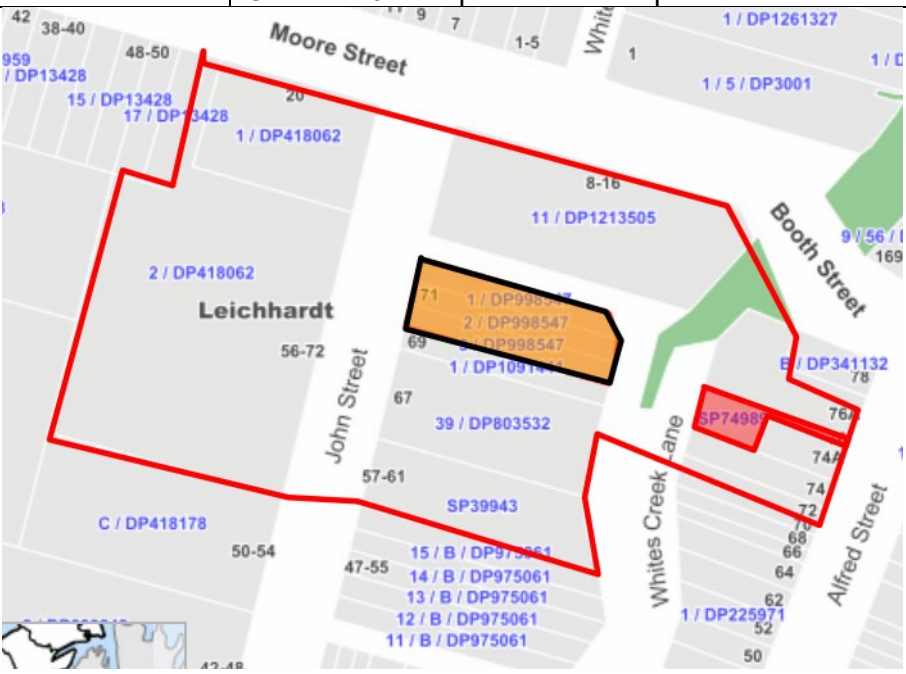




	
DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2020/0182
<b>Address</b>	71 John Street LEICHHARDT NSW 2040
<b>Proposal</b>	Construction of a new service lift and three new mezzanines within the existing building adding a total area of 336.76m <sup>2</sup> .
<b>Date of Lodgement</b>	16 March 2020
<b>Applicant</b>	Giovanni Cirillo
<b>Owner</b>	Mr Antonino Gaudio Mrs Carmel M Gaudio
<b>Number of Submissions</b>	Initial: 1
<b>Value of works</b>	\$1,457,687.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%
<b>Main Issues</b>	FSR exceeds 1:1
<b>Recommendation</b>	Approval with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site 	Objectors 
Notified Area 	Supporters 

## 1. Executive Summary

This report is an assessment of the application submitted to Council for Construction of a new lift and three new mezzanines within the existing building adding a total area of 336.76m<sup>2</sup> at 71 John Street, Leichhardt.

The application was notified to surrounding properties and 1 submission was received in response.

The main issues that have arisen from the application include:

- Breach of FSR

The non-compliances are acceptable given that the FSR breach does not increase the envelope of the building and is located wholly within the existing form. The mezzanine and lift increase warehouse storage capacity and provide improved accessibility and therefore the application is recommended for approval.

## 2. Proposal

Installation of a service lift to existing and proposed mezzanine levels located wholly within the existing built form.

## 3. Site Description

The subject site is located on the eastern side of John Street, between Moore and Hill Streets. The site consists of 3 allotments and is generally rectangular in shape with a small chamfer to the corner of an unnamed Lane with a total area of 945.7 sqm and is legally described as Lots 1, 2 & 3 in DP 998547.

The site has a frontage to John Street (and the unnamed Lane to the East) of 17.5 metres and a secondary frontage of approximate 54.87 metres to unnamed Lane to the north.

The site supports elevated single storey warehouse. The adjoining properties support mixture of one and two storey warehouse buildings.

