





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0647
Address	6/4-26 Mansfield Street ROZELLE NSW 2039
Proposal	Fitout of Unit 6 for the purpose of an artisan food and drink industry with an ancillary office premises.
Date of Lodgement	13 August 2020
Applicant	White Bay Beer Company Pty Ltd
Owner	Mutual Trust Pty Ltd
Number of Submissions	Nil
Value of works	\$415,000.00
Reason for determination at Planning Panel	FSR variation exceeds 10%
Main Issues	Permissibility; FSR; Traffic and Parking; BCA; Social Impacts
Recommendation	Refusal
Attachment A	Without Prejudice Draft Conditions of Consent (if not refused)
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		N ↑
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for fitout of Unit 6 for the purpose of an artisan food and drink industry with ancillary office premises at Unit 6 within 4-26 Mansfield Street Rozelle.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Permissibility
- FSR variation
- Traffic and parking
- BCA, accessibility and fire safety
- Social impacts

Insufficient information has been submitted to enable a full and proper assessment of the proposal in terms of permissibility, traffic and parking, BCA, accessibility, fire safety and social impacts, and therefore the application is recommended for refusal.

2. Proposal

The proposal involves a change of use and fitout of the existing light industry (microbrewery) to an artisan food and drink industry incorporating the existing microbrewery of approximately 400sqm, a restaurant/café with a floor area of approximately 448sqm for 100 patrons and 20 staff and an ancillary mezzanine office space of 308sqm.

Details of the proposal include:

- Retention of the existing microbrewery approved under CDC No. 190345/1 issued by City Plan Services on 16 October 2019 comprising 18 brewing tanks;
- Minor extension of the brewing equipment wet area to accommodate an additional 12 brewing tanks and new steel escape stairs due to use of access ramp for pallet racking;
- Construction of a bar, cool room, amenities block, and brewery storage and installation of tables and seating at the western section of the ground floor;
- Food truck to service the restaurant/café patrons; and
- Infill of the mezzanine floor with additional 98sqm of gross floor area and fit-out for use as an ancillary office with associated boardroom, staff kitchen and amenities.

The brewery is staffed from 7am to 10pm Sundays to Thursdays and 7am to midnight Fridays and Saturdays. The proposed hours of operation for the restaurant/café are 12pm to 10pm Sundays to Thursdays and 12pm to midnight Fridays and Saturdays. The restaurant/ café will have a total of 20 staff and maximum capacity of 100 patrons.

A total of 3 car spaces are available at all times and an additional 5 car spaces are available from 4pm to midnight Mondays to Fridays, midday to midnight Saturdays and midday to 10pm Sundays.

3. Site Description

The subject site forms part of an existing two and three storey industrial complex comprising numerous tenancies with frontages to Robert Street, Mullens Street and Mansfield Street.

The subject building (Unit 6) is located in the north-western part of the site off Mansfield Street and has an area of approximately 1326sqm.

The site is located within the distinctive neighbourhood of 'Robert Street Industrial'. The subject site is not a heritage item but is located within a conservation area. Adjoining properties comprise one to three storey industrial buildings and one and two storey residential dwellings on the northern side of Mansfield Street.

The property is partly identified as a flood prone lot. The land is zoned IN2 Light Industrial as indicated in the figure below.

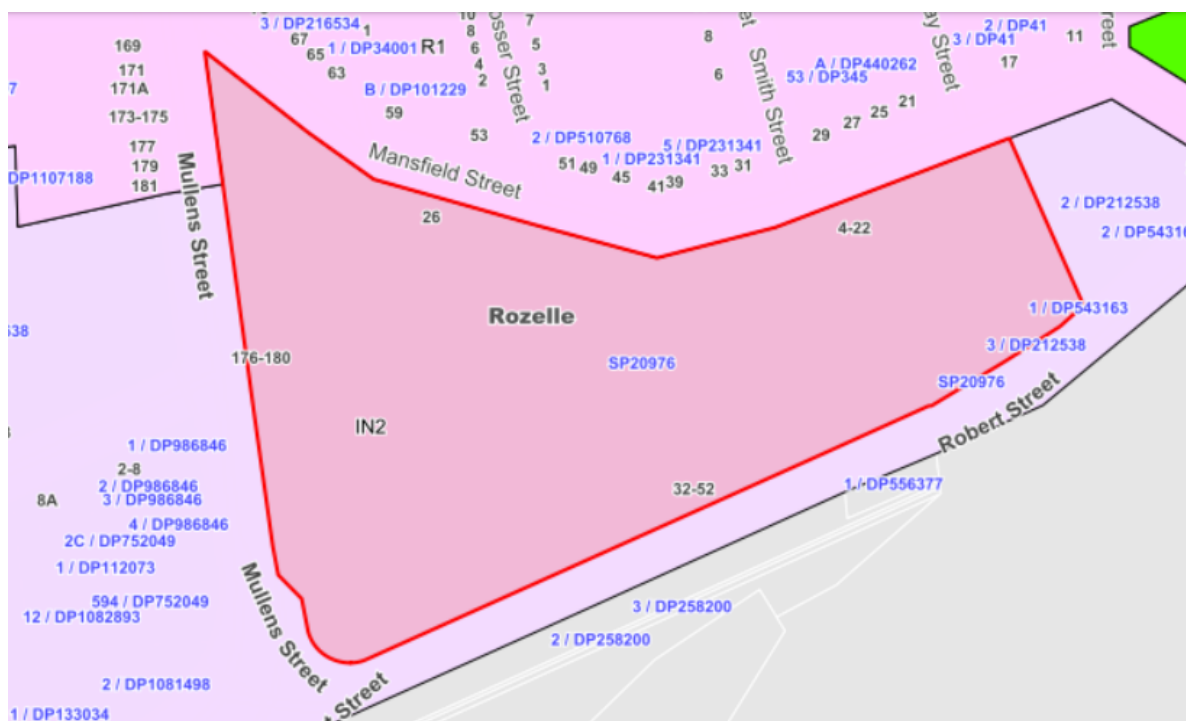


Figure 1: Zoning Map

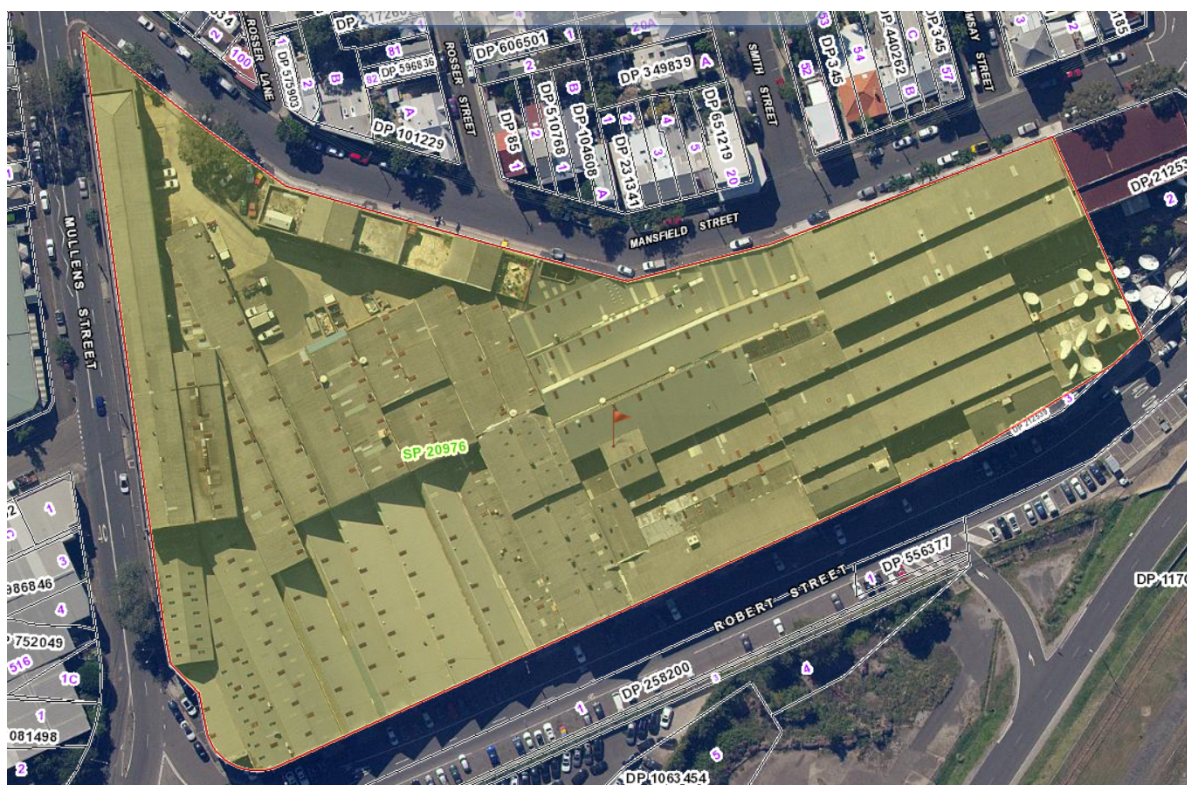


Figure 2: Aerial Map

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
CDC/2019/168	<p>Change of use to micro-brewery and fitout installation.</p> <p>NOTE: On 3 October 2019, the certifier advised Council as follows:</p> <p><i>As required by Clause 129D of the Environmental Planning and Assessment Regulation 2000, City Plan Services have become aware of significant fire safety issues within the building and are therefore required to notify Council of these issues and the associated affected parts of the building.</i></p> <p><i>The significant fire safety issues noted are as follows:</i></p> <ol style="list-style-type: none"> <i>The building does not appear to have adequate fire resistant construction or compartmentation as required for Type A construction.</i> <i>The building egress systems and fire-isolated stairs are inadequate in relation to Part D1 of the BCA.</i> 	Approved 16/10/2019

