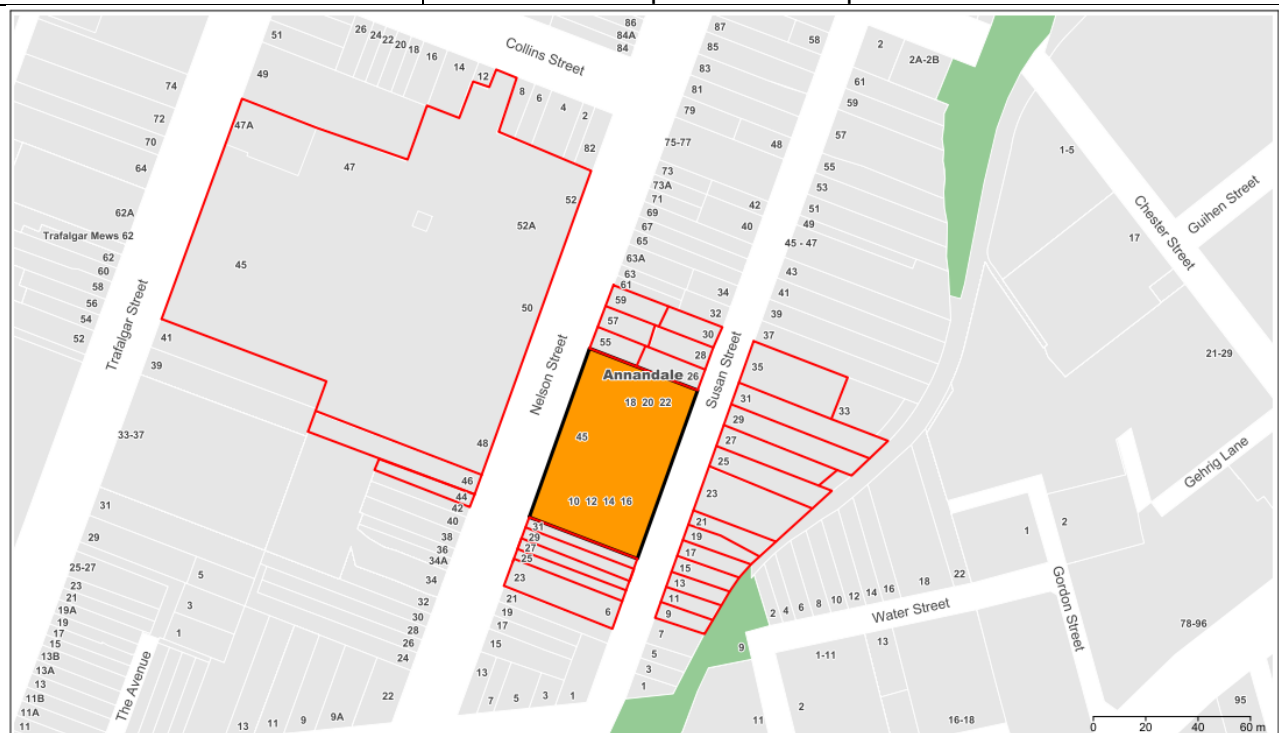


# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2021/0366
<b>Address</b>	G 12/45 Nelson Street ANNANDALE NSW 2038
<b>Proposal</b>	Conversion of Storage Area to Business Premises and Partial Fit-out for Shop 2
<b>Date of Lodgement</b>	11 May 2021
<b>Applicant</b>	NSW Town Planning Pty Ltd
<b>Owner</b>	James Rose Holdings Pty Ltd
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$13,200.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%
<b>Main Issues</b>	Floor Space Ratio
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards



DISCLAIMER: This map has been compiled from various sources and the publisher and/or contributors accept no responsibility for any injury, loss or damage arising from its use or errors or omissions therein. While all care is taken to ensure a high degree of accuracy users are invited to notify any map discrepancies.



**INNER WEST COUNCIL**

Created on 8/12/2021  
Map Scale: 1:1500

### LOCALITY MAP

Subject Site		Objectors	
Notified Area		Supporters	

## 1. Executive Summary

This report is an assessment of the application submitted to Council for the conversion of a storage area to be used as part of the business premises and partial fit-out of Shop 2 at G 12/45 Nelson Street, Annadale.

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

The main issues that have arisen from the application include:

- Floor Space Ratio variation exceeds 10%

The non-compliance is acceptable given that the proposed increase in FSR will have no significant adverse amenity impacts to adjoining properties/premises or impacts on the public domain, and therefore the application is recommended for approval.

## 2. Proposal

The application seeks consent to extend the approved creative office space/sound studio use that applies to the ground floor premises known as Shop 2, 45 Nelson Street, Annandale (consent granted by complying development certificate CDCP/2021/0168 and CDCP/2021/0253) to the lower ground floor portion of this tenancy which is currently a storage space. Partial fit out of the lower ground floor level is also included as part of the proposal to accommodate a kitchenette.

The expanded use being applied for includes audio post-production work such as voice recording and is intended to operate 9:00am – 6:00pm, Monday to Friday with up to 4 staff on site at any one time.

The use involves no loading/unloading of goods or major equipment during operation.

No external works or changes to the existing building envelope or footprint are proposed.

