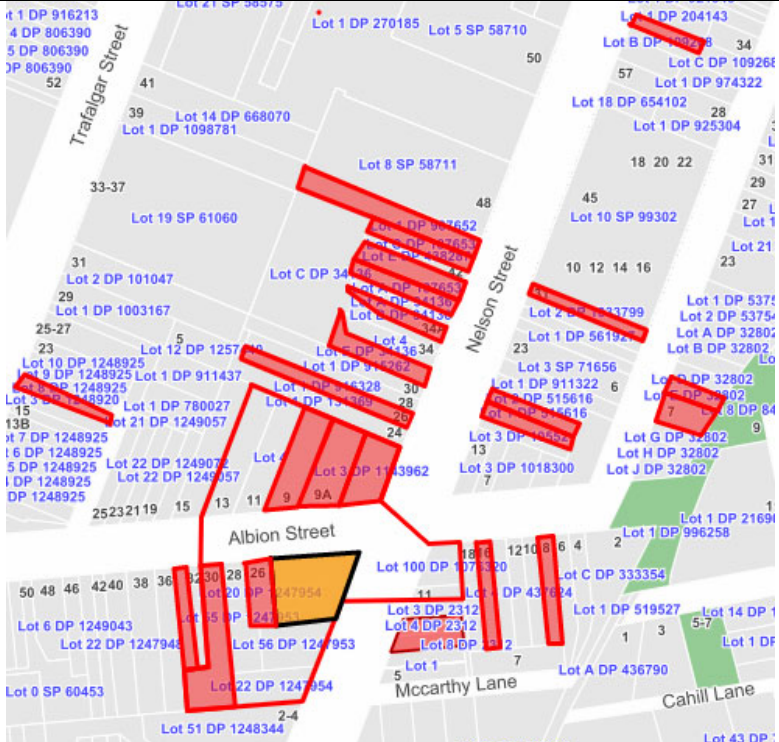





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2020/0942
Address	8-14 Nelson Street ANNANDALE NSW 2038
Proposal	Use of the premises as a Women's only Recreation Facility (indoor) to operate as women's health and fitness club, operating 7 days per week from 5.00am to 10.00pm
Date of Lodgement	02 November 2020
Applicant	SJB Planning
Owner	MJB Group Pty Ltd
Number of Submissions	31 in objection 2 in support
Value of works	\$25,197.00
Reason for determination at Planning Panel	Number of submissions – 33 FSR Breach
Main Issues	Parking Hours of operation Noise
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	
	
Note: Due to scale of map, not all objectors/submitters could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for Use of the premises as a Women's only Recreation Facility (indoor) to operate as women's health and fitness club, operating 7 days per week at 8-14 Nelson Street, Annandale.

The application was notified to surrounding properties and 33 submissions were received.

The main issues that have arisen from the application include:

- Cost of works
- Parking and traffic
- Hours of operation / Plan of management
- Noise
- Access

The non-compliances are acceptable given conditions are recommended to reduce the hours of operation and to provide parking on-site and therefore the application is recommended for approval.

2. Proposal

It is proposed to fitout and use an existing warehouse building located in a B2 Local Centre zone for the use of a women's only gym operating from 5am till 10pm 7 days a week. The proposed works include internal fit out and external signage.