	<p>3. The construction of exits throughout the building are generally not compliant with Part D2 of the BCA.</p> <p>4. The services and equipment within the building would not meet current standards in accordance with Part E.</p>	
EPA/2019/425	<p>Order 1: Engage the services of an appropriately qualified Accredited Certifier to carry out a Building Code of Australia (BCA) audit of the building located at the above premises against the deemed to satisfy fire safety provisions. The audit shall:</p> <p>a. Address all clauses within Sections C, D, E and H1 of the BCA 2016 stipulating where the building achieves compliance, fails to achieve compliance or the provision is not applicable relative the circumstances.</p> <p>b. Review the current onsite fire safety measures, including their relevant standard of performance.</p> <p>c. The findings of the audit are to be incorporated into a report that stipulates a strategy / recommendations to upgrade the premises to address the non-compliant provisions of Section C, D, E and H1 of the BCA 2016. The report shall include a new/updated Fire Safety Schedule stipulating existing and proposed essential fire safety measures, including their relevant standard of performance.</p> <p>Order 2: The audit is to include a timetable for the completion of the works to address the upgrade / recommendations listed in Item (c) above.</p> <p>Order 3: The audit and timetable listed in Items 1 and 2 above are to be submitted to Council for its consideration and approval. No fire safety upgrading works are to be undertaken until such time as Council has issued you with a fresh Notice of Intention advising you of the extent of fire safety upgrading works to be undertaken and the timeframe/s in which the works are to be completed.</p>	<p>Issued 16/10/2019</p>

Surrounding properties

Not applicable.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
14/10/2020	<p>An Acoustic Report, updated site contamination report, and planning response to the BCA, permissibility, traffic and social impact issues provided by the applicant.</p> <p>The plans were also updated to incorporate an accessible toilet and indicate the location of fire stairs egress.</p> <p>However, the additional information and amended plans do not satisfactorily address all of the issues raised including permissibility, BCA, fire safety, accessibility, traffic/parking and social impacts.</p>

	<p>Whilst it is accepted that a restaurant/café is permitted as a secondary part of an artisan food and drink industry, it is unclear based on the information provided that the restaurant/café can be regarded as secondary to a principal brewery use and further, that the office is an ancillary use. In addition, it is considered that the restaurant presents as a pub/ small bar with a food truck, and as such, the proposal fails to satisfy the definition of an artisan food and drink industry.</p> <p>The applicant has not provided a traffic report, BCA/ fire safety report, Accessibility Report or Social Impact Statement prepared by suitably qualified consultants. Whilst it is noted that there are comments in the SEE relating to traffic and parking and social impact, this is considered to be insufficient given the nature and scale of the proposed change of use.</p> <p>Council’s Building Section has reviewed the proposal and raised concerns regarding the ability for the proposed change of use to comply with BCA, fire safety and accessibility requirements, noting the existing BCA/fire safety issues with the current building and that additional fire safety and accessibility requirements are likely to apply to the change of use but have not been identified.</p> <p>Council's Engineering Section has reviewed the proposal and raised concerns in relation to traffic and parking for the proposed change of use, and the assumption that no car parking is required for the existing microbrewery is not accepted.</p> <p>The application has not been accompanied with updated Owner’s Consent from the Strata Body Corporate (stamped with the common seal) for the use of car spaces within the Strata complex during the proposed hours of operation.</p>
<p>23/9/2020</p>	<p>Council wrote to the applicant requesting further information to address the following issues:</p> <ul style="list-style-type: none"> • Permissibility • FSR variation • BCA, fire safety and accessibility • Site Contamination • Acoustic impacts • Traffic and parking impacts • Social impacts • Strata consent for use of car spaces <p>Noting the issues raised, the applicant was also advised that, in the event the requested information could not be provided within the required timeframe, a Pre-DA meeting would assist to identify the most appropriate land use characterisation and pathway for approval under a new application.</p>

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. *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 proposal was accompanied by a Preliminary Site Investigation prepared by a suitably qualified consultant, which concludes that, whilst there is potential for localised contamination to be present, further investigation is not warranted given the proposal involves interior fitout works only with retention of existing concrete slabs.

Therefore, it is considered that the site is considered suitable for ongoing commercial use and will not require remediation in accordance with *SEPP 55*.

5(a)(i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is not located within the Foreshores and Waterways Area.

5(a)(ii) 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
- Clause 5.10 – Heritage Conservation
- Clause 6.3 – Flood planning
- Clause 6.4 – Stormwater management
- Clause 6.9 – Business and office premises in Zone IN2
- Clause 6.14 – Development control plans for certain development

Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned IN2 Light Industrial under the *LLEP 2013*.

The *LLEP 2013* defines the development as:

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops.

Note—

See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.

Artisan food and drink industries are a type of **light industry**—see the definition of that term in this Dictionary.

The existing brewery involves the making or manufacture of boutique food or drink products only. However, it is not made clear based on the information provided that the proposal as submitted would maintain the *principal* or dominant use of the brewery and that the restaurant/café is a *secondary* or subservient use.

Further, it is considered that the proposed restaurant/café as submitted without a commercial kitchen presents as more akin a pub or small bar use, being serviced by a food truck. In the absence of any identified retail area for the sale of products or facilities for holding tastings, tours or workshops, the proposal fails to meet the definition of an artisan food and drink industry. Whilst a small bar is permitted in the IN2 zone, the applicant seeks to rely upon the definition of an artisan food and drink premises with a restaurant or café.

In addition, the proposed office space is prohibited in the IN2 zone under Clause 6.9 of LLEP 2013 as it is not for a creative purpose and is not considered to be an ancillary use to the existing brewery given the excessive size and lack of details provided in relation to the ostensibly principal use.

The objectives of the IN2 zone are as follows:

- *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 development is not consistent with the relevant objectives of the IN2 zone given insufficient information has been provided to demonstrate that the proposal satisfies the definition of an artisan food and drink industry.

Clause 4.4 Floor Space Ratio

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio (FSR) Maximum permissible: 1:1 (19,810sqm)	1.105:1 (additional 98sqm)	10.5%	No

Note: The estimated FSR of the existing industrial complex is at least 1.1:1 (or 21,791sqm gross floor area) given the site is essentially fully built-upon and contains two to three storey buildings with various alterations and mezzanine additions over time. Therefore, the proposed additional gross floor area of 98sqm (0.45% increase to existing) results in an estimated FSR of at least 1.105:1 (or 21,889sqm gross floor area).

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 4.4 – Floor Space Ratio

The proposal involves an additional 98sqm of gross floor area, and as such, the applicant seeks a variation to the FSR development standard under Clause 4.4 of the applicable Local Environmental Plan by 10.5% (or 2,079sqm).

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

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

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

- *The additional proposed FSR is limited to the infilling of the mezzanine void to allow the mezzanine to be suitable for use as an office premises ancillary to the artisan food and drink industry. The proposed work is entirely internal and so does not alter the bulk, form and scale thus achieving direct compliance with the above Objective.*
- *Second, the infilling of the mezzanine void is needed for the mezzanine to be used for a purpose that complements the ‘IN2 – Light Industrial’ zoning objectives and is necessary for the operations of the proposed artisan food and drink industry. As shown in Figure 3 below the mezzanine void occupies the majority of the mezzanine, and as seen in Figure 4, the mezzanine is unusable while the void exists. Its infilling is therefore essential to allow the provision of an office premises ancillary to the proposed artisan food and drink industry. Approximately 10 staff will be employed in the office, and the office is required for the operations of the proposed light industry. The additional GFA, therefore, complements the objectives of ‘IN2 – Light Industrial’ to encourage employment opportunities and to provide a light industrial use. The mezzanine remains dead space so long as the void is not filled.*
- *Third, The Subject Lot in its existing form already exceeds the prescribed development standard. The FSR variation sought is a minor 0.0045:1 or 0.45%. It is an additional 98sqm in the context of approximately some 21,791sqm. As the proposed increase is only minor, strict compliance with the standard is unreasonable and unnecessary.*

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

It is considered the development is not in the public interest because it is inconsistent with the objectives of the IN2 Zone and the objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- Whilst the additional increase to existing FSR is numerically minor, the proposed development fails to demonstrate that it satisfies the definition of an artisan food and drink industry, that the restaurant is secondary to the principal brewery purpose and that the extent of office space is ancillary to a permitted use in the IN2 zone.
- The proposal fails to demonstrate that potential traffic/parking and social impacts on other land uses in the vicinity have been satisfactorily mitigated.

The proposal thereby fails to accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are insufficient planning grounds to justify the departure from the FSR development standard, and it is recommended that the Clause 4.6 exception not be granted.

Clause 5.10 Heritage Conservation

The subject property at 6/4-26 Mansfield Street, Rozelle, is a contributory building located within The Valley Heritage Conservation Area (C7 in Schedule 5 of the Leichhardt LEP 2013). It is in the vicinity of the State listed White Bay Power Station, Victoria Road Rozelle. The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of The Valley Heritage Conservation Area or the White Bay Power Station heritage item given the proposal only involve internal alterations and mezzanine and no external changes to the existing building are proposed.

