</b>	Nil, change of use only
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation to FSR, Site Coverage and Landscaped Area exceeds officer's delegation
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Issues in relating to flooding/stormwater</li> <li>• Non-compliances with Floor Space Ratio, Site Coverage and Landscaped Area development standards</li> <li>• Insufficient amenity to the proposed dwelling.</li> </ul>
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Reasons for Refusal
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage
<b>Attachment E</b>	Draft Conditions



LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for change of use of the existing building to a residential dwelling at 33 White Creeks Lane, Annandale. The application was notified to surrounding properties and objection from one property was received. The main issues that have arisen from the application include:

- Issues relating to flooding/stormwater;
- Non-compliances with Floor Space Ratio, Site Coverage and Landscaped Area development standards; and
- Insufficient amenity to the proposed dwelling.

The non-compliances are not considered acceptable after a full assessment, and therefore, the application is recommended for refusal.

## 2. Proposal

The development application proposes:

- Change of use of the existing building to a residential dwelling at 33 White Creeks Lane, Annandale. No building works are proposed.

It is noted that the internal configurations were not formally approved in the form of a Development Application. While there was a Development Application previously approved in 2009 (D/2008/525) for a change of use to commercial with internal fit out, a Construction Certificate was not obtained and the current internal arrangement (including the atrium) is inconsistent with the floor plans approved under D2008/525.

A Building Certificate in relation to the existing building was issued in 2017 (BC/2015/88).

## 3. Site Description

The subject site is located on western side of Whites Creek Lane. The site consists of 1 allotment and is rectangular shaped with a total area of 345.5m<sup>2</sup> and is legally described as Lot A DP447545. The site has a frontage to White Creeks Lane of 13.885. The subject site is not listed as a heritage item nor located within a Heritage Conservation Area. The subject site is identified as a flood control lot. The site supports a single storey warehouse building made of brick and corrugated metal/ galvanised sheet roof.



Aerial photo of subject site and surrounding properties.



View of proposed site from White Creeks Lane.

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
PREDA/2008/25	Conversion of existing industrial building into two dwellings with parking.	Issued 25-Mar-2008
D/2008/525	Change of use to commercial and internal fit out	Approved 05-Mar-2009
BC/2015/88	Removal of existing asbestos roof, capping, flashing, roof ventilators and the like, replaced with new corrugated metal galvanized roof sheeting with safety mesh barrier, sarking and insulation including associated roof component. Removal of 24 skylights replaced with new 'Velux' skylights to locations as nominated on roof plan. Retain existing roof pitch gutters and falls. Internal works for bathroom and mezzanine floor.	Issued 08-Mar-2017

It is noted that PREDA/2008/25 and D/2008/525 had raised issues in regards to potential flood-related issues and was approved subject to the following condition:

4. *A flood risk management plan, prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The plan must be prepared to make provision for the following:*
  - a) *Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The precautions shall include but not be limited to the following:*
    - i) *Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.*
    - ii) *Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.*
    - iii) *Flood warning signs/depth indicators for areas that may be inundated*
    - iv) *A flood evacuation strategy.*
    - v) *On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.*
  - b) *Specify the architectural and structural plans upon which the above recommendations have been incorporated.*

*The Flood Risk Management Plan must be based on a 100 year Average Recurrence Interval flood level of 18.33m AHD and a Probable Maximum Flood level of 19.33m AHD.*

The internal fit-outs currently existing are unauthorised - a Construction Certificate was never issued and the internal configuration and associated works are not consistent with the floor plans relating to D/2008/525 nor were the floor levels set as per condition 4 above.

#### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
15 February 2019	Letter sent to applicant outlining significant issues and requesting to withdraw application
22 February 2019	E-mail from Applicant confirming application will not be withdrawn

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

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

The following provides further discussion of the relevant issues:

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

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

The site has been used in the past for activities which could have potentially contaminated the site, including for industrial purposes (brick works 1927-1980) and vehicle workshop (1982-1986). *Greencap* was engaged to conduct a Phase 1 Investigation, and its conclusions and recommendations are summarised below:

*“Greencap deems that the site is suitable for the continued use and for adaptation in its current state with no garden accessible soils to a BCA Class 1A single dwelling. The site has the potential for contamination beneath concrete hardstand which currently encapsulates the extent of the site. This needs to be considered for future redevelopment works involving site soils.*

*Based on the findings of this investigation Greencap recommends the following:*

- *An appropriate assessment of soils across the site is recommended to be undertaken prior to future redevelopment or utility works involving the removal of concrete hardstand and/or disturbance of site soils.”*

The site is considered to be acceptable in this regard if there are no disturbances to the existing concrete slab.

However, the proposal in its current form (which proposes no construction works) cannot be supported as the existing building is considered to be unacceptable in terms of amenity (solar access, landscaping) and safety (due to flood risk). Works to resolve these concerns would inevitably give rise to contamination issues which would need further consideration by way of a further and more detailed contamination assessment.

#### 5(a)(i) 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 6.3 – Flood Planning
- Clause 6.4 – Stormwater management
- Clause 6.11 – Adaptive reuse of existing non-residential buildings in Zone R1

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio</b> Required: [0.6:1]	1.11:1 383m <sup>2</sup>	85%	No
<b>Landscape Area</b> Required 20% of Site Area	0% 69.1m <sup>2</sup>	100%	No
<b>Site Coverage</b> 60% of Site Area	88.1% 304.5m <sup>2</sup>	47%	No

The following provides further discussion of the relevant issues:

Clause 1.2 of the Leichhardt Local Environmental Plan 2013 – Aims of the Plan

The proposal does not comply with the Floor Space Ratio, Landscaped Area and Site Coverage development standards. The proposal does not provide adequate amenity and landscaped areas for a dwelling, and thus, is contrary to the following objectives under Clause 1.2:

- (d) to promote a high standard of urban design in the public and private domains,*
- (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*

Clause 2.3 – Zone objectives and Land Use Table

The subject site is located in the R1 General Residential zoning, and dwelling houses are permissible in the zone with consent.