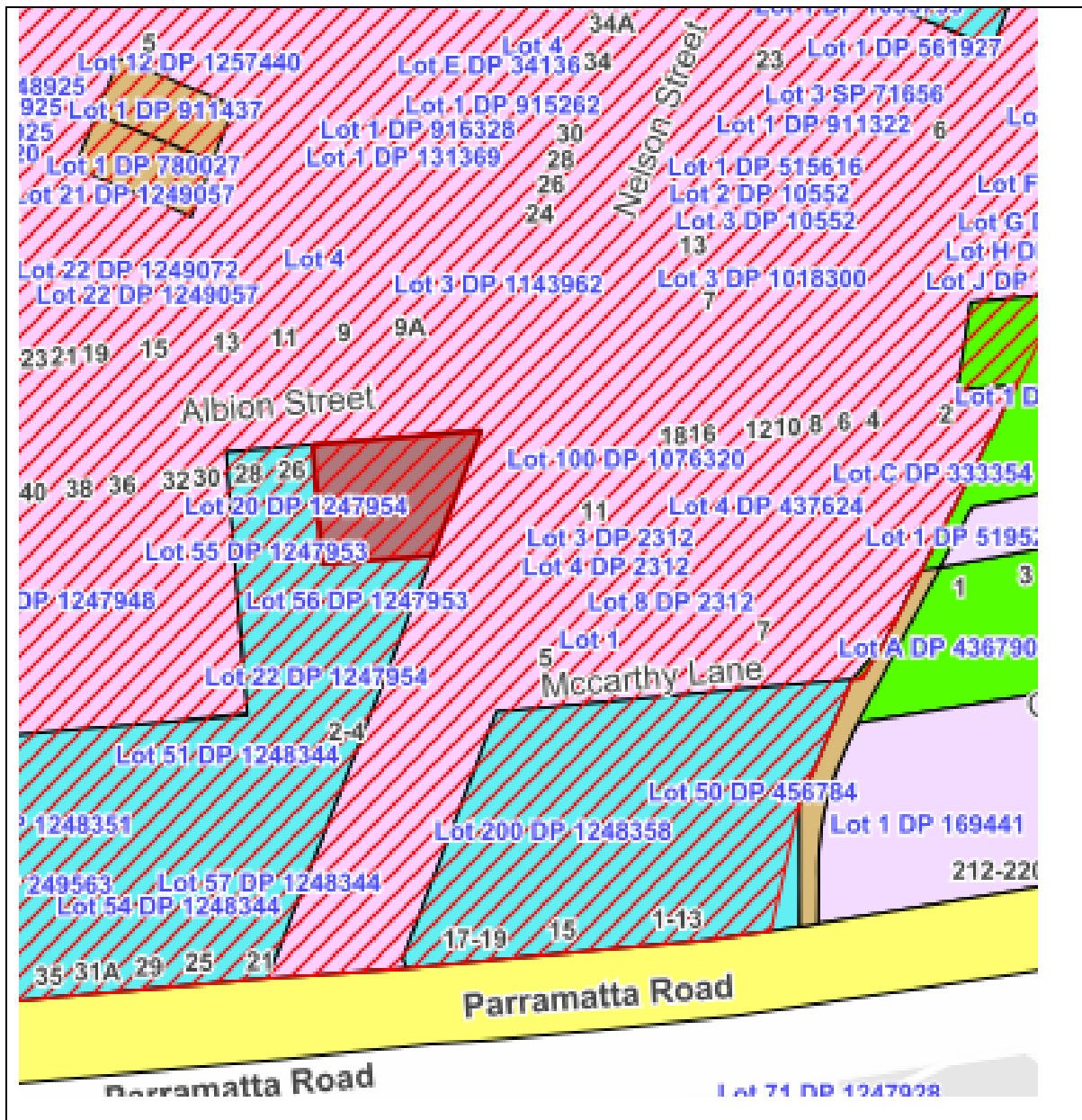
3. Site Description

The subject site is located on the corner of Nelson Street to the East and Albion Street to the North. The site consists of one allotment (Lot 21 DP 1247954) and is generally rectangular in shape with a total area of approximately 509sqm.

The site has a frontage to Nelson Street of 23 metres and a secondary frontage of approximately 30 metres to Albion street.

The site supports an existing warehouse building with mezzanine level. The adjoining properties support predominantly converted warehousing to dwellings, attached and detached residential dwellings and, closer to Parramatta Road, commercial premises. (6a Nelson Street to the south of the site and 28 Albion Street to the west)

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



4. Background

4(a) Site history

The current site contains an existing warehouse building that has been refurbished for office space.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
05/11/2020	Development application lodged
11/12/2020	Request for further information letter issued
15/01/2021	Response provided

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

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

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

5(a)(ii) State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64)

The following is an assessment of the proposed development under the relevant controls contained in *SEPP 64*.

SEPP 64 specifies aims, objectives, and assessment criteria for signage as addressed below. Schedule 1 of *SEPP 64* specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of *SEPP 64*.

Signs and Advertising Structures

The application seeks consent for the erection of the following signage:

- 1 wall sign measuring approximately 5720mm (width) by 850mm (height) fronting Albion Street being “business signage”
- 1 wall sign measuring approximately 600mm (width) by 800mm (height) fronting Albion Street being “business signage”
- 2 wall signs measuring approximately 1770mm (width – Both) by 2040mm (height – top) and 820mm (height – bottom) fronting the chamfer to Albion & Nelson Streets being “business signage”
- 1 x wall sign measuring approximately 10650mm (width) by 1200mm (height) fronting Nelson Street being “business signage”
- 1 wall sign measuring approximately 3930mm (width) by 600mm (height) fronting Nelson Street being “business signage”

The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64, as it is consistent with the usual sign outcomes for businesses in such zones.

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

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

- Existing warehouse building with no external alterations and additions. Proposal is internal fit-out of the use as an indoor recreational facility.

Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

Clause 1.2 - Aims of the Plan
 Clause 2.3 - Zone objectives and Land Use Table
 Clause 4.4 – Floor Space Ratio
 Clause 4.6 - Exceptions to development standards
 Clause 5.10 - Heritage Conservation
 Clause 6.1 - Acid Sulfate Soils
 Clause 6.3 - Flood Planning
 Clause 6.4 - Stormwater management

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

The site is zoned B2 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the B2 zone.

