





INNER WEST

DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	DA/2024/0519
Address	233 Catherine Street LEICHHARDT
Proposal	Construction of a mezzanine level, internal fit out works to Unit 1 of the existing light industrial building.
Date of Lodgement	25 June 2024
Applicant	The Trustee for TAP III Leichhardt Trust
Owner	Tap III Leichhardt Pty Ltd
Number of Submissions	Initial: 0
Cost of works	\$88,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	FSR variation
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for the construction of a mezzanine level and internal fit out works to Unit 1 of the existing light industrial building, at 233 Catherine Street Leichhardt.

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

The main issues that have arisen from the application is the non-compliance with the Floor Space Ratio (FSR) Development Standard prescribed by *Inner West Local Environmental Plan 2022*.

The non-compliance is considered acceptable given the proposal involves internal works within the previously approved building envelope. The proposed mezzanine level results in additional gross floor area which contributes to an increase in the variation with the FSR development standard. A Section 4.6 variation request has been submitted which is considered worthy of support. The application is recommended for approval subject to conditions.

2. Proposal

The proposed works are located in the portion of the building previously allocated to Units 1 and 2, as originally approved in the Complying Development Certificate - CDCP/2022/0159. Units 1 and 2 have been consolidated as part of the CDC and are now defined as Unit 1.

The proposal includes the construction of a mezzanine level, with an area of 150sqm, located within the internal space of Unit 1. Access to the proposed mezzanine level is provided from the ground level by an internal stairway located on the northern side of the industrial building.

There is no use proposed for the building.

3. Site Description

The subject site is located on the eastern side of Catherine Street, between Moore Street and Hill Street, Leichhardt. The site consists of one allotment and is generally rectangular with an additional irregular shaped component to the southeast corner. The site has a total area of 4,216 sqm and is legally described as Lot 1 in DP 1272898 (231-233 Catherine Street) and Lot 6 in DP 1266673 (50 Moore Street).

The site has a frontage to Catherine Street of 96.61 metres and while the site has no secondary street frontage, there is a frontage of approximately 52.90 metres to the private lane to the East.

The site supports a light industrial building which is currently under construction. The subject application is located within the Units originally approved as Units 1 and 2, now defined as Unit 1 in the light industrial building (by CDCP/2024/0160)

. There are a number of easements on the lane relating to access and services.

The adjoining properties support a mix of single and double storey commercial and industrial buildings. Single and double storey residential buildings are located on the opposite (western) side of Catherine Street.

The subject site is not listed as a heritage item and is not located within a conservation area, however it adjoins a *Heritage Item – Landscape* (Item i1088). The item is named *Street trees—row of Port Jackson Figs* which is located in the road reserve.

A row of Port Jackson Fig trees is located on the nature strip adjacent to the western boundary.

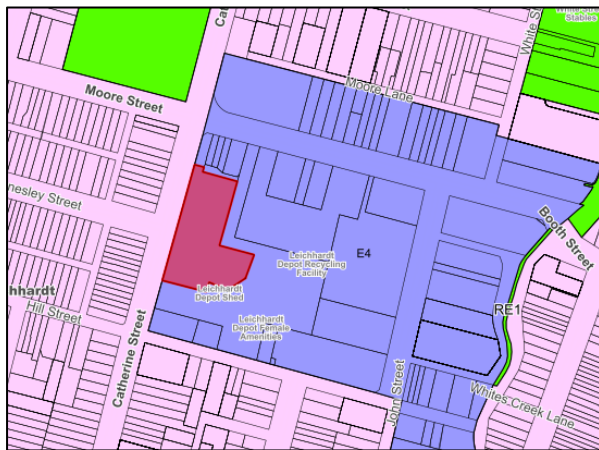


Figure 1: Zoning Map of the subject site - E4 General Industry (site highlighted red)

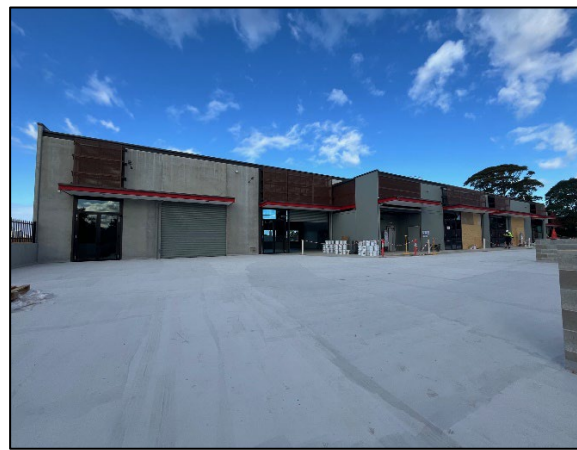


Figure 2: Photo of the overall development at 233 Catherine Street as viewed from vehicular entry



Figure 3: Photo of subject site - Unit 1 to left

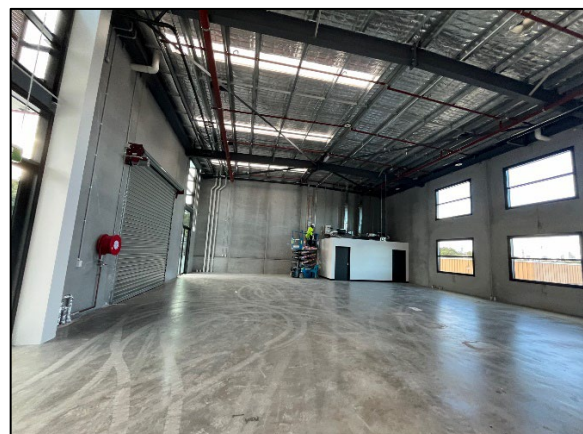


Figure 4: Internal photo of Unit 1 looking north

4. Background

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/2022/0159 233 Catherine Street, Leichhardt (CDC Certificate number – 210090-01)	Demolition of the existing warehouse development and construction of a new light industrial development	24 May 2022
CDCP/2022/0127 50 Moore Street, Leichhardt (CDC Certificate number – 220011-01)	Demolition of the existing industrial warehouse premises	28 April 2022
CDCP/2022/0366 233 Catherine Street, Leichhardt (CDC Certificate number – 210090-01/A)	Mod CDC1/A of 210090-01: Minor modifications to the approved design documentation including additional demolition, excavation and ancillary works (only); associated with the demolition of the existing warehouse development and construction of a new light industrial development	20 December 2022
DA/2023/0141 50 Moore Street and 233 Catherine Street Leichhardt	Consolidate the land at 50 Moore Street and 233 Catherine Street into a single Torrens title allotment, construct a new two-storey warehouse building at 50 Moore Street including a ground floor light industrial unit (Unit 8) and a first-floor light industrial unit, and make alterations to the approved light industrial units at 233 Catherine Street. Hours of operation are 7:00am to 7:00pm Monday to Saturday	25 October 2023
CDCP/2024/0160 233 Catherine Street, Leichhardt (CDC Certificate number – 210090-01/B)	Mod CDC1/B of 210090-01: Minor modifications to the approved design documentation including additional demolition, excavation and ancillary works (only); associated with the demolition of the existing warehouse development and construction of a new light industrial development	20 May 2024

DA/2023/1099	Construction of a mezzanine level, internal fit out works and change of use of Units 3 – 5 to a Veterinary Hospital. Operating hours are 8.00am - 6.00pm Mondays to Fridays and 8.00am - 2.00pm on Saturdays. Operating hours of emergency services are 24 hours a day, Mondays to Sundays.	18 June 2024
MOD/2024/0121	Section 4.55(2) modification to DA/2023/0141. Modification involves amendment to the location of the substation, modified drainage, fire egress, reconfiguration of amenities in units 6 and 8, and addition of ventilation louvres to units 6 and 8.	25 July 2024
MOD/2024/0249	Section 4.55(1a) Modification to DA/2023/1099 dated 18/06/2024, modification involves internal reconfiguration to the ground, void, and mezzanine levels, relocation of the roof access points and skylights, and installation of four (4) ventilation grills on the front facade, and associated works.	Under Assessment as of 12/9/2024

Note: For the purposes of this report, the original Complying Development Certificate - CDCP/2022/0159 will be referenced when referring to the approved light industrial building given the number of subsequent minor CDC modifications.

