





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2022/0700
Address	28 Albion Street ANNANDALE NSW 2038
Proposal	Alterations and additions to existing building and change of use to light industry, industrial retail outlet, ancillary office and associated internal fit out works
Date of Lodgement	26 August 2022
Applicant	Eric La Rocca
Owner	Adele Selene Holdings Pty Ltd
Number of Submissions	Nil
Value of works	\$136,033.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10% - FSR
Main Issues	Heritage Design
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing industrial building and change of use to light industry, industrial retail outlet, ancillary office and associated internal fit out works at 28 Albion Street Annandale.

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

The main issues that have arisen from the application include:

- Heritage Design

The design issues identified in the assessment can be adequately addressed by conditions of consent.

2. Proposal

Change of use from warehouse and ancillary offices to light industry, Industrial Retail Outlet and ancillary offices with 10 staff.

The existing warehouse use is prohibited in the zone, whereas the proposed light industry and Industrial retail outlet uses with ancillary offices are permissible with consent.

The Industrial Retail Outlet use comprises online orders 80/20 split with face to face sales. Printing machines are used for production. The business is to use a van for deliveries (1 trip per day), with ad hoc couriers as required.

Alterations and additions are proposed to the building comprising:

Ground Floor -

- New roof with skylights
- Alterations to front lobby area with display
- New toilets (Male, Female and Disabled)
- Dark Room
- Wash Bay
- Paint and Screen
- Print /Embroider Transfers
- Workspace with shelving

Mezzanine Storage -

- Storage

Mezzanine Floor -

- Reception
- Office
- Meeting room with display
- Workstations
- Office
- Lunchroom

Hours of Operation are proposed to be:

Monday to Friday 8am to 5:30pm

Saturday 9am to 3pm

Loading and unloading facilities exist on-site with access to three (3) stacked car spaces.