## 3. Site Description

The subject site is located on the eastern side of Nelson Street, between Albion Street and Chester Street. The site consists of one (1) allotment and is generally rectangular shaped with a total area of 2426sqm and is legally described as Lot 30 in Strata Plan 99302.

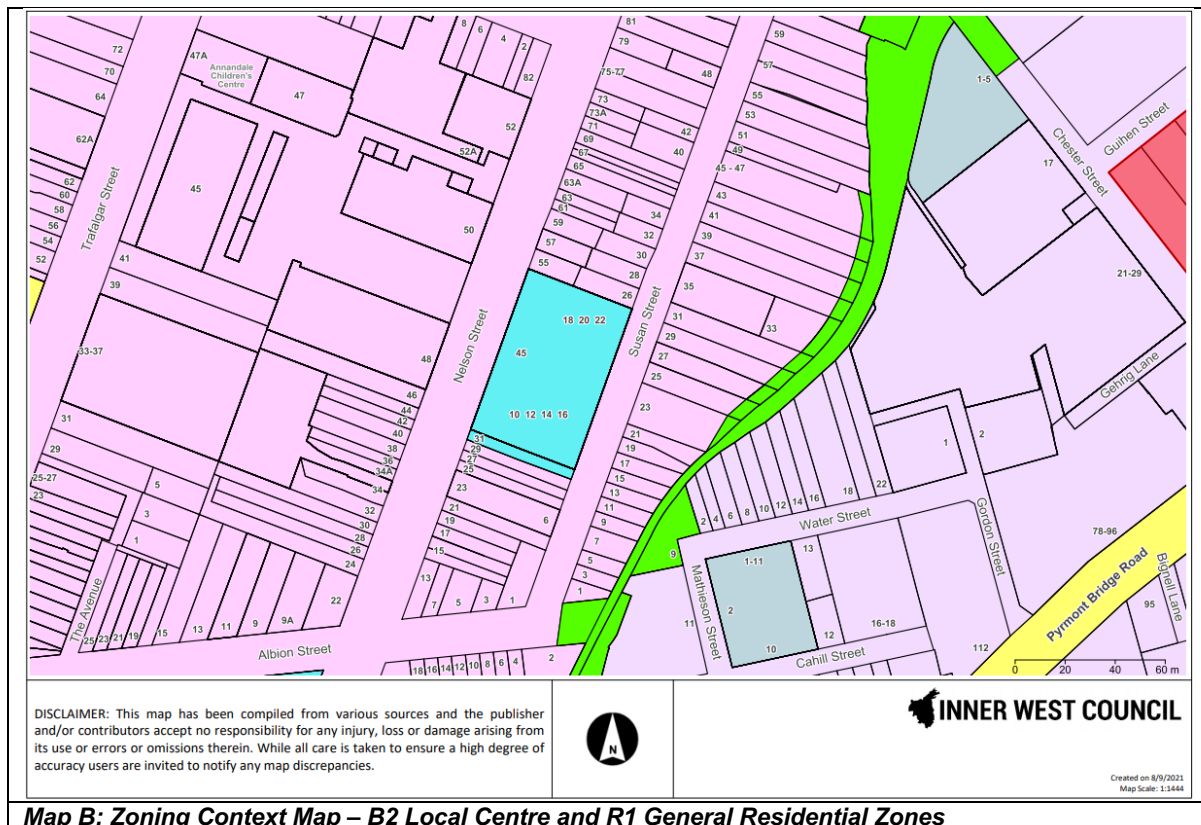
The site has a frontage to Nelson Street of 61 metres, a secondary frontage of 61 metres to Susan Street and a depth of 39 metres.

The subject tenancy has a total floor area of 117.2sqm, with 58.1sqm on the ground floor and 59.1sqm on the lower ground floor.

The site supports a three-storey mixed use building with basement car park, two shops, and 28 residential dwellings as approved under development application - D/2016/109.

The adjoining properties consist of single and two storey residential dwellings with the exception of the residential conversion of the Piano Factory to the west which is four storeys.

The subject site is not a heritage item, however is located within a Heritage Conservation Area. The site is not identified as a flood control lot.



**Map B: Zoning Context Map – B2 Local Centre and R1 General Residential Zones**

## 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
CDCP/2021/0253	Modified Complying Development Certificate - Private Certifier. Change of use to Creative Office Space / Sound Studio, along with associated fit out works, to Ground Floor, along with partition installation to existing basement storage to Lower Ground Floor.	Approved - 28/05/2021
CDCP/2021/0168	Complying Development Certificate - Private Certifier (Default category). Change of use to Creative Office Space / Sound Studio, along with associated fit out works, to Ground Floor, along with partition installation to existing basement storage to Lower Ground Floor	Approved - 15/04/2021

M/2018/25	Modification of Development Consent D/2016/109 seeking to modify Condition 74 to correctly reflect car parking rates due to amendment of commercial floor space as approved under M/2017/95.	Approved - 06/03/2018
M/2017/95	Application to modify D/2016/109 to modify roof height, setbacks, parking access and reconfigure: basement layout, apartment layouts (including balconies and private open space), multi-dwelling housing layouts and shops.	Approved - 21/12/2017
PREDA/2017/36	S96 to DA No. 2016/109 to reconfigure the basement layout and the apartment layouts	Advice Issued - 08/05/2017
D/2016/109	Demolition of existing building and remediation, construction of mixed use building with basement car park for 36 vehicles, two shops, and 28 Residential dwellings and tree removal.	Approved - 11/10/2016 - Local Planning Panel