The proposal relies on the structure approved in CDC certificate number 210090-01/B as well as additional works and conditions of consent within DA/2023/0141. As such, if consent is granted for the subject application it is a recommended condition of consent that the final occupation certificate must be issued for CDC certificate number 210090-01/B and DA/2023/0141 before an occupation certificate of the subject application is issued.

Related Applications

Not applicable

Application history

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

Date	Discussion / Letter / Additional Information
25/06/2024	Application Lodged.
2/07/2024 - 16/07/2024	Application notified.
17/07/2024	Site Inspection.
11/09/2024	Council requested that an updated Section 4.6 Variation Request be submitted due to a minor difference in Council's calculation of the figure associated with the variation request.

12/09/2024	An updated 4.6 Variation Request and updated Statement of Environmental Effects were submitted to incorporate the minor adjustment to the figures in the Section 4.6 variation Request. The amended documents have been assessed in this report.
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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 (EP & A Act 1979)*.

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

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

As previously outlined, development was approved for the subject site under CDCP/2022/0159 and subsequently under DA/2023/0141. The approved light industrial building is currently under construction. The proposed works are located within the approved building and the proposal does not alter compliance with this part.

Notwithstanding, as noted in the Development Assessment Report for DA/2023/0141 there was evidence of contamination on the site. A DSI was prepared for DA/2023/0141 and a further letter submitted to clarify data gaps. Based on the report, the consent authority was satisfied that the land was suitable for the proposed use and that the land could be remediated.

The subject application does not specifically involve category 1 remediation under *SEPP (Resilience and Hazards) 2021* as remediation requirements were addressed as part of the assessment and associated conditions of consent for DA/2023/0141.

Inner West Local Environmental Plan 2022

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

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal satisfies the section as follows: <ul style="list-style-type: none"> The proposal facilitates economic growth and employment opportunities within Inner West. 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table E4 – General Industry Zone	<ul style="list-style-type: none"> The application proposes alterations and additions to a <i>light industrial</i> building. light industries means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following- <ul style="list-style-type: none"> (a) high technology industry, (b) home industry, (c) artisan food and drink industry, (d) creative industry. Note— Light industries are a type of <i>industry</i> Light industries uses are permissible with consent in the E4 zone. The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for a range of industrial, warehouse, logistics and related land uses. 	Yes

Part 4 – Principal development standards

Section	Proposed		Compliance
Section 4.4 Floor space ratio	Maximum	1.1:1 or 4,216sqm	No, refer to Section 4.6 discussion below.
	Proposed in subject application	1.24:1 or 5210.85sqm	
	Variation in subject application	994.85sqm or 24%	
	FSR approved in DA/2023/1099	1.2:1 or 5060.85sqm	
	Variation approved in DA/2023/1099	844.85sqm or 20%	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.4 <i>Floor Space Ratio</i> of the Inner West Local Environmental Plan 2022.		See discussion below

Section 4.6 – Exceptions to Development Standards

4.4 Floor space ratio development standard

The applicant seeks a variation to the above mentioned under section 4.6 of the *IWLEP 2022* by 994.85sqm or 24%. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

As outlined above, a variation of 844.85sqm or 20% was previously approved in DA/2023/1099. The proposal seeks to increase the variation by a further 150sqm or 4%.

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. 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 Section 4.6 of the *IWLEP 2022* below.

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described

in *Initial Action at [17]* is used, which is that the objectives of the Section 4.4 development standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.4** of the Inner West LEP 2022 is “(a) to establish a maximum floor space ratio to enable appropriate development density”. The written request states:

- *The proposed development will result in the addition of 150sqm of GFA, representing a minor increase to the approved development on the Subject Site.*
- *The proposed development will not result in any significant intensification of the use of the Subject Site that will have adverse amenity impacts on the surrounding development.*
- *The increased 150sqm of GFA will be used for light industrial purposes and it has been demonstrated throughout the SEE that the additional density will not result in any adverse impacts on the amenity of the area and nearby dwellings by way of traffic and parking impacts, acoustic privacy, visual privacy, bulk and scale, overshadowing, or the like.*

It is acknowledged that whilst the proposal breaches the maximum FSR prescribed, the 4% increase as a result of the proposal is considered to be minor and is located wholly within the existing building envelope thereby enabling an appropriate development density as envisioned by the objective. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.4** is “(b) to ensure development density reflects its locality”. The written request states:

- *The resultant density of the Subject Site is appropriate for the capacity of the locality in terms of infrastructure and services.*
- *The additional floor space does not cause any traffic or parking issues on the surrounding road network as it creates negligible additional traffic or truck movements.*
- *There are no changes to the approved building envelope and the additional GFA will not result in any material increase to the bulk and scale of the building and the building will remain consistent with the desired future character of the area.*

Having regard to the above, it is considered the proposed density does reflect the locality. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.4** is “(c) to provide an appropriate transition between development of different densities”. The written request states:

- *The subject Site has been configured with respect to the surrounding industrial and residential properties and the existing and desired character of the area through a sophisticated and modern industrial development. Furthermore, the proposed mezzanine is located entirely internal to the existing industrial unit.*
- *The proposed development would not cause any visual impact, view obstruction, privacy intrusion or loss of solar access to any adjoining development or the public domain.*

It is agreed that as the additional floor area is located wholly within the existing building envelope, there is no visual perception of the increased floor area and as the approved external built form remains unchanged, the proposal ensure an appropriate transition between development of different densities. Accordingly, the breach is consistent with the third objective.

The **fourth objective of Section 4.4** is “(d) to minimise adverse impacts on local amenity”. The written request states:

- *The proposed mezzanine is located entirely internal to the approved industrial unit and therefore would have no adverse impacts on the local amenity regarding visual impact, overshadowing, view obstruction, privacy intrusion or loss of solar access.*
- *The proposed additional GFA on the Subject Site is anticipated to result in negligible intensification of use on the Subject Site in regard to traffic and parking generation.*
- *As noted within the Traffic and Parking Impact Assessment, the Subject Site can accommodate the increased parking demand caused by the additional GFA.*
- *The Noise Impact Statement has adequately assessed any potential noise impacts on surrounding sensitive receivers. The statement concluded that the proposed operation is predicated to comply with the relevant noise emission criteria of Inner West Council, NSW guidelines and Australian Standards, following the incorporation of the recommendations outlined in the statement.*

Having regard to the traffic assessment and noise impact assessment, impacts as a result of operation are reduced, and it is noted that there are no physical impacts by way of visual appearance. Accordingly, the breach is consistent with the fourth objective.

The **fifth objective of Section 4.4** is “(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain”. The written request states:

- *The proposed development is entirely internal, within the approved industrial unit, and would have no impact on any tree canopy.*
- *Given the scale and internal nature of the proposal, the operations of all surrounding sites will not be impacted.*
- *The public domain will not be impacted as the proposed development is entirely internal to the approved industrial unit and there are negligible traffic, car parking and acoustic impacts.*

Notwithstanding the above, it is noted that this objective is not entirely relevant to the proposal. However the existing approval incorporates landscaping for the entire development and the proposal does not impede on this in any way.