Clause 6.3 Flood Planning

The site is identified as a flood control lot. However, Council's flood mapping indicates the flood affected areas of the overall property are sufficiently distanced from the proposed development under this application, and as such, the proposal is unlikely to result in any adverse flooding impacts.

Clause 6.14 Development control plans for certain development

Whilst the overall site has an area of over 3,000sqm, the proposal does not involve an increase to the gross floor area of any existing building by more than 5% and as such, the proposal is not subject to the requirement for a site specific development control prior to grant of consent.

5(b) Draft Environmental Planning Instruments

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

- Draft SEPP Environment

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. This consolidated SEPP proposes to provide a single set

of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The proposal is consistent with the provisions of the draft Environment SEPP.

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 general intent of the Draft IWLEP 2020 is to harmonise the existing planning controls from Leichhardt, Marrickville and Ashfield into a consolidated LEP, and as such, the assessment of the proposal would remain generally consistent with the amended provisions contained in the Draft IWLEP 2020.

However, it is considered that the Draft IWLEP 2020 is not imminent or certain given the early stage of the planning proposal and as such, little if any weight can be applied to these draft provisions. Further, it is assumed that a savings provision will apply under the Draft IWLEP 2020 to ensure that applications lodged prior to any commencement of the IWLEP 2020 will continue to be assessed under the former provisions.

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.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	No – see discussion
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
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	No – see discussion
C1.11 Parking	No – 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	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
Part C: Place – Section 2 Urban Character	
C2.2.5.6 'Robert Street Industrial' Distinctive Neighbourhood, Rozelle	Yes
Part C: Place – Section 3 – Residential Provisions	
Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	N/A
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	No
C4.11 Licensed Premises and Small Bars	No
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
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	N/A
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
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	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
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

The following provides discussion of the relevant issues:

B3.1: Social Impact

A Social Impact Statement was not submitted as a part of the proposal.

The following comment was provided in the submitted SEE:

The Application is likely to have a positive social impact on the local community by providing a local facility to socialise in a highly accessible area.

The modest and boutique nature of the proposed development significantly reduces the potential for adverse impacts arising from the operation.

Further to this, the Application proposes the implementation of a Plan of Management that incorporates safety and security provisions to encourage good behaviour. These provisions include compulsory RSA training for staff, RSA Marshalls, methods of active intervention before intoxication, and the provision of a complaints register and a public phone number to deter antisocial behaviour within the premises and in its immediately vicinity. Signage shall also be erected throughout the site advising patrons to leave the premises in a quiet and orderly manner.

Whilst only a Social Impact Comment is required for a restaurant, given the nature of the proposal being a licensed premises with a capacity of 100 patrons and appearing more akin to a pub / small bar with a food truck as opposed to a restaurant, the proposal is required to be accompanied with a Social Impact Statement prepared by a suitably qualified consultant criteria of the Leichhardt Development Control Plan 2013.

In the absence of a more in-depth Social Impact analysis prepared by a suitably qualified social scientist with social impact assessment experience, insufficient information has been provided to enable a full and proper assessment of the social impacts of the proposal.

C1.9 Safety by Design

The proposal incorporates suitable CPTED measures and was accompanied by a Plan of Management in accordance with Control C2.

In addition, the proposal was referred to the NSW Police for comment, which raised no objections subject to conditions.

C1.10 Equity of Access and Mobility

Whilst an accessible toilet was incorporated as a part of amended plans, the proposal was not accompanied with a BCA and Access Report prepared by a suitably qualified consultant and as such, insufficient information has been provided to enable a full and proper assessment of the proposed change of use in relation to likely BCA and accessibility requirements.

Council's Building Section has reviewed the proposal and objects to the proposal in the absence of a BCA and Accessibility Report.

C1.11 Parking

Section C1.11 of LDCP 2013 requires a minimum parking provision of 1 space per 250sqm for industry, 1 space per 80sqm for small bars or restaurants and 1 space per 100 sqm for office premises.

The applicant indicates that the existing gross floor area is 848sqm on the ground floor and 210sqm on the mezzanine and that the proposed additional gross floor area is 98sqm. Based on a proposed brewery of 400sqm, 448sqm of restaurant and 308sqm of office, a total of 11 car spaces are required.

The applicant did not provide a Traffic and Parking report prepared by a suitably qualified consultant to justify the proposed shortfall, but contends that the existing microbrewery recently approved under separate CDC does not generate any car parking requirement, and as such, only the proposed restaurant and office result in additional car parking demand. On this basis, 9 car spaces would be required.

The submitted SEE indicates that a total of 8 car spaces are available to the proposal during business hours, but the accompanying owner's consent letter from the Strata Body Corporate only provides 3 car spaces at all times and 5 car spaces from 4pm to midnight Mondays to Fridays, midday to midnight Saturdays and midday to 10pm Sundays.

Therefore, based on an overall parking requirement of 11 car spaces, the proposal results in a shortfall of up to 8 car spaces during the proposed hours of operation until 4pm on Mondays to Fridays and a shortfall of 3 car spaces at all other times.

Council's Engineer has reviewed the proposal and provided the following comments:

The proposed is not supported as proposed and the advice as provided in the previous engineering referral remains as follows.

Additional information is still required to substantiate parking that is required, existing and proposed.

The applicant in the Letter of Response to Council RFI claims the microbrewery component is excluded from requiring any carparking as CDC190345/1 does not require any car parking. No evidence has been provided to substantiate and it is expected the brewery component is currently benefited by existing parking allocated to the unit.

The applicants proposed strata letter demonstrating the existing approved parking for the site including existing location and allocations and the approval for (re)allocation to Unit 6 has not been provided. Furthermore, it is noted that the parking plan submitted only shows 22 parking spaces rather than the originally claimed 30 parking spaces.

Accordingly, it is considered that insufficient information has been provided to enable a full and proper assessment of the likely traffic and parking impacts of the proposal.

C1.17 Site Facilities

Whilst commercial waste and bulky waste storage areas and transfer paths have not been indicated on the plans, Council's Waste Management Officer has reviewed the proposal and raised no objections subject to suitable conditions.

C4.10 Industrial Development

The proposal fails to comply with Controls C1, C17(d) and C22 given the proposal does not accommodate the required car parking and Control C2 given the ancillary office is more than 10% of the floor space of the brewery.

C4.11 Licensed Premises and Small Bars

Control C5 requires trading hours of 10am to 10pm for all licensed premises outside 'late night trading areas' and Control C9 requires extended trading hours to be subject to a 12 month trial period.

The brewery is staffed from 7am to 10pm Sundays to Thursdays and 7am to midnight Fridays and Saturdays. The proposed hours of operation for the restaurant/café are 12pm to 10pm Sundays to Thursdays and 12pm to midnight Fridays and Saturdays.

In the event of approval, a condition could be imposed requiring the proposed extended trading hours to be subject to a 12 months trial period.

5(e) The Likely Impacts

The assessment of the application demonstrates that it has not been demonstrated that the proposal will not have an adverse impact on the locality in terms of traffic and social impacts.

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

The site is zoned IN2 Light Industrial. It is considered that the proposal is not suitable for the site given the uncertainty surrounding the mix of uses, insufficient information in relation to BCA, fire safety and accessibility compliance and is likely to have an adverse impact in terms of traffic and social impacts, and therefore, it is considered that the site is unsuitable to accommodate the proposed development.

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.

No submissions were received by Council.

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 was accompanied by inadequate information to demonstrate this, and hence, the approval of the application will be 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.

- Heritage: No objections subject to conditions
- Development Engineer: Not supported
- Waste Management: No objections subject to conditions
- Environmental Health: No objections subject to conditions
- Building: Not supported

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- NSW Police: No objections subject to conditions

7. Section 7.12 Contributions

Section 7.12 contributions are payable for the development if the proposal is determined by grant of consent.

A financial contribution would be required for the development under Leichhardt Section 7.12 Contributions Plan of \$4,150 based on the submitted estimated cost of works.

8. Conclusion

This application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is considered to be unsatisfactory.

The proposal does not comply with the relevant aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. Insufficient information has been provided to enable a full and proper assessment of the likely impacts in terms of traffic and social impacts.

The application is considered unsupportable and refusal of the application is recommended.

9. Recommendation

- A. The applicant has made a written request under Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary Clause 4.4 Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standard is unnecessary in the circumstances of the case and that there are sufficient environmental grounds to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

-
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. DA/2020/0647 for fitout of Unit 6 for the purpose of an artisan food and drink industry with an ancillary office premises at 4-26 Mansfield Street Rozelle, for the following reasons
1. The proposed development is inconsistent has not demonstrated compliance with the relevant sections of the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, including:
 - a) Clause 2.3 – Zone objectives and Land use Table;
 - b) Clause 4.4 – Floor Space Ratio;
 - c) Clause 4.6 – Exceptions to development standards; and
 - d) Clause 6.9 – Business and office premises in Zone IN2.
 2. The proposal was not accompanied with sufficient information to enable a full and proper assessment in relation to land use characterisation, permissibility, traffic, parking, BCA, fire safety, accessibility and social impacts; and the proposal lacks owner's consent from the Strata Body Corporate for the use of sufficient car spaces during the proposed hours of operation contrary to Clauses 50 and 54 of the Regulations.
 3. The Clause 4.6 request to vary the maximum Floor Space Ratio development standard under Clause 4.4 of the Leichhardt Local Environmental Plan 2013 does not demonstrate sufficient environmental planning grounds to contravene the standard, and the proposal is not consistent with the objectives of the standard and the zone in which the development is to be carried out.
 4. The proposed development is 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 B3.1 – Social Impact Assessment;
 - b) Clause C1.10 – Equity of Access and Mobility;
 - c) Clause C1.11 – Parking;
 - d) Clause C4.10 – Industrial Development; and
 - e) Clause C4.11 – Licensed Premises and Small Bars.
 5. The proposal will result in adverse environmental impacts in the locality, having regard to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
 6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, having regard to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
 7. The approval of this application is considered contrary to the public interest due to the adverse traffic and social impacts and fire safety concerns, having regard to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979.