### Surrounding properties

G0 3/45 Nelson Street ANNANDALE NSW 2038

Application	Proposal	Decision & Date
CDCP/2020/0258	Complying Development Certificate - Private Certifier (Default category). Commercial fit out and first use as an office.	Approved - 15/10/2020

### 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*.

### 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*

The following provides further discussion of the relevant issues:

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

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

The site has been used in the past for activities which could have potentially contaminated the site. However, the site does not require remediation as remediation was undertaken in accordance with *SEPP 55* as part of D/2016/109.

Overall, the proposal is considered acceptable with regard to compliance with the requirements of *SEPP55*.

5(a)(ii) Leichhardt Local Environment Plan 2013 (LLEP 2013)

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards

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

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

- Business premises** means a building or place at or on which—
- a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
  - b) a service is provided directly to members of the public on a regular basis,

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

(ii) Clause 4.4 - Floor Space Ratio

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

Standard	Existing	Proposed	Non-compliance	Complies
<b>Floor Space Ratio (FSR)</b> Maximum permissible: 1:1 or 2426sqm	1.32:1 or 3203sqm	1.34:1 or 3262.1sqm	34.46% or 836.1sqm	No

Having regard to the above, the existing development does not comply with the FSR development standard and the proposal to utilise 59.1sqm of area previously dedicated as storage space further increases the non-compliance.

(iii) 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 application seeks a variation to the Floor Space Ratio Development Standard under Clause 4.4 of the LLEP 2013 by 34.46% or 836.1sqm.

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 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 LLEP 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

- the variation is a minor change to the already non-compliant floor space ratio approved for the Site, and will have no greater impact than the floor space already approved;
- the variation to the standard exists as a result of change of use of an existing structure only, with no bulk and scale impacts to occur;
- the objectives of the floor space ratio standard as well as the B2 zone are achieved;
- no adverse impact that the development standard seeks to avoid is created by the development;
- the other planning controls anticipate the creative use of structures and include provisions to encourage such uses where they do not result in an adverse amenity outcome;
- no impact on the heritage significance of the locality is created by the variation

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

It is considered the development is in the public interest because it is consistent with the objectives of the B2 – Local Centre, in accordance with Clause 4.6(4)(a)(ii) of LLEP 2013 for the following reasons:

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

- *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 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.*

Having regard to these objectives, the following is noted:

- The proposal provides for a business use in an accessible location,

- The proposal provides employment in a creative industry that is compatible with other uses on and surrounding the site,
- The proposal does not result in adverse amenity impacts to adjoining premises or residential dwellings within the subject site or adjoining sites, and
- The proposal supports the site’s function and role as a local centre.

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 LLEP 2013 for the following reasons:

The objectives of the Clause 4.4 – Floor Space Ratio are as follows:

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

Having regard to these objectives, the following is noted:

- The proposed development does not result in any additional bulk and is contained entirely with the existing built form
- The proposed development and use of the site is compatible with the adjoining premises within the site as well as adjoining sites.
- The proposal does not result in any adverse amenity impacts.
- The development is consistent with the desired future character of the area.

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 LLEP 2013. 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.

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 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
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A

B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
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
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.1.6 Nelson Street Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	N/A
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	N/A
C4.5 Interface Amenity	Yes
C4.6 Shopfronts	N/A
C4.7 Bulky Goods Premises	N/A
C4.8 Child Care Centres	N/A
C4.9 Home Based Business	N/A
C4.10 Industrial Development	N/A
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	Yes – see discussion
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	N/A
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
<b>Part F: Food</b>	
<b>Part G: Site Specific Controls</b>	
	N/A

The following provides discussion of the relevant issues:

**C1.11 - Parking**

The following parking rates are applicable to the proposal:

- Minimum: 1 space per 100sqm
- Maximum: 1 space per 60sqm

A total of 11 commercial parking spaces are allocated to the 523.6sqm of commercial floor space approved under D/2016/109 which is the equivalent of 1 space per 47.6sqm. The proposal involves increasing the floor area of shop 2 to include an existing storage area and by doing so would result in an additional 59.1sqm of commercial floor space and change the overall parking rate to 1 space per 53sqm.

Given the original development approved an allocation of commercial parking spaces in excess of the parking requirements of this Clause (1 space per 47.6sqm), the proposed parking rate of 1 space per 53sqm is considered acceptable and the development achieves compliance with the objectives and controls of this Clause.

**C4.21 - Creative Industries**

The existing commercial premises known as Shop 2 is located within a mixed use building and has a primary shopfront on the ground floor and a storage area on the lower ground floor. Both ground floor and lower ground floor components of the premises are adjacent to a public corridor area and residential units (refer to image 1 and image 2).