As demonstrated by the applicant’s submission, it is considered that the proposal achieves the objectives of the *Floor space ratio* development standard, and that compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant provides the following environmental planning grounds to justify contravening the 4.4 Floor space ratio development standard:

Environmental Planning Ground 1 - *The proposed development is consistent with the underlying objective(s) or purpose of the FSR standard.*

As discussed, the applicant has demonstrated compliance with the development standard objectives in accordance with the first method of the 'Wehbe test'. As such, compliance with the development standard objectives cannot also be considered an environmental planning ground for consideration.

Environmental Planning Ground 2 - *The proposed development achieves the objectives of the IWLEP2022 for the E4 General Industrial zone.*

This environmental planning ground is accepted because the proposal has been assessed with regard to and is considered to be consistent with the objectives of the E4 General Industrial zone. Furthermore, Table 4 in the 4.6 Variation Request demonstrates how the proposal is consistent with each of the objectives.

Environmental Planning Ground 3 - *The additional floor space does not cause any network or capacity issues on the surrounding road network and does not cause any discernible impact on the locality by way of parking pressure.* The request states that:

- *The traffic analysis for the proposed development indicates that the effect of additional density caused by the additional industrial floor area does not cause any discernible impact on the locality by way of traffic.*
- *The additional car parking spaces triggered by the additional floor space is negligible and is accommodated on Subject Site.*

This environmental planning ground is accepted because the Traffic and Parking Impact Assessment submitted with the proposal has been reviewed by Council and is considered acceptable in terms of demonstrating there will be no adverse traffic impacts as a result of the proposal and that the parking proposed is sufficient to cater to the development.

Environmental Planning Ground 4 - *The proposed development would support the productive economic use of the Subject Site.* The request states that:

- *The site is ideally located within an area zoned for such permissible industrial-related use, as-well-as being located within close proximity to major commercial centres (Sydney CBD) and nearby transport infrastructure, such as bus networks and the wider regional road network.*
- *The proposed mezzanine is considered a key attribute in creating an internal building environment that would ensure the delivery of suitable industrial facilities required to*

support the operations of the future tenants and enabling the productive use of the Subject Site.

- *The additional FSR would facilitate the proposal for light industries and related purposes and maximise the operational efficiencies of the premises.*

This planning ground is accepted as the additional floor space proposed within the approved building envelope is a productive and economic use of the subject site, whilst not creating any significant amenity or transport impacts. As such, the proposal contributes to providing efficient use of the land for industrial uses which is consistent with the objectives of the E4 – General Industrial zone.

Environmental Planning Ground 5 - *There will be no adverse amenity impacts on surrounding development.* The written request states that there would be no impacts on any sensitive receptors in relation to solar access, privacy or visual bulk as the mezzanine is located entirely internal to the approved industrial unit. The request also outlines that the proposed industrial unit would have no adverse or non-compliant acoustic outcomes on any nearby residential, industrial or commercial receivers during daytime, evening or night-time periods.

This planning ground is accepted as the proposed development is contained within the building envelope previously approved in Complying Development Certificate CDCP/2022/0159 and Development Application DA/2023/0141. There are no resulting amenity impacts related to the building form as no change is proposed to the approved height or bulk. Furthermore, there are no likely adverse noise impacts as a result of the additional floor space.

Cumulatively, it is considered that the applicant has established sufficient grounds to justify contravening the development standard.

For the reasons outlined above, it is recommended that the section 4.6 exception be granted.

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.10 Heritage conservation	<p>As previously noted, the subject site is not listed as a heritage item and is not located within a conservation area, however it adjoins a landscape Heritage Item (Item i1088).</p> <p>The heritage item refers to the Street trees on Catherine Street which consist of a row of Port Jackson Figs, located in the road reserve. As such, a condition has been included in the recommendation to ensure that the street trees on Catherine Street are protected during works associated with the proposal.</p>	Yes, subject to conditions

Section	Compliance	Compliance
	Subject to the imposition of the recommended conditions, the proposal preserves the environmental heritage of the Inner West.	

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application includes an internal fitout within the existing and already constructed unit and does not propose any works that would result in any significant adverse impacts to the watertable. 	Yes
Section 6.8 Development in areas subject to aircraft noise	<ul style="list-style-type: none"> The site is located within the ANEF 20-25 contour. Conditions were included in the development consent for DA/2023/0141 to ensure that the building would meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the building's compliance with the relevant provisions of Section 6.8 of the <i>IWLEP 2022</i>. As such, a condition has been included in the recommendation that prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that all conditions of related DA/2023/0141 have been satisfied. 	Yes, subject to conditions

B. Development Control Plans

Summary

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

LDCP 2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part C	
C1.1 Site and Context Analysis	Yes
C1.7 Site Facilities	Yes

C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
Part C: Place – Section 2 Urban Character	
C2.2.3.3(b) Industrial Sub Area	Yes
Part C: Place – Section 4 – Non-Residential Provisions	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.5 Interface Amenity	Yes
C4.10 Industrial Development	Yes
Part D: Energy	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.4 Non-Residential Development	Yes

The following provides discussion of the relevant issues:

Leichhardt Development Control Plan 2013

The application was assessed against the following relevant parts of the Leichhardt Development Control Plan 2013 (LDGP 2013).

Part C – Section 1 – General Provisions

Control	Proposed / Discussion	Compliance
C1.1 Site and Context Analysis	<ul style="list-style-type: none"> The proposal involves internal works within the building envelope previously approved in CDCP/2022/0159. 	Yes
C1.7 Site Facilities	<ul style="list-style-type: none"> The proposal includes facilities which are integrated into the layout and design of the development and will not have an adverse amenity impact. 	Yes
C1.10 Equity of Access and Mobility	<ul style="list-style-type: none"> The application was supported by a BCA and Access Design Assessment Report which states that the proposed works are capable of achieving compliance either by complying with the prescriptive requirements or via a performance-based approach. As such, a condition has been included in the recommendation that the proposal incorporate the recommendations of the BCA and Access Design Assessment Report into the Construction Certificate documentation. 	Yes, subject to conditions
C1.11 Parking	<ul style="list-style-type: none"> The Traffic and Parking Impact Assessment submitted with the proposal has been reviewed by Council and is considered acceptable in terms of the proposed provision and configuration of car parking. 	Yes

Part C – Section 2 – Urban Character

Control	Proposed / Discussion	Compliance
C2.2.3.3(b) Industrial Sub Area	<ul style="list-style-type: none"> The proposal is considered to be a satisfactory response to the Distinctive Neighbourhood controls under this part as no external changes are proposed to the building envelope. 	Yes