The Objectives of zone are as follows:

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

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

The development in its current form does not consist of any building works, therefore it will be compatible with the desired future character of the neighbourhood as all floor areas are contained within the existing building envelope.

However, the proposal will not provide adequate landscaping or private open space (nor adequate solar access to the limited private open space). Therefore, it is considered to be inconsistent with a number of the relevant objectives of the zone.

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

The proposal provides nil landscaped area which results in a 100% breach to the development standard. A clause 4.6 exception had not been provided in relation to Landscaped Area Development Standard – on this basis alone, the application is unsupportable.

Options to provide some soft landscaping on the site, which would provide vegetation, habitat and improve the environmental performance of the site have not been seriously explored by the applicant.

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

The proposal results in a Site coverage of approximately 88.1% (304.5 m<sup>2</sup>) which results in a 47% breach of the development standard. A clause 4.6 exception had not been provided in relation to Site Coverage Development Standard – on this basis alone, the application is unsupportable.

Options to reduce site coverage by removing hard surfaces, which would allow for landscaping and improve the environmental performance of the site in terms of permeability have not been seriously explored by the applicant.

#### Clause 4.4 – Floor Space Ratio

The proposal results in a Floor Space Ratio approximately 1.11:1 (383 m<sup>2</sup>) which results in a significant (49%) breach of the development standard, although it is acknowledged that this is contained within an existing building form.

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(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

However, Clause 4.6 exceptions have not been provided for variations to the Landscaped Area development standard or the Site Coverage development standard and these are included in the recommended reasons for refusal.

A clause 4.6 request has been received for the Floor Space Ratio development standard breach and is assessed below.

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 seeks to vary development standards in relation to Clause 4.4 – Floor Space Ratio.

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's justifications for variations for the Floor Space Ratio development standard are outlined below:

### **Floor Space Ratio**

*The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:*

- *The proposal relates to an existing building that comprises a quantity of GFA that exceeds that permitted on the Site under the current LLEP2013 FSR standard. By contrast, the demolition of the building (which would be required to rectify the FSR non-compliance) would be unreasonable.*
  - *The proposal generally maintains the existing building footprint and envelope. Accordingly, the density and scale of the built form would remain generally consistent with the established building on the Site, ensuring the development effectively integrates with the streetscape and character of the area.*
  - *The additional FSR above the prescribes threshold does not give rise to any amenity, environmental or other material impacts as it is existing.*
  - *The development would protect neighbouring amenity. On the basis that the established building footprint and envelope would be retained, the proposal would maintain existing levels of solar access, privacy, views/outlook and sense of enclosure.*
  - *Similarly, through generally maintaining the approved building footprint and envelope, the built form relationship of the site with adjoining built form would be consistent with the previous approval. No additional amenity impacts will arise that have not already been deemed suitable through the previous DA approval.*
  - *The amenity of the surrounding development and the public domain will not be unreasonably impacted.*
  - *The density and scale of the built form would remain generally consistent with the established building on the Site, ensuring the development effectively integrates with the streetscape and character of the area.*
  - *The proposed change of use of the existing building would uplift the visual character of the Site as viewed from the public domain.*
- (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 objectives of the FSR development standard and the R1 General Residential Zone are as follows:

#### **4.4 Floor Space Ratio**

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

#### **Objectives of the R1 General Residential zone**

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

#### **Comment:**

#### **Floor Space Ratio**

The current structure existing on the site is associated with a commercial premise where the maximum permissible Floor Space Ratio development standard is higher (1:1) than that for a residential development (0.6:1). Retaining the existing floor area is not considered to be a strong justification for the variation in and of itself.

Ordinarily, where a proposal involves conversion from a commercial to residential premise, it incorporates design modifications which provide adequate landscaped area and private open space in order to achieve acceptable amenity outcomes for future occupants of the dwelling. The proposal does not make allowance for these essential components of a dwelling.

#### **Conclusion**

The applicant's written rationale does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary, or that there are sufficient

environmental planning grounds to justify contravening the development standard, for the following reasons:

- Insufficient landscaped area and private open space has been provided for the enjoyment of future residents on the site. This is as a result of the breach of development standard, whereby the building occupies far more of the site than a compliant residential building.

It is considered the development is not in the public interest because it is inconsistent with the following relevant objectives of the R1 General Residential zone in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

Clause 6.11 – Adaptive reuse of existing non-residential buildings in Zone R1

(1) *The objectives of this clause are as follows:*

- (a) *to provide for the adaptive reuse of existing buildings for residential accommodation,*
- (b) *to retain buildings that contribute to the streetscape and character of Leichhardt,*
- (c) *to provide satisfactory amenity for future residents of the area,*
- (d) *to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.*

The development in its current form which does not consist of any building works, therefore it will have a relatively neutral impact upon the existing streetscape. However, in terms of its proposed re-use, the proposal will not provide adequate landscaping, private open space nor adequate solar access to its private open space, and therefore, sufficient amenity is not provided and is considered to be inconsistent with the objectives under this part.

5(b) Draft Environmental Planning Instruments

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

- Draft SEPP - Environment

The proposal does not contravene the provisions in the Draft SEPP – Environment.