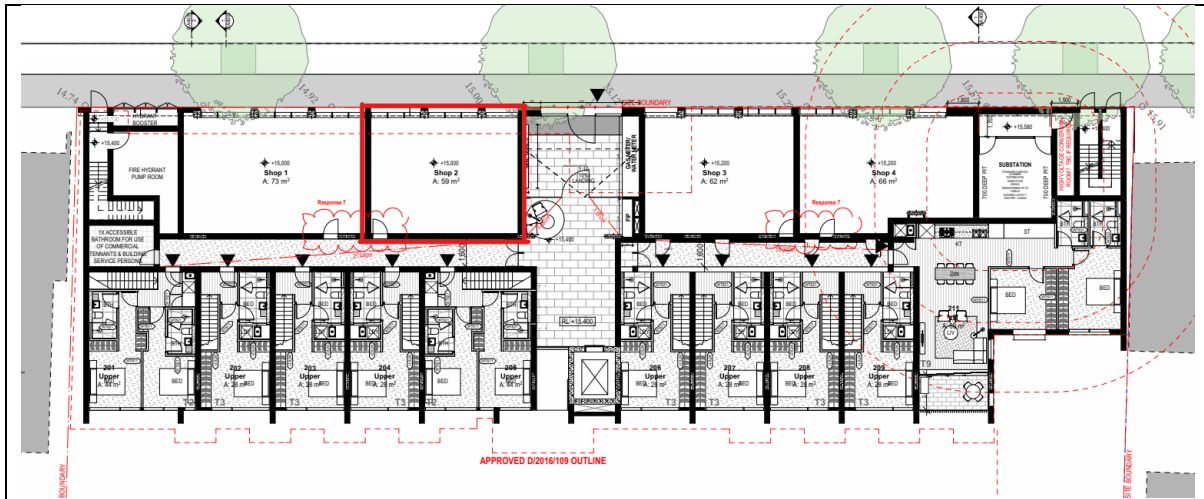


Image 1: Existing ground floor plan showing location of Shop 2 (bordered red)

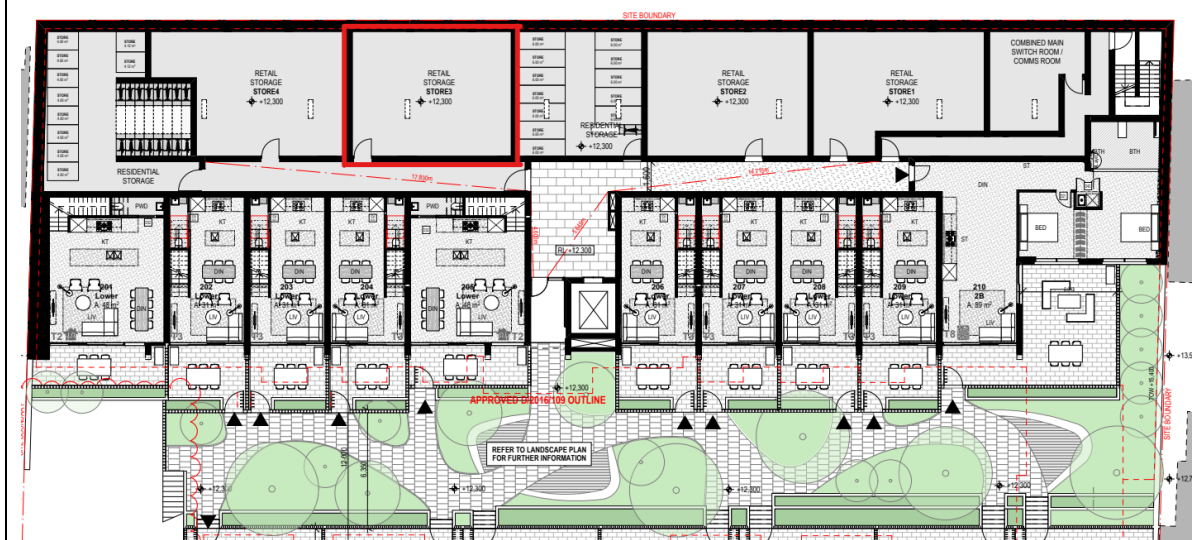


Image 2: Existing lower ground floor plan showing location of storage area associated with Shop 2 (bordered red)

The proposed change of use of the lower ground storage area associated with Shop 2 to be used as a creative industry as an audio editing studio is generally consistent with the objectives and controls of this Section for the reasons outlined below:

- The combined gross floor area of the premises is below 300sqm.
- The lower ground floor storage area is wholly contained within the existing building and as such, will have no streetscape or bulk and scale impacts.
- The application was accompanied by an Acoustic Report prepared by *Koikas Acoustic*. Acoustic Testing was conducted to determine potential noise mitigation strategies to reduce breakout noise from the proposed new use of the space to surrounding nearby residents. The conclusions and recommended methods of sound attenuation contained in this report are considered to be well founded with regard to insulation, partitioning and treatment of door systems.

To ensure that the ongoing use of the premises as an audio studio maintains adequate acoustic amenity outcomes for surrounding residential dwellings and commercial premises, conditions of consent are included in the recommendation requiring that testing be carried out in the first 60 days of operation to ensure measures recommended by the acoustic report are sufficient to mitigate any acoustic impacts to adjoining residential development, and

where/if identified as deficient, rectification measures to mitigate any further impacts are to be implemented.