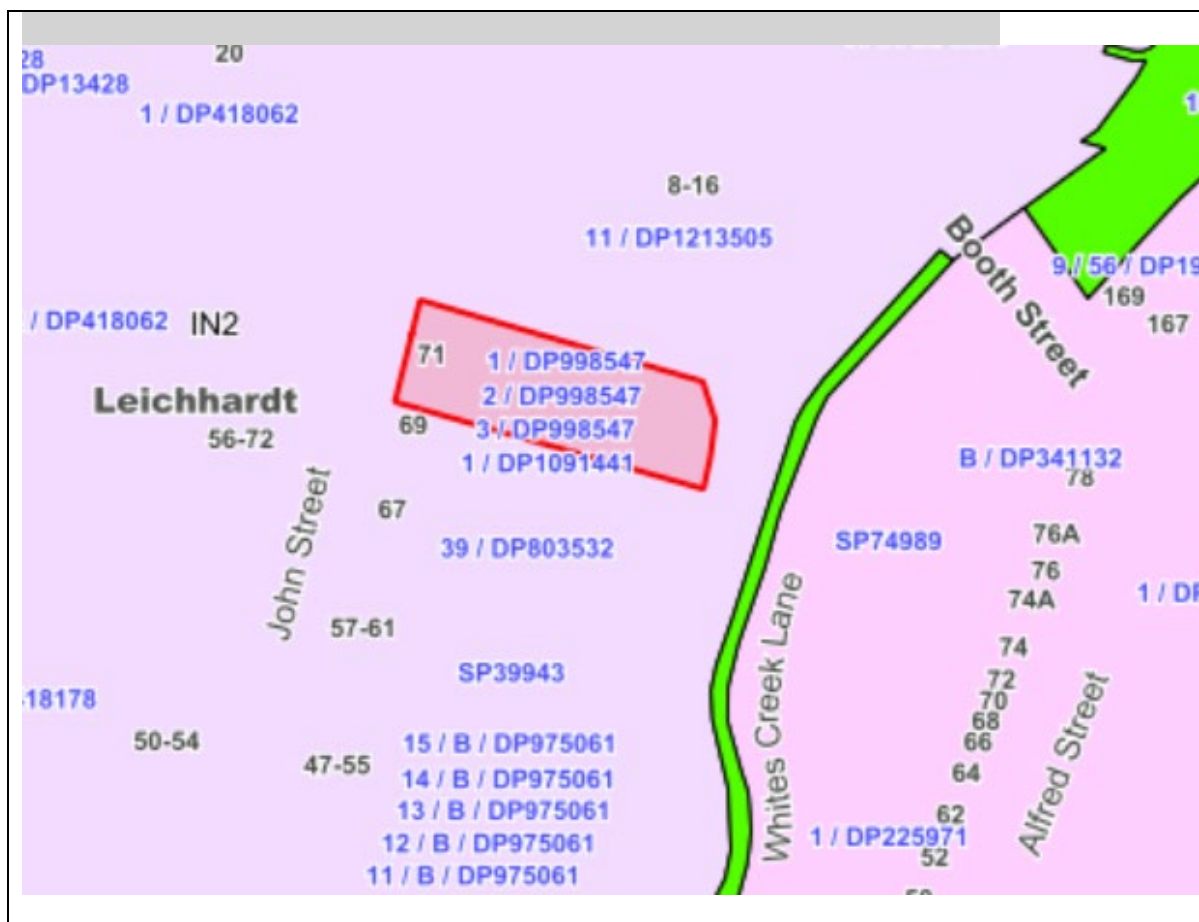


Figure 1: Zoning Map (subject site highlighted)

## 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
BC/2020/0203	Building certificate for unauthorised works – mezzanine	2 September 2020
CDCP/2020/0041	Change of use and internal alterations	11 February 2020
PCA/2020/0142	Nomination of certifier	11 February 2020

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
23 August 2020	Letter sent to the applicant requiring them to apply for a Building Certificate for the unauthorised mezzanine
31 July 2020	BC/2020/0203 Lodged
2 September	BC/2020/0203 Approved

## 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*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

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

The site has been used in the past for activities which could have potentially contaminated the site. However, as the proposal does not entail a change or intensification of the current use, it is considered that the site will not require remediation in accordance with *SEPP 55*.

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

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities for the following reasons:

- Inclusion of lift and mezzanine is located wholly within the existing building footprint.

#### 5(a)(iii) *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 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area

## Clause 4.6 - Exceptions to development standards

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

The site is zoned IN2 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

[alterations and additions to a] **warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.

The development is permitted with consent within the land use zone. The development is consistent with the objectives of the IN2 zone.

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

Standard	Proposal	non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 1:1 or 945.7 sqm	1.55:1 or 1,466.89 sqm	521.19 sqm or 55%	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

**NB:** The current FSR on the site exceeds the standard. The Current FSR is 1.16:1 at 1,100.13sqm

The applicant seeks a variation to the Floor Space Ratio (FSR) development standard under Clause 4.4 of the Leichhardt LEP of 1:1 by up to 1.55:1(1,466.89sqm), being a variation of 55% (521.19sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Leichhardt LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Leichhardt LEP justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed mezzanines are contained entirely within the existing structure and will not be visible from the outside. Therefore, there are no issues arising from visual domination, streetscape incompatibility, overshadowing or privacy. Due to their intended uses as storage, the mezzanines will not contribute to increased noise generation or any significant increased traffic generation. The proposal supports the retention of industrial lands within the Inner West LGA and contributes to local employment and services.*

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

The objectives of the IN2 zone are:

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To retain existing employment uses and foster a range of new industrial uses to meet the needs of the community.*
- *To ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities.*

It is considered the development is in the public interest because it is consistent with the objectives of the IN2 zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The application seeks only to increase floor space within the existing building footprint to increase the available storage on the site for warehousing and distribution.
- The proposed development will improve and maintain an existing warehousing employment use which is in keeping with the economic focus of the IN1 zone.

The relevant objective of the FSR development standard is:

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

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

- The proposal will not detrimentally effect the building's character-relationship with the neighbourhood as the works are wholly internal.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Leichhardt LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio and it is recommended the Clause 4.6 exception be granted.

### 5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not particularly relevant to the assessment of the application.

## 5(d) Development Control Plans

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

<b>LDCP2013</b>	<b>Compliance</b>
<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	N/A
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	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes - See discussion
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
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>	
C2.2.3.3 Piperston Distinctive Neighbourhood & C2.2.3.3(b) Industrial Sub Area	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	<b>N/A</b>
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	N/A
C4.4 Elevation and Materials	Yes

C4.5 Interface Amenity	Yes
C4.6 Shopfronts	N/A
C4.7 Bulky Goods Premises	N/A
C4.8 Child Care Centres	N/A
C4.9 Home Based Business	N/A
C4.10 Industrial Development	Yes
C4.11 Licensed Premises and Small Bars	N/A
C4.12 B7 Business Park Zone	N/A
C4.13 Markets	N/A
C4.14 Medical Centres	N/A
C4.15 Mixed Use	N/A
C4.16 Recreational Facility	N/A
C4.17 Sex Services Premises	N/A
C4.18 Vehicle Sales or Hire Premises And Service Stations	N/A
C4.19 Vehicle Repair Station	N/A
C4.20 Outdoor Dining Areas	N/A
C4.21 Creative Industries	N/A
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	N/A
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

**C1.11 Parking** - Comment: the proposed increase of floor space for the use of storage of goods does not reduce the parking available on site. The warehouse is a storage and distribution centre and the parking provided is sufficient for the current use.



### 5(e) The Likely Impacts

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

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

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

### 5(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. One (1) submission was received in response to the initial notification.

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

- Parking – see Section 5

### 5(h) The Public Interest

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

The proposal is not considered contrary to the public interest.