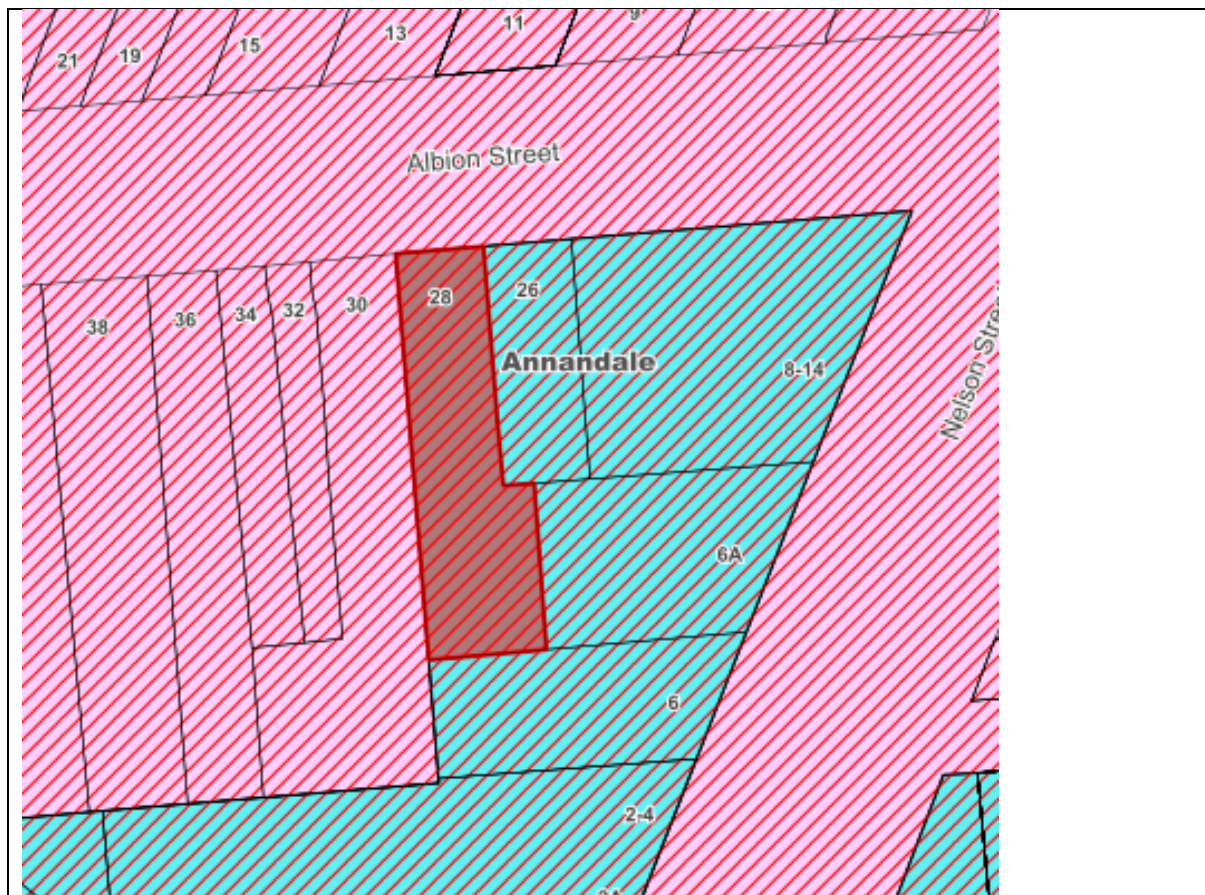
3. Site Description

The subject site is located on the southern side of Albion Street, between Nelson and Trafalgar Street Annandale. The site consists of 1 allotment and is L – Shaped with a total area of 305.6sqm and is legally described as Lot 55 in DP1247953, more commonly referred to as 28 Albion Street Annandale.

The site has a frontage to 7.62m to Albion Street.

The site supports an industrial building having a two-storey façade to the street with the front portion of the building containing a second level. The adjoining properties support single storey dwellings to both sides of the site. The subject site shares a party wall with a mixed use building to the rear of the site.

The property is located within a conservation area. The property is identified as a flood control lot.



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
D/2006/141	Development Application - Works to facade of existing warehouse including painting and enlargement of windows.	Approved – 16/6/2006
DA/2022/0003	Alterations to the front façade of an existing building	Approved – 22/3/2022

Surrounding properties**30 Albion Street**

Application	Proposal	Decision & Date
T/2011/118	Removal of one Celtis Australis (celtis sinensis).	Approved – 17/6/2011

4(b) Application history

Not applicable

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Resilience and Hazards) 2021**Chapter 4 Remediation of land**

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

- “(a) it has considered whether the land is contaminated, and*
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

In considering the above, there no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

5(a)(ii) Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Control	Proposed	Compliance
Section 1.2 - Aims of Plan	The additions are considered sympathetic to the existing built form	Yes

Part 2 – Permitted of prohibited development

Zone	Proposed Use	Permitted with consent
Section 2.3 – B2 – Local Centre	<p>light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil, or otherwise, and includes any of the following</p> <ul style="list-style-type: none"> (a) high technology industry, (b) home industry, (c) artisan food and drink industry, (d) creative industry. <p>Industrial retail outlet means a building or place that</p> <ul style="list-style-type: none"> (a) is used in conjunction with an industry (other than an artisan food and drink industry) or rural industry, and (b) is situated on the land on which the industry or rural industry is located, and (c) is used for the display or sale (whether by retail or wholesale) of only those goods that have been manufactured on the land on which the industry or rural industry is located, <p>but does not include a warehouse or distribution centre.</p>	Yes
Zone Objectives		Consistent?
Section 2.3 – Zone Objectives	The development meets the objectives of the zone.	Yes

Control	Proposed	Compliance
Section 2.7 Demolition requires development consent	The proposal satisfies the section as follows: <ul style="list-style-type: none"> Demolition works are proposed, which are permissible with consent; and Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes

Part 4 – Principal development standards

Standard	Proposal	non compliance	Complies
Section 4.4 - Floor Space Ratio Maximum permissible: 1:1 or 305.6sqm	1.3:1 or 396.6sqm	29.78% or 91sqm	No

Section 4.6 – Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Inner West LEP 2022 by 29.78% (or 91sqm). It is noted that building has an existing non-compliance of 12.07% (or 36.9sqm). Therefore, the current application effectively seeks an additional breach of 54.1sqm.

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

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Inner West LEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Inner West LEP 2022 justifying the proposed contravention of the development standard which is summarised as follows:

The contravention of the FSR development standard and compliance with the requirements of *Clause 4.4 Floor Space Ratio* is unnecessary in the circumstances of this case for the following reasons:

- The objectives of the IWLEP2022 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the B2 Local Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.

- There are sufficient environmental planning grounds to support the proposed variation, given the existing FSR non-compliance for the site, the existing scale of Albion Street, and precedence through other sites approved with a variation.
- The addition relates to an existing mezzanine level with the addition for a lunch room and office all internally within the existing building.
- The proposal will have minimal environmental impacts including on the surrounding heritage area.
- There are no unreasonable environmental or amenity impacts on any nearby properties or the locality as a result of the FSR breach.
- The proposal has minimal impacts on any neighbouring properties.
- The development is consistent with the Parramatta Road Commercial Distinctive Neighbourhood controls.