Overall, it is considered that the proposed use of the storage area will not generate noise impacts which would adversely affect the amenity of neighbouring residential dwellings or common areas. Therefore, the proposed hours of operation being 9:00am – 6:00pm, Monday to Friday are supported and the proposal satisfies the objectives and controls of this Section.

#### 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 Councils Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

#### 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:

- Building Certification - No objections to proposal, subject to Annual Fire Safety conditions being imposed as a requirement of any future Occupation Certificate.

#### 6(b) External

The application was not required to be referred externally.

## 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 has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- 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/2021/0366 for the conversion of a storage area to be used as part of the business premises and partial fit-out of Shop 2 at G 12/45 Nelson 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
AD2-01 Rev A	Lower Ground Floor Plan	11.01.21	This Office Design
AD2-00 Rev B	Ground Floor Plan	11.01.21	This Office Design
4583R20210212pdS2N45NelsonStAnnandale_CC	Acoustic Report	10.03.21	Koikas Acoustics
AD9-00 Rev A	Joinery Details 1	19.01.21	This Office Design
AD9-01	Joinery Details 2	19.01.21	This Office Design

As amended by the conditions of consent.

**GENERAL CONDITIONS**

**2. 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.

### **3. Works Outside the Property Boundary**

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

### **4. Noise – Consultant’s Recommendations**

The recommendations contained in the acoustic report prepared by *Koikas Acoustic*, reference 4583R20210212pdS2N45NelsonStAnnandale\_CC, dated 10 March 2021 must be implemented.

### **PRIOR TO ANY DEMOLITION**

#### **5. 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**

#### **6. 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*

### **DURING DEMOLITION AND CONSTRUCTION**

#### **7. 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**

##### **8. 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**

**9. Hours of Operation**

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

Day	Hours
Monday to Friday	9:00am - 6:00pm
Saturday and Sunday	No trading

**10. Noise – Acoustic Report**

During the first sixty (60) days of operation at the premises, the following acoustic measures must be undertaken:

- a. A suitably qualified acoustic consultant must be appointed to:
  - i. measure and verify the noise emanating from the premises; and
  - ii. if necessary, make recommendations to ensure that the noise emanating from the premises complies with the noise criteria.
- b. The noise measurements must be:
  - i. undertaken without the knowledge of the applicant, manager or operator of the premises;
  - ii. taken on at least three (3) different occasions on three (3) different days of the week (excluding Monday, Tuesday and Wednesday) from 11pm until the end of the public entertainment or close of business, whichever occurs first, and
  - iii. Submitted to the Certifying Authority within four (4) weeks of testing.
- c. If the acoustic consultant recommends that additional treatment or works be undertaken those recommendations must be:
  - i. submitted to Certifying Authority with the noise measurements;
  - ii. implemented to the acoustic consultant's satisfaction before the end of the first sixty (60) days of operation at the premises; and
  - iii. If the acoustic consultant's recommendations are not implemented in accordance with this condition, the operation of the premises must cease until such time as the recommendations are implemented and verified.

**11. Noise General**

The proposed use of the premises and the operation of all equipment must not give rise to the transmission of a vibration nuisance or damage other premises and 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.

### **ADVISORY NOTES**

#### **Prescribed Conditions**

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

#### **Notification of commencement of works**

At least 7 days before any demolition work commences:

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

#### **Storage of Materials on public property**

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

#### **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.

**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.

**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 Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Dial before you dig**

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

**Useful Contacts**

BASIX Information    1300 650 908 weekdays 2:00pm - 5:00pm  
[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading                            13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig	1100	<a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - Environmental Solutions	SITA 1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.



INNER WEST COUNCIL  
 DEVELOPMENT CONSENT  
 S99 APPLICATION  
 Date: 21/03/2017  
 Reference Number: M/2017/95



M/2017/95 - Stamped Lower Ground Floor  
 Plan showing location of Shop 2 Storage Area

**PRELIMINARY -  
 FOR REVIEW**

Project Name: Shop 2 Storage Area  
 Project Address: 111-113 Macquarie Street, Sydney NSW 2000  
 Project Number: M/2017/95  
 Drawing Number: 1A.2.002  
 Date: 21/03/2017



DKO ARCHITECTURE  
 111-113 Macquarie Street, Sydney NSW 2000  
 Phone: (02) 9231 1111  
 Email: info@dko.com.au  
 Website: www.dko.com.au

Scale: 1:100  
 Date: 21/03/2017  
 Drawing Number: 1A.2.002

Author: [Name]  
 Designer: [Name]  
 Checker: [Name]  
 Approver: [Name]

Client: [Name]  
 Project: [Name]

Site: [Name]  
 Address: [Name]

Project: [Name]  
 Drawing: [Name]

Scale: [Name]  
 Date: [Name]

Author: [Name]  
 Designer: [Name]  
 Checker: [Name]  
 Approver: [Name]



INNER WEST COUNCIL  
 DEVELOPMENT CONSENT  
 S96 APPLICATION  
 Date: 21/12/2017  
 Reference Number: M/2017/95

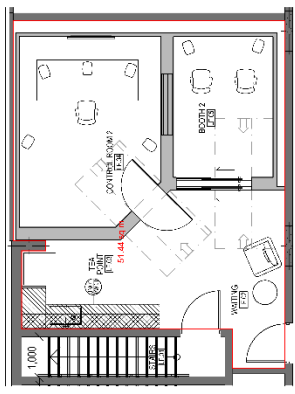
M/2017/95 - Stamped Ground Floor Plan showing location of Shop 2

MKS: MKS  
 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



PARTITION LEGEND	
ROOM NAME	SYMBOL
TOILET	
77.00-82.04	
77.00-82.04	
77.00-82.04	
77.00-82.04	
77.00-82.04	
77.00-82.04	
77.00-82.04	
77.00-82.04	

- NOTES:**
1. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  2. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  3. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  4. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  5. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  6. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  7. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  8. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  9. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
  10. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.