## 6 Referrals

### 6(a) Internal

The application was referred to the following internal sections/ officers and issues raised in those referrals have been discussed in section 5 above.

- Engineers – no objection

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

## 8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining properties or the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 4.4 Floor Space Ratio of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out. **C.H**
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/0182 for Construction of a new lift and three new mezzanines within the existing building adding a total area of 336.76m<sup>2</sup> at 71 John Street LEICHHARDT NSW 2040 subject to the conditions listed in Attachment A.

**Attachment A – Recommended conditions of consent****CONDITIONS OF CONSENT****FEES****1. Security Deposit - Custom**

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

<b>Security Deposit:</b>	\$2,152.50
<b>Inspection Fee:</b>	\$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.

## **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.

## **GENERAL CONDITIONS**

### **3. Boundary Alignment Levels**

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

### **4. Stormwater Drainage System – Simple**

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

Any existing component of the stormwater system that is to be retained, 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 ensuring no concentration of flows or nuisance to other properties.

### **5. Car Parking**

The development must provide and maintain within the site:

- a. Nine (9) existing line marked car parking spaces wholly within the site.

**PRIOR TO ANY DEMOLITION****6. Hoardings**

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

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

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

**PRIOR TO CONSTRUCTION CERTIFICATE****7. Dilapidation Report – Pre-Development – Minor**

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

**DURING DEMOLITION AND CONSTRUCTION****8. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

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

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

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

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

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

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

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

#### **PRIOR TO OCCUPATION CERTIFICATE**

##### **9. No Encroachments**

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

##### **10. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

**ADVISORY NOTES****Permits**

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

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

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

**Insurances**

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

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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



**Obtaining Relevant Certification**

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

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

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

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

**Permits from Council under Other Acts**

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

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

- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

#### **Noise**

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

#### **Amenity Impacts General**

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

#### **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.

#### **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

Department of Fair Trading		<a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a> 13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig		1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom		9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
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 - Environmental Solutions	SITA	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