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

Standard	Proposal	non compliance	Complies
Floor Space Ratio Maximum permissible: 1:1 or 512sqm	1.27:1 or 651sqm	139sqm or 27%	No

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt LEP by 27% or 139 sqm.

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

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

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

- *The application proposes a gross floor area (GFA) of 651sqm which equates to a FSR of 1.27:1. This is the existing FSR and is not being changed as the development involves use of the existing GFA*

The applicant's written rationale adequately demonstrates 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.

It is considered the development is in the public interest because it is consistent with the objectives of the B2, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP for the following reasons:

- *The objectives of the B2 Local Centre 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 ensure that development is appropriately designed to minimise amenity impacts.*
 - *To allow appropriate residential uses to support the vitality of local centres.*
 - *To ensure that uses support the viability of local centres.*
 - *To provide a mixture of compatible land uses.*
 - *To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.*
 - *To integrate suitable business, office, residential, retail and other development in accessible locations.*

The proposal is consistent with the objectives of the development standard as the Floor Space Ratio is unchanged. The bulk and scale is unchanged as the development is for change of use to an indoor recreational facility with minor internal changes.

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 Leichhardt LEP for the following reasons:

The objectives of Clause 4.4 are as follows:

- “(a) to ensure that residential accommodation—
 - (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and
 - (ii) provides a suitable balance between landscaped areas and the built form, and
 - (iii) minimises the impact of the bulk and scale of buildings,
- (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

The proposal is consistent with the development standard as the Floor Space Ratio is unchanged. The bulk and scale will not change as the development is for change of use with minor internal changes.

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

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

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

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

The amended provisions contained in the Draft IWLEP 2020 are not particularly relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

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 B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
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
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes the BCA report suggests the

	development can comply.
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	Yes - see discussion
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 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	Yes – see discussion
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 – see discussion
C4.6 Shopfronts	N/A
C4.16 Recreational Facility	Yes - see discussion
Part D: Energy	
Section 1 – Energy Management	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	N/A
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
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

The following provides discussion of the relevant issues:

C1.11 Parking

Comments:

Summary

The development is not supported by Council's Traffic Engineer as there is a shortfall of up to 16 off-street parking spaces (after applying a parking credit) in an area of existing high on-street parking occupancy and the proposal seeks to rely on on-street parking up to 200m from the site. Whilst this may be acceptable for the proposed use for the subject site, will impact the availability of on-street parking for a significant number of existing commercial and residential developments in the vicinity that may not be able to rely on on-street parking at such a significant distance from their properties.

Parking

A supplementary traffic and parking supplementary response prepared by pdc Consultants dated 14/01/2021 has been provided to support the development. It is noted that the report does not specifically address Council's concerns with the parking survey provided. The following assessment is provided based on this supplementary report.

Estimated Parking Demand generated by the site

Visitors/members

The report relies on the [applicant's] existing Broadway gym to estimate parking demand generated by members for the proposed site however it is unclear how the report has determined the number of occupants within the Broadway gym at any particular time as the traffic report figure 1 and 2 only identifies 'average visits' (i.e. members entering the site) rather than 'average occupants' (i.e. numbers of members in the gym at a certain time of day). Furthermore as the swipe card entry data has not been provided it is unclear if all weekdays are similar or if days of unusually low visitors e.g. public holidays, days with early close etc. have been included that would lower the average.

This is a concern as it is noted that the report states "absolute maximum average occupancy of 34 members was identified on Tuesday evenings between 5 – 6pm, with only four other one-hourly periods throughout the week averaging over 30 member visits". Based on the information provided it suggests that on average 34 members entered the site between 5-6pm on a Tuesday evening. Therefore assuming a members spend 1.5hours from parking a car to leaving the parking space (e.g. 60min session plus changing plus travel to/ from car etc), it could be assumed average member occupancy including crossover could be in the order of 50 members.

As this estimate is consistent with the proposed maximum patron capacity to 58 in the current proposal and this number of members could feasibly be reached given the overlap of pilates, yoga and personal training class times on weekday afternoons, it is considered it is reasonable to use 50 members as the estimation of car parking demand in peak periods.

Therefore based on 31% members driving (as per Broadway survey) and 50 members on the site, there is expected to be an on-street parking demand generated for 16 parking spaces during peak times for visitors.

Staff

The site has capacity for 4 off-street parking spaces in a tandem arrangement, which are proposed to be removed. The traffic report identified a maximum of 12 staff for the site at any particular time. If driving habits are the same as for members (roughly 1/3), this results in a parking demand of 4 parking spaces (resulting in a shortfall of 4 staff parking spaces).

Total parking demand and shortfall

It is estimated there will a maximum total parking demand for 20 vehicles in peak times. Applying the parking credit as per the traffic report, there is an estimated shortfall of 16 parking spaces.