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
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A

<b>Part C</b>	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	No
C1.2 Demolition	Yes
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No
C1.5 Corner Sites	No
C1.6 Subdivision	N/A
C1.7 Site Facilities	No
C1.8 Contamination	Yes
C1.9 Safety by Design	No
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No
C1.12 Landscaping	No
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	
C2.2.3.3 Piperston Distinctive Neighbourhood <i>C2.2.3.3(a) Whites Creek Lane Sub Area</i>	No
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	No
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No
C3.9 Solar Access	No
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	No
C3.14 Adaptable Housing	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	N/A
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes

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

The following provides discussion of the relevant issues:

#### C2.2.3.3 Piperston Distinctive Neighbourhood/ C2.2.3.3(a) Whites Creek Lane Sub Area

The desired future character of the Piperston Distinctive Neighbourhood allows the potential of providing dwellings with frontages to Whites Creek Lane (C16). As the proposal does not consist of any building works, there are no additional streetscape impacts or any additional solar access or visual privacy impacts to the adjoining properties. However, the proposal is recommended for refusal for reasons outlined elsewhere in this report.

#### C1.12 Landscaping and C3.8 Private Open Space

The existing building in its current form provides a central area to be used as private open space. However, as this is capable of being fully enclosed, it is essentially an 'atrium' rather than an ordinary private open space area. The only area that would be regarded as private open space is the first floor deck located on the north-eastern side of the site, which does not meet the 16sqm requirement. Also, the proposal does not provide any landscaping, and is incapable with its current site coverage of providing landscaped areas which allow two trees that matures to a maximum height of 6 metres in height to comply with the DCP.

Therefore, the proposal in its current form (which does not include any building works) does not achieve the objectives and controls under C1.12 and C3.8 of Leichhardt DCP 2013.

#### C3.9 Solar Access

As detailed previously, the central atrium space cannot be considered as private open space. Even if it were, the central atrium space and the first floor deck will receive very little

solar access during winter solstice between 9am and 3pm given their location and orientation.

The central atrium will be in shade between 9am and 3pm in mid-winter with the exception of receiving approximately 1.2sqm of solar access at midday. The first floor deck will be in shade between 9am and 3pm with the exception of receiving 0.3sqm of solar access at 9am. Therefore, the proposal will not achieve the required solar access under C4 which requires private open space to receive a minimum three hours of direct sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice.

Although the proposal consists of a change of use only with no physical works involved, no realistic design options to maximise direct sunlight to the main living room or private open space have been explored by the applicant. The proposal is therefore inconsistent with control C2 under this part of the DCP.

### C3.12 Acoustic Privacy

The subject site is located in the R1 General Residential zoning and dwelling houses are permissible in the zone. Therefore, in general terms, noise generated that is ordinarily associated with residential uses will be considered to be acceptable. However, as the subject site is located within the ANEF 20-25 contour, acoustic measures will need to be carried out to address aircraft noise impacts. The controls under this part that would be applicable to this proposal are:

C2 Buildings that are exposed to high levels of external noise are designed and constructed in accordance with *AS3671 – Acoustics – Road Traffic Noise Intrusion, AS2107 – Recommended Design Sound Levels and Reverberation Times for Building Interiors, and AS 2021-2000 – Acoustics- Aircraft noise intrusion – Building siting and construction.*

C3 Noise generating areas that are not contained within buildings, such as private outdoor open space, parking and service equipment, is located and oriented away from bedroom windows on adjoining sites.

C8 *Private open space* is encouraged to be located away from bedrooms on adjoining properties to ensure minimal acoustic impacts.

With regard to acoustic impacts, the central atrium area is located in the centre of the site and the first floor deck would be adjacent to the first floor balcony of No. 37 Whites Creek Lane, and therefore, the location of these outdoor areas are considered to be acceptable.

The proposal is recommended for refusal for other reasons outlined in this report. Notwithstanding, in the event that the application was to be approved, conditions would need to be imposed requiring that:

- That the proposal comply with the recommendations of the acoustic report that accompanies the application; and
- Compliance with the Building Code of Australia requirements for a class 1a (i.e. single residential) building.

### Clause C3.13 - Conversion Of Existing Non-Residential Buildings of LDGP 2013

The objectives of the clause seeks to encourage the adaptive re-use of non-residential buildings for residential uses that:

- a) *retain heritage value of the building;*
- b) *maximise the environmental benefits of recycling buildings and minimises waste;*
- c) *provide a high level of resident amenity;*
- d) *is compatible with the character of the neighbourhood and streetscape;*
- e) *represent high quality urban and architectural design; and*

f) *does not have a significant adverse amenity impact on surrounding land.*

As discussed in earlier sections of the report, the proposal is not acceptable in regards to the provision of adequate landscape area, private open space and solar access and therefore does not achieve a high level of resident amenity and therefore is considered to be inconsistent with objective (c) under this part.

E1.1.4 Flood Risk Management Report, E1.2.2 Managing Stormwater within the Site, E1.2.3 On-Site Detention of Stormwater and E1.2.4 Stormwater Treatment

The proposal is not supported on flooding/ site drainage and stormwater control grounds as the proposed development does not meet the requirements of Leichhardt Local Environmental Plan 2013 Clause 6.3 and does not comply with Leichhardt DCP2013 Part E (Water) Section E1.3.1 (Controls C1, C2, C8 and C9) of DCP 2013 as follows:

- a) The proposal is for a change of use from an existing commercial dwelling to a new dwelling, and therefore, does not comply with the requirements for all floor levels must be at, or above or raised to the Flood Planning Level or Probable Maximum Flood Level (whichever is higher) as per Control C2 and C8(d).  
NB: As the dwelling is not an existing residential property, the exceptions of C2 (a)-(e) do not apply to the proposed development.
- b) The ground floor level is below the 100 year flood level. As such the dwelling would be inundated by flood waters in storm events that are more frequent than the 100 year flood event.
- c) A safe flood evacuation route from the ground floor is not possible as occupants are required to pass through high hazard flood waters to reach the stairwells to the mezzanine area.
- d) The proposal to provide two areas above PMF level instead of compliance with the DCP controls with respect to floor levels is not supported as, in addition to the above, this results in a situation whereby occupants are required to pass through high hazard flood waters between Family Room to Bedroom 1 and vice versa particularly in the case where occupants are separated.
- e) The proposed planter box at the front of the dwelling will block and redirect flood flows and therefore must be deleted.
- f) The parking space does not comply with the requirements of Control C9 and does not comply with the requirements of AS2890.1:2004 and Leichhardt DCP including the requirement for clear dimensions of 6000mm x 3000 mm (length x width).
- g) It has not been adequately demonstrated that all structures are designed/capable to withstand the High Hazard Condition in all flood events up to the Probable Maximum Flood as per the requirement of Control C8. In this regard the following issues are raised with the Appendix 10 TTW Structural Flood Response letter document No. 191565 SAAA dated 15 July 2019:
  - i. No detailed structural analysis of the existing building has been undertaken.
  - ii. The structural assessment is based on visual and photographic assessment only.
  - iii. The report does not provide the details of the building standards and other best practice methodology on which the assessment is based.
  - iv. The report does not clearly identify the assumptions on which the report is based and does not provide evidence to support the validity of those assumptions.
  - v. The assessment is based on the façade only. This is not supported. All components of the dwelling structure must be assessed.
  - vi. The letter states that walls vary in thickness however does not provide details on how the walls thickness has been determined or identify the materials that form the wall and construction type.

- vii. The letter identifies the construction type of the existing floor as timber frame. No comment has been made with respect to the ability of this floor to withstand flood conditions or if replacement is required.
- viii. Photograph 1 indicates as approximate flood level of RL17.90m AHD without reference to flood event. Assuming this is the 100 year event flood level, the photograph incorrectly identifies the upstream flood level. In addition this photo does not show PMF flood levels.
- ix. The letter page 4 does not identify the expected flood conditions and forces expected to impact the dwelling and do not provide any objective evidence or calculations to support the statements within this section of the letter. In this regard:
  - The velocity of flood flows and the corresponding hydrodynamic forces have not been identified.
  - There is a significant change in the depth of flow across the frontage of the site in a 100 year flood event from 700mm depth to 400mm depth. This change in flow conditions and the corresponding potential increase in the velocity of flood flows has not been identified or considered in the report.
  - The statement on Page 4 related to PMF relies on water entering the building and subfloor areas. Documentation has not been provided demonstrating that will occur (e.g. flood proofing works may prevent water entering the subfloor area which may create a substantial hydrostatic pressure difference given the floor level must be raised to FPL).
  - Forces from the impact from debris and uplift forces have not been identified.
- x. The letter summary statement does not provide a definitive statement(s) with respect to the ability of the structure to resist forces from flooding in all or various situations. In this regard, the report uses words such as 'should' and 'appears' to withstand flood conditions. This is not supported. The situation(s) in which the structure will (and will not) withstand flood conditions must be defined and all proposed/necessary works for the dwelling to withstand flood conditions included.

If the roofing over the atrium becomes openable in future applications, the flood/stormwater impacts of draining the internal courtyard will add to the issues in the abovementioned advice.

#### 5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

The proposal does not comply with Floor Space Ratio, Site Coverage and Landscaped Area development standards, does not provide adequate amenity to the proposed dwelling and flood and stormwater issues had not been resolved management issues raised remains unresolved and therefore presents a flood risk to the future occupants of the site.

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

The site is zoned R1 General Residential. The proposal does not comply with Floor Space Ratio, Site Coverage and Landscaped Area development standards, does not provide adequate amenity to the proposed dwelling and flood and stormwater issues had not been resolved management issues raised remains unresolved and therefore presents a flood risk to the future occupants of the site and therefore it is considered that the site is unsuitable to accommodate the proposed development.

### 5(f) Any submissions

The application was notified in accordance with Leichhardt DCP 2013 for a period of 14 days to surrounding properties. Objection from one property was received.

The submission is in relation to noise and acoustic impacts to No.37 Macquarie Street.

**Comment:** It is recognised that there have been various works previously done to the property without proper approval and a Building Certificate was issued on 08-Mar-2017 for the building structures only, which does not authorise any change of use.

Issues in relation to acoustic privacy are discussed in more detail in an earlier section of the report. As the subject site is located in the R1 General Residential zoning and dwelling houses are permissible in the zoning. There are not design aspects of the proposal which would give rise to extraordinary acoustic impacts. Therefore in general terms, noise generated that is associated with residential uses will be considered to be acceptable.

As previously noted, in the event that the application was to be approved, conditions would need to be recommended requiring that:

- That the proposal comply with the recommendations of the acoustic report that accompanies the application; and
- Compliance with the Building Code of Australia / National Construction Code requirements for a class 1a (i.e. residential) building.

An advisory note would also need to be included that outlines that the use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment.

However, the application is recommended for refusal for reasons outlined elsewhere in the report.

### 5(g) The Public Interest

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

The proposal is contrary to the public interest as:

- Insufficient landscaped area had been provided for the amenity of future residents on the site. This is directly as a result of the breach of Floor Space Ratio, Landscaped Area and site coverage development standards.
- The development in its current form does not provide adequate private open space and solar access to the proposed dwelling and therefore a high level of amenity is not achieved for future residents of the site.
- The proposal has not demonstrated issues to flood risk and stormwater design had been resolved and therefore the proposal poses a flood risk to the future occupants of the site.

## 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

## 6(b) External

The application was not required to be referred to any external bodies.

## 7. Section 7.11 Contributions

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that 7.11 contributions to be paid should be imposed on any consent granted.

## 8. Conclusion

On balance, the proposal does not adequately satisfy the relevant aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013.

The development does not comply with Floor Space Ratio, Site Coverage and Landscaped Area development standards, does not provide adequate amenity to the proposed dwelling and flood and stormwater issues had not been resolved. The approval of the application would not be in the public interest and in view of the circumstances, refusal of the application is recommended.

## 9. Recommendation

That the Inner West Planning Panel,, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2019/270 for change of use of existing building to a residential dwelling at 33 Whites Creek Lane Annandale for the following reasons.