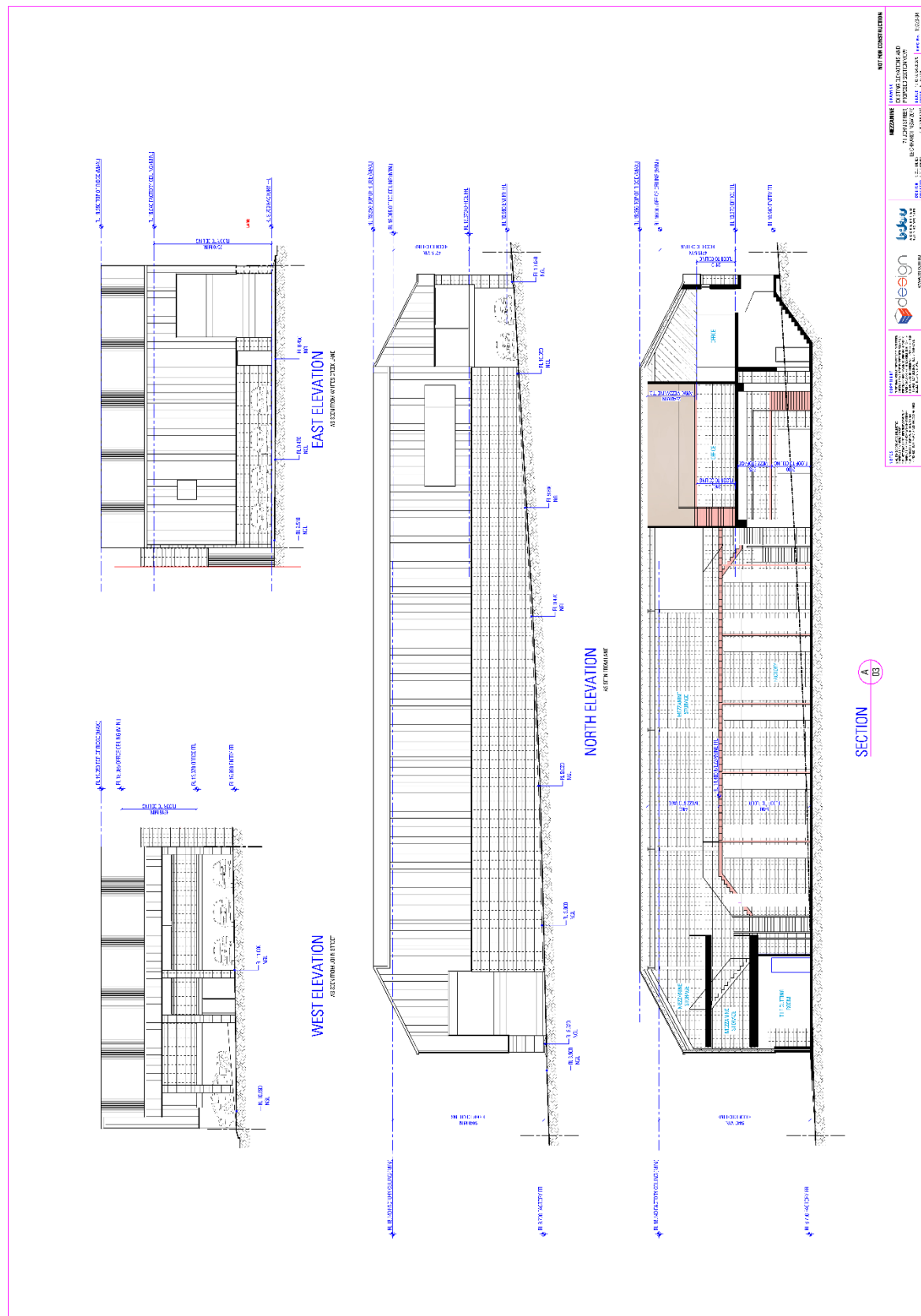
WorkCover Authority of NSW 13 10 50

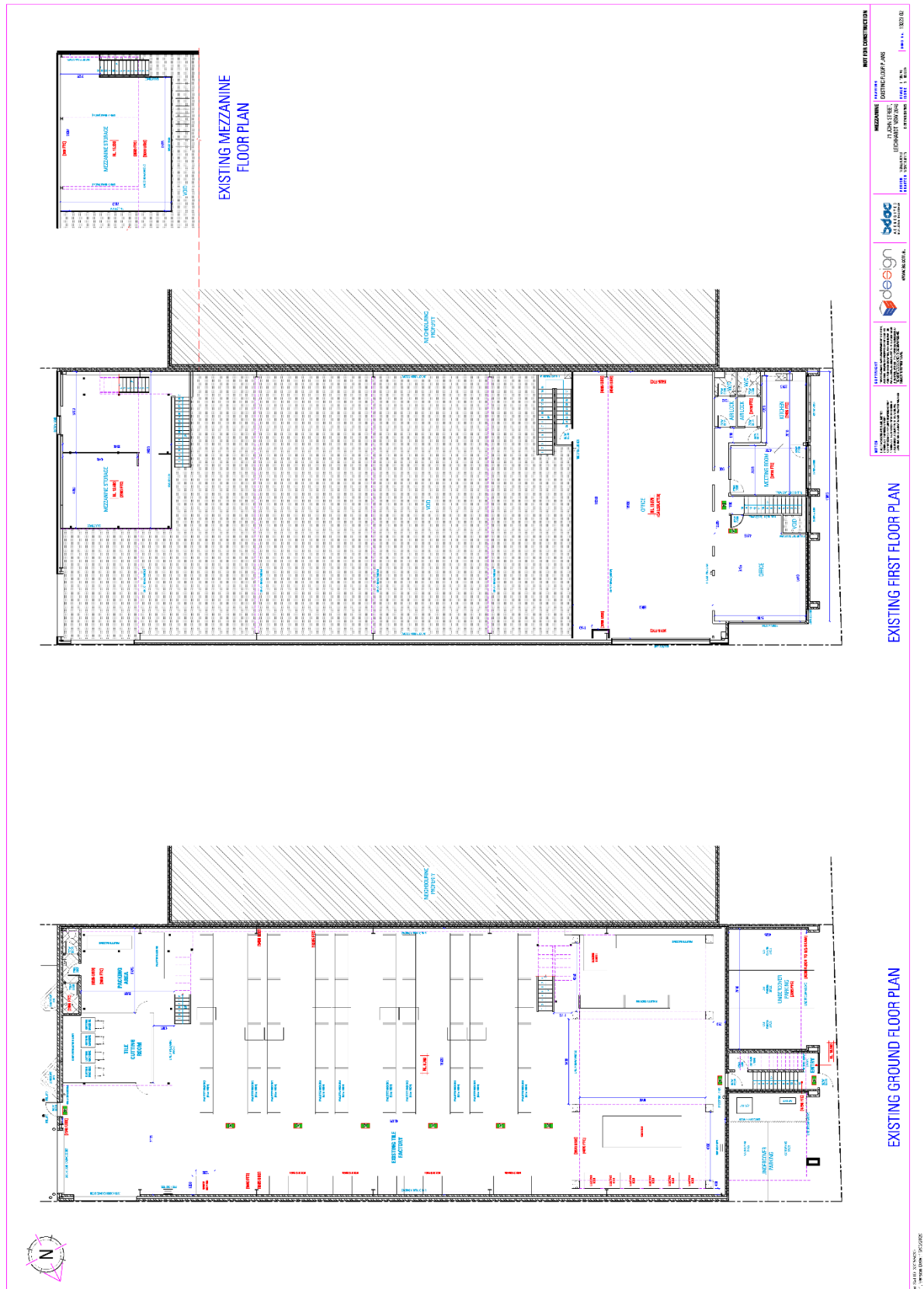
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

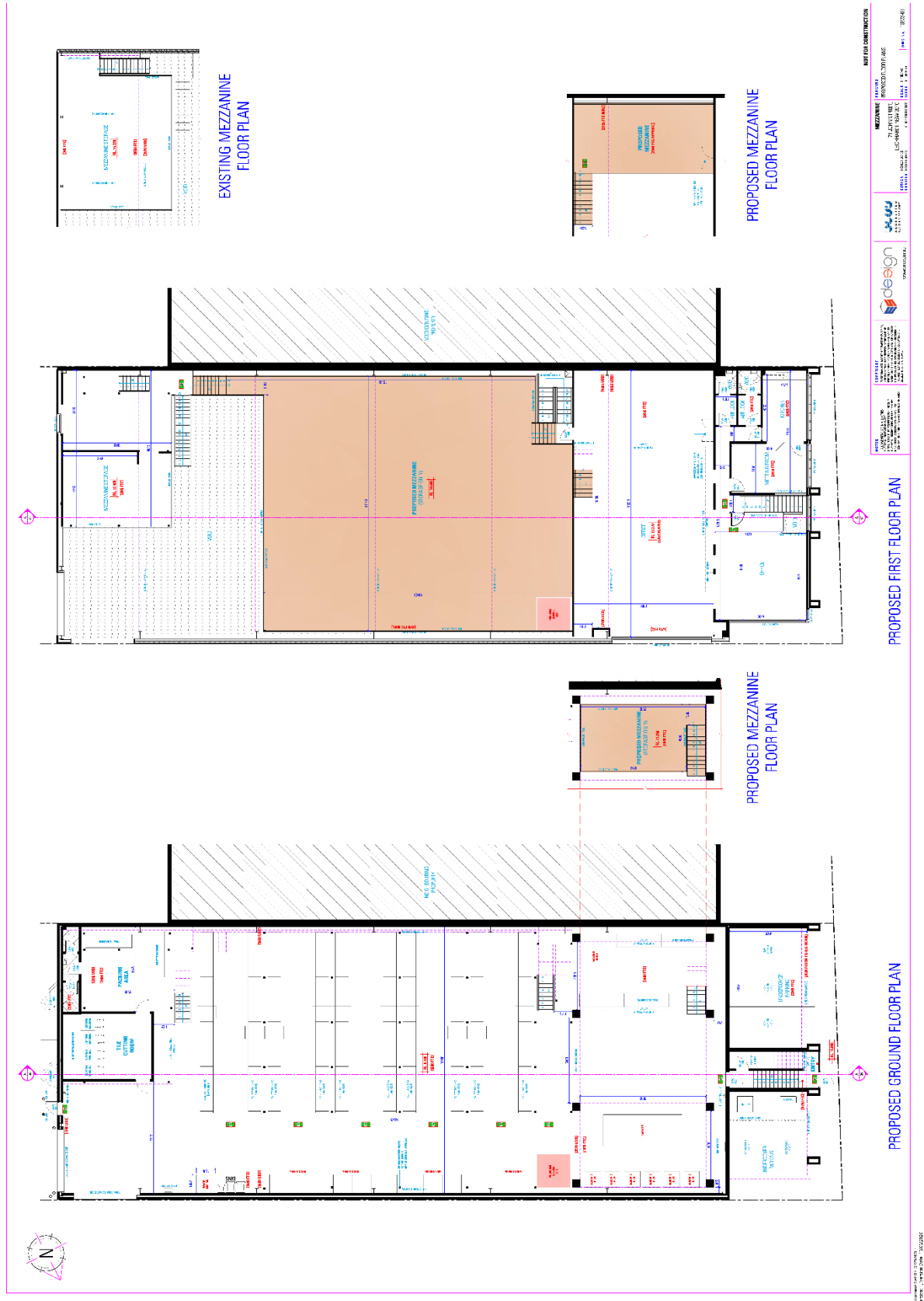
Enquiries relating to work safety and asbestos removal and disposal.