Impact to on street parking due to additional demand generated by the site

Concerns raised with the on-street parking survey in Council's previous advice have not been adequately addressed, particularly with respect to estimation of the number of existing parking spaces.

Regardless of the above, the development is not supported by Council's traffic engineers as there is a shortfall of up to 16 off-street parking spaces in an area of existing high on street parking occupancy and seeks to rely on on-street parking up to 200m from the site which will impact the availability of on-street parking for a significant number of existing commercial and residential developments in the vicinity that may not be able to rely on on-street parking at such a significant distance from their properties.

Additional comments

Whilst the proposal is not supported by Council's engineers as proposed, should the planning panel consider it acceptable, conditions have been provided and the following recommendations are made:

- 4x staff parking spaces be provided within the site in a tandem arrangement utilising the existing vehicular accesses. This will require reconfiguration of the internal layout and entry. NB: This will reduce estimated peak parking demand/shortfall to 16 spaces.
- The number of total members and number of patrons on the site at any one time be limited by condition of consent. This is achieved by the proposed reduction of and restrictions on programmed classes to alleviate conflict of required residential parking to nearby dwellings and peak pick-up and drop-off of the nearby school. The recommended conditions for hours are as follows:
 - a. The hours of operation of the premises must not exceed the following:

Day	Hours
Monday to Friday	6am till 9pm
Saturday and Sunday	8am till 5pm
Public holidays	9am till 4pm

And further,

Monday to Friday No programmed classes between 8am to 9.30am and 2.30pm to 4.30pm (School Days);

Monday to Friday No programmed classes between 5.30pm to 6.30pm

The restriction on programmed classes is intended to alleviate parking demand/conflict during high turnover times associated with school drop off and collection, and commuters returning home.

C1.15 Signs and Outdoor Advertising

The proposed signage has been assessed and considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64. It is noted that the signage is non-illuminous and non-reflective and is satisfactory as business identification signage.

C4.1 Objectives for Non-Residential Zones

Council has considered the public consultation feedback in terms of the environmental impacts for the intensification of the site from office space to indoor recreation facility and has proposed conditions to be imposed to minimise environmental impacts, address concerns and ensure the development meets the objectives of the clause.

C4.5 Interface Amenity

Council's Health Officer has supported the acoustic report and recommendations for the use of the site as an indoor recreation facility, in addition to conditions to reduce parking demand, the hours of operation will also alleviate environmental impacts of the site to adjoining residential dwellings. As the use is permissible in the zone, balance is required to ensure the proposal can meet the objectives of the clause pertaining to noise within the site and occupants entering and leaving the site.

C4.16 Recreational Facility

The proposed use for an indoor recreation facility at the subject site is considered to meet the objectives of the clause subject to conditions to provide on-site parking for staff cars and bicycles, reduce the operating hours to ensure sensitive transition to adjoining residential areas and limit the occupancy rate at peak demand for parking for pick-up and drop-off to the nearby school and allow for sufficient time for residents to park after work hours. Refer to C1.11 Parking.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. 33 submissions were received in response to the initial notification, two (2) in support and 31 in objection.

- Parking
- Hours of operation
- Noise
- Signage

The issues raised in submissions above have been discussed in this report under Section 5(d).

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, subject to conditions.

6 Referrals

6(a) Internal

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

- Engineers - Not Supported, however conditions imposed
- Heritage – No Objections
- Health - No Objections subject to conditions
- Building Certification – No objections

7. Section 7.11 Contributions/7.12 Levy

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

8. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining 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 Clause 4.6 to vary Clause 4.4 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the variation is not inconsistent with the objectives of the standard or 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 Development Application No. DA/2020/0942 for Use of the premises as a Women's only Recreation Facility (indoor) to operate as women's health and fitness club operating 7 days per week at 8-14 Nelson Street ANNANDALE NSW 2038 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
2020105-03/05	Ground Floor Plan	October 2020	Nagy Khoury Design P/L
2020105-04/05	Ground Mezzanine Plan	October 2020	Nagy Khoury Design P/L
-	Plan of Management	-	-
-	Signage Plan	-	-
7030-1.1R Rev C	Noise & Vibration Impact Assessment	September 2020	Day Design P/L
2000369 Rev 2	BCA Compliance Capability Statement	October 2020	City Plan
200371 Rev 02	Accessibility Assessment Report	October 2020	City Plan

As amended by the conditions of consent.