Subject to the conditions contained in this report, the applicant's written rationale would adequately demonstrate compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Subject to the conditions contained in this report, it is considered the development is in the public interest because it is consistent with the objectives of the B2 Local Centre zone, in accordance with Clause 4.6(4)(a)(ii) of the Inner West LEP as set out below:

The relevant objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.*
- *To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.*

The proposal is considered to be consistent with the zone objectives as it:

- Provides a density of development which is commensurate with the character of the area.
- Is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form in the streetscape and area.
- The proposal will be compatible with the existing and desired future character of the area in relation to building bulk, form and scale.
- Minimises amenity impacts to adjoining properties.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Inner West LEP as set out below:

The relevant objective of the development standards are:

- *(a) to establish a maximum floor space ratio to enable appropriate development density,*
- *(b) to ensure development density reflects its locality,*
- *(c) to provide an appropriate transition between development of different densities,*
- *(d) to minimise adverse impacts on local amenity,*

- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

The proposal is consistent with the development standard objective as it:

- Contains the proposed additional floor area within the general form of the existing industrial building thereby not significantly contributing to the apparent bulk of the building.
- Maintains the general form of the existing non-residential building which is compatible in relation to scale, form and siting with existing development in the area.
- Will not adversely impact the heritage qualities of the Heritage Conservation Area.

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

Subject to the conditions contained in this report, the proposal would accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of IWLEP 2022. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

Part 5 – Miscellaneous provisions

Control	Compliance	Compliance
Section 5.4 Miscellaneous permissible uses	<p>This Part provides:</p> <p><i>(4) Industrial retail outlets if development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed-</i></p> <p><i>(a) 20% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or</i></p> <p><i>(b) 100 square metres, whichever is the lesser.</i></p> <p>The proposal provides 17.4% (59sqm) of industrial retail outlet floor space and complies with the maximum 20% gross floor area of the proposed industry.</p>	Yes
Section 5.10 – Heritage conservation	<p>The subject property is a contributory building located within the Annandale Heritage Conservation Area.</p> <p>The subject building is a highly altered example of a warehouse with the interior of the building with a contemporary fitout.</p> <p>Previously approved works to the building as part of DA/2022/0003 have been added to the current proposal. This is a positive heritage outcome as it will improve the aesthetics of the front façade of the building and its presentation to the streetscape, which will improve the building’s</p>	Yes, subject to conditions

	<p>contribution to the aesthetics of the Annandale HCA.</p> <p>The proposal includes box surrounds to the windows to the first floor of the north (Albion Street) elevation. It is recommended a design change condition be included in any consent requiring their deletion as they are not characteristic of complementary detail within the streetscape or the HCA. If the installation of sun shading devices / awnings are required, they must be characteristic to the area with a pitch of approximately 40°.</p> <p>The proposal also includes lifting a portion of the roof to the centre of the building to create a sawtooth roof profile. This is acceptable as it is associated with the part of the roof form behind the main building form to Albion Street. The roof sheeting and the timber rafters are contemporary. In addition, as the new roof structure is set behind the main roof form to Albion Street, it will not be visible from the public domain.</p> <p>It is recommended a condition be included in any consent requiring a pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to the colour and material used on the roof to the front portion of the building facing Albion Street.</p> <p>The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of the Annandale Heritage Conservation Area subject to the design changes noted above and contained in the attached conditions.</p>	
<p>Section 5.21 – Flood Planning</p>	<p>The subject site is identified as a flood control lot.</p> <p>The application is for a change of use to an existing warehouse/factory building with some internal partitioning at ground level, the proposal is acceptable in terms of flooding subject to the measures outlined in the <i>Flood Risk Management Report</i>.</p> <p>The proposed works to the building and change of use have been assessed and the proposal is considered satisfactory subject to the attached conditions including that:</p> <ul style="list-style-type: none"> - All new works on the ground floor up to the flood planning level of 14.45m AHD must be constructed from flood compatible materials. 	<p>Yes</p>

	- The upper floor is satisfactory in terms of flooding as it is above the PMF flood and offers a place of refuge in extreme flood events.	
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Part 6 – Additional local provisions

Control	Proposed	Compliance
Section 6.1 Acid sulfate soils	The site is identified as containing Class 5 acid sulfate soils. The proposal does not propose any works that would result in any significant adverse impacts to the watertable.	Yes
Section 6.8 Development in areas subject to aircraft noise	The site is located within the 20-25 ANEF footprint for Sydney Kingsford Smith Airport. As an industrial use, no issues arise in this regard. An acoustic report has been submitted demonstrating compliance with requirements of AS2021-2015 can be achieved.	Yes

5(c) Draft Environmental Planning Instruments

There are no relevant draft plans.