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, specifically:
  - a) Clause 1.2 of the Leichhardt Local Environmental Plan 2013 – Aims of the Plan;
  - b) Clause 2.3 – Zone objectives for the R1 zone
  - c) Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
  - d) Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
  - e) Clause 4.4 – Floor Space Ratio
  - f) Clause 6.11 – Adaptive reuse of existing non-residential buildings in Zone R1
2. The proposed development breaches the maximum Site coverage of 60% of site area as stipulated by Clause 4.3A(3)(a) under Leichhardt Local Environmental Plan 2013 by 47% and is not supported by a Clause 4.6 exceptions to Development Standards request.
3. The proposed development breaches the minimum Landscaped Area of 20% of site area as stipulated by Clause 4.3A(3)(b) under Leichhardt Local Environmental Plan 2013 by 100% and is not supported by a Clause 4.6 exceptions to Development Standards request.
4. The proposed development breaches the Floor Space Ratio of 0.6:1 as stipulated by Clause 4.4 under Leichhardt Local Environmental Plan 2013 by 85% and the applicant's written rationale does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify contravening the development standard.

5. The proposed development cannot be approved as it as it fails to achieve the precondition of Clause 6.11 under Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979.
6. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
  - a) Clause C1.12 Landscape Area
  - b) Clause C3.1 – Residential General Provisions;
  - c) Clause C3.8 Private Open Space
  - d) Clause C3.13 Conversion of Existing Non-Residential Buildings
  - e) Clause E1.2.2 Managing Stormwater within the Site
  - f) Clause E1.3.1 Flood Risk Management
7. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
8. The approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

## Attachment A – Reasons of Refusal

### Reasons for refusal

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
  - g) Clause 1.2 of the Leichhardt Local Environmental Plan 2013 – Aims of the Plan;
  - h) Clause 2.3 – Zone objectives and Land Use Table
  - i) Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
  - j) Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
  - k) Clause 4.4 – Floor Space Ratio
  - l) Clause 6.11 – Adaptive reuse of existing non-residential buildings in Zone R1
2. The proposed development breaches the maximum Site coverage of 60% of site area by 47% as stipulated by Clause 4.3A(3)(a) under Leichhardt Local Environmental Plan 2013 and is not supported by a Clause 4.6 exceptions to Development Standards request.
3. The proposed development breaches the minimum Landscaped Area of 20% of site area by 100% as stipulated by Clause 4.3A(3)(b) under Leichhardt Local Environmental Plan 2013 and is not supported by a Clause 4.6 exceptions to Development Standards request.
4. The proposed development breaches the Floor Space Ratio of 0.6:1 by 85% as stipulated by Clause 4.4 under Leichhardt Local Environmental Plan 2013 and the applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case.
5. The proposed development cannot be approved as it as it fails to achieve the precondition of Clause 6.11 under Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979.
6. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
  - g) Clause C1.12 Landscape Area
  - h) Clause C3.1 – Residential General Provisions;
  - i) Clause C3.8 Private Open Space
  - j) Clause C3.13 Conversion of Existing Non-Residential Buildings
  - k) Clause E1.2.2 Managing Stormwater within the Site
  - l) Clause E1.3.1 Flood Risk Management
7. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
8. The approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

**Attachment B – Plans of proposed development**





## Attachment C – Clause 4.6 exception for Floor Space Ratio

17 July 2019

WTJ19-144\_Clause 4.6 Variation



### **Clause 4.6 Variation - Floor Space Ratio**

#### **Proposed Change of Use of Existing Warehouse Building to Residential Dwelling**

33 Whites Creek Lane, Leichhardt

Lot A DP 447545

Prepared by Willowtree Planning Pty Ltd on  
behalf of PAD Group Pty Ltd

July 2019

A national town planning consultancy  
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**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
 33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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**Document Control Table**

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**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
 33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

**PART A PRELIMINARY**

**1.1 INTRODUCTION**

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the proposed change of use of an existing warehouse to a residential dwelling located at 33 Whites Creek Lane, Leichhardt (the Site). The Site is legally described as Lot A DP 447545.

The proposed non-compliances are with the following development standards under the *Leichhardt Local Environmental Plan 2013* (LLEP2013):

- Clause 4.4 Floor Space Ratio;

This Variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of SLEP 2012, which includes the following objectives:

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development; and*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

**1.2 PROPOSED NON-COMPLIANCES**

**1.2.1 Floor Space Ratio**

Under the provisions of Clause 4.4 in LLEP2013, the Site is subject to a maximum base FSR of 0.5:1. The Site is also subject to the provisions of Clause 4.4(2B)(c)(iii) of LLEP2013 which states the following:

- (2B) *Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:*
  - (c) *on land shown edged brown on the Floor Space Ratio Map is not to exceed:*
    - (iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or*

In light of the above, the Site has a maximum prescribed FSR of 0.6:1.

Based on a Site area of 345.5m<sup>2</sup> and a FSR control of 0.6:1, a maximum GFA of 207.3m<sup>2</sup> may be obtained across the Site. The existing premises has an existing non-compliance with a current GFA of 430m<sup>2</sup> and an FSR of 1.24:1. The proposed development would not result in an increase of the existing GFA however, it exceeds the eligible maximum FSR of 0.6:1 by 107%.

A summary of the proposed variation is outlines in **Table 1**.

<b>Table 1   Floor Space Ratio</b>			
<b>SLEP2012 Clause</b>	<b>SLEP2012 Development Standard</b>	<b>Proposed Development Non-Compliance</b>	<b>Percentage of Variation</b>
<b>Clause 4.4 Floor Space Ratio</b>	Maximum 0.6:1 Floor Space Ratio (FSR)	The proposal seeks development consent for a 1.24:1 FSR	107%

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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The proposed change of use of an existing warehouse to a residential dwelling will not increase the existing GFA of the building. This existing non compliance exceeds the prescribed FSR pursuant to the LLEP2013. Given the existing levels of non-compliance across the Site with the existing built form, the proposed non-compliance is considered minor in nature, and therefore it is considered appropriate to consider the proposed variation to development standard as part of a Clause 4.6 Variation.