Attachment A – Without Prejudice conditions of consent (in the event that the Panel grants consent)

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA1-0500, Rev. 2	Site Plan & Site Analysis	14/10/2020	H&E Architects
DA1-1100, Rev. 7	General Arrangement - Ground Floor	14/10/2020	H&E Architects
DA1-1101, Rev. 6	General Arrangement - Mezzanine	14/10/2020	H&E Architects
DA1-1102, Rev. 1	General Arrangement - Lower Level Plan	14/10/2020	H&E Architects
AC01, Issue 1	Acoustic Assessment	13/10/2020	ARUP
201433.2S	Plan of Management	July 2020	Design Collaborative

As amended by the conditions of consent.

FEES

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

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

Note:

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

Payment amount*:

\$4,150.00

*Indexing of the Section 7.12 contribution payment:

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

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions); cash (to a maximum of \$10,000)*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

3. 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.

4. Security Deposit - Standard

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:	\$2,209.00
Inspection Fee:	\$236.70

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

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

GENERAL CONDITIONS

5. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

6. Car Parking

The development must provide and maintain within the site:

- a. 8 car parking spaces must be paved and line marked.

7. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

8. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

PRIOR TO ANY DEMOLITION

9. Dilapidation Report

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

10. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE

11. Food Premises – Odour Emission Control

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that emission control equipment has been provided in the mechanical exhaust system that effectively minimises the emission of odours, vapours and oils.

12. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

13. Enclosure of Fire Hydrant

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

14. Structural Certificate for retained elements of the building

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

15. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

16. Future Food Use - Mechanical Ventilation Provision

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

DURING DEMOLITION AND CONSTRUCTION**17. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

18. Contamination – Retention of Ground Slab

This consent only permits the fit-out and use of the premises with the retention of the existing ground slab. Intrusive ground excavations and/or works that may compromise the integrity of the existing ground slab covering the site are not approved, and existing ground slabs and hardstand areas must be retained and maintained in their original form.

Should any ground slab or hardstand area be damaged or disturbed, an appropriately qualified Environmental Consultant must inspect the site immediately and determine whether any potential contaminants have been disturbed. If preventative works need to be undertaken, a written statement prepared by a qualified Environmental Consultant must be provided to Council detailing the outcome of this investigation and associated works.

19. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

20. 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.

21. Stormwater Drainage System

<for applications not referred to development engineering>

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

22. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

23. Licensed Premises – Plan of Management

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with a Plan of Management for the operation of the licensed premises that addresses the following:

- a. Compliance with the relevant conditions of approval;
- b. Minimise the potential impact of the operation of the premises on nearby residents;
- c. Effectively minimise and manage anti-social behaviour;
- d. Minimise noise emissions and associated nuisances;
- e. Effectively manage and respond to resident complaints;
- f. Ensure responsible service of alcohol and harm minimisation; and
- g. Patron conductivity and security.

24. Food Premises Grease Trap – Trade Waste Agreement

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with certification confirming that the grease trap has been installed to the premises in accordance with Australian Standard AS 3500 and the National Plumbing and Drainage Code. A copy of the Sydney Water Trade Waste Agreement must also accompany the certification.

25. 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.

26. Section 73 Certificate

< Refer to [Types of development that need a Section 73 Compliance Certificate.](#)>

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

PRIOR TO SUBDIVISION CERTIFICATE**27. Section 73 Certificate**

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

28. Separate Stormwater

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with details, endorsed by a practising stormwater engineer demonstrating separate drainage systems to drain each proposed lot.

ON-GOING**29. Bin and Re-usable Item Storage**

All bins and re-usable items such as kegs and pallets are to be stored within the site.

30. Documentation of Businesses Waste Services

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

31. Private Waste Collectors

All commercial waste, recyclable and other material collected by a private waste collector must have minimal impact on the surrounding properties.

32. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

33. Noise – Licensed Premises (7am – 12midnight)

The LA10 noise level emitted from the premises, measured between the hours of 7am and 12 midnight, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive) by more than 5 dB, when measured at the boundary of any adjoining residence.

34. Noise – Licensed Premises (12midnight – 7am)

The LA10 noise level emitted from the premises, measured between the hours of midnight and 7am, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive), when measured at the boundary of any adjoining residence.

35. Licensed Premises – Plan of Management - Operation

The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management is not to be further amended without the prior written approval of the Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.

36. Hours of Operation

- a. The staffed hours of operation of the brewery and office must not exceed the following:

Day	Hours
Sundays to Thursdays	7am to 7pm
Fridays and Saturdays	7am to 7pm

- b. Within the hours of operation, trading hours of the restaurant must not exceed the following:

Day	Hours
Sundays to Thursdays	12pm to 10pm
Fridays and Saturdays	12pm to 10pm

- c. Service is to cease 30 minutes before ceasing of trading hours.

37. Trial Hours

- a. The hours of operation of the premises must not exceed the following:

Day	Hours
Sundays to Thursdays	7am to 7pm (brewery and office) 12pm to 10pm (restaurant)
Fridays and Saturdays	7am to 7pm (brewery and office) 12pm to 10pm (restaurant)

- b. For a period of not more than 12 months from the issue of the Final Occupation Certificate for the use approved in this consent, the hours of operation of the premises must not exceed the following:

Day	Hours
Sundays to Thursdays	7am to 10pm (brewery and office) 12pm to 10pm (restaurant)
Fridays and Saturdays	7am to midnight (brewery and office) 12pm to midnight (restaurant)

- c. A continuation of the extended hours will require a further application under the *Environmental Planning and Assessment Act 1979*.

ADVISORY NOTES**Health Premises Registration – Generic**

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a. *Food Shop - Food Act 2003*;

Food Premises Certification

The food premises design, construction and operation is in accordance with the following:

- a. *Food Act 2003*;
- b. *Food Regulation 2010*;
- c. Australia and New Zealand Food Standards Code;
- d. Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises);
- e. Australian Standard AS 1668 Part 1 – 1998; and
- f. Australian Standard AS 1668 Part 2 – 2012.

Food Premises Waste Storage Area

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

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.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

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.

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.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving