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	n/a
B3.1 Social Impact Assessment	n/a
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	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes - see discussion above
C1.5 Corner Sites	n/a
C1.6 Subdivision	n/a
C1.7 Site Facilities	Yes
C1.8 Contamination	n/a

C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	n/a
C1.13 Open Space Design Within the Public Domain	n/a
C1.14 Tree Management	n/a
C1.15 Signs and Outdoor Advertising	n/a
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	n/a
C1.17 Minor Architectural Details	n/a
C1.18 Laneways	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	
C2.2.1.7 - Parramatta Road Commercial Distinctive Neighbourhood	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	Yes
C4.5 Interface Amenity	Yes
C4.6 Shopfronts	Yes
C4.7 Bulky Goods Premises	n/a
C4.8 Child Care Centres	n/a
C4.9 Home Based Business	n/a
C4.10 Industrial Development	Yes -see discussion
C4.11 Licensed Premises and Small Bars	n/a
C4.12 B7 Business Park Zone	n/a
C4.13 Markets	n/a
C4.14 Medical Centres	n/a
C4.15 Mixed Use	n/a
C4.16 Recreational Facility	n/a
C4.17 Sex Services Premises	n/a
C4.18 Vehicle Sales or Hire Premises And Service Stations	n/a
C4.19 Vehicle Repair Station	n/a
C4.20 Outdoor Dining Areas	n/a
C4.21 Creative Industries	n/a
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	n/a
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
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	n/a
E1.2.4 Stormwater Treatment	n/a
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	n/a
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	n/a
Part F: Food	n/a

The following provides discussion of the relevant issues:

C1.11 - Parking

The proposal retains the existing parking provisions on-site and is supported by a Traffic and Parking Assessment which confirms the proposal is consistent with the relevant objectives of Part C1.11 and complies with the required parking numbers for the proposal.

The proposed development requires a minimum of three on-site car parking spaces (depending on the extent of on-site retail component) and a loading dock area.

Suitable conditions of consent are included in the recommendation requiring all loading and unloading to be conducted within the site at all times and the designated loading bay/dock area is to remain available for loading/unloading purposes at all times with no storage of goods or parking of cars to take place in this area. Further, that the proposed tandem parking within the building must be designated as staff parking only.

C4.10 - Industrial Development

Control C2 provides that where an office or shop is ancillary to the main industrial purpose on the site, the ancillary portion shall be no greater than 10% of the floor space of the premise. This DCP provision is superseded by clause 5.4 of the IWLEP2022 as discussed above.

The proposed works and change of use to the existing industrial building is otherwise consistent with the provisions of this Part.

The proposed hours of operation comply with control C20 of this Part.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Building Certification
- Development Engineer
- Fire Officer
- Health Officer
- WasteManagement - Commercial Officer

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$680.17 would be required for the development under *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2022/0700 for Alterations and additions to existing building and change of use to light industry, industrial retail outlet, ancillary office and associated internal fit out works at 28 Albion Street, Annandale subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA-02/A	Ground & First Floor Plans	27/7/2022	Carone & Dolan Design
DA-03/A	Site/Roof Plan	27/7/2022	Carone & Dolan Design
DA-04/A	Sections AA & BB - Elevations	27/7/2022	Carone & Dolan Design
DA-05/A	Sections AA & BB - Elevations	27/7/2022	Carone & Dolan Design
DA-06/A	Sections AA & BB	27/7/2022	Carone & Dolan Design
Revision 3	BCA Capability Statement	16/8/2022	MBC Group
-	Flood Risk Management Report	27/7/2022	ACE
5554R20220812/V1	Acoustical Report	16/8/2022	Koikas Acoustics
22.407r01v03	Traffic Impact Statement	16/8/2022	Traffix
-	Heritage Impact Statement	15/8/2022	Four Towns Planning

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The box surrounds to the windows to the first floor of the north (Albion Street) elevation must be deleted. If the installation of sun shading devices / awnings are required, they must be characteristic to the area with a pitch of approximately 40°.

FEES

3. Security Deposit - Custom

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

Security Deposit:	\$2,800.00
Inspection Fee:	\$350.00

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

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

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

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

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

4. 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*:

\$680.17

*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.**

5. Long Service Levy

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

GENERAL CONDITIONS

6. Boundary Alignment Levels

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

7. Noise – Consultant’s Recommendations

All the recommendations contained in the acoustic report prepared by Koikas Acoustics Pty Ltd, reference 5554R20220812as28AlbionStreetAnnandale_DA dated 16 August 2022 must be implemented:

8. Car Parking

The development must provide and maintain within the site:

- a. Three (3) car parking spaces must be paved and line marked.
- b. One (1) Loading docks/bays.
- c. Bicycle storage capacity within the site.

9. 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.

10. Standard Street Tree Protection

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

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**12. Hoardings**

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

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

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

13. 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 properties 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.

14. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

15. 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**16. Dilapidation Report – Pre-Development – Minor**

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

17. Stormwater Drainage System – Minor Developments (OSD is not required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The Stormwater Drainage Concept plan on Drawing No. 2122-34 prepared by ACE CIVIL & HYDRAULIC ENGINEERS and dated 21 July 2022, must be amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the

requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;

- g. No nuisance or concentration of flows to other properties;
- h. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- i. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- j. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- k. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- l. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;
- m. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- n. No impact to street tree(s);

18. Flood Affected Site

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:

- a. All new structures below the Flood Planning Level of 15.45m AHD (1 in 100 year flood level plus 500mm freeboard) must be constructed from flood compatible materials;
- b. All electrical equipment and wiring must be waterproofed or installed at or above Flood Planning Level of 15.45m AHD;
- c. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level;

19. Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:

- a. The plan must be generally in accordance with the recommendations of the Flood Risk Management Report prepared by ACE Civil and Hydraulic Engineers and dated 27/07/22;
- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
 - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris;
 - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections;
 - iii. Flood warning signs/depth indicators for areas that may be inundated;
 - iv. A flood evacuation strategy; and
 - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below:
 - i. Building Code of Australia;
 - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level;
 - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and
 - iv. Flood hazard level (FHL) Flood Planning Level (FPL).