The proposed development results in a variation of 0.64:1 (107%) from the prescribed maximum FSR of 0.6:1.

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of the LLEP2013 and the relevant development standards within.

**1.3 STRATEGIC PLANNING JUSTIFICATION**

This Clause 4.6 Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under LLEP2013. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed FSR non-compliance is the best means of achieving the objective of encouraging orderly and economic use and development of land under Section 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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**PART B THRESHOLDS THAT MUST BE MET****2.1 CLAUSE 4.6 OF THE LLEP2013**

In accordance with Clause 4.6 of LLEP2013, Council is required to consider the following subclauses:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

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

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) the public benefit of maintaining the development standard, and*
- c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are responded to in Part D of this Clause 4.6 Variation Request.

**2.2 CASE LAW**

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
  - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in Part D of this Clause 4.6 Variation.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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**PART C STANDARD BEING OBJECTED TO****3.1 CLAUSE 4.4 FLOOR SPACE RATIO OF THE LLEP2013**

The development standard requested to be varied is *Clause 4.4 Floor Space Ratio* of LLEP2013 which provides as follows:

*4.4 Floor Space Ratio*

(1) *The objectives of this clause are as follows:*

(a) *to ensure that residential accommodation:*

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

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

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

(b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

(2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*

**(2B) Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:**

(a) *on land shown edged black or pink on the Floor Space Ratio Map is not to exceed:*

(i) *in the case of development on a lot with an area of less than 150 square metres—0.9:1, or*

(ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or*

(iii) *in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or*

(iv) *in the case of development on a lot with an area of 450 square metres or more—0.6:1, or*

(b) *on land shown edged red or green on the Floor Space Ratio Map is not to exceed:*

(i) *in the case of development on a lot with an area of less than 150 square metres—1.0:1, or*

(ii) *in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or*

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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*(iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or*

*(iv) in the case of development on a lot with an area of 450 square metres or more—0.7:1, or*

***(c) on land shown edged brown on the Floor Space Ratio Map is not to exceed:***

*(i) in the case of development on a lot with an area of less than 150 square metres—0.8:1, or*

*(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or*

***(iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or***

*(iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or*

***(d) on land shown edged yellow on the Floor Space Ratio Map is not to exceed:***

*(i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or*

*(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or*

*(iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.*

The LLEP2013 map referred to in subclause (2) above, identifies the Site as being subject to a 0.5:1 maximum FSR. Despite subclause (2), the floor space ratio for the development for the purpose of residential accommodation that is shown edged in brown and has a lot size between 300m<sup>2</sup> and 450m<sup>2</sup> has a maximum FSR of 0.6:1.

The proposed development seeks approval for proposed change of use of an existing warehouse to a residential dwelling. The proposal will result in an FSR of 1.24:1, which exceed the maximum FSR standard of 0.6:1 under Clause 4.4 of LLEP2013. It is important to note the existing warehouse exceeds the maximum FSR permissible with an FSR of 1.24:1

Pursuant to Clause 4.6, the proposed development seeks exception to the 0.6:1 FSR standard prescribed by Clause 4.4.

The Site is zoned R1 General Residential under the provisions of LLEP2013 where a dwelling house, being the proposed use of the Site, is permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the R1 zone.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

**PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO**

**4.1 OBJECTIVES OF THE CLAUSE 4.4 FSR STANDARD UNDER LLEP2013**

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard is the proposed development’s compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognized this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the Site is subject to specified numerical controls for FSR, the objectives and underlying purpose behind this development standard are basic issues for consideration in the development assessment process.

The proposed development is considered consistent with the relevant objectives of the control for the reasons outlined in **Table 2**.

<b>Table 2   Consistency of the Proposed Development with the Floor Space Ratio Objectives</b>	
<b>OBJECTIVE</b>	<b>COMMENT</b>
<p><i>a) to ensure that residential accommodation:</i></p> <p><i>(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and</i></p>	<p>The proposed development seeks development consent for a change of use from an existing warehouse to a residential dwelling that would significantly renovate and rejuvenate the existing building on site. The proposed development is considered compatible and consistent with the bulk and scale of the surrounding properties located along Whites Creek lane.</p> <p>The proposed development does not seek to alter the built form and scale of the existing building on site</p> <p>The additional floorspace creates an outcome that is consistent with both the existing and desired streetscape character of the locality having regard to the built forms on adjoining properties.</p> <p>Overall, the existing development is of a form that is compatible with the desired future character of the area. Therefore, the proposed development is consistent and compatible with the surrounding built form and is consistent with the character of the local area.</p>
<p><i>(ii) provides a suitable balance between landscaped areas and the built form, and</i></p>	<p>The proposed development does not seek to alter the existing built form. The existing building has zero rear and side setbacks. The front setback is also entirely encased by hardstand area. The existing constraints on the Site does not allow for a further increase in landscaped area.</p>
<p><i>(iii) minimises the impact of the bulk and scale of buildings,</i></p>	<p>The proposed development seeks development consent for a change of use from an existing warehouse to a residential dwelling. It does not propose to alter the existing bulk and scale of the existing building.</p> <p>The existing building is located in a well established residential area surrounded by low density single and double storey residential dwellings. The bulk and scale of the existing building</p>

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

	is compatible with the area and does not adversely impact streetscape and street character.
<i>b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.</i>	The proposed development is for residential purposes, therefore this objective is not applicable.