the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

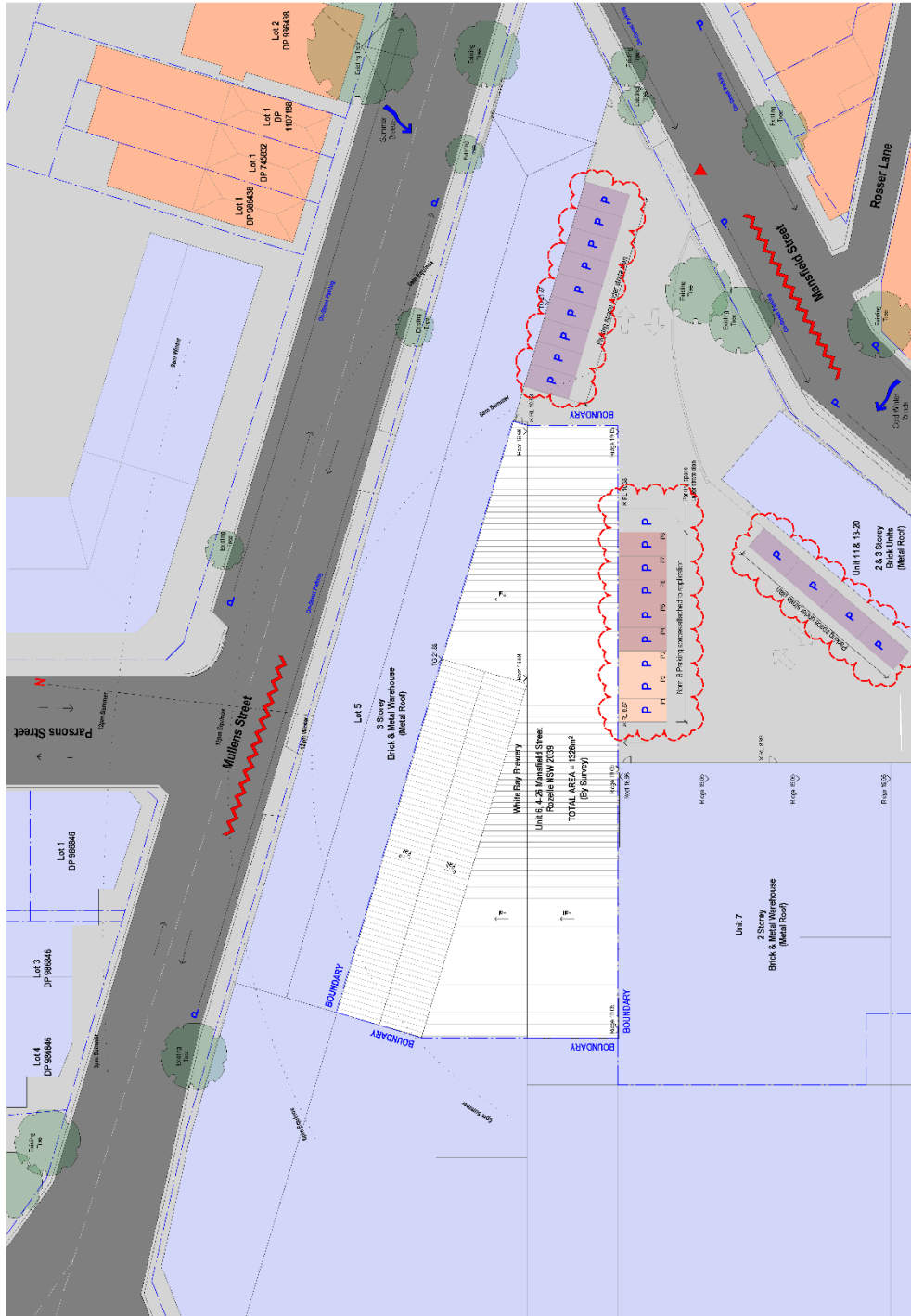
Dial before you dig

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

General Notes and Legend

1. All dimensions are in metres unless otherwise stated.
 2. All dimensions are to the centre of the line unless otherwise stated.
 3. All dimensions are to the face of the wall unless otherwise stated.
 4. All dimensions are to the face of the slab unless otherwise stated.
 5. All dimensions are to the face of the ceiling unless otherwise stated.
 6. All dimensions are to the face of the floor unless otherwise stated.
 7. All dimensions are to the face of the wall unless otherwise stated.
 8. All dimensions are to the face of the slab unless otherwise stated.
 9. All dimensions are to the face of the ceiling unless otherwise stated.
 10. All dimensions are to the face of the floor unless otherwise stated.

- 1. 200mm wide concrete kerb
- 2. 100mm wide concrete kerb
- 3. 50mm wide concrete kerb
- 4. 25mm wide concrete kerb
- 5. 12.5mm wide concrete kerb
- 6. 6.25mm wide concrete kerb
- 7. 3.125mm wide concrete kerb
- 8. 1.5625mm wide concrete kerb
- 9. 0.78125mm wide concrete kerb
- 10. 0.390625mm wide concrete kerb
- 11. 0.1953125mm wide concrete kerb
- 12. 0.09765625mm wide concrete kerb
- 13. 0.048828125mm wide concrete kerb
- 14. 0.0244140625mm wide concrete kerb
- 15. 0.01220703125mm wide concrete kerb
- 16. 0.006103515625mm wide concrete kerb
- 17. 0.0030517578125mm wide concrete kerb
- 18. 0.00152587890625mm wide concrete kerb
- 19. 0.000762939453125mm wide concrete kerb
- 20. 0.0003814697265625mm wide concrete kerb
- 21. 0.00019073486328125mm wide concrete kerb
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Parking Legend

- P Parking
- Parking spaces available for exclusive use during premises hours of hospitality operation (10am - 10pm)
- Parking spaces available for exclusive premises use (24hrs)
- Parking spaces allocated to alternative enable developments

Site Analysis Legend

- Roadways
- Vehicle Entry
- Roadway Access
- Pedestrian Access
- Existing Paved Area
- Solar Path
- Winds & Screens
- Noise Source
- Industrial / Commercial
- River (entire)

General Notes and Legend

Note: Shaded areas indicate areas of concern. The shaded areas are not intended to be a guarantee of any outcome. The shaded areas are only a guide to the areas of concern.

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Development Application

Project No.	As indicated	Project No.	CG
Project Name	As indicated	Project Name	HR
Project Date	25/09/2024	Project Date	16/10/2024
Project No.	2549	Project No.	2549
Project No.	DA1-0500	Project No.	02

General Notes

The site is located at the intersection of Mullens Street and Rosser Lane. The site is currently zoned as Industrial/Commercial. The site is currently vacant. The site is currently vacant.

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Development Application

Project No. DA1-0500

Project Name: Site Plan & Site Analysis

Project Date: 25/09/2024

Project No.: 2549

Project No.: 02

H&E ARCHITECTS

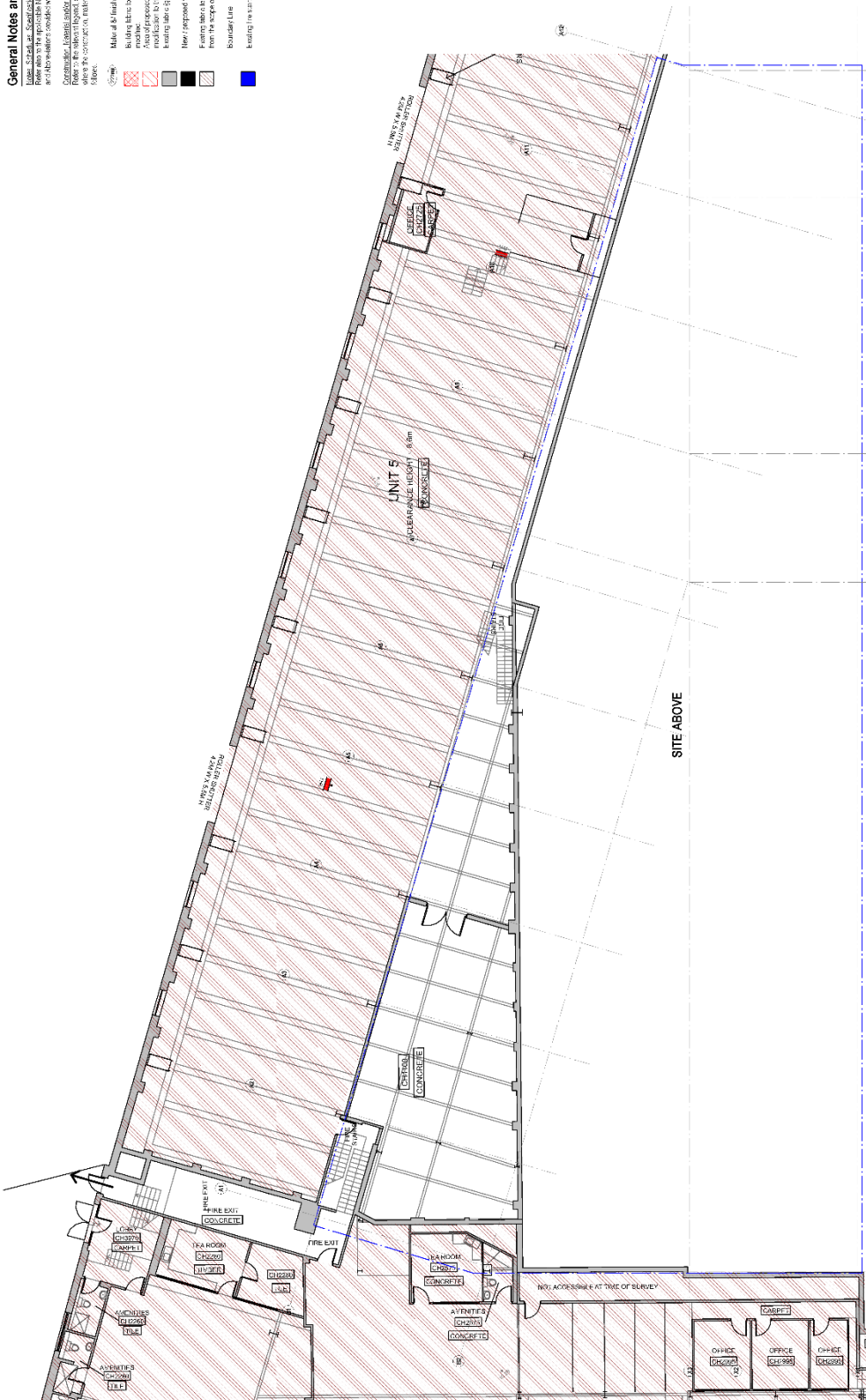
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11, 10/102, Devonport Coleraine Ave, Devonport TAS 7310

General Notes and Legend

- 1. All work to be done in accordance with the relevant Australian Standards and Codes of Practice.
- 2. All work to be done in accordance with the relevant Australian Standards and Codes of Practice.
- 3. All work to be done in accordance with the relevant Australian Standards and Codes of Practice.
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- 10. All work to be done in accordance with the relevant Australian Standards and Codes of Practice.