① LOWER GROUND FLOOR  
NOT TO SCALE

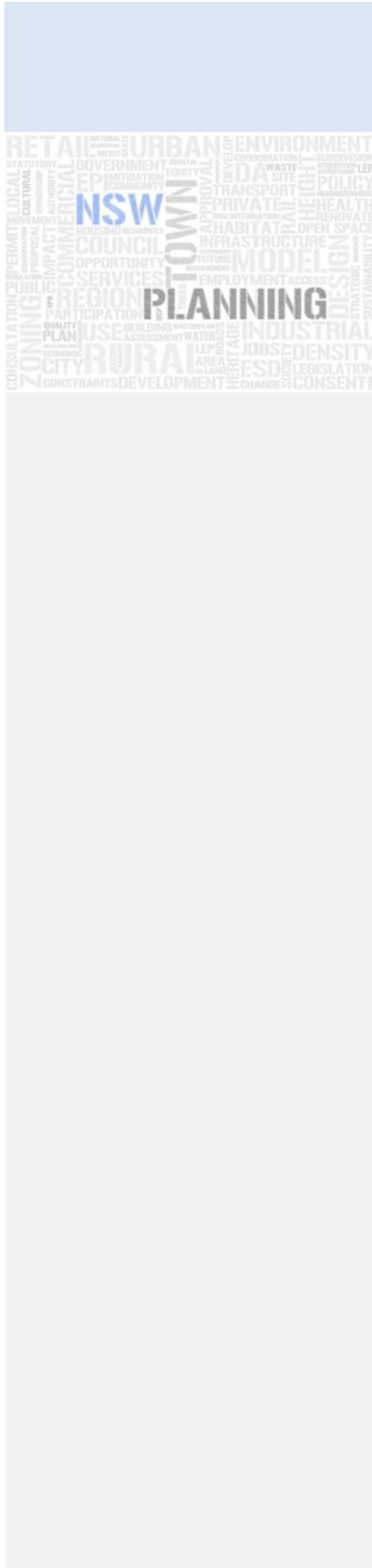
		<p>Scale: 1:100</p>		<p>Client Name: MATT PERCOTT SUITE 2 45 NELSON STREET ANNANDALE NSW</p>	<p>Project Name: TOD-00125-DA</p>	<p>Drawn By: 11/18/21</p>	<p>Scale: 1:100</p>	<p>Sheet No: 244</p>	<p>Revision No: 1 of 21</p>
<p><b>PARTITION PLAN</b></p> <p><b>LOWER GROUND FLOOR</b></p> <p> <input type="checkbox"/> TOILET    <input type="checkbox"/> PERSONAL    <input type="checkbox"/> HALLWAY  <input type="checkbox"/> WAITING    <input type="checkbox"/> OFFICE    <input type="checkbox"/> COMMUNICATION                 </p>									
<p>PROJECT NO: <b>AD2-01</b></p>									







Attachment C- Clause 4.6 Exception to Development Standards



# Clause 4.6 Variation

Floor Space Ratio

Conversion of Storage Area to Business  
Premises and Partial Fit-out

Part Shop 2 (Lower Ground Floor)  
45 Nelson Street  
Annandale

{Lot 30 Strata Plan 99302}

Prepared by NSW Town Planning  
March 2021  
Ref | FSR\_Variation.docx

**Document Control Table**

<b>Document Reference:</b>	FSR Variation.docx	
<b>Date</b>	<b>Version</b>	<b>Author</b>
17 March 2021	1	N. Murray
07 May 2021	2	N. Murray

© 2021 NSW Town Planning

This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorized reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from NSW Town Planning.

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

**1. Introduction**

This variation request is made pursuant to Clause 4.6 *Leichhardt Local Environmental Plan 2013* and has been prepared in relation to the resulting floor space ratio that will occur from the proposed conversion of storage space to business premises at the lower ground floor or Shop 2 at 45 Nelson Street, Annandale.

Clause 4.6 exists to provide a degree of flexibility to the consent authority in determining whether a variation to a development standard contained within the LEP should be supported.

The objectives of Clause 4.6 are:

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

Clause 4.6(3) provides for consent to be granted for development even though the development would contravene a development standard where it is demonstrated:

- (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.*

And under subclause (4), where:

- (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 Director-General has been obtained.*

In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

This Objection demonstrates why strict compliance with the development standard for distribution of floor space ratio is both unreasonable and unnecessary in creating an appropriate development for the subject development.