DESIGN CHANGE

2. Green Travel Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Green Travel Plan certified by a suitably experienced Civil Engineer in the field of transport who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) addressing the following:

- a. A travel plan is a set of measures designed to reduce private car dependency for a development by encouraging use of more sustainable transport modes.
- b. Such a plan should contain a series of complementary measures which will act in unison to discourage private car dependency.
- c. transport choices including bus stops, light rail stops, cycleways and public transport timetables;
- d. site-specific bike facilities;
- e. management initiatives for employees including subsidised public transport
- f. on-site displays, or digital apps, as information for both staff and visitors.
- g. The travel plan must include:
 - a. targets including reductions in car trips and increased mode share for sustainable transport;
 - b. travel data including baseline travel demand and mode share estimates derived from experience with comparable developments;
 - c. action plan which outlines the measures to be implemented as part of the travel plan, associated promotional, information and education initiatives, and management mechanisms to be introduced as part of the travel plan;

- d. commitment to the on-going maintenance and adaptation of the action plan to ensure its long term success.
- e. There should also be a management mechanism introduced which will bind future owners or lessees of the development to the travel plan;
- f. monitoring and review shall be conducted.

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:	\$8,266
Inspection Fee:	\$236.70

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

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

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

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

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

4. 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

5. Noise – Consultant’s Recommendations

The recommendations contained in the acoustic report prepared by Day Design Pty Ltd reference 7030-1.1R Rev C dated 25 September 2020 must be implemented, including the following:

Subject to the following conditions:

1. Acoustic report prior to CC – to address to AC plant selection
2. The northern roller doors, first floor operable windows, eastern (glazed) front entry doors shall remain closed during at all times.
3. That the dropping of weights is prohibited and the WHaFC are to enforce its restriction to ensure that the amenity of adjoining residential premises are maintained.
4. A Noise Management Plan be submitted to Council prior to the issue of the Occupation Certificate detailing the following:
 1. The plan to manage all staff and patrons leaving the building during the early morning and evenings.
 2. The plan to manage all staff and patrons entering and exiting their vehicles so as not to disturb the adjoining residential properties.

6. Stormwater Drainage System – Simple

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

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road.

7. Balcony

The meditation terrace can only operate between the hours of 9am and 5pm and must have no amplified music.

8. Car Parking

The development must provide and maintain within the site:

- a. Four (4) staff car parking spaces must be paved and line marked;
- b. 12 Bicycle spaces within the site; and
- c. Loading docks/bays is to be made available when necessary off Albion Street when the four (4) allocated staff parking spaces are located.

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. Works Outside the Property Boundary

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

PRIOR TO CONSTRUCTION CERTIFICATE

11. Light Spill

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

12. 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.

13. Changes to Design

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

- a. Four (4) parking spaces must be provided in a Tandem parking arrangement for staff carparking utilising the existing vehicular access to the site. The parking spaces must have minimum clear internal dimensions of 11400 x 5400mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004. Upright kerb and/or Bollards must be provided to prevent vehicle encroachment into pedestrian ways, stairs, doorways, lifts and the like as per Section 2.4.5.5 of AS/NZS2890.1:2004.
- b. The main entrance to the gym is to be located off Nelson Street only, it must accommodate an accessible path of travel from this entry.
 1. The staff parking / loading dock is to be adequately separated from the gym to ensure recommendations from the acoustic report can be meet.

DURING DEMOLITION AND CONSTRUCTION**14. 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

15. 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*, NSW Environment Protection Authority’s Noise Policy for Industry and Noise Control Manual and conditions of Council’s approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

16. 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.

17. Protect Sandstone Kerb

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

ON-GOING

18. Noise General

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

19. parking spaces - staff

Four (4) parking spaces must be provided and maintained at all times for the purposes of staff car parking. Kerb and/or Bollards must be provided to prevent vehicle encroachment into pedestrian ways, stairs, doorways, lifts and the like.

20. Green Travel Plan

The Green Travel Plan approved with the Construction Certificate must be implemented and kept in a suitable location on site at all times.

21. Hours of Operation

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

Day	Hours
Monday to Friday	6am till 9pm
Saturday to Sunday	8am till 5pm
Public holidays	9am till 4pm

Monday to Friday No programmed classes between 8am to 9.30am and 2.30pm to 4.30pm (School Days)
Monday to Friday No programmed classes between 5.30pm to 6.30pm

ADVISORY NOTES

Permits

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

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

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

Insurances

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

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

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.