Part C – Section 4 – Non-Residential Development

Control	Assessment	Compliance
C4.1 Objectives for Non-Residential Zones	<ul style="list-style-type: none"> It is noted that the light industrial building has already been approved and is under construction. Proposed works are all located within the approved building envelope and as such, many of the zone objectives under this part (including those related to the building envelope and siting) are not relevant to the assessment of the subject proposal. The proposal is generally consistent with the objectives of this part and contributes to providing efficient use of the land for industrial uses by creating additional floor space within the existing light industries building envelope. 	Yes
C4.2 Site Layout and Building Design	<ul style="list-style-type: none"> The proposal is contained within the previously approved light industries building and as such is consistent with this part. 	Yes
C4.5 Interface Amenity	<ul style="list-style-type: none"> The site is located on the opposite side of Catherine Street from land located in a residential zone. Given the proposed building works are located within the previously approved building envelope of CDCP/2022/0159, the relevant and remaining C4.5 Interface amenity considerations for the subject proposal relate to any likely noise associated with the proposed use. An acoustic report submitted with the proposal has been reviewed by Council and conditions have been included in the recommendation that the recommendations contained within the acoustic report are implemented. Further conditions are also included in the recommendation requiring that the Principal Certifier must be provided with an acoustic report which demonstrates and certifies that noise and vibration emissions from the development will satisfy and comply with the relevant provisions of the Protection of the Environment Operations Act 1997 and conditions of Council's approval. 	Yes, subject to conditions
C4.10 Industrial Development	<ul style="list-style-type: none"> Given the light industrial building has already been approved and is under construction, a number of the controls, including those relating to the built form, siting and design on industrial lands, are not relevant to the subject proposal. The proposal is consistent with the remaining and relevant provisions of this part as follows: <ul style="list-style-type: none"> Appropriate site facilities and basic amenities are proposed; 	Yes, subject to conditions

	<ul style="list-style-type: none"> ○ The proposed carparking complies with the provisions of Part C1.11 of the DCP; ○ The development complies with the Waste Management provisions of the DCP; ○ No changes are proposed to the hours of operation of the subject premises; ○ As previously discussed, conditions have been included in the recommendation to ensure that there are no adverse noise impacts associated with the proposal. 	
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Part D – Energy

Control	Assessment	Compliance
Section 2 – Resource Recovery and Waste Management		
D2.1 General Requirements	<ul style="list-style-type: none"> • The proposal includes a Waste Management Plan in the development application. 	Yes
D2.4 Non-Residential Development	<ul style="list-style-type: none"> • Waste and recycling storage and collection areas are provided. • Conditions have been included in the recommendation to ensure waste management is adequately implemented in the construction process and on an ongoing basis. 	Yes, subject to conditions

C. The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in an industrial surrounding amongst uses generally consistent with that proposed. It is noted that the premises is adjacent to residential uses on the other side of Catherine Street.

E. Submissions

The application was required notified in accordance with Council’s Community Engagement Strategy between 02 July 2024 to 16 July 2024.

No submissions were received.

F. 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.

This has been achieved in this instance.

6. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of **\$14,654.00** would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

7. Housing and Productivity Contributions

The carrying out of the development would result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. A contribution of **\$2,361.00** would be required for the development under Part 7, Subdivision 4 Housing and Productivity Contributions of the *EP & A Act 1979*.

A housing and productivity contribution is required in addition to any Section 7.11 or 7.12 Contribution. A condition requiring that the housing and productivity contribution is to be paid is included in the recommendation.

8. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Development Engineer;
- Environmental Health;
- Building Certification; and
- Property.

Comment:

With regard to the Building Certification referral, it is noted that the *BCA & Access Design Assessment Report* submitted with the proposal indicates a combination of deemed to satisfy requirements and performance requirements for several non-compliances identified in the

report. As such, a condition has been included in the recommendation that the recommendations in the *BCA & Access Design Assessment Report* are implemented and incorporated into the construction certificate documentation.

9. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining 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.

10. Recommendation

- A. In relation to the proposal by the development in Development Application No. 2024/0519 to contravene the development standard in Clause 4.4 of *Inner West Local Environmental Plan 2022* the Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

- 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/2024/0519 for the construction of a mezzanine level, internal fit out works to the light industrial building to Unit 1 at 233 Catherine Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

Condition	
1.	<p style="text-align: center;">Permits</p> <p>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:</p> <ul style="list-style-type: none"> • 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; • A concrete pump across the roadway/footpath; • Mobile crane or any standing plant; • Skip Bins; • Scaffolding/Hoardings (fencing on public land); • Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; • Awning or street veranda over the footpath; • Partial or full road closure; and • Installation or replacement of private stormwater drain, utility service or water supply. <p>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.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
2.	<p style="text-align: center;">Insurances</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>
3.	<p style="text-align: center;">Noise – Consultant's Recommendations</p> <p>All the recommendations contained in the acoustic report entitled Noise Impact Statement Units 1, 233 Catherine Street, Leichhardt NSW prepared by Acoustic Dynamics dated 8 April 2024 must be implemented.</p> <p>Reason: To protect the amenity of the neighbourhood and ensure that the development is carried out in accordance with the consent.</p>

4.	<p style="text-align: center;">Mechanical Ventilation System Certification</p> <p>The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:</p> <ol style="list-style-type: none"> 1. Australian Standard AS 1668 Part 1 – 1998; 2. Australian Standard AS 1668 Part 2 – 2012; 3. Australian Standard 3666.1 – 2011; 4. Australian Standard 3666.2 – 2011; and 5. Australian Standard 3666.3 - 2011. <p>The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.</p> <p>Reason: To ensure compliance with the relevant Australian Standards.</p>
5.	<p style="text-align: center;">Hazardous and Industrial Waste Removal</p> <p>Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
6.	<p style="text-align: center;">Storage of Hazardous and Dangerous Goods</p> <p>The premises are to be designed, constructed and operated in accordance with the Public Health Act 2010, Public Health Regulation 2012 and Local Government (General) Regulation 2005.</p> <p>Reason: To ensure compliance with the Public Health Act 2010, Public Health Regulation 2012 and Local Government (General) Regulation 2005.</p>
7.	<p style="text-align: center;">Transport and Disposal of Hazardous and Dangerous Goods</p> <p>Dangerous and hazardous goods must be stored in accordance with NSW WorkCover requirements and AS1940-2004, The Storage and Handling of Flammable and Combustible Liquids.</p> <p>Reason: To ensure compliance with the relevant environmental legislation and Australian Standards.</p>
8.	<p style="text-align: center;">Bin Storage</p> <p>All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>

9.	Documents related to the consent																												
	The development must be carried out in accordance with plans and documents listed below:																												
	<table border="1"> <thead> <tr> <th>Plan, Revision and Issue No.</th> <th>Plan Name</th> <th>Date Issued/Received</th> <th>Prepared by</th> </tr> </thead> <tbody> <tr> <td>1200064_A012 Issue H</td> <td>Site Plan</td> <td>21 May 2024</td> <td>Reid Campbell</td> </tr> <tr> <td>1200064_A112 Issue F</td> <td>Ground Floor Plan</td> <td>16 May 2024</td> <td>Reid Campbell</td> </tr> <tr> <td>1200064_A113 Issue F</td> <td>Mezzanine Level</td> <td>16 May 2024</td> <td>Reid Campbell</td> </tr> <tr> <td>1200064_A311 Issue F</td> <td>Building Sections</td> <td>16 May 2024</td> <td>Reid Campbell</td> </tr> <tr> <td>P223_328-3 (BCA) JR [Unit 1]</td> <td>BCA & Access Design Assessment Report Development Application</td> <td>30 April 2024</td> <td>Design Confidence</td> </tr> <tr> <td>-</td> <td>Noise Impact Statement Units 1, 233 Catherine Street, Leichhardt</td> <td>8 April 2024</td> <td>Acousticdynamics</td> </tr> </tbody> </table>	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by	1200064_A012 Issue H	Site Plan	21 May 2024	Reid Campbell	1200064_A112 Issue F	Ground Floor Plan	16 May 2024	Reid Campbell	1200064_A113 Issue F	Mezzanine Level	16 May 2024	Reid Campbell	1200064_A311 Issue F	Building Sections	16 May 2024	Reid Campbell	P223_328-3 (BCA) JR [Unit 1]	BCA & Access Design Assessment Report Development Application	30 April 2024	Design Confidence	-	Noise Impact Statement Units 1, 233 Catherine Street, Leichhardt	8 April 2024	Acousticdynamics
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	As amended by the conditions of consent.																												
	Reason: To ensure development is carried out in accordance with the approved documents.																												
10.	Works Outside the Property Boundary																												
	This development consent does not authorise works outside the property boundaries on adjoining lands.																												
	Reason: To ensure works are in accordance with the consent.																												
11.	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 <i>Environmental Planning and Assessment Act 1979</i> .																												
	Reason: To ensure compliance with legislative requirements.																												