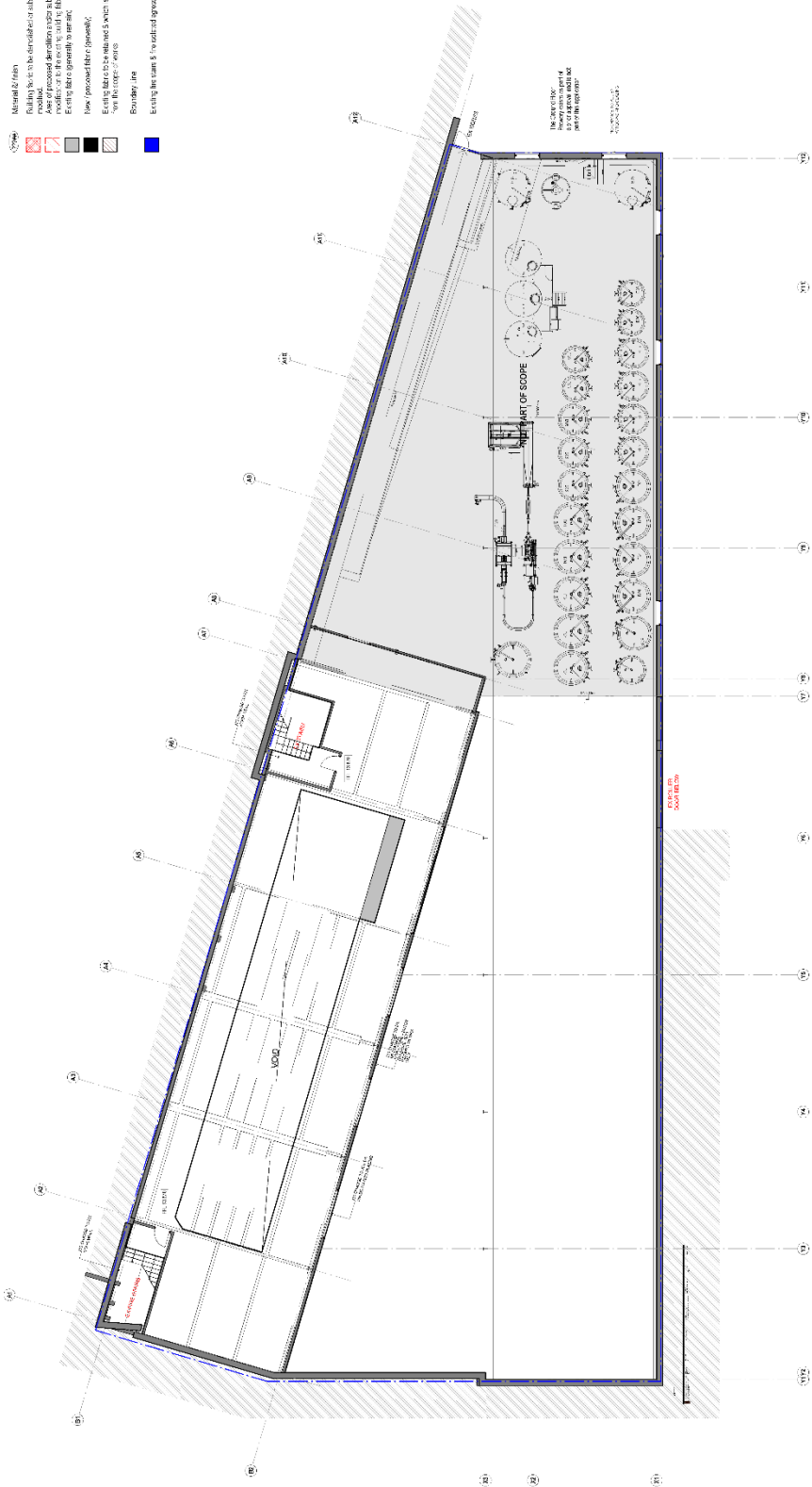
Development Application

<p>General Notes: 1. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 2. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 3. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 4. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 5. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 6. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 7. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 8. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 9. All work to be done in accordance with the relevant Australian Standards and Codes of Practice. 10. All work to be done in accordance with the relevant Australian Standards and Codes of Practice.</p>	<p>Site No: 2549 Title: Existing & Demolition - Lower Level Plan Date: 01/10/20</p>
<p>Project: White Bay Brewery Site: Lot 5, Mansfield Street, Rozelle Owner: Tim Cordon</p>	<p>Scale: 1:100 Date: 01/10/20</p>
<p>Prepared by: H&E ARCHITECTS Suite 2, Level 2, 24 Oxford Street Sydney NSW 2000 PO Box 580 Darlinghurst NSW 1500 Tel: (02) 9231 2388 Email: info@h&e.com.au Website: www.h&e.com.au</p>	<p>Drawn by: DA1-1002 Date: 01/10/20</p>

General Notes and Legend

1. This plan is a preliminary plan. It is not to be used for construction purposes. It is subject to change without notice. The Council reserves the right to refuse to issue a Development Application or to require the applicant to provide further information.

- 2. The plan shows the proposed development and the existing site conditions. The applicant is responsible for providing all necessary information to support the application.
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Development Application

DA No.	DA1-1001
DA Title	2549
DA Type	DA1-1001
DA Status	06
DA Date	11/01/20
DA Author	12/01/20
DA Reviewer	12/01/20
DA Approved	12/01/20
DA Refused	12/01/20
DA Withdrawn	12/01/20
DA Cancelled	12/01/20

Site No.	Lot 5, Manifest Street, Roselle
Site Name	White By Brewery
Site Address	Lot 5, Manifest Street, Roselle
Site Owner	Tim Gordon
Site Use	Existing & Demolition - Mezzanine

DA No.	DA1-1001
DA Title	2549
DA Type	DA1-1001
DA Status	06
DA Date	11/01/20
DA Author	12/01/20
DA Reviewer	12/01/20
DA Approved	12/01/20
DA Refused	12/01/20
DA Withdrawn	12/01/20
DA Cancelled	12/01/20

DA No.	DA1-1001
DA Title	2549
DA Type	DA1-1001
DA Status	06
DA Date	11/01/20
DA Author	12/01/20
DA Reviewer	12/01/20
DA Approved	12/01/20
DA Refused	12/01/20
DA Withdrawn	12/01/20
DA Cancelled	12/01/20

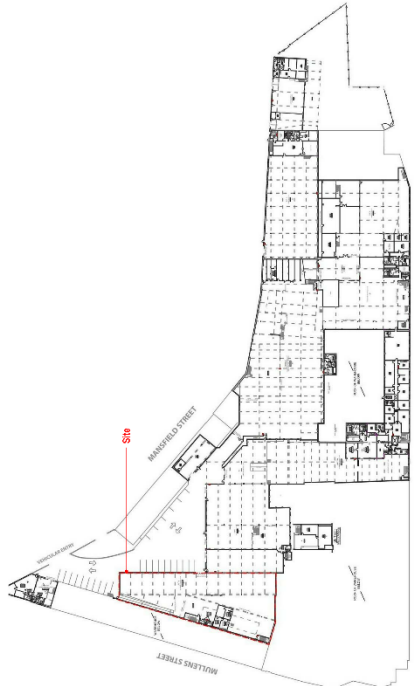
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DA Status	06
DA Date	11/01/20
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DA Reviewer	12/01/20
DA Approved	12/01/20
DA Refused	12/01/20
DA Withdrawn	12/01/20
DA Cancelled	12/01/20

DA No.	DA1-1001
DA Title	2549
DA Type	DA1-1001
DA Status	06
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DA Author	12/01/20
DA Reviewer	12/01/20
DA Approved	12/01/20
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DA Reviewer	12/01/20
DA Approved	12/01/20
DA Refused	12/01/20
DA Withdrawn	12/01/20
DA Cancelled	12/01/20

White Bay Brewery
Project No:2549
Lot 6, Mansfield Street, Rozelle
Tim Condon
Development Application



Project Information: Project Name, Address, Applicant, and Architect (H&E ARCHITECTS) details.

Drawing List - Development Application table with columns for Sheet Number, R/View, R/View Date, and Sheet Name.

General Notes & Abbreviations

General Note: This design shows the property of H&E Architects. This design is not to be used for any other purpose without the written consent of H&E Architects.

Standard Abbreviations

Table of Standard Abbreviations: A-Z list of abbreviations and their corresponding full names (e.g., A/C, A/C, A/C, A/C).



ANNEXURE 4

PLAN OF MANAGEMENT

JULY 2020 / 201433.2S





DESIGN COLLABORATIVE
Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Town Planning and Liquor Licensing
Consultants

www.designcollaborative.com.au

Managing Director

J Lidis
BTP (UNSW)
MPIA

Director

David Rippingill
BEP (WSU)
Juris Doctor (UNE)
RPIA

Consultant

G W Smith
BSurv (QLD)
MCP (MIT)
MPIA (Life Fellow)
MIS Aust
MRTPI
FAP1

Plan of Management

For a Microbrewery known as White Bay Beer Co.

Located at Unit 6, 4-26 Mansfield Road, Rozelle

April 2020
Ref: 201433.4P

Suite 304, 105 Pitt St Sydney NSW 2000 Tel: 02 9262 3200 Fax: 02 9262 3601

CONTENTS

PART 1 Purpose 3

PART 2 Hours of Operation and Use of Premises 3

PART 3 Signage 3

PART 4 Amenity of Neighbourhood 4

PART 5 Noise 4

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PART 7 Complaint Handling 6

PART 8 Waste Disposal 7

PART 9 Delivery and Waste Collection 7

PART 10 Maintenance 7

PART 11 Fire and Safety Measures 7

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PART 13 Licensee's Statement of Understanding 8

Appendix A – Development Consent

Appendix B – Liquor Licence

Appendix C – Licensed Area Plan

PART 1 Purpose

- 1) The purpose of this Plan of Management is to establish performance criteria for various aspects of the operation of the White Bay Beer Co located at Unit 6, 4-26 Mansfield Road, Rozelle (*the Premises*) having regard to the relevant matters under the *Environmental Planning and Assessment Act, 1979*, the *Liquor Act, 2007* and relevant Regulations under that legislation.
- 2) A copy of this Plan shall be kept at the Premises at all times and immediately produced for inspection upon request by Police or Council Officers. A copy of the premises' Producer/Wholesaler Liquor Licence (**Appendix A**) and Development Consent (**Appendix B**) will be kept with this Plan and produced upon request by Police or Council Officers.
- 3) All staff involved with the sale or supply of liquor or security shall be made familiar with this Plan of Management.