20. 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.

21. Aircraft Noise – Acoustic Report (ANEF20-25 or Greater)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report that meets the relevant provisions of Australian Standard AS 2021:2000 Acoustics – Aircraft noise intrusion – Building siting and construction. The recommendations of the report are to be indicated on the architectural plans and / or specifications.

22. Parking Facilities

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities complies with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- a. A minimum of 2500mm headroom must be provided throughout the access and parking facilities to allow for access by a B99 vehicle. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- b. The design of the parking spaces must comply with the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004; and
- c. The tandem parking spaces must be designated for staff use only.

23. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

24. 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.

25. 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

26. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION**27. 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.

28. 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.

29. Roofing Materials

During construction works, a pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to the colour and material used on the roof to the front portion of the building facing Albion Street.

30. Construction Hours – Class 2-9

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

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time;
and
- c. at no time on Sundays or public holidays.

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

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

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

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

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

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

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

PRIOR TO OCCUPATION CERTIFICATE

31. No Encroachments

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

32. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

33. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Principal Certifier 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* and conditions of

Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

34. 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.

ON-GOING

35. Bin and Reusable Item Storage

All bins and reusable items such as pallets are to be stored within the site.

36. 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.

37. Storage, Transport and Disposal of Liquid, Special and/or Hazardous Waste

Any liquid, special and/or hazardous waste generated from this use must be stored, transported and disposed of in accordance with the requirements of state agencies and legislation.

38. Commercial Waste/Recycling Collection

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

39. Loading/unloading on site

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

40. Hours of Operation

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

Day	Hours
Monday to Friday	8am to 5:30pm
Saturday	9am to 3pm

ADVISORY NOTES

Permits

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

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

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

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those

lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Storage of Hazardous and Dangerous Goods

Dangerous and hazardous goods must be stored in accordance with NSW WorkCover requirements and AS1940-2004, The Storage and Handling of Flammable and Combustible Liquids.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

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

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.

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

Amenity Impacts General

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

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.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100

			www.dialprior toyoudig.com.au
Landcom		9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)			www.waterrating.gov.au
WorkCover Authority of NSW		13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

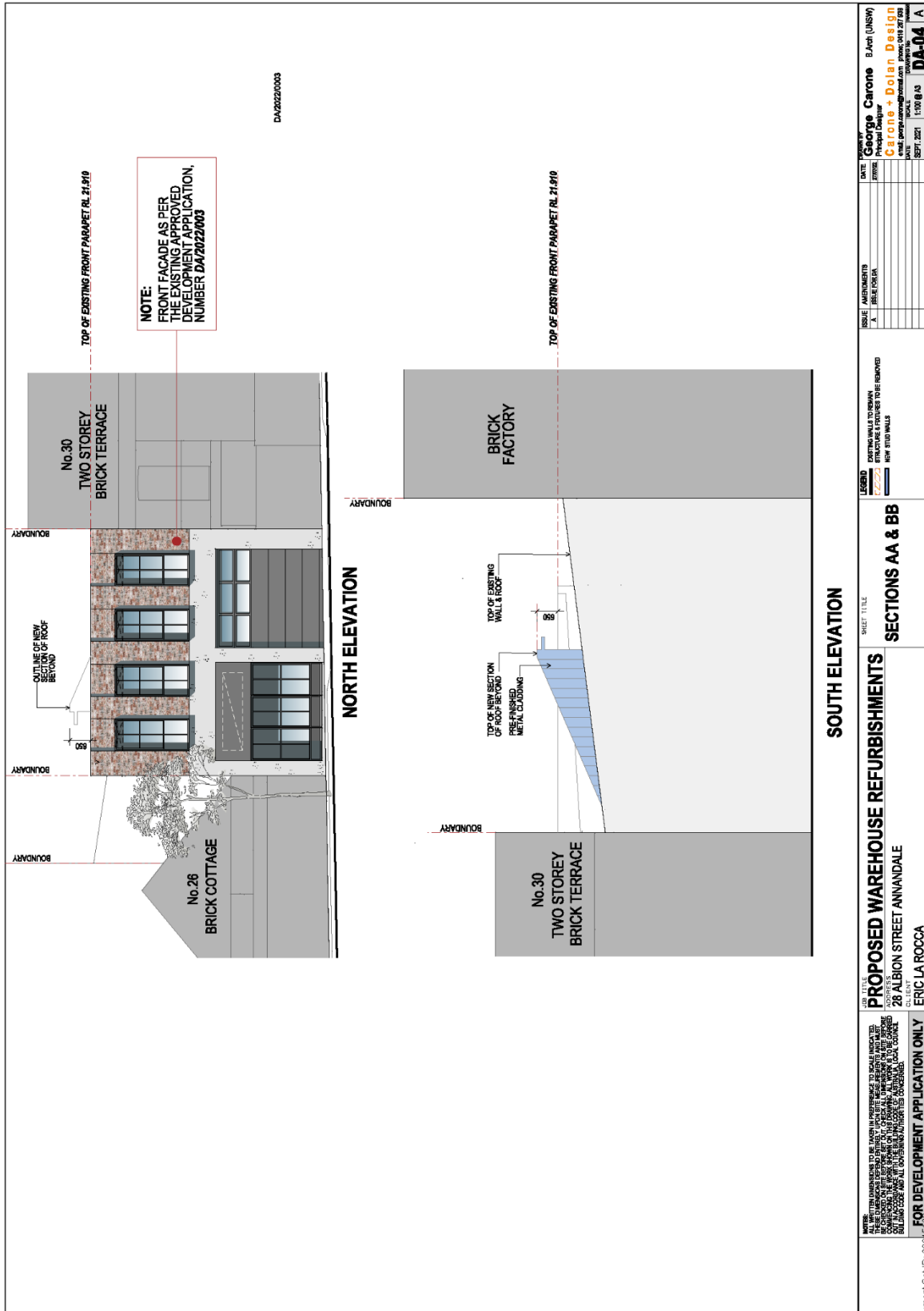
Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