12.	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.
	Reason: To ensure compliance with legislative requirements.
13.	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.
	Reason: To protect pedestrian safety.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition				
14.	<p>Security Deposit - Custom</p> <p>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.</p> <p>Security Deposit:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Security Deposit:</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td>Inspection Fee:</td> <td style="text-align: center;">\$374.50</td> </tr> </table> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	Security Deposit:	N/A	Inspection Fee:	\$374.50
Security Deposit:	N/A				
Inspection Fee:	\$374.50				

	<p>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.</p> <p>Reason: To ensure required security deposits are paid.</p>								
15.	<p>Dilapidation Report – Pre-Development – Minor</p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>								
16.	<p>Noise General – Acoustic Report</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the Protection of the Environment Operations Act 1997 and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>								
17.	<p>Resource Recovery and Waste Management Plan - Demolition and Construction</p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a "Waste and Recycling Waste Management Plan - Demolition and Construction" in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>								
18.	<p>Long Service Levy</p> <p>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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.</p> <p>Reason: To ensure the long service levy is paid.</p>								
19.	<p>Section 7.11 Contribution</p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p> <table border="1" data-bbox="435 1435 1145 1606"> <thead> <tr> <th>Contribution Category</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Open Space & Recreation</td> <td>\$3,295.00</td> </tr> <tr> <td>Community Facilities</td> <td>\$0.00</td> </tr> <tr> <td>Transport</td> <td>\$8,665.00</td> </tr> </tbody> </table>	Contribution Category	Amount	Open Space & Recreation	\$3,295.00	Community Facilities	\$0.00	Transport	\$8,665.00
Contribution Category	Amount								
Open Space & Recreation	\$3,295.00								
Community Facilities	\$0.00								
Transport	\$8,665.00								

Plan Administration	\$425.00
Drainage	\$2,270.00
TOTAL	\$14,654.00

At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$

Where:

C_{payment} = is the contribution at time of payment

C_{consent} = is the contribution at the time of consent, as shown above

CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 139.1 for the June Quarter 2024.

CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

Reason: To ensure payment of the required development contribution.

20.	<p>BCA and Access Report Recommendations to be Incorporated</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with updated architectural drawings and/or any relevant supporting documentation to demonstrate that the recommendations in the BCA & Access Design Assessment Report by Design Confidence dated 30 April 2024 have been included in the Construction Certificate documentation and incorporated in the works.</p> <p>Reason: To ensure compliance with the National Construction Code (Building Code of Australia).</p>								
21.	<p>Housing and Productivity Contribution</p> <p>a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition (b), is required to be made</p> <table border="1" data-bbox="491 667 1110 813"> <thead> <tr> <th>Housing and productivity contribution</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Total housing and productivity contribution</td> <td>\$2,361.00</td> </tr> </tbody> </table> <p>b. The amount payable at the time of payment is the amount shown in condition (a) as the total housing and productivity contribution adjusted by multiplying it by:</p> <p style="text-align: center;"><i>Highest PPI number</i></p> <p style="text-align: center;"><i>Consent PPI number</i></p> <p>Where:</p> <p><i>highest PPI number</i> is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and</p> <p><i>consent PPI number</i> is the PPI number last used to adjust HPC rates when consent was granted, and</p> <p><i>June quarter 2023</i> and <i>PPI</i> have the meanings given in clause 22 (4) of the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.</p> <p>c. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:</p> <table border="1" data-bbox="491 1469 1212 1608"> <thead> <tr> <th>Development</th> <th>Time by which HPC must be paid</th> </tr> </thead> <tbody> <tr> <td>Development consisting only of residential subdivision within the meaning of the HPC Order</td> <td>Before the issue of the first subdivision certificate</td> </tr> </tbody> </table>	Housing and productivity contribution	Amount	Total housing and productivity contribution	\$2,361.00	Development	Time by which HPC must be paid	Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
Housing and productivity contribution	Amount								
Total housing and productivity contribution	\$2,361.00								
Development	Time by which HPC must be paid								
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate								

	High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate	
	Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate	
	Manufactured home estate for which no construction certificate is required	Before the installation of the first manufactured home	

In the Table, *HPC Order* means the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

d. The HPC must be paid using the NSW planning portal (<http://pp.planningportal.nsw.gov.au/>).

e. If the Minister administering the *Environmental Planning and Assessment Act 1979* agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:

- a. the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
- b. the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition (b.) at the time of payment.

f. Despite condition (a.), a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: To ensure payment of the required development contribution.

BEFORE BUILDING WORK COMMENCES

Condition	
22.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.</p> <p>Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>
23.	<p>Standard Street Tree Protection</p> <p>Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.</p> <p>Reason: To protect and retain trees.</p>
24.	<p>Construction Fencing</p> <p>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.</p> <p>Reason: To protect the built environment from construction works.</p>
25.	<p>Tree Protection</p> <p>No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent. Prescribed trees protected by Council's Tree Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent. Any public tree within 5 metres of the development must be protected in accordance with AS4970—<i>Protection of trees on development sites</i> and Council's Development Fact Sheet—<i>Trees on Development Sites</i>. No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.</p> <p>Reason: To ensure that trees to be retained are protected.</p>

DURING BUILDING WORK

Condition	
26.	<p>Construction Hours – Class 2-9</p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:</p> <p>7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm); 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and at no time on Sundays or public holidays.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to 8:00am to 12:00pm, Monday to Saturday; and 2:00pm to 5:00pm Monday to Friday.</p> <p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>
27.	<p>Tree Protection</p> <p>No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent. Prescribed trees protected by Council's Tree Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent. Any public tree within 5 metres of the development must be protected in accordance with AS4970—<i>Protection of trees on development sites</i> and Council's Development Fact Sheet—<i>Trees on Development Sites</i>. No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.</p> <p>Reason: To ensure that trees to be retained are protected.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
28.	<p>No Encroachments</p> <p>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.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>
29.	<p>Noise – Acoustic Report</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the Protection of the Environment Operations Act 1997 and conditions of Council’s approval, including any recommendations of the acoustic report referenced in the conditions of the approval. 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.</p> <p>Reason: To ensure compliance with the relevant Australian Standard.</p>
30.	<p>Evidence of Occupation Certificate for the Building</p> <p>Prior to the Issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Certifier must be shown evidence of the final Occupation Certificate for DA/2023/0141 and for Complying Development Certificate number 210090-01/B.</p> <p>Reason: To ensure the approved works are undertaken in accordance with the consent of the related applications.</p>