PART 2 Hours of Operation and Use of Premises

- 4) The hours of operation for the Premises are restricted as follows:
 - a) The manufacturing process of the microbrewery will operate 24 hours but will only be staffed between the hours of 7am and 10pm, Sunday to Thursday, and 7am to midnight, Friday and Saturday.
 - b) The proposed hours of operation for the ancillary hospitality component are 12pm to 10pm, Sunday to Thursday, and 12pm to midnight, Friday and Saturday.
 - c) Office hours are between 7am and 10pm, Sunday to Thursday, and 7am to midnight, Friday and Saturday.
- 5) The maximum capacity of the premises is 120 persons including staff.
- 6) A sign must be displayed in a prominent position in the building stating the maximum number of persons that are permitted in the building
- 7) Standard Responsible Service of Alcohol and Harm Minimisation protocols are applicable during all operating hours.

PART 3 Signage

- 8) The Licensee shall be responsible to ensure signage is erected and maintained in a clear and prominent position adjacent to all points of egress, requesting that patrons

depart the Premises in a manner respectful of the surrounding area, or wording to that effect.

- 9) Signage will be erected at the entrance to the Premises, stating the name of the Premises, name of the Licensee, the type of licence and the licence number.
- 10) Signage will be erected at the entry/exit of the venue advising patrons that they must not generate excessive noise and leave the premises in a quiet and sensible manner
- 11) All signage required under the Liquor Act 2007 and all relevant Regulations shall be displayed in the required places.

PART 4 Amenity of Neighbourhood

- 12) Staff shall intervene to provide corrective advice to any patron on the Premises or in the immediate vicinity that is behaving in a manner that is likely to disturb the amenity of nearby residents. Any patron whose behaviour is extreme or repeatedly objectionable may be refused service, asked to leave and barred for a period determined by the Licensee.
- 13) Staff are required to monitor patron behaviour as they depart the Premises after 8pm and provide corrective advice when necessary so that patron behaviour does not impact on nearby residential dwellings.
- 14) The Licensee shall ensure that the entry points and immediate vicinity of the Premises is kept clean and tidy.

PART 5 Noise

- 15) The LA₁₀ noise level emitted from the Premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz - 8kHz inclusive) by more than 5dB between 8.00pm and 12.00 midnight at the boundary of any affected residence.
- 16) The background noise level must be measured in the absence of noise emitted from the Premises.

PART 6 Behaviour of Patrons and Responsible Service of Alcohol

- 17) The Licensee shall take all reasonable steps to ensure the Premises licence is exercised in accordance with the provisions of the Liquor Act and any relevant Regulations;
The following operational policies for the responsible service of alcohol shall apply:-
 - a) All staff involved in the sale and supply of liquor and security personnel shall have

completed an approved course in the Responsible Service of Alcohol.

- b) Any member of staff with a NSW Competency Card must ensure they have that card on their person whilst working and produce it on request of NSW Police or OLGR Special Inspectors. Failure to produce may be subject to an on the spot \$550 fine.
 - c) The Licensee shall not engage in any liquor promotion that is likely to promote irresponsible service of liquor.
 - d) The Licensee shall take all reasonable steps to ensure that alcohol is not served to intoxicated persons.
 - e) The Licensee shall take all reasonable steps to ensure that any person who is intoxicated shall be denied entry to the Premises.
 - f) The Licensee will not permit intoxication or any indecent, violent or quarrelsome conduct by patrons in the Premises. Any person causing such a disturbance shall be refused service and asked to leave. Any patron whose behaviour is either extreme or repeatedly objectionable may be barred from entering the Premises for a period determined by the Licensee.
 - g) Production of photographic identification will be required at the discretion of the Licensee, staff and security personnel. The only acceptable proof of age identification are:
 - i. Australian or foreign Government issued driver or rider's licence;
 - ii. Australian or foreign Government Passport;
 - iii. Australian Federal or State issued identification used for the purpose of attesting to a person's identification and age; or
 - iv. Keypass Identity card issued by Australia Post.
 - h) Low alcohol beer or low alcohol content beverages (such as half-nips in tall glasses) and non-alcoholic beverages (including water) will be available at all times.
- 18) The Licensee shall require management employed at the Premises to:-
- a) Ensure that persons entering the Premises are suitably attired in accordance with the Premises' dress code which shall require patrons, at least, to be neatly dressed in casual wear, with footwear and to be clean.
 - b) Prevent any person, detected as intoxicated, entering the Premises and bring to notice of the Licensee or manager, any person in the Premises who might be considered to be in, or approaching, a state of intoxication.

- c) Prevent patrons leaving the premises with glasses or other opened drinking containers of alcohol.
- d) Prevent patrons entering the Premises with alcoholic drinks.
- e) Monitor patron behaviour in, and in the vicinity of, the Premises until all patrons have left, taking all practical steps to ensure the quiet and orderly departure of patrons.
- f) Collect any rubbish in the vicinity of the Premises that may be associated with the business.
- g) Upon commencing duty and thereafter, regularly during routine patrols, check to ensure that any emergency exit doors that are required to be kept closed are closed.
- h) Patrol all toilets at random intervals, notifying the Licensee of any suspected illegal activity or if the toilets need attention in regard to cleanliness.
- i) In the event of an incident, clearly identify themselves and attempt to rectify the problem.

PART 7 Complaint Handling

19) The following details of complaints made to the Premises are to be recorded in a diary:

- a) Date and time of the incident that led to the complaint;
- b) Nature of the incident that led to the complaint;
- c) Address and contact details of the complainant;
- d) Any actions proposed to deal with the complaint; and
- e) The actions taken and the time and date when that was reported to the complainant.

20) Management is to provide a contact phone number on the Premises' website that residents or businesses can use to contact the Premises, in order to make a complaint. Any staff member answering such a call must do so in a polite, sympathetic and courteous manner. Where possible, action shall be immediately taken to address any complaint so made, including follow-up action, such as returning the complainant's call to let them know what has been done to address the concerns/complaints expressed.

21) All complaints are to be responded to by management within 24 hours, unless the complaint was originally made to management.

PART 8 Waste Disposal

- 22) All waste shall be disposed of in the appropriate waste disposal facilities. Recyclable waste is to be separated from general waste and stored in a separate receptacle.
- 23) All waste receptacles and waste storage areas shall be cleaned at least once a week. Waste is to be kept in the appropriate waste storage areas at all times and carted to the waste collection point in the courtyard during waste collection services.

PART 9 Delivery and Waste Collection

- 24) Waste collection services shall occur outside of operating hours.
- 25) Keg deliveries and empty keg removal shall occur between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm on Sundays and Public Holidays. Emptying glass bottles into bins shall also only occur during these hours.

PART 10 Maintenance

- 26) The Premises shall be kept in a clean and tidy condition and regularly maintained to the satisfaction of Council both internally and externally.
- 27) All graffiti and vandalism shall be cleared by staff within 24 hours. Management is to note the graffiti and take photographic evidence which is to be kept on-site.

PART 11 Fire and Safety Measures

- 28) The Licensee shall ensure that all essential services installed at the Premises are certified annually and shall ensure that they remain in good working order.
- 29) In the event of any malfunctioning of any essential service, the Licensee shall ensure that it is rectified as quickly as is reasonably possible.
- 30) A list of the telephone numbers of all relevant emergency agencies shall be kept near all telephones.
- 31) All managers and other permanent staff shall be made aware of fire safety requirements and the procedures to be followed in the event of an emergency at the Premises. It is the responsibility of the Duty Manager to ensure that all staff and patrons are cleared from the Premises in the event of a fire.

PART 12 Amendment to this plan

32) If, in circumstances where better management or improved amenity outcomes can be achieved by amendments to this Plan such amendments must only be made following consultation with both the NSW Police Service and Inner West Council who shall be provided with a copy of any modified Plan once modified consent has been obtained.

PART 13 Licensee's Statement of Understanding

The Licensee of the Premises hereby acknowledged that the above provisions have been read and are understood.

Sign:.....

Date:.....

White Bay Brewery

Plan of Management

APPENDIX A

Development Consent

White Bay Brewery

Plan of Management

APPENDIX B

Liquor Licence

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Plan of Management

APPENDIX C

Licensed Area Plan

Attachment C- Clause 4.6 Exception to Development Standards



DESIGN COLLABORATIVE
Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Town Planning and Liquor Licensing
Consultants

www.designcollaborative.com.au

Managing Director

J Lidis
BTP (UNSW)
MPIA

Director

David Rippingill
BEP (WSU)
Juris Doctor (UNE)
RPIA

Consultant

G W Smith
BSurv (QLD)
MCP (MIT)
MPIA (Life Fellow)
MIS Aust
MRTPI
FAPI

Clause 4.6 Written Variation to Development Standard - Floor Space Ratio

Prepared for Inner West Council to Accompany a Development Application For

Change of Use, Alterations & Additions

At

Unit 6, 4-26 Mansfield Road, Rozelle

Prepared By

Design Collaborative Pty Ltd.

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Internal Review				
Issue	Date	Description	Prepared	Checked
201433.3c4.6	30 March 2020	First Draft	MS	DR
201433.3c4.6	31 March 2020	Client Review	MS	DR
201433.3c4.6	8 April 2020	Council Submission	MS	DR
201433.3c4.6	14 October 2020	Updated Council Submission	MS	DR

1. Context

This written request has been prepared in accordance with Clause. 4.6 of Leichhardt *Local Environmental Plan 2013 (the LEP)* to accompany a Development Application (*the Application*) which seeks consent for the fit out and use of Unit 6, 4-26 Mansfield Road, Rozelle (*Subject Site*) for the purpose of an **artisan food and drink industry** with an ancillary office premises.