Notification of commencement of works

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

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

Fire Safety Certificate

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

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

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Lead-based Paint

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

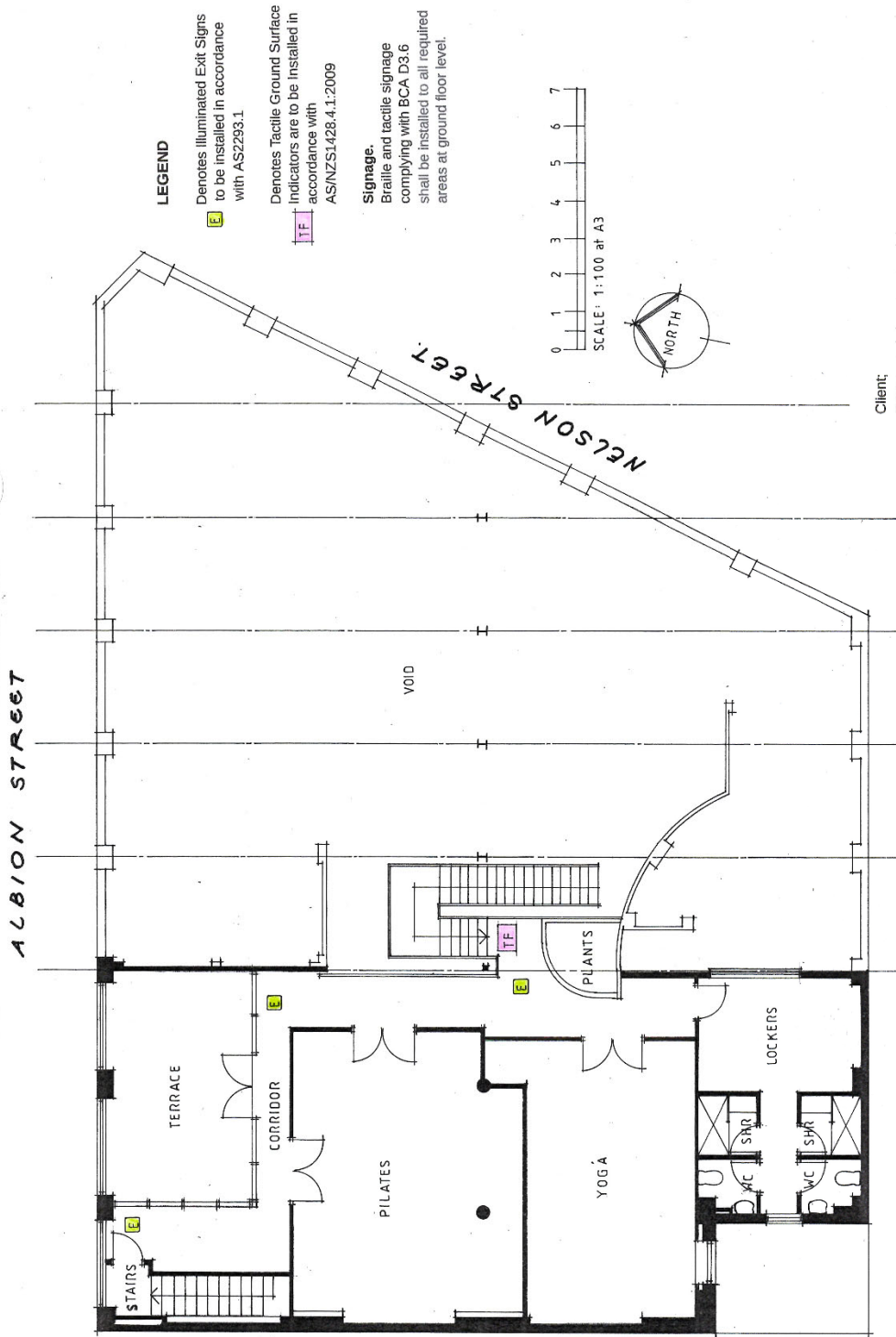
Dial before you dig

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

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 Payments Corporation	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 - SITA Environmental Solutions	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.