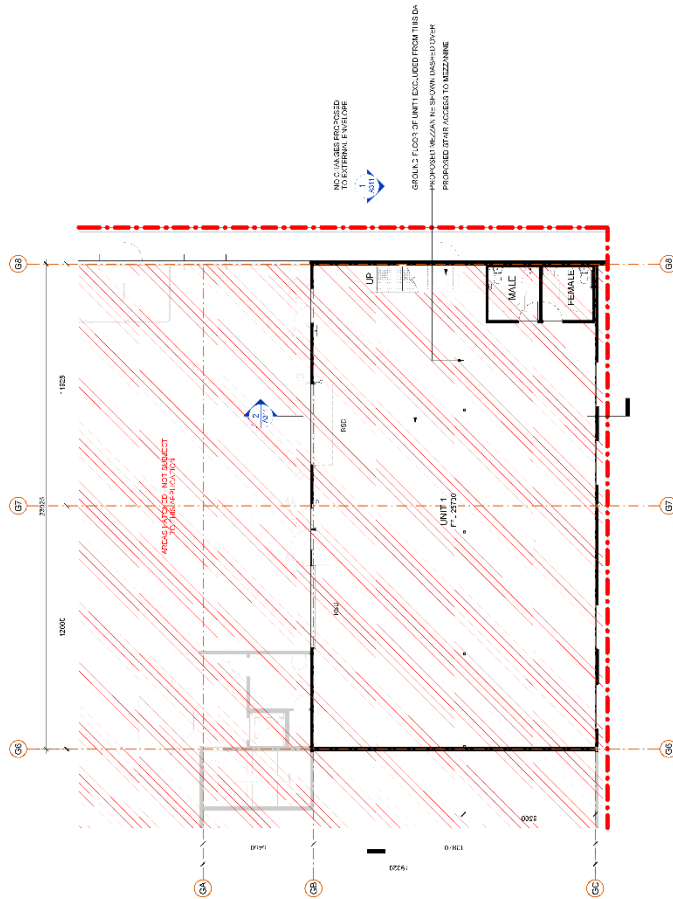
OCCUPATION AND ONGOING USE

Condition	
31.	<p>Noise General</p> <p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
32.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.</p> <p>Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>



ABBREVIATION

- 2P COOK WIRE
- 2E KITCHEN SINK
- 2F POLYURETHANE DOOR
- 2K COOK SINK
- 2L KITCHEN SINK
- 2M REFRIGERATOR
- 2N GAS STOVE

GENERAL NOTES

1. ALL DIMENSIONS ARE IN METERS.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

SCALE BAR 1: 20 @ A1 : 1: 200 @ A3
 0m 2m 4m 6m 8m 10m

DATE: 12/06/2024
 PROJECT: 120064_A112

PROJECT NUMBER
 TAP II LEICHHARDT PTY LIMITED

DEVELOPMENT APPLICATION

RED CAMPBELL

REVISIONS

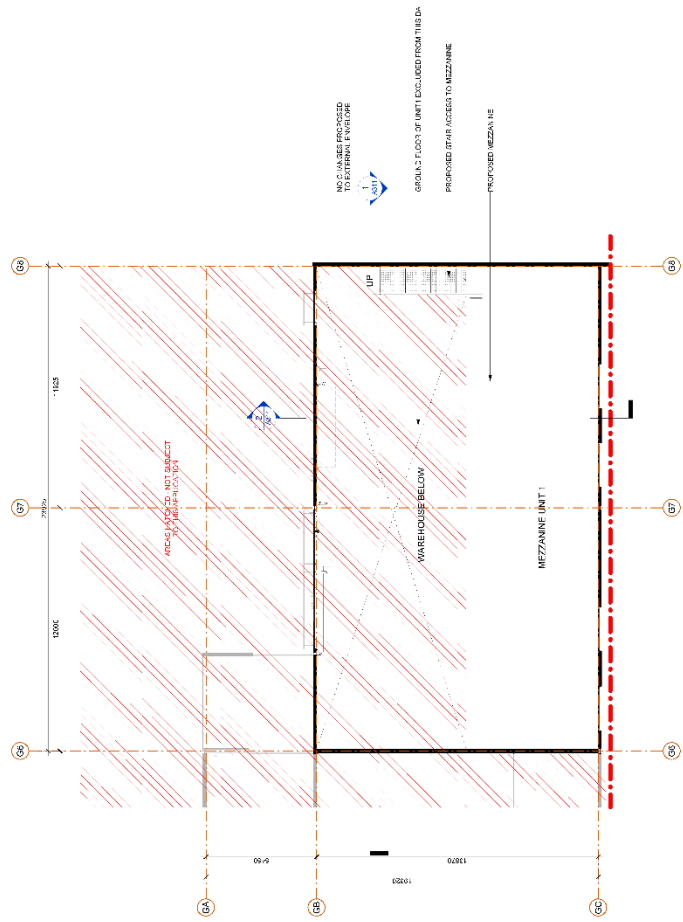
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PROJECT: 120064_A112

DATE: 12/06/2024

PROJECT: 120064_A112

DATE: 12/06/2024



ABBREVIATION

- 2P COOK WARE
- 2A KITCHEN UNIT
- 2B KITCHEN UNIT
- 2C KITCHEN UNIT
- 2D KITCHEN UNIT
- 2E KITCHEN UNIT
- 2F KITCHEN UNIT
- 2G KITCHEN UNIT
- 2H KITCHEN UNIT
- 2I KITCHEN UNIT
- 2J KITCHEN UNIT
- 2K KITCHEN UNIT
- 2L KITCHEN UNIT
- 2M KITCHEN UNIT
- 2N KITCHEN UNIT
- 2O KITCHEN UNIT
- 2P KITCHEN UNIT
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- 2R KITCHEN UNIT
- 2S KITCHEN UNIT
- 2T KITCHEN UNIT
- 2U KITCHEN UNIT
- 2V KITCHEN UNIT
- 2W KITCHEN UNIT
- 2X KITCHEN UNIT
- 2Y KITCHEN UNIT
- 2Z KITCHEN UNIT

GENERAL NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL BUILDING REGULATIONS 2011.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL ELECTRICAL REGULATIONS 2017.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL PLUMBING REGULATIONS 2017.
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL GAS REGULATIONS 2018.
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL MECHANICAL REGULATIONS 2017.
6. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL TILING REGULATIONS 2017.
7. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL PAINTING REGULATIONS 2017.
8. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL CARPETING REGULATIONS 2017.
9. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL FLOORING REGULATIONS 2017.
10. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL JOINERY REGULATIONS 2017.
11. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL GLAZING REGULATIONS 2017.
12. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL ROOFING REGULATIONS 2017.
13. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL CONCRETE REGULATIONS 2017.
14. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL MASONRY REGULATIONS 2017.
15. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL METALWORK REGULATIONS 2017.
16. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL WOODWORK REGULATIONS 2017.
17. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL PAINTING REGULATIONS 2017.
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25. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL METALWORK REGULATIONS 2017.
26. ALL WORK SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL WOODWORK REGULATIONS 2017.