# REASONS FOR REFUSAL

## PAGE 487







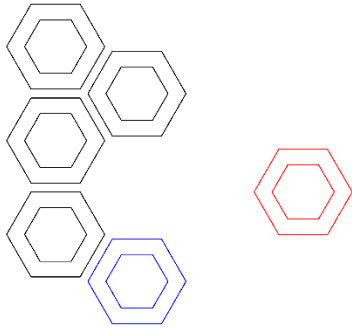
## DEVELOPMENT APPLICATION

## DRAWING SCHEDULE

01 EXISTING SITE PLAN  
02 EXISTING FLOOR PLANS  
03 PROPOSED FLOOR PLANS  
04 EXISTING ELEVATIONS AND PROPOSED SECTION VIEW

## ISSUE DETAILS

A	26.11.19	ISSUED FOR DESIGN DISCUSSION
B	02.12.19	ISSUED FOR LAND & ENVIRONMENT COURT PROCEEDINGS
C	30.01.20	ISSUED FOR DEVELOPMENT APPLICATION



## CONSULTANT DETAILS

TOWN PLANNER | PLANNING LAB | 0147 755 799  
BCA | DESIGN RIGHT CONSULTING P/L | 0405 295 978  
SURVEYOR | CC SURVEYING | 02 9789 3937