Attachment B – Plans of proposed development

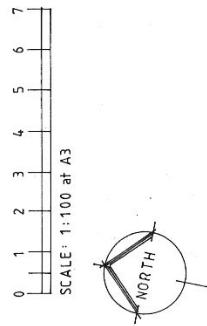


LEGEND

Denotes Illuminated Exit Signs to be installed in accordance with AS2293.1
E

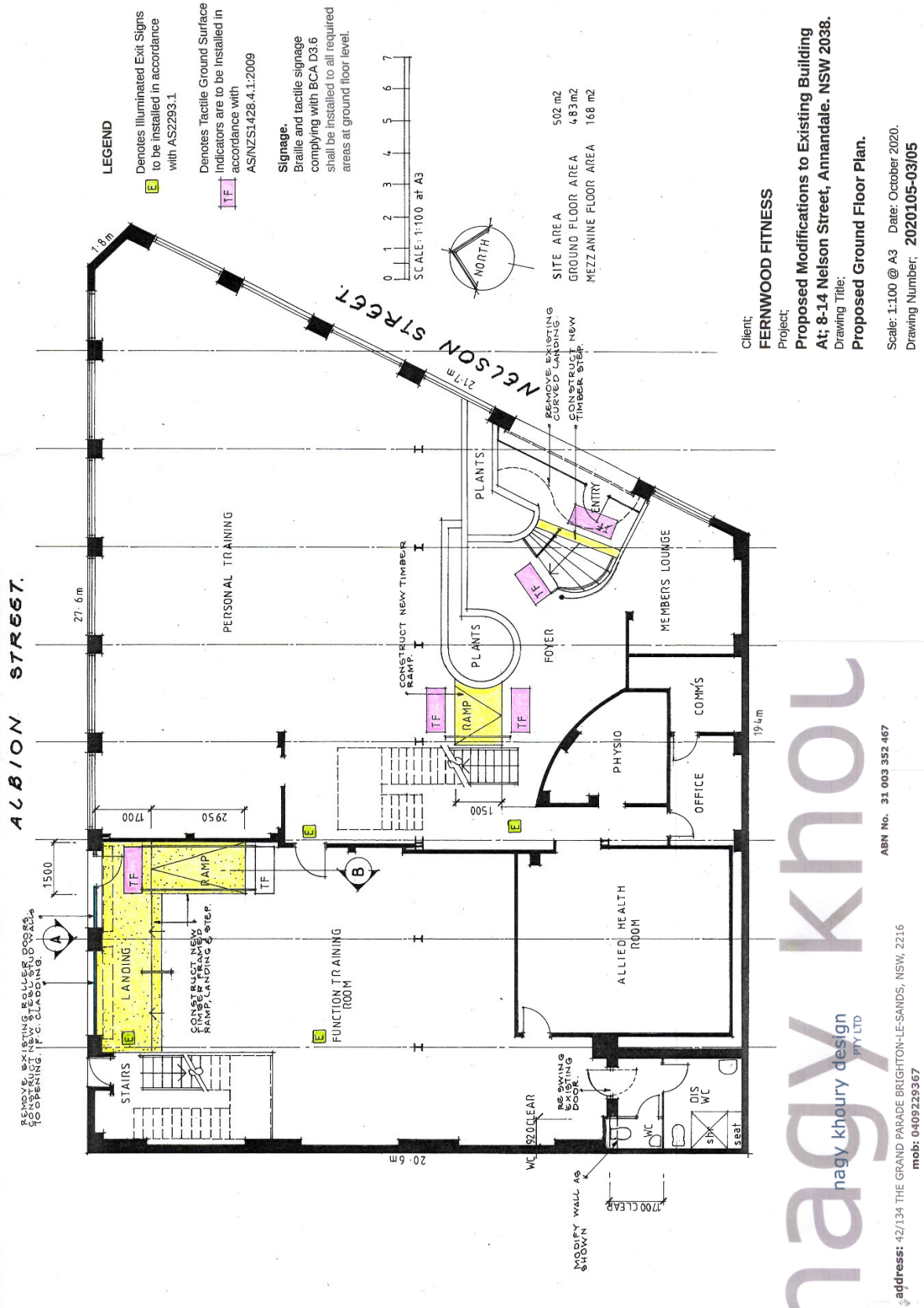
Denotes Tactile Ground Surface Indicators are to be installed in accordance with AS/NZS1428.4.1:2009
TF

Signage.
 Braille and tactile signage complying with BCA D3.6 shall be installed to all required areas at ground floor level.



Client: **FERINWOOD FITNESS**
 Project: **Proposed Modifications to Existing Building At: 8-14 Nelson Street, Annandale, NSW 2038.**
 Drawing Title: **Proposed Mezzanine Plan.**
 Scale: 1:100 @ A3 Date: October 2020.
 Drawing Number: **2020105-04/05**

nagy khoury design
 PTY LTD
 ABN No. 31 003 352 467
 address: 42/134 THE GRAND PARADE BRIGHTON-LE-SANDS, NSW, 2216
 mob: 0409229367



Attachment C- Clause 4.6 Exception to Development Standards

SJB Planning



Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.4 - Floor Space Ratio

Address: 8-14 Nelson Street, Annandale

Proposal: Use of an existing building as a recreation facility (indoor)

Date: 22 October 2020

1.0 Introduction

This is a written request to seek an exception to a development standard under Clause 4.6 – Exceptions to Development Standards of Leichhardt Local Environmental Plan (LLEP) 2013. The development standard for which the variation is sought is Clause 4.4 Floor Space Ratio under LLEP YEAR.

The following sections of this written request demonstrate that the proposed development addresses the principles identified in the above judgements.

2.0 Description of the planning instrument, development standard and proposed variation

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

The Leichhardt Local Environmental Plan (LLEP) 2013.

2.2 *What is the zoning of the land?*

The zoning of the land is B2 Local Centre.

2.3 *What are the Objectives of the zone?*

The objectives of the B2 Local Centre 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 ensure that development is appropriately designed to minimise amenity impacts.
- To allow appropriate residential uses to support the vitality of local centres.
- To ensure that uses support the viability of local centres.
- To provide a mixture of compatible land uses.
- To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations.;

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Sydney NSW 2010 sjb.com.au

SJB Planning (NSW) Pty Ltd ACN 112 509 501

2.4 What is the development standard being varied?

The development standard being varied is the floor space ratio development standard.