SCALE BAR 1: 20 @ A1 : 1: 200 @ A3
 0m 2m 4m 6m 8m 10m



MEZZANINE LEVEL
 120064_A13
 F

PROJECT NUMBER
 120064_A13

TAP II LEICHHARDT PTY LIMITED

DEVELOPMENT APPLICATION

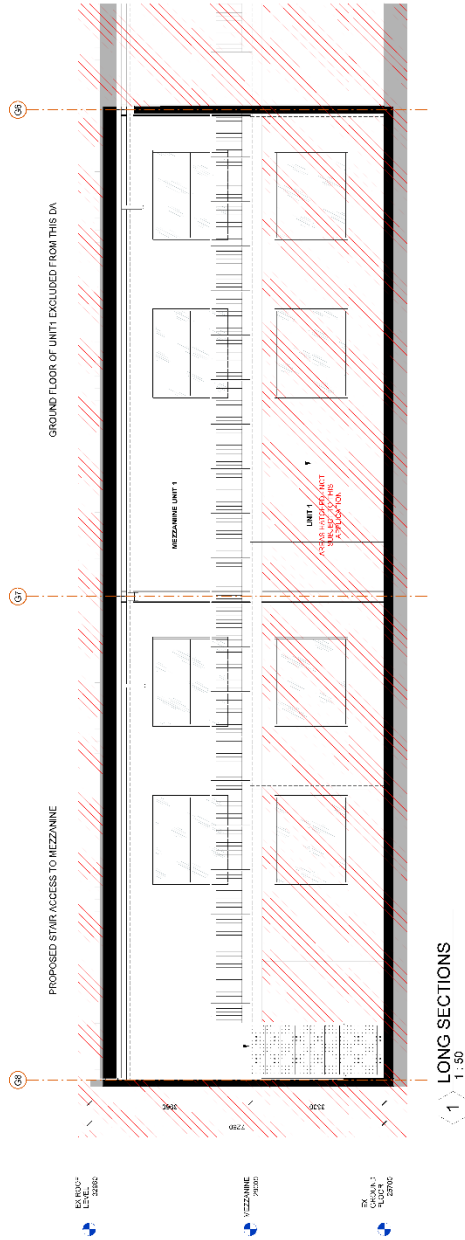
RED CAMPBELL

RED CAMPBELL

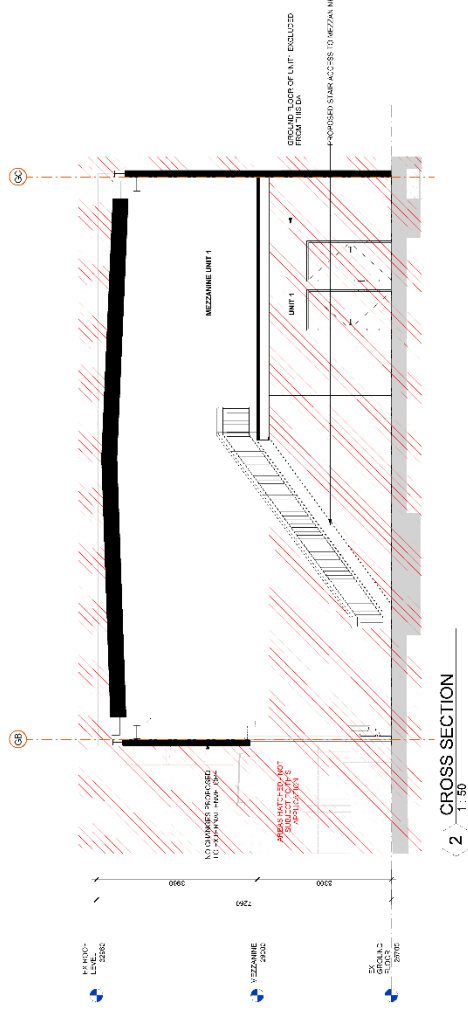
RED CAMPBELL

RED CAMPBELL

RED CAMPBELL



1 LONG SECTIONS
1:100



2 CROSS SECTION
1:100

ABBREVIATION

2P	COOK WIRE
1/2"	WALL EXIST. 1/2"
IND	INDICATOR LIGHT
2"	PROFILES AFTER COVER
3"	COOK WIRE
1/2"	WALL EXIST. 1/2"
1/2"	WALL EXIST. 1/2"
1/2"	WALL EXIST. 1/2"
1/2"	WALL EXIST. 1/2"
1/2"	WALL EXIST. 1/2"

GENERAL NOTES

1. ALL DIMENSIONS ARE IN METERS.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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SCALE BAR 1:50 @ A1 : 1:100 @ A3
0m 1m 2m 3m 4m 5m

BUILDING SECTIONS

PROJECT NUMBER
120064_A311

CLIENT
TAP II LEICHHARDT PTY LIMITED

PROJECT NUMBER
120064_A311

DEVELOPMENT APPLICATION

RED CAMPBELL

RED CAMPBELL ARCHITECTURE
1/150

RED CAMPBELL ARCHITECTURE
1/150

RED CAMPBELL ARCHITECTURE
1/150



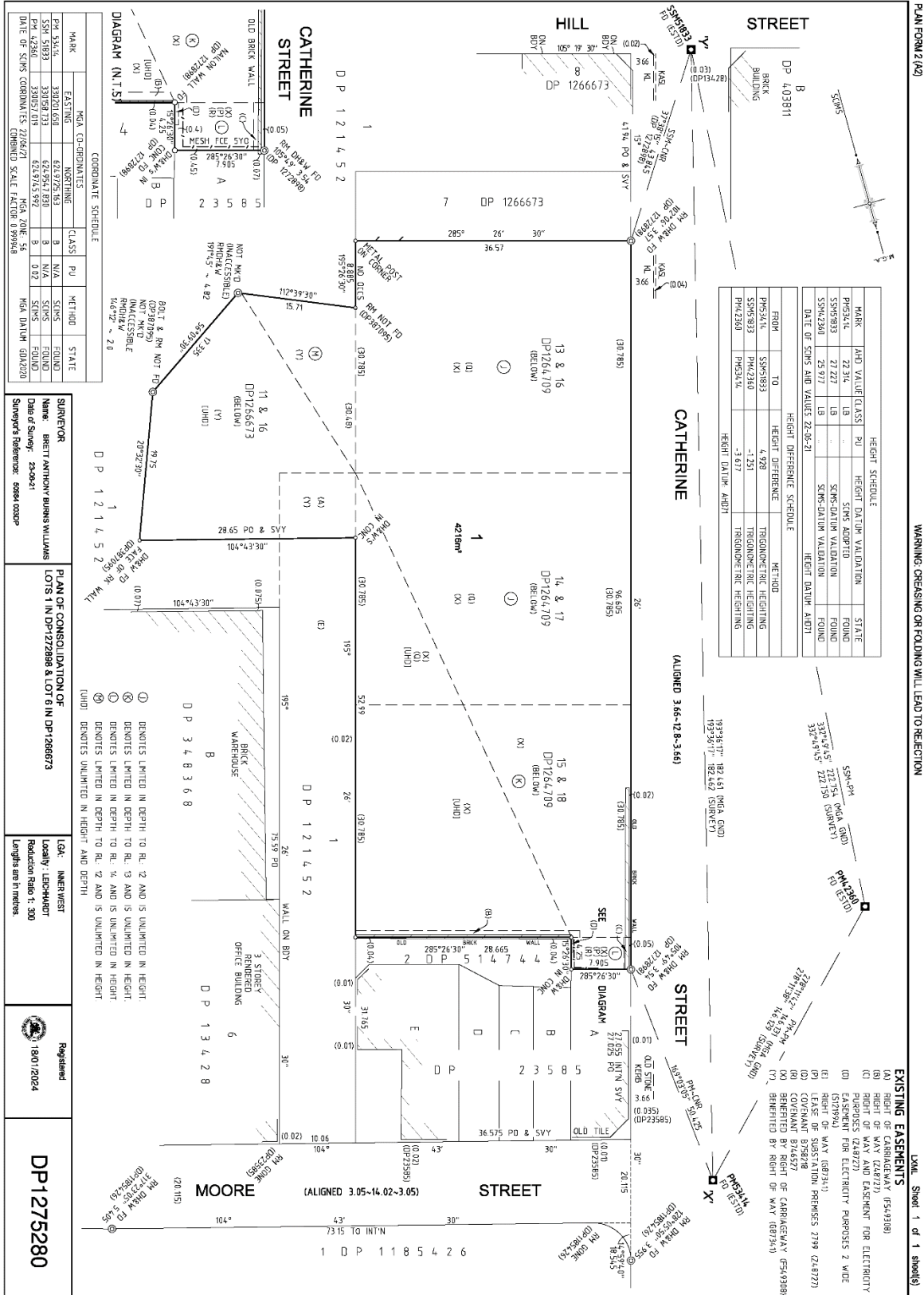
CERTIFICATE ORDER SUMMARY

Transaction Details

Date: 02/02/2024 10:25
Order No. 82752731
Certificate No: 122630406
Your Reference: TAP III Leichhardt Trust
Certificate Ordered: NSW LRS - Copy of Plan - Deposited Plan 1275280
Available: Y
Size (KB): 1639
Number of Pages: 5
Scan Date and Time: 18/01/2024 17:51


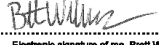
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Dye & Durham Property Pty Ltd an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with section 96B(2) of the Real Property Act 1900.