## ADDITIONAL INFORMATION

A01	OWNER'S CONSENT FORM
A02	SURVEY PLAN

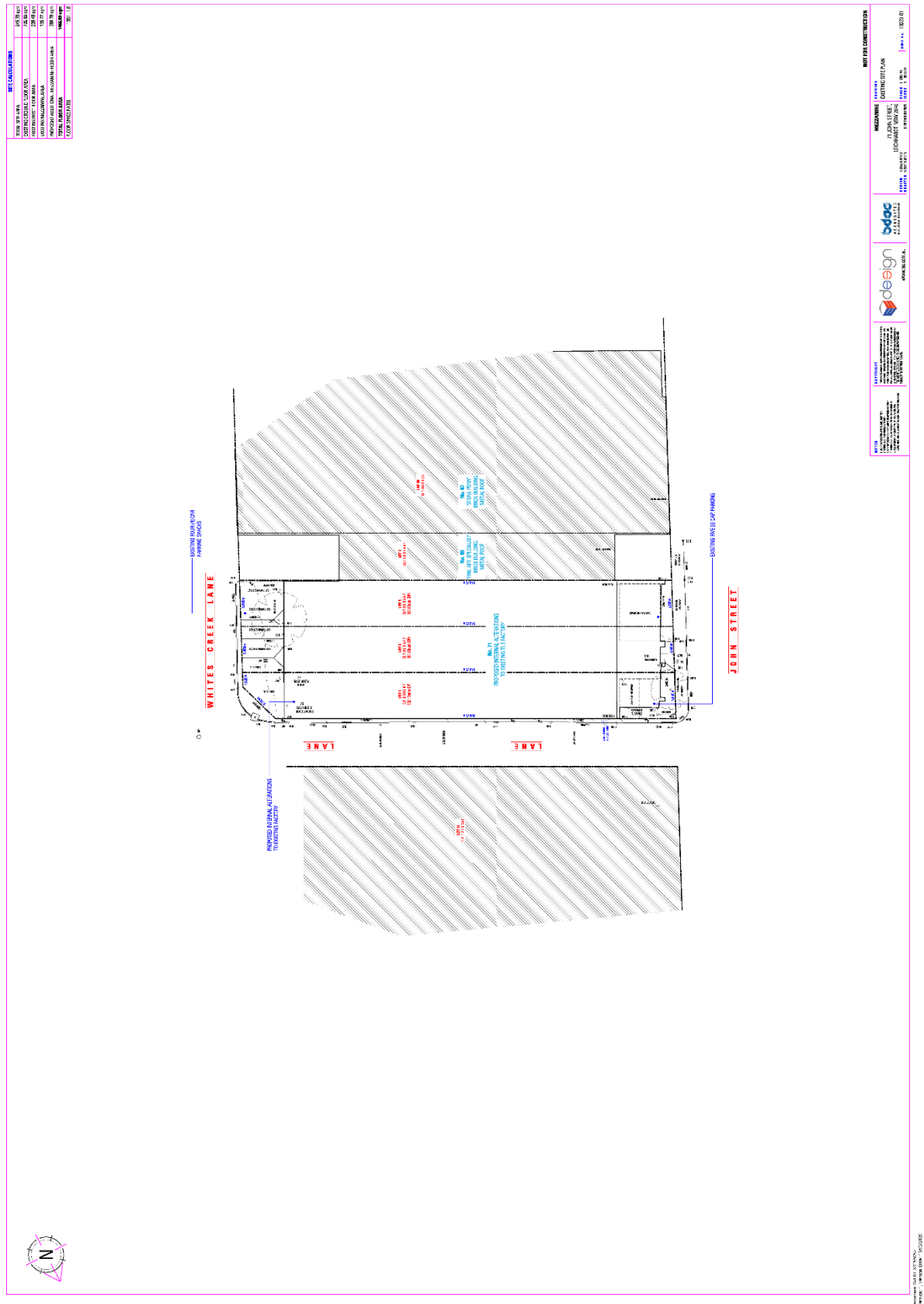
## MEZZANINE

71 JOHN STREET,  
LEICHHARDT NSW 2040

## OLDE ENGLISH TILES







## Attachment C- Clause 4.6 Exception to Development Standards

**planning  
lab**

### CL 4.6 VARIATION OF DEVELOPMENT STANDARDS JUSTIFICATION

71 JOHN STREET, LEICHHARDT

DA FOR ALTERATIONS AND ADDITIONS INCLUDING THE  
INSTALLATION OF MEZZANINES AND A LIFT



Report Prepared by: Planning Lab

Issue Date: 2 March 2020

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## Clause 4.6 Variation Request Summary

### Site

Lots 1-3 in DP998547 – 71 John Street, Leichhardt

### Variations sought

Clause 4.4 Floor Space Ratio

### Extent of FSR variation

Maximum FSR permissible under Clause 4.4: 1:1

Site area: 945.70m<sup>2</sup>

Current GFA / FSR: 1,100.13m<sup>2</sup> / 1.16:1

Proposed GFA / FSR: 1,466.89m<sup>2</sup> / 1.55:1

### Summary of non-compliance

The proposal involves the construction of three mezzanines within the existing warehouse building which will add an additional 336.76m<sup>2</sup> to the sites GFA. The application also seeks to regularise the use of an existing multi-level storage mezzanine which was constructed without consent. Under the proposal, the building will exceed the 1:1 floor space ratio (FSR) limit under Clause 4.4 of the Leichhardt LEP 2013 by 0.55:1.

## Introduction

This Clause 4.6 Variation of Development Standards Justification has been prepared by Planning Lab to accompany an application for the installation of three mezzanines and a lift along with regularisation of an existing multi-level mezzanine structure within the existing industrial building at 71 John Street, Leichhardt ('the site'). The Architectural Plans have been prepared by ES Design and are included within this application. A description of the proposal is included within the attached Statement of Environmental Effects by Planning Lab.

The purpose of the proposed modifications is to provide additional storage for the use of the site's occupant, Olde English Tiles. The site is used for the production and storage of tiles which are then sold in their retail stores located within the Inner West Council LGA.

The existing building on site is part single storey warehouse space part two storey building with an ancillary office area on the upper level. The single storey portion of the building currently has a floor to ceiling height of 9.42m. This application proposes to install a mezzanine across the majority of the warehouse area, between Ground and Level 1 and between Level 1 and the ceiling.

The mezzanine spaces are intended to be used for storage. The floor to ceiling heights are:

- Within the former warehouse area – 4.46m above, 5.7m under.
- Between ground and Level 1 – 1.945m above, 2.4m under.
- Between the Level 1 ancillary office and the ceiling – 2.94m above, 2.4m under.

The proposal will result in the building's FSR increasing from the existing 1.16:1 to 1.55:1. The proposal does not involve any external modifications to the building or increase in bulk or scale as the additional floor space is all being created through the use of mezzanines within existing space.

To the extent that the proposed increase in FSR exceed the applicable controls under the Leichhardt LEP 2013 the proposal creates a better planning outcome by supporting the ongoing use and retention of industrial lands within the Inner West LGA which Council has identified as being in shortage. The proposed new GFA is for the purpose of storage and will not impact noise emissions or significantly impact traffic generation. When viewed from the outside, the proposed works will not be perceptible. Therefore, the proposal will have no negative environmental impacts on any surrounding developments.

This Clause 4.6 Variation Request demonstrates that the proposed design will result in an improved planning outcome for the site and has no associated negative environmental impacts. In addition, the proposal is entirely consistent with the relevant FSR and IN2 Zone objectives of the Leichhardt LEP 2013.