**4.2 OBJECTIVES OF THE ZONE**

The Site is currently zoned R1 General Residential under LLEP2013. The proposed development is located within an established residential precinct and is permissible at the Site. The proposed development is consistent with the following R1 zone objectives.

<b>Table 3   Consistency of the Proposed Development with the Zone Objectives</b>	
<b>Objective</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> </ul>	The proposed development satisfies the objective as it seeks development consent for a change of use of an existing warehouse to a residential dwelling. Therefore, providing for the housing needs of the local community within a low-density residential environment.
<ul style="list-style-type: none"> <li>To provide for a variety of housing types and densities.</li> </ul>	The proposed development provides a residential dwelling that has been specifically designed to meet the lifestyle, accessibility and other needs of the local community. The proposal therefore enhances the variety of housing types available in the area. The proposal also retains the general appearance of the previously-approved warehouse, thereby ensuring the development integrates with the character of the surrounding low-density residential environment.
<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	The proposed development provides a residential dwelling. This objective is not affected by the variation sought
<ul style="list-style-type: none"> <li>To improve opportunities to work from home.</li> </ul>	The proposed development does not hinder opportunities to work from home. Quite the contrary, the previous use of the Site is for an office premises. Therefore, the proposed development provides opportunity to work from home.
<ul style="list-style-type: none"> <li>To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</li> </ul>	The proposed development is for a change of use of an existing warehouse to a residential dwelling. The proposal retains the existing built form of the previously-approved warehouse, thereby ensuring the development integrates with the character of the surrounding low-density residential environment.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

	The existing building is orientated towards Whites Creek Lane which is consistent with the style, orientation and pattern of the surrounding buildings.
<ul style="list-style-type: none"> <li>To provide landscaped areas for the use and enjoyment of existing and future residents.</li> </ul>	The proposed development does not seek to alter the existing built form. The existing building has zero rear and side setbacks. The front setback is also entirely encased by hardstand area. The existing constraints on the Site does not allow for a further increase in landscaped area.
<ul style="list-style-type: none"> <li>To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.</li> </ul>	The proposed development is for a change of use of an existing warehouse to a residential dwelling. It does not seek subdivision, therefore this objective does not applicable.
<ul style="list-style-type: none"> <li>To protect and enhance the amenity of existing and future residents and the neighbourhood.</li> </ul>	The proposed development will provide a low-density residential dwelling whist not altering the built form of the existing building. This maintains existing streetscape and street character thus protecting the amenity of existing and future residents.

**4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY**

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ set out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance** with the standard.
2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. Notwithstanding the proposed variation, the development is consistent with the underlying objectives of the standard for FSR and the relevant Zoning prescribed under LLEP2013.

In view of the particular circumstances of this case, strict compliance with Clause 4.4 of LLEP2013 is considered to be both unnecessary and unreasonable. The proposed development does not conflict with the intent of Clause 4.4 as demonstrated above. The proposed development achieves the objectives, notwithstanding the proposed numeric variation.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposal relates to an existing building that comprises a quantity of GFA that exceeds that permitted on the Site under the current LLEP2013 FSR standard. By contrast, the demolition of the building (which would be required to rectify the FSR non-compliance) would be unreasonable.
- The proposal generally maintains the existing building footprint and envelope. Accordingly, the density and scale of the built form would remain generally consistent with the established building on the Site, ensuring the development effectively integrates with the streetscape and character of the area.
- The additional FSR above the prescribes threshold does not give rise to any amenity, environmental or other material impacts as it is existing.
- The development would protect neighbouring amenity. On the basis that the established building footprint and envelope would be retained, the proposal would maintain existing levels of solar access, privacy, views/outlook and sense of enclosure.
- Similarly, through generally maintaining the approved building footprint and envelope, the built form relationship of the site with adjoining built form would be consistent with the previous approval. No additional amenity impacts will arise that have not already been deemed suitable through the previous DA approval.

Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

#### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

Clause 4.6(3)(b) of SLEP2012 requires the departure from the development standard to be justified by demonstrating:

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

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the LEC addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
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In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that Site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the Site for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the FSR standard, as demonstrated in **Section 4.1**.
- The proposed development fully achieves the objectives of LLEP2013 for the R1 General Residential zone, as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The proposed change of use of the Site would generally preserve the existing building footprint and building envelope.
- Accordingly, the density of development and scale of the built form would remain consistent with the established building on the Site. This would ensure the development effectively integrates with the streetscape and character of the area.
- The footprint, envelope, density and scale of development on the Site would generally remain consistent with the existing building, and thereby the building as would integrate with its context.
- The development would maintain neighbouring amenity as well as the amenity of the public domain.

For the reasons outlined above, it is considered that the proposed variation to the FSR control is entirely appropriate and can be clearly justified having regard to the matters listed within LLEP2013 Clause 4.6.

**4.5 PUBLIC INTEREST**

*Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

**Section 4.1** and **Section 4.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.4 and the R1 Zone under LLEP2013.

The public advantages of the proposed development are as follows:

- The amenity of the surrounding development and the public domain will not be unreasonably impacted.
- The density and scale of the built form would remain generally consistent with the established building on the Site, ensuring the development effectively integrates with the streetscape and character of the area.
- The proposed change of use of the existing building would uplift the visual character of the Site as viewed from the public domain.

There are no significant public disadvantages which would result from the proposed development.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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The proposed development is therefore considered to be justified on public interest grounds.

**4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE**

The proposed non-compliances with Clauses 4.4 Floor Space Ratio would not raise any matters of significance for State or regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under section 117 of the *Environmental Planning and Assessment Act* (EP&A Act).

Planning circular PS 08-014, issued by the NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by Council rather than under delegation. The proposed development would result in an exceedance of the Clauses 4.4 Floor Space Ratio control by 107%, which is greater than the 10% prescribed in the subject planning circular.