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

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.



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Attachment C- Section 4.6 Exception to Development Standards



**OBJECTION PURSUANT TO CLAUSE 4.6
OF INNER WEST LOCAL
ENVIRONMENTAL PLAN 2022**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO AS DETAILED IN
CLAUSE 4.4 OF INNER WEST LOCAL
ENVIRONMENTAL PLAN 2022**

**Alterations and Additions to Existing
Building and Change of Use to Light
Industry, Industrial Retail Outlet,
Ancillary Office and Associated Internal
Fit Out Works**

**28 Albion Street,
Annandale NSW 2038**

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www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions and Change of Use to Light Industry and Industrial Retail Outlet

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Custom Gear

20 October 2022

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Alterations and Additions and Change of Use to Light Industry and Industrial Retail Outlet

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Inner West Local Environmental Plan 2022. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio (FSR) of a building as described in Clause 4.4 of the Inner West Local Environmental Plan 2022(IWLEP 2022).

The following assessment of the variation to Clause 4.4 – FSR development standard, has taken into consideration the recent judgements contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Requirement	1:1 305.6sqm
Proposed	1.294:1 395.2sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	29.3%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the IWLEP 2022.

The variation to the FSR control is consistent with surrounding developments and the proposed minor increase in GFA is compatible with the locality and complies with the bulk and scale for the site, noting no change the existing building footprint and no addition storeys. The breach to the FSR control is considered minor with no adverse impacts from the proposed development relating to internal additions to the existing mezzanine level.

A variation to the strict application of the FSR standard is considered appropriate for the subject site as:

- The objectives of the IWLEP2022 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the IWLEP2022 B2 Local Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation. Noting the existing FSR non-compliance for the site, the existing scale of Albion Street, and precedence through other sites approved with a variation. Further, the addition relates to an existing mezzanine level with the addition for a lunch room and office all internally within the existing building.

Alterations and Additions and Change of Use to Light Industry and Industrial Retail Outlet

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.4(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

Alterations and Additions and Change of Use to Light Industry and Industrial Retail Outlet

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.4(2) Floor Space Ratio

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.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental*

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Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.27(4),*
- (cb) clause 6.28,*
- (cc) clause 6.29,*
- (cd) clause 6.31.*

Comment: As detailed previously in this request, Clause 4.6 of IWLEP2022 is applicable to enable a variation to the Floor Space Ratio to permit Inner West Council power to grant development consent to the subject development.

This proposal involves a departure from the FSR control of IWLEP2022, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

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

(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as “Area 1” on the [Key Sites Map](#) is 1:1.