2.5 Is the development standard a performance based control?

No, the floor space ratio development standard is a numerical control.

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

The development standard is listed under Clause 4.4 of LLEP 2013.

2.7 What are the objectives of the development standard?

The objectives of Clause 4.4 are as follows:

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

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

Clause 4.4 establishes a maximum floor space ratio (FSR) of 1:1 for the site.

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

The application proposes a gross floor area (GFA) of 651m², which equates to a FSR of 1.27:1. This is the existing FSR and is not being changed as the development involves use of the existing GFA.

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

The proposal exceeds the maximum FSR development standard of 1:1 by approximately 27% (139m²). This is the existing non-compliance and is not being changed as the development involves use of the existing GFA.

3.0 Assessment of the Proposed Variation**3.1 Overview**

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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."*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- "(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."*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- "(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."*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- "(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*
- (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."*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ("Four2Five No 1");*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ("Four2Five No 2");*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ("Four2Five No 3");*
- *Micaul Holdings Pty Limited v Randwick City Council (2015) NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;*
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61; and*
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.*

3.2 *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

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3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the FSR standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The application is for a change of use to an existing building making no changes to the GFA and FSR of the building;
- Strict numerical compliance would require partial demolition of an existing building in a conservation area; and
- No work is proposed altering the exiting GFA of the building.

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Not relevant to be demonstrated.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

It is not contended that the standard has been abandoned by Council

3.2.4 Is the zoning of the land unreasonable or inappropriate?

The zoning is reasonable and appropriate.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

No environmental planning ground would be served by requiring strict numerical compliance. Strict numerical compliance would thwart the use of the building for commercial purposes for which the land it occupies is zoned.

Environmental planning grounds to support the continued non-compliance include:

- The existing building will be occupied for a commercial use
- The use provides employment opportunities and services to the local community
- The height bulk and contribution of the building in the conservation area is unaltered as a result of the proposed use.

3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

3.4.1 Objectives of the FSR standard

The proposal remains consistent with the objectives of the FSR standard outlined in Clause 4.3 despite the non-compliance, as demonstrated below:

- “(a) to ensure that residential accommodation—*
- (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) provides a suitable balance between landscaped areas and the built form, and*

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

No residential accommodation as part of the proposed use as a recreation facility (indoor). As the objective relates to residential accommodation it is not relevant in the circumstance.

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

The non-residential development is compatible with the existing and future character of the area as this will remain unchanged. The application is for a land use change that does not alter the existing configuration of the building and its relationship to surrounding existing development.

3.4.2 Objectives of the zone

The objectives of the B2 Local Centre zone are addressed as follows:

Objective	Comment
<i>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.</i>	The proposal is to operate a women’s health and fitness studio providing a safe and non-judgemental environment. The use provides this and allied services to the women of the community and those who may visit the area due to its good access to regular public transport.
<i>To encourage employment opportunities in accessible locations.</i>	The proposal will provide direct and indirect employment opportunities in a site well served by public transport.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposal is a health and fitness use intended to service the surrounding residential population and those who may break up a public transport commute to utilise the facilities to be offered.
<i>To ensure that development is appropriately designed to minimise amenity impacts.</i>	All activities are indoor and quieter uses such as the yoga and Pilates studios located in the mezzanine area adjacent to the western boundary of the premises.
<i>To allow appropriate residential uses to support the vitality of local centres.</i>	No residential use is proposed.
<i>To ensure that uses support the viability of local centres.</i>	The premises will continue the use and occupation of commercial premises and potentially support other service uses in the vicinity.
<i>To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.</i>	The proposed use supports the function of the centre and will not detract from the function. The proposed use provides activity in the area for uses other than licensed premises adding to the vibrancy and diversity of uses in the area.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations.</i>	The location is suitable and accessible for the proposed use.

3.5 **Whether contravention of the development stand raises any matter of significance for the State or regional environmental planning?**

The contravention of the development standard does not raise any matter of State or Regional significance.

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3.6 *Is there public benefit in maintaining the development standard?*

In general there is a public benefit in maintaining development standards. However specific circumstances must also be considered. In the circumstance of the case the application proposes the use of an existing building with an existing non-compliance. The public benefit of maintaining a development standard is not undermined as it will facilitate the use and occupation of an existing building zoned for non-residential commercial enterprises to be carried out.

3.7 *Is the objection well founded?*

The objection is considered to be well founded and has addressed the statutory requirements of clause 4.6.

4.0 **Conclusion**

The non-compliance exists and is not proposed to be altered as a result of the land use application.

The support of the variation request is appropriate in the circumstance and should be supported.