The lot on which the Subject Site is located is legally described as SP20976 (*Subject Lot*). The Subject Lot has an area of 19,810sqm. An aerial photo showing the location of the Subject Site within the Subject Lot is shown below.



Figure 1: Aerial Photograph of Subject Site & Lot (Source: Neamap, March 2020)

The Application seeks a variation to the development standard provided for at Clause 4.4 of the LEP, being Floor Space Ratio. Under Clause 4.4 of the LEP, the FSR development standard for the Subject Lot is 1:1 (see below figure).



Figure 2: LEP Mapping - FSR [Source: NSW Planning Portal, March 2020]

The current Gross Floor Area (GFA) and FSR for the Subject Lot are unknown but can be estimated. As shown in **Figure 1**, the Lot is mostly occupied by industrial warehouses, many of which contain mezzanines. It is almost entirely built upon, putting it close to 1:1. It is estimated, using aerial photography, that the total Lot GFA is some 21,791sqm. This would equate to an FSR of 1.1:1. Therefore, the existing FSR for the site likely exceeds the permitted FSR of 1:1.

The area of the Subject Site relevant to the Application has an existing GFA of 1058sqm, accounting for approximately 5% of GFA for the Subject Lot. The Application seeks an increase in GFA of some 98sqm, resulting in a total GFA of 1156sqm, and 21,889sqm for the Subject Lot. This equates to a minor increase of 0.005:1, or 0.45%, in FSR for the Lot to 1.105:1.

Table 1 – Existing & proposed GFA & FSR					
Permitted FSR	Existing GFA	Existing FSR	Proposed GFA	Proposed FSR	Variance
1:1	21,791sqm	1.1:1*	21,889sqm *	1.105:1*	+0.105

*Based on an estimated GFA of 21,791sqm for the Subject Lot.

As the proposed moderate increase in GFA only relates to a small portion of the Subject Lot, arising from the infill of an existing floor, within an existing building envelope it is considered unnecessary and unreasonable for the Applicant to survey the entire Lot to determine an

exact existing and proposed GFA and FSR. There would also be no public benefit in requiring the expenditure of those funds.

2. Clause 4.6 - Leichhardt LEP 2013

Clause 4.6 of the LEP stipulates:

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 Planning Secretary has been obtained.

5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Application's proposed variation to the FSR development standard.

It is noted that the NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 Variations in the form of *Varying development standards: A Guide* (August 2011). This written request to vary the FSR development standard is based on the DPI&E's Guide.

3. Written Request

The Development Application seeks a variation to the development standard provided for at Clause 4.4 of the LEP, being Floor Space Ratio. Under Clause 4.4 of the LEP, the development standard for the site is 1:1.

The questions set out in the DPI&E's Guide are addressed below.

3.1 *What is the name of the environmental planning instrument that applies to the land?*

Leichhardt Local Environmental Plan 2013.

3.2 *What is the zoning of the land?*

IN2 – Light Industrial.

3.3 *What are the objectives of the zone?*

The objectives of the zone are as follows:

- *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.*

3.4 *What is the development standard being varied?*

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Clause 4.6 Variation

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The standard being varied is the FSR development standard.

3.5 Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.4 of the LEP.

3.6 What are the objectives of the development standard?

The objectives of the standard 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.

3.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the development standard is 1:1.

3.8 What is the proposed numeric value of the development standard in your development application?

The exact proposed numeric value of the development standard in the Application is unknown. It is estimated to be 1.1:1

3.9 What is the percentage variation (between your proposal and the environmental planning instrument) ?



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The Application proposes an increase in GFA of approximately 98sqm, or +0.0045% to the current GFA, resulting in an adjusted FSR of 1.105:1 (+0.105:1 in excess of the prescribed development standard). This equates to a percentage variation of 10.05%.

3.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Strict compliance with the development standard is considered is **unreasonable and unnecessary** for the following reasons.

First, the variation complements the objectives of the FSR development standard in the LEP. Clause 4.4, Objective (B) of the LEP is as follows

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

The additional proposed FSR is limited to the infilling of the mezzanine void to allow the mezzanine to be suitable for use as an **office premises ancillary to the artisan food and drink industry**. The proposed work is entirely internal and so does not alter the bulk, form and scale thus achieving direct compliance with the above Objective.

Second, the infilling of the mezzanine void is needed for the mezzanine to be used for a purpose that complements the '**IN2 – Light Industrial**' zoning objectives and is necessary for the operations of the proposed **artisan food and drink industry**.

As shown in **Figure 3** below the mezzanine void occupies the majority of the mezzanine, and as seen in **Figure 4**, the mezzanine is unusable while the void exists. Its infilling is therefore essential to allow the provision of an **office premises** ancillary to the proposed **artisan food and drink industry**. Approximately 10 staff will be employed in the office, and the office is required for the operations of the proposed light industry. The additional GFA, therefore, complements the objectives of '**IN2 – Light Industrial**' to encourage employment opportunities and to provide a light industrial use. The mezzanine remains dead space so long as the void is not filled.

Third, The Subject Lot in its existing form already exceeds the prescribed development standard. The FSR variation sought is a minor 0.0045:1 or 0.45%. It is an additional 98sqm in the context of approximately some 21,791sqm. As the proposed increase is only minor, strict compliance with the standard is unreasonable and unnecessary.

In light of the above, it is considered that strict compliance to the FSR development standard is **unreasonable and unnecessary**.

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Clause 4.6 Variation

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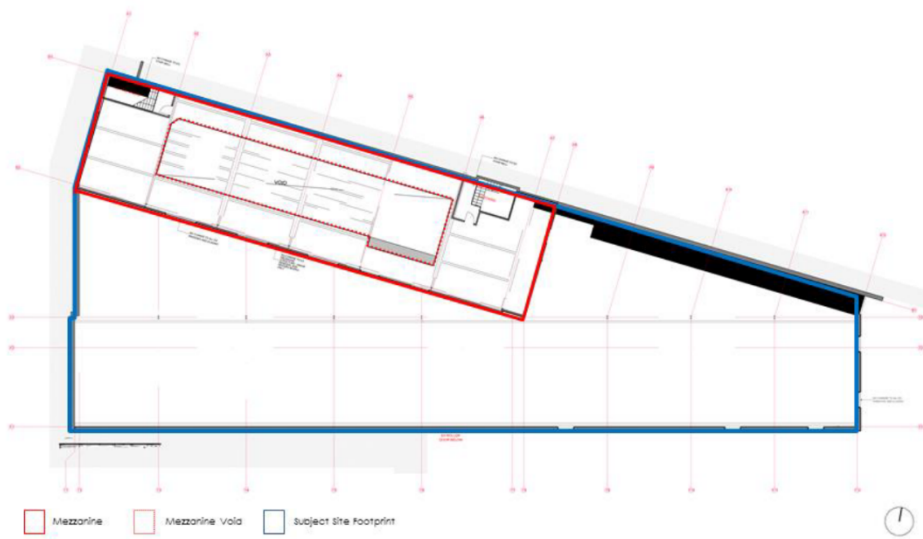


Figure 3: Existing Mezzanine Floor Plan (Source: H&E Architects, March 2020)



Figure 4: Mezzanine. Note the location of the void makes the space unusable. It would likely have served a particular purpose in relation to the previous industrial use of the site.

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3.11 *How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?*

Strict compliance in the context of such minor additional floor space would preclude most minor work to the property. This would be a poor outcome that fails to achieve objectives (a) and (c) in Section 1.3 of the *Environmental Planning and Assessment Act 1979*.

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

The proposed variation to the FSR standard would allow the provision of an ancillary office premises that is necessary for the operations of an employment-generating **artisan food and drink industry**. The office itself will also provide employment opportunities.

(c) to promote orderly and economic use and development of land.

As noted above, the infilling of the mezzanine will allow 'dead' space to be used for, and support, employment-generating activities. It is not presently otherwise useable.

3.12 *Is the development standard a performance-based control? Give Details.*

The FSR development standard is not a performance-based control as it provides a numerical standard to be achieved.

3.13 *Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?*

This matter is addressed in detail above in answer to question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that would outweigh the positive outcomes of the development.

The Application is consistent with the provisions of orderly and economic development. The Application is also consistent with the objectives of the FSR development standard and '**IN2 – Light Industrial**' Zoning.

3.14 *Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.*

The environmental planning grounds and benefits considered to arise from a variation of the development standard are as follows:

- Enhanced facilities available to the general public;
- No impact to building bulk, form and scale;
- Maximised land-use efficiency; and
- Economic and employment benefits.

It is considered that there are no sufficient environmental planning grounds to uphold the development standard that would outweigh the benefits of the proposed variation.

4. Summary

Accordingly, it is considered that there are more than sufficient environmental planning grounds to justify the variation on the basis that compliance with the standard would be unreasonable and unnecessary in the circumstances of this particular case. The proposal will maximise the land-use of the Subject Site whilst not impacting the bulk, form and scale of the existing industrial warehouse.

In the context of other requirements of Clause 4.6, it is considered that the proposed development raises no matters of State or regional planning significance. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This request is considered to adequately address the matters required by Clause 4.6. It demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