(2B) The maximum floor space ratio for development for the purposes of residential accommodation is as follows—

(a) on land shown edged black or pink on the [Floor Space Ratio Map](#)—

<i>Site area</i>	<i>Maximum floor space ratio</i>
<i>< 150m²</i>	<i>0.9:1</i>

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$\geq 150 < 300m^2$	0.8:1
$\geq 300m^2 < 450m^2$	0.7:1
$\geq 450m^2$	0.6:1
<i>(b) on land shown edged orange or green on the Floor Space Ratio Map is—</i>	
Site area	Maximum floor space ratio
$< 150m^2$	1.0:1
$\geq 150 < 300m^2$	0.9:1
$\geq 300m^2 < 450m^2$	0.8:1
$\geq 450m^2$	0.7:1
<i>(c) on land shown edged brown on the Floor Space Ratio Map is—</i>	
Site area	Maximum floor space ratio
$< 150m^2$	0.8:1
$\geq 150 < 300m^2$	0.7:1
$\geq 300m^2 < 450m^2$	0.6:1
$\geq 450m^2$	0.5:1
<i>(d) on land shown edged yellow on the Floor Space Ratio Map is—</i>	
Site area	Maximum floor space ratio
$< 150m^2$	0.9:1
$\geq 150 < 300m^2$	0.8:1
$\geq 300m^2$	0.7:1
<i>(2C) The maximum floor space ratio for development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land identified as "F" on the Floor Space Ratio Map is specified in the Table to this subclause.</i>	
Site area	Maximum floor space ratio
$\leq 150m^2$	1.1:1
$> 150 \leq 200m^2$	1:1
$> 200 \leq 250m^2$	0.9:1
$> 250 \leq 300m^2$	0.8:1
$> 300 \leq 350m^2$	0.7:1
$> 350m^2$	0.6:1
<i>(2D) The maximum floor space ratio for development for the purposes of residential flat buildings on land shown edged red on the Floor Space Ratio Map is 0.25:1.</i>	
<i>(2E) In calculating the floor space ratio in relation to land dedicated to the Council for the purposes of a proposed road on the Land Reservation Acquisition Map, land marked "Local Road (SP2)" must be included in the site area.</i>	

Comment: It is acknowledged that the proposed development does not comply with clause 4.4 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the IWLEP2022 and demonstrates that compliance with the provisions of clause 4.4 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.4 (2) of the IWLEP2022, is amendable to variation. The purpose of this Clause 4.6 is to vary the Floor Space Ratio as a floor space referable to the building

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to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.4 (2) states:

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

The Floor Space Ratio Map sets a maximum FSR control of 1:1. For the purpose of calculating FSR, the IWLEP2022 provides the following definition:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

It is proposed to provide 395.2sqm of GFA on the site which has a site area of 305.6sqm. This equates to an FSR of 1.294:1, representing a 29.3% variation to Councils standard.

The Floor Space Ratio in clause 4.4(2) of the IWLEP2022 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (d) the cubic content or floor space of a building,*

Despite the variation to the floor space ratio control, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal will not result in any unreasonable visual impact on the Albion Street.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing, as the existing building footprint is retain with the

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addition to an existing mezzanine level internally. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under IWLEP2022 and the provisions of Clause 4.6 which permit a variation to a development standard.

Objection to Development Standard – Floor Space Ratio (Clause 4.4(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council at [42] and [43]*.

Comment: Clause 4.6(3)(a) of the IWLEP2022 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'*.

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366*) and *Project Venture Developments v Pittwater Council (2005) NSW LEC 91*).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for business needs within the Inner West LGA in particular the B2 Local Centre zone. As noted under the review of Clause 4.4 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.4, as outlined below:

- The proposal is consistent with the existing and desired streetscape character.
- The proposal does not change the existing building footprint.
- The proposal will have no impact on the desired future character in relation to building bulk, form and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation.

2. The underlying objective or purpose of Clause 4.4 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: The underlying objective and purpose of Clause 4.4 is not relevant as the proposal and variation to the FSR meets the purpose and objectives of Clause 4.4:

(a) to establish a maximum floor space ratio to enable appropriate development density,
Complies – the proposal retains the existing building footprint with the proposal for a minor increase to the mezzanine level to provide an enhanced workplace environment with new lunch room and facilities to today's standards for employees.

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(b) to ensure development density reflects its locality,

Complies – the proposal does not change the bulk and scale of the development through the additional floor space. The site reflects the existing density of the area noting the various land uses and opportunities to increase floor space with residential inclusions. The proposal relates to a change of use with minor alterations and additions to the existing roof and a new enhanced internal fit out with an increase to the floor area to provide modern facilities for the buildings occupants. The proposal does not change the existing building footprint and the proposal changes to the roof increase the amenity of the existing building by providing additional sources of natural light. The proposal will have no impact on the desired future character in relation to building bulk, form and scale.

(c) to provide an appropriate transition between development of different densities,

Complies – the proposal does not change the existing bulk and scale of the site through additional floor space. The proposal allows appropriate transition between the various land uses surrounding the site existing and future character of the land.

(d) to minimise adverse impacts on local amenity,

Complies – the proposal will not have any adverse impacts on the local amenity of the area

(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

Complies – the proposal does not change the building footprint with no impacts to tree canopy within the site or within the public domain.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a relatively minor variation as the development does not have any adverse impacts on the immediate amenity of the area and relates to an increase in floor area internally with no bulk and scale impacts.