This statement has been prepared in accordance with the *'Department of Planning & Environment's Guideline for Varying Development Standards: A Guide'* (August 2011) and *'Planning Circular PS-18-003: Variations to development standards'* (Issued 21 February 2018), and has ensured consistency with the relevant principles identified in the following Land and Environment Court judgements:

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827 ('Wehbe')
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
4. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

6. *Moskovich v Waverley Council* [2016] NSWLEC 1015
7. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action')

Chief Justice Preston in *Initial Action* outlined that Clause 4.6(4) establishes the preconditions that a Consent Authority must be satisfied before it can grant a variation to a development standard. This statement has sought to address those preconditions which have been listed below:

1. (a) *addresses why compliance with the development standard is unreasonable or unnecessary in the circumstances; and*
2. (b) *provides sufficient environmental planning grounds to justify contravening the development standard; and*
3. (c) *identifies that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone.*

It is relevant to note that Initial Action also establishes that:

- *in determining whether compliance with the development standard is unreasonable or unnecessary, the consent authority needs to ask itself if the applicants written submission has adequately addressed this matter, not that they themselves considers the compliance unreasonable or unnecessary.*
- *clause 4.6 does not directly or indirectly establish that a neutral or beneficial effect be realised by the proposal variation.*
- *clause 4.6(3)(b) required that there be "sufficient environmental planning grounds to justify contravening the development standard" and the words "better environmental outcome" came from the objectives of clause 4.6. as there is no provision to require compliance with those objectives, the belief that the outcome be a better outcome both for and by development is not a relevant matter for consideration.*



Clause 4.6 Variation

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

## 2. Development Standard to Which this Variation Applies

The Clause 4.6 Variation applies to Clause 4.4(2) of *Leichhardt Local Environmental Plan 2013* which sets a maximum floor space ratio for land as indicated on the Floor Space Ratio Map. For the purposes of this application, the relevant map sheet is Sheet 009, which prescribed a maximum floor space ratio (FSR) of 1:1 for the site (extract reproduced as Figure 1).

It is noted that Clause 4.4A then provides an FSR incentive of 1.5:1, to encourage mixed use developments in the B1 and B2 zones and labelled Area 1 on the Floor Space Ratio Map. The subject site is located within the B2 zone and thus is entitled to the incentive. However, this incentive is only applicable where the following criteria can be met:

- (3) *Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is 1.5:1 if the consent authority is satisfied that:*
  - (a) *the building will have an active street frontage, and*
  - (b) *the building comprises mixed use development, including residential accommodation, and*
  - (c) *the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.*
- (4) *Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:*
  - (a) *entrances and lobbies (including as part of mixed use development),*
  - (b) *access for fire services,*
  - (c) *vehicular access.*
- (5) *in this clause, a building has an active street frontage if all floor space on the ground floor of the building facing the street is used for a purpose other than residential accommodation.*

The Site is identified as being within Area 1; however, due to ground floor development fronting Susan Street being residential, the Site was approved on the basis that the proposal did not satisfy the bonus provisions of Clause 4.4A.

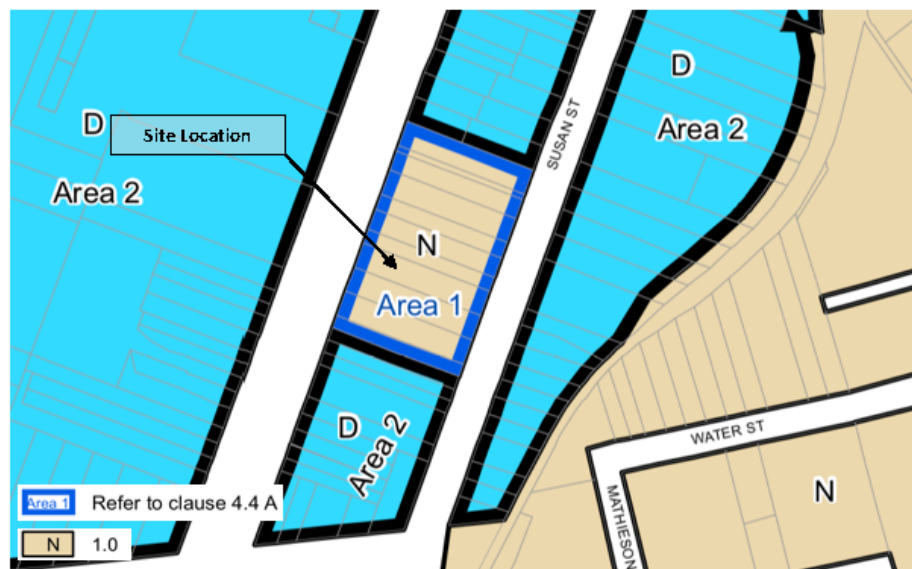


Figure 1. Leichhardt Local Environmental Plan 2013 FSR Map (Source: Leichhardt Council, 2013)

\*Lots shown prior to consolidation in the current strata plan

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

**3. Variation to the Standard**

The proposal departs from the development standard as it seeks approval for the expansion of a creative business use into an area of the existing building that is currently approved as storage, and was excluded from the calculation of gross floor area.

The proposed floor space ratio will be 1.34:1 (being an increase of 59.1sqm from the current non-compliant floor space ratio of 1.32:1).