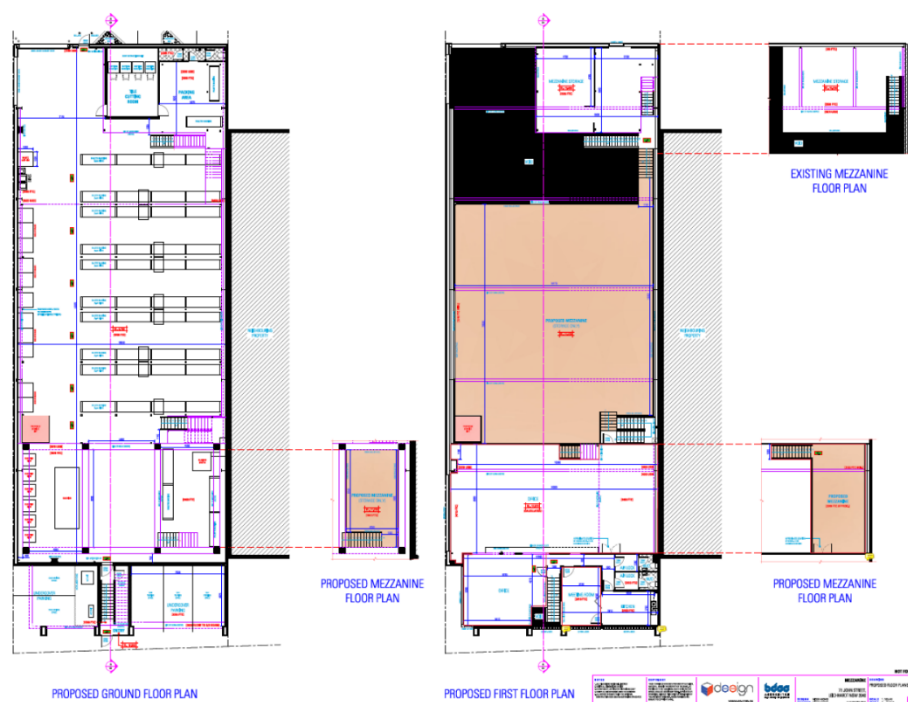


Figure 1 – Proposed mezzanines

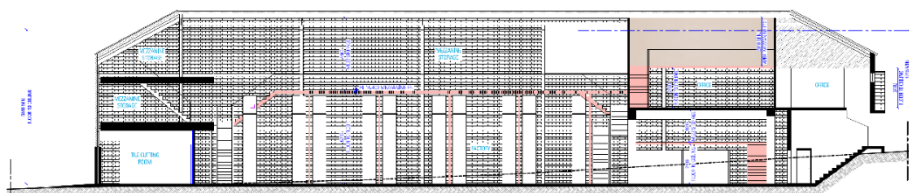


Figure 2 - Section detailing mezzanine heights

## Relevant Clause Extracts

The relevant clauses of the Leichhardt LEP 2013 are 4.4 Floor Space Ratio and 4.6 Exceptions to Development Standards. Clause 4.6 is reproduced in full while the relevant portions of clause 4.4 are reproduced on the following pages.

### 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.*

### 4.6 Exceptions to development standards

*(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, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

*(a) 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.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

**Note.** When this Plan was made it did not include any of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.



## Background

The subject site for the Development Application is 71 John Street, Leichhardt which is legally described as Lots 1-3 in DP998547. The site has an area of 945.7m<sup>2</sup>. The proposal includes the construction of three mezzanines with a total combined area of 366.76m<sup>2</sup> in addition to the regularisation of the use of an existing mezzanine. The storage mezzanines will be used in connection with the site's approved use. The maximum FSR of the site under the Leichhardt LEP 2013 is 1:1. The construction of the proposed mezzanines will increase the site's GFA/FSR from 1,100.13m<sup>2</sup> / 1.16:1 to 1,466.89m<sup>2</sup> / 1.55:1.

The site fronts John Street and has vehicle access from Whites Creek Lane. The existing building is used by Olde English Tiles for the manufacture and storage of tiles with an ancillary office occupying level 1. The building is a part single storey part two storey former warehouse building.

The site is located within an industrial area with a mix of uses. To the east of the site, on the opposite side of Whites Creek, is a residential area which is dominated by detached houses.

Olde English Tiles previously operated out of 182 and 184-186 Parramatta Road which was compulsorily acquired as part of the WestConnex Project forcing them to seek alternative locations for their business in a short time frame. They began using 2-8 Parsons Street, Rozelle for manufacturing and storing tiles but have since been given notice to relocate by 1 April 2020 as 2-8 Parsons Street has been approved by the Land and Environment Court for development of a Bunnings hardware store. 71 John Street has been approved for use by Olde English Tiles for the manufacture and storage of tiles as a 'general industry' under CDC 2019/158.

As to former Leichhardt Council noted in various strategic reports and the Leichhardt DCP 2013, there is a shortage of industrial land in the Inner West LGA. Due to the external pressures placed upon Olde English Tiles, over which they had no control, they have been forced to move quickly to acquire a new premises for their operations. 71 John Street is suitable to their operations but the addition of additional floor space through mezzanines will enhance its long-term suitability.

## Argument

The proposed mezzanines are contained entirely within the existing structure and will not be visible from the outside. Therefore, there are no issues arising from visual domination, streetscape incompatibility, overshadowing or privacy. Due to their intended uses as storage, the mezzanines will not contribute to increased noise generation or any significant increased traffic generation.

The proposal supports the retention of industrial lands within the Inner West LGA and contributes to local employment and services.

### Justification

In response to the proposed FSR non-compliance, this Clause 4.6 application is provided to seek exemption from the development standards.

It is submitted that the variation is well-founded and is worthy of Council's approval. The following is an assessment of the proposed variation against the requirements of CI 4.4 Floor Space Ratio and Clause 4.6 Exceptions to Development Standards.

The proposal seeks to provide sufficient floor space within the existing building so as to support the operations of Olde English Tiles. In doing so, it supports the retention of industrial lands and industrial employment within the Inner West LGA. The proposed development will reflect the desired character of industrial areas in Leichhardt as expressed in Chapter 4.10 of the Leichhardt DCP 2013 and contributes positively to the LGA without any adverse impacts on the surrounding area. In particular:

- The building's external appearance is unchanged.
- The additional mezzanines will not be visible from the public domain or surrounding development.
- The FSR variation is sought in relation to mezzanines used for storage.
- The proposal is not expected to create additional noise or traffic.
- The development provides the maximum amount of parking permitted under the Leichhardt DCP 2013 and will not negatively impact traffic.
- The contravention of the FSR controls by the proposal does not give rise to any environmental effect of sufficient significance that would cause concern, and it is considered that the environmental benefits of the proposal result in a better planning outcome and a building which is on balance an appropriate environmental outcome, to justify the contravention of the development standard.

### Justification for Variation to Clause 4.4

Clause 4.4 dictates the FSR limit for the subject site providing a limit of 1:1. The subject site has an area of 945.7m<sup>2</sup> and is proposed to have a GFA of 1,466.89m<sup>2</sup> which equals an FSR of 1.55:1. The exceedance results from mezzanines which are contained wholly within the building's existing structure and which will not be visible from the public domain or surrounding development. The intensification is appropriate to the location of the site within an industrial area given the forecast shortages of industrial land in the Leichhardt area.