4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

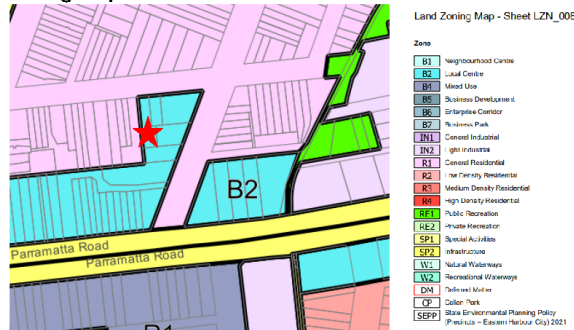
Comment: Whilst the proposal seeks a variation to Councils numerical FSR standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments and approvals granted show that the development standard for FSR has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable and should be based on the merit assessment.

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5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map



Zone B2 Local Centre

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.
- To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.

2 Permitted without consent

Home occupations

3 Permitted with consent

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Information and education facilities; Light Industrial; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Cemeteries; Crematoria; Depots; Eco-tourist facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industries; Industrial training facilities; Marinas; Mooring pens; Mortuaries; Open cut mining; Pond-based aquaculture; Recreation facilities (major); Residential accommodation; Rural industries; Storage premises; Sewage treatment plants; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste disposal facilities; Waste or resource transfer stations; Water treatment facilities; Wholesale supplies

Comment: The relevance of the zone objectives are assessed below:

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Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

Objectives of the B2 Local Centre zone:

1 Objectives of zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.*
- *To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.*

The site is zoned B2 Local Centre and currently utilises “Existing Use Rights” for use as a warehouse. A Light Industry and Industrial Retail Outlet are permissible land uses with Council’s consent. The proposal is consistent with the objectives of the zone, as supported below:

- The proposal provides uses that integrate together, are low impact and serve the needs of people who live in, work in and visit the area
- The proposal encourages employment opportunities within an accessible location
- The proposal encourages and will maximise public transport patronage and encourages walking and cycling
- The proposal changes the existing use from a warehouse to a low impact light industry. It is noted that screen printing is quiet and will not impact adjoining properties or the immediate locality, this is supported by an acoustic assessment.
- The proposal provides for a mixture of uses which are compatible to the area and B2 Local Centre with many existing warehouse type developments which have been converted to offices and recreation facilities.
- The proposal provides for a use that enhances the role of the area and includes a low impact light industry which does not detract the function of the local centre. The proposal upgrades the front façade of the building which is supported by the heritage team at Inner West Council.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”

Comment: As detailed above, there are sufficient environmental planning grounds to justify the proposed variation to the IWLEP2022 FSR control. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor increase to the allowable GFA, which have set the ground rules for the bulk, scale and mass of the proposal with no breaches to the existing building footprint or height.
- The LEC planning principles on FSR relate to compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

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- Are the proposals physical impacts on the surrounding development acceptable?
- Is the proposals appearance in harmony with the buildings around it and the character of the street.

In addressing the above planning principals, the benefits of the development, represents a new modern fit out which enhances the internal amenity of the building. Not only does this provide improved amenity for the occupants of the building, it complies with the objectives of the zone.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The design proposed represents an increase in GFA which is minor and within the existing building footprint
- The site is constrained due to the GFA and building layout.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.
- The proposal is consistent with other approved developments within the locality.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.4(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the existing building and the proposed new parts which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Floor Space Ratio. The proposal has been skilfully designed within the existing building footprint and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of FSR applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a new functional design. Council should encourage such building upgrades via support of positive intention to upgrade old buildings within the Inner West LGA.

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Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the FSR development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.4(2) Floor Space Ratio and this statement verifies that compliance with the provisions of clause 4.4(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Floor Space Ratio development standard is considered appropriate for the site at 28 Albion Street, Annandale. The variation to FSR is isolated and retained within the existing building footprint and internally within the building with the addition to an existing mezzanine level.

This development proposes a departure from the maximum floor space ratio development standard, with the proposal to provide an FSR of 1.294:1.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The objectives of the IWLEP2022 FSR control are achieved notwithstanding the technical non-compliance.

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- The objectives of the IWLEP2022 B2 Local Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation. Noting the existing FSR non-compliance for the site, the existing scale of Albion Street, and precedence through other sites approved with a variation. Further, the addition relates to an existing mezzanine level with the addition for a lunch room and office all internally within the existing building.
- The proposal is consistent with the existing and desired streetscape character.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, heritage conservation values and the privacy and solar values for adjoining neighbours.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Floor Space Ratio, the B2 Local Centre objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Floor Space Ratio Clause 4.4(2) is acceptable and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. The variation under Clause 4.6 is to vary the Floor Space Ratio control to give Inner West Council the power to grant development consent to the proposed development.