**4.7 SUMMARY**

For the reasons outlined above, it is considered that the objections to Clauses 4.4 of the LLEP2013 are well-founded in this instance and the granting of Clause 4.6 Variations to these development standards are appropriate in the circumstances. Furthermore, the objection is considered to be well founded for the following reasons as outlined in Clause 4.6 of the SLEP2012, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives of the particular standard;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Overall, it is considered that the proposed Clause 4.6 Variations to the maximum FSR controls are entirely appropriate and can be clearly justified having regard to the matters listed within LLEP2013 Clause 4.6.

**Clause 4.6 Variation – Floor Space Ratio**

Proposed Change of Use of Existing Warehouse Building to Residential Dwelling  
33 Whites Creek lane, Leichhardt (Lot A DP 447545)

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**PART E CONCLUSION****5.1 RECOMMENDATION**

It is requested that Inner West Council exercise its discretion and find that this Clause 4.6 Variation Request adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the LLEP2013.

This is particularly the case given the existing FSR non-compliance as well as the proposed development's otherwise compliance with the LLEP2013 and LDGP2013, and the strategic suitability of the proposed development at both a local and State government level. Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by Council.

## Attachment D – Draft Conditions



## NOTICE OF DETERMINATION - APPROVAL

*Issued under Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979*

<b>Development Application No.</b>	D/2019/270
<b>Applicant</b> <b>Land to be developed</b>	Pad Group Pty Ltd 33 Whites Creek Lane, LEICHHARDT NSW 2040
<b>Approved development</b> <b>Cost of development</b>	Change of use of existing building to a residential dwelling. \$0
<b>Building Classification</b>	Class 1a
<b>Determination</b>	The application was determined by «Decision Authority Determined» and was granted consent <b>subject to the conditions attached.</b>
<b>Other Approvals</b>	Before commencing <i>building work</i> or <i>subdivision work</i> , a relevant Construction Certificate must be obtained from Council or an Accredited Certifier. Council must be appointed the Principal Certifier for any <i>subdivision work</i> under the Act.
<b>Determination date</b>	
<b>Consent is to operate from</b>	Refer to section 4.16(3) of the Act
<b>Consent will lapse on</b>	Insert Date Five Years From Date Of Determination

**Reasons for conditions**

To protect the environmental amenity of the area and the public interest.

**Right of appeal**

*Approval*

If you are dissatisfied with this decision, Section 8.7 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. In addition to the above, third party appeal rights are set out in the Environmental Planning and Assessment Act 1979 and may be applicable.

Division 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. Division 8.2 does not apply to complying development, designated development, integrated development or a determination made by Council under Division 4.2 in respect of Crown applications.

For further information please contact Eric Wong on 9392 5229

**Development Assessment Manager  
Team Leader – Development Assessment  
Senior Planner**

## Conditions of Consent

### Fees

#### 1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$20,000 has been paid to the Council.

The above contribution is the contribution applicable as at 10 October 2019.

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 \$
Open Space and Recreation	\$17826.66
Community Facilities and Services	\$2120.64
Bicycle Works	\$16.7
<b>TOTAL</b>	<b>\$20,000</b>

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>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*.

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

#### 2. Long Service Levy

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

#### 3. Security Deposit - Standard

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

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

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

**General Conditions**

**4. 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
DWG No A001, REV C	GROUND FLOOR PLAN & MEZZANINE FLOOR PLAN	08/04/19	Petar Danicic Architects
DWG No A002, REV C	ELEVATIONS AND SECTIONS	08/04/19	Petar Danicic Architects
DWG No A003, REV C	LOCATION PLAN AND SITE SURVEY	08/04/19	Petar Danicic Architects
A346529	BASIX Certificate	31 May 2019	ESD Synergy
Ref: 110514-BCA-r1	BCA ASSESSMENT REPORT	1 April 2019	BCA Logic
SYD2019-1027-R001B	Aircraft Noise Assessment	30/05/19	Acouras Consultancy
REF: 710-20190503, Issue: 2	FLOOD RISK MANAGEMENT REPORT	JUNE 2019	JAMES ROSE CONSULTING
191565 SAAA	Structural Engineer's Report	15 July 2019	Taylor Thomson Whitting (NSW) Ply Ltd
J162333	PRELIMINARY SITE INVESTIGATION	June 2019	Greencap

As amended by the conditions of consent.

**5. 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.

**6. Standard Street Tree Protection**

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

#### 7. Works Outside the Property Boundary

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

#### Prior to Construction Certificate

#### 8. 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 132092.*

#### 9. Acoustic Report – Aircraft Noise

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

#### During Demolition and Construction

#### 10. Construction Hours – Class 1 and 10

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

#### 11. Stormwater Drainage System

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

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

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

### Prior to Occupation Certificate

#### **12. Aircraft Noise –Alterations and Additions**

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

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

#### **13. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

#### **14. Shopping trolley management plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a shopping trolley management plan which specifies a management system that will be used to ensure that shopping trolleys are not abandoned on the surrounding area.

## Advisory notes

### Prescribed Conditions

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

### Notification of commencement of works

At least 7 days before any demolition work commences:

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

### Storage of Materials on public property

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

### 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.
- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

**Disability Discrimination Access to Premises Code**

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

**National Construction Code (Building Code of Australia)**

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

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

**Permits from Council under Other Acts**

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

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant

- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

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

#### **Noise**

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

#### **Amenity Impacts General**

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

#### **Fire Safety Certificate**

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

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

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule.

The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

#### **Construction of Vehicular Crossing**

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

#### **Lead-based Paint**

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

#### **Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

**Dial before you dig**

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

**Useful Contacts**

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

[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading 13 32 20

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig 1100

[www.dialprior toyoudig.com.au](http://www.dialprior toyoudig.com.au)

Landcom 9841 8660

To purchase copies of Volume One of "Soils and Construction"

Long Service Payments Corporation 131441

[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

NSW Food Authority	1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.