**4. Objectives of the Standard**

The objectives for the floor space ratio controls under *Leichhardt Local Environmental Plan 2013* are:

- (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 objectives as there is no changes to any built form that would result in any change to character of the area in terms of bulk, scale and form.

The development also maintains the approved provision of open space/landscaping.

The creative use of the space for post-production recording is compatible with the locality, and is supported by an acoustic report indicating no amenity impacts resulting from noise.

**5. Objectives of the Zone**

The Site is zoned B2 Local Centre. The objectives of Zone B2 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 zone objectives in that it:

- provides for a business use in an accessible location,
- provides employment in a creative industry that is compatible with other uses on and surrounding the Site,
- avoids all amenity impacts, and
- supports the site's function and role as a local centre.

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

## 6. Whether the Development Standard is Unreasonable or Unnecessary

As outlined earlier in this statement, Initial Action Preston CJ establishes that in assessing whether compliance with a development standard is unreasonable or unnecessary, the consent authority needs to specifically assess if the applicants written submission has adequately addressed this matter, not that they themselves consider the compliance unreasonable or unnecessary.

*Wehbe* asserts that compliance with a development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- *“the objectives of the development standard are achieved notwithstanding non-compliance with the standard*
- *the underlying objective or purpose is not relevant to the development*
- *the underlying objective or purpose would be thwarted if compliance with the standard was required*
- *the development standard has been virtually abandoned or destroyed by the Council’s decisions in granting development consents that depart from the standard*
- *the Zoning of the land is unreasonable or inappropriate (though this limb is limited) some other way”.*

The proposal does not involve any building work that enlarges the building footprint bulk or scale, and seeks the adaptive reuse of an area that is used as storage, in support of the use that has been established for the ground floor part of the same tenancy.

The site was approved with a floor space ratio of 1.32:1 in recognition of the fact that there was no adverse outcome by exceeding the base FSR of 1:1. The only reason the Site was not able to achieve 1.5:1 without reliance on clause 4.6 was due to the fact that it has a dual street frontage, and only the Nelson Street elevation satisfied the ground active frontage requirement. The Susan Street was regarded as having a very different character and thus not provided with commercial frontage.

It is clear that the Site was capable of accommodating a higher floor space ratio, however, did not achieve so based on a technicality regarding active street frontage.

The total “new” gross floor area is only 59.1sqm and is completely contained within the existing building. The floor area represents a minor proportion of the total site area and is completely reversible in the future should its use no longer be required.

All other controls that apply to the development are satisfied by the proposal.

The objectives of the floor space ratio control are also satisfied.

In this circumstance, compliance with the development standard would be unreasonable and unnecessary given that the floor area in question already exists, and will simply be more efficiently used for creative purposes as is supported under Part C4.21 of the Leichhardt Development Control Plan.

The change of use of this space does not result in any potential impacts that the controls in place seek to avoid such as bulk and scale impacts on the streetscape or neighbouring properties.

There is no greater impact to occur from the use and development of the Site by the proposal in comparison to the existing arrangement.

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

## 7. Environmental Planning Grounds to Justify Contravening the Development Standard

Initial Action lays out a framework to demonstrate that there are 'sufficient' environmental planning grounds to justify contravening the development standard as:

- *"environmental planning grounds" by their nature, being grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (including section 1.3 of the EPA Act); and*
- *"sufficient" in that they are adequate to:*
  - *justify contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.*
  - *demonstrate that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter.*

The variation to the development standard to the floor space ratio control is considered justified in this instance as:

- the variation is a minor change to the already non-compliant floor space ratio approved for the Site, and will have no greater impact than the floor space already approved;
- the variation to the standard exists as a result of change of use of an existing structure only, with no bulk and scale impacts to occur;
- the objectives of the floor space ratio standard as well as the B2 zone are achieved;
- no adverse impact that the development standard seeks to avoid is created by the development;
- the other planning controls anticipate the creative use of structures and include provisions to encourage such uses where they do not result in an adverse amenity outcome;
- no impact in the heritage significance of the locality is created by the variation; and
- the proposal enables living in a logical location in which residential development is encouraged.

It is emphasised that *Initial Action* confirms that there is no requirement to demonstrate a neutral or beneficial outcome; however, this outcome is achieved nonetheless.

## 8. The Public Interest

The proposal variation is not inconsistent with the public interest as the overarching intent of the floor space ratio control will be achieved by the development.

No discernible changes will be experienced by the public given the floor space already exists and all works are contained within the existing built form.

## 9. Other Matters of State or Regional Significance

No other matters of relevance apply to preclude the variation from being granted.

**Clause 4.6 Variation**

[Change of Use and Partial Fit-Out](#) | Part Shop 2, Lower Ground Floor, 45 Nelson Street, Annandale

---

**10. Conclusion**

It is considered that the proposed variation has satisfied the criteria established under Clause 4.6 of *Leichhardt Local Environmental Plan 2013*.

Strict compliance with the floor space ratio controls under Clause 4.4(2) of that instrument is neither reasonable nor necessary to achieve the intended outcomes.

There are sufficient environmental planning grounds to justify contravening the development standard.

No unreasonable environmental impacts are introduced as a result of the proposal.

There is no public or material benefit in maintaining strict compliance with the standard.

It is requested that favourable consideration to the variation is provided.