This application will address each aspect of Clause 4.4 for completeness.

***(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.***

Objective a. The site is not located within a residential zone.

Objective b. The proposal does not change the building's existing bulk, form or scale. The subject building is a warehouse located in an industrial area and will remain compatible with the current and desired future character of the area.

***(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.***

The building exceeds the FSR of 1:1 shown on the Height of Buildings map by 0.55:1 which is the impetus for this application.

### Justification for Variation under Clause 4.6

This application will address each aspect of Clause 4.6 for completeness.

**(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.**

Objective 1(a) provides the impetus for the clause in confirming its intention for flexibility in the application of development standards. Here the flexibility relates to the proposal which relates to the construction of mezzanines and the related exceedance of the prescribed maximum FSR.

Objective 1(b) introduces the desired outcome from objective 1(a) in providing a better outcome from applying the flexible approach.

This proposal provides an opportunity for a better outcome by varying the relevant height standard as follows:

- The proposal is consistent with the objectives of Clause 4.4.
- The building will provide additional industrial GFA which is currently in short supply within the LGA.
- The additional GFA will support industrial employment within the LGA.
- The increased GFA will be imperceptible from the public domain.

***(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.***

The development standard proposed to be contravened is Clause 4.4 which not expressly excluded from the operation of this clause.

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

***(a) 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.***

Subclauses 3 (a) and (b) are discussed separately.

(a) Compliance with the development standard is considered unnecessary and unreasonable.

Compliance with Clause 4.4 is considered unnecessary and unreasonable in the circumstances of the case for the following reasons:

- The proposal does not alter the building's existing bulk, form or scale and will not be seen from outside of the building.
- The proposed use of the mezzanines is for storage which will not increase noise or traffic generation.
- The contravention of the height and FSR controls by the proposal do not give rise to any environmental effect of sufficient significance that would cause concern, and it is considered that the environmental benefits of the proposal result in a better planning outcome and a building which is on balance an appropriate environmental outcome, to justify the contravention of the development standard.

The outcome of the proposal is increased industrial GFA within the Inner West LGA and a building that is better suited to its authorised use by the current occupant.

In this context and in consideration of the nature of the variation sought, it cannot be argued that the proposal is seeking to effect general planning change. Essentially, the development remains compliant with the objectives of the relevant controls and expectations within the planning framework and does not alter the building's bulk. If approved, the built form outcome of the proposal will not be out of keeping with, nor detrimental to the amenity of its surroundings.

In view of all the above, compliance with Clause 4.4 is unreasonable and unnecessary in the circumstances.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

Chapter 4.10 of the Leichhardt DCP 2013 relates to industrial development and provides the following background statement which is relevant to this application (emphasis added by underline):

*Whilst largely used for light industry uses, industrial precincts also include a range of other related uses, including vital residential service functions such as motor vehicle repair stations. Furthermore, in response to the strategic objectives identified in Council's adopted Community and Cultural Plan, Council has expanded the range of uses permissible with consent in the IN2 Light Industrial Zone to encourage the arts and creative industry sector.*

*This Development Control Plan seeks to enhance the long term viability of industrial lands as employment generators and to accommodate the provision of goods and services needed by the community both now and in the future.*

*Building the capacity of the community to meet the opportunities and challenges presented by changes in resource availability, climate, environment and the economy requires Council to protect the integrity of non-residential lands. This means that Council needs to limit sensitive land uses to ensure that future generations have sufficient non-residential land to meet their needs. Council is mindful that the community may need non-residential land to accommodate processes and uses which include infrastructure, goods and services that support distributed energy and water management close to the places where they are harvested, recycled or produced.*

*Given Leichhardt's historic development pattern, many of the municipality's industrial areas adjoin or are located close to residential areas. Protecting residential amenity is a key issue for industrial areas.*

*Council acknowledges that a proportion of industrial development will occur in the form of alterations or additions to existing buildings, and that due to existing characteristics, not all of the controls in this section may be able to be reasonably satisfied. In such situations, and in the interests of encouraging economic development, it will be Council policy to exercise discretion in the application of controls, provided that it can be demonstrated by the applicant that the objectives of this part can be achieved.*

The environmental planning justification for the proposal is that it aligns with Council's stated vision for industrial areas. The proposal seeks to increase the amount of industrial GFA within the LGA, provide employment, and produce goods sold and used within the LGA. Council has acknowledged that a discretion is required in considering modifications to existing industrial development. This is a proposal where Council is justified in using their discretion to grant a variation to the FSR 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.**

These matters were considered and are positively demonstrated by the proposal. The Director General has formally delegated his function to Council.

**4(a)(i)**

The matters required to be demonstrated have been addressed under discussion of Clauses 4.3 and 4.6.

**4(a)(ii) consistency with the objectives for development within land use zone.**

The land use table in the LEP specifies the zone objectives and permissible uses. The objectives of the IN2 Light Industrial zone are:

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To retain existing employment uses and foster a range of new industrial uses to meet the needs of the community.*
- *To ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities.*
- *To retain and encourage waterfront industrial and maritime activities.*
- *To provide for certain business and office premises and light industries in the arts, technology, production and design sectors.*

The proposal recognises these objectives for the In2 Light industrial zone by:

- Facilitating and industrial use
- Facilitating industrial based employment
- Adverse effects of the proposal have been considered in this Clause 4.6 Justification Report and the related Statement of Environmental Effects and been shown to be appropriately mitigated.

***(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.***

The Secretary of Department of Planning and Environment can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*. Under Clause 64(2), a consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

In any event, the contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

***(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—***

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or***

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** When this Plan was made it did not include all of these zones.

The proposal is not for the contravention of a subdivision control, nor is it located within one of the specified zones.

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

The consent authority will keep a record of the determination.

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

Not applicable.