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PLAN FORM 6 (2020) WARNING: Creasing or folding will lead to rejection													
DEPOSITED PLAN ADMINISTRATION SHEET Sheet 1 of 4 sheet(s)													
<p style="text-align:right">Office Use Only</p> <p>Registered:  18/01/2024</p> <p>Title System: TORRENS</p>	<p style="text-align:right">Office Use Only</p> <h1 style="text-align:center">DP1275280</h1>												
<p>PLAN OF CONSOLIDATION OF LOTS 1 IN DP1272898 & LOT 6 IN DP1266673</p>	<p>LGA: INNER WEST Locality: LEICHHARDT Parish: PETERSHAM County: CUMBERLAND</p>												
<p style="text-align:center">Survey Certificate</p> <p>I, BRETT ANTHONY BURNS WILLIAMS of LTS LOCKLEY Locked Bag 5 GORDON NSW 2072 a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>, is accurate and the survey was completed on 23-06-21</p> <p>*(b) The part of the land shown in the plan (*being/excluding** was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>, the part surveyed is accurate and the survey was completed on, the part not surveyed was compiled in accordance with that Regulation, or</p> <p>*(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>.</p> <p>Datum Line: 'X' - 'Y' Type: *Urban/*Rural The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>Signature:  Dated: 24-11-2023 <small>Electronic signature of me, Brett Williams, affixed by me on 24-11-2023</small></p> <p>Surveyor Identification No: 6795 Surveyor registered under the <i>Surveying and Spatial Information Act 2002</i></p> <p>*Strike out inappropriate words. **Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p>	<p style="text-align:center">Crown Lands NSW/Western Lands Office Approval</p> <p>I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature: Date: File Number:</p> <p>Office:</p> <hr/> <p style="text-align:center">Subdivision Certificate</p> <p>I, *Authorised Person/*General Manager/*Registered Certifier, certify that the provisions of s.6.15 of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: Registration number: Consent Authority: Date of endorsement: Subdivision Certificate number: File number:</p> <p>*Strike through if inapplicable.</p>												
<p>Plans used in the preparation of survey/compilation.</p> <table border="0"> <tr><td>DP13428</td><td>DP1185426</td></tr> <tr><td>DP23585</td><td>DP1266673</td></tr> <tr><td>DP121452</td><td>DP1272898</td></tr> <tr><td>DP387095</td><td></td></tr> <tr><td>DP388087</td><td></td></tr> <tr><td>DP403811</td><td></td></tr> </table>	DP13428	DP1185426	DP23585	DP1266673	DP121452	DP1272898	DP387095		DP388087		DP403811		<p>Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land.</p>
DP13428	DP1185426												
DP23585	DP1266673												
DP121452	DP1272898												
DP387095													
DP388087													
DP403811													
<p>Surveyor's Reference: 50984 003DP</p>	<p>Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A</p>												

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PLAN FORM 6A (2019) DEPOSITED PLAN ADMINISTRATION SHEET Sheet 2 of 4 sheet(s)														
	18/01/2024	Office Use Only	Office Use Only											
Registered:			DP1275280											
PLAN OF CONSOLIDATION OF LOTS 1 IN DP1272898 & LOT 6 IN DP1266673			This sheet is for the provision of the following information as required:											
Subdivision Certificate number: Date of Endorsement:			<ul style="list-style-type: none"> • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2017</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals- see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 											
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">LOT</th> <th style="width: 20%;">STREET NUMBER</th> <th style="width: 30%;">STREET NAME</th> <th style="width: 20%;">STREET TYPE</th> <th style="width: 20%;">LOCALITY</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">LEICHHARDT</td> </tr> </tbody> </table>	LOT	STREET NUMBER	STREET NAME	STREET TYPE	LOCALITY	1	N/A	N/A	N/A	LEICHHARDT				
LOT	STREET NUMBER	STREET NAME	STREET TYPE	LOCALITY										
1	N/A	N/A	N/A	LEICHHARDT										
Certificate of Currency														
I, BRETT ANTHONY BURNS WILLIAMS of ADW JOHNSON PTY LTD 7/335 HILLSBOROUGH ROAD WARNERS BAY 2282 a surveyor registered under the Surveying and Spatial Information Act 2002, certify that, from the date of the completion of the survey shown on the survey certificate:														
(a) there are no changes to the boundaries of the land to which the survey relates (the subject land), and the definition of those boundaries in the plan of survey remains consistent with surrounding plans, or if not, the plan of survey has been updated;														
(b) 2 or more of the permanent survey marks used in the survey remain in place, or if not, the plan of survey has been updated;														
(c) all reference marks placed in respect of the survey remain in place, or if not, the reference marks have been replaced and the plan of survey has been updated; and														
(d) there has been no change to the occupations and other improvements relevant to the boundaries of the subject land since the completion of the survey, or if not, the plan of survey has been updated.														
Signature: 														
<small>Electronic signature of me, Brett Williams, affixed by me on 24-11-2023</small>														
Date: 24-11-2023														
Surveyor Identification No: 6795														
If space is insufficient use additional annexure sheet														
Surveyor's Reference: 50984 003DP														

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PLAN FORM 6A (2019) DEPOSITED PLAN ADMINISTRATION SHEET Sheet 3 of 4 sheet(s)			
<div style="display: flex; justify-content: space-between; align-items: center;"> 18/01/2024 Office Use Only </div> <p>Registered:</p> <p>PLAN OF CONSOLIDATION OF LOTS 1 IN DP1272898 & LOT 6 IN DP1266673</p> <p>Subdivision Certificate number:</p> <p>Date of Endorsement:</p>	<div style="text-align: center; font-size: 24px; font-weight: bold; margin-bottom: 10px;"> DP1275280 </div> <p style="font-size: small;">This sheet is for the provision of the following information as required:</p> <ul style="list-style-type: none"> A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2017</i> Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> Signatures and seals- see 195D <i>Conveyancing Act 1919</i> Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 		
<table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none; vertical-align: top;"> <p>EXECUTED by) TAP III LEICHHARDT PTY LIMITED) ACN 641 331 848) in accordance with Section 127) of the Corporations Act)</p> <div style="text-align: center; margin-top: 10px;"> </div> <p>..... Signature of Director</p> <p style="text-align: center; margin-top: 10px;">Ben Fife</p> <p>..... NAME (please print)</p> </td> <td style="width:50%; border: none; vertical-align: top;"> <div style="text-align: center; margin-top: 10px;"> </div> <p>..... Signature of Director/secretary</p> <p style="text-align: center; margin-top: 10px;">Susan Vuong</p> <p>..... NAME (please print)</p> </td> </tr> </table>		<p>EXECUTED by) TAP III LEICHHARDT PTY LIMITED) ACN 641 331 848) in accordance with Section 127) of the Corporations Act)</p> <div style="text-align: center; margin-top: 10px;"> </div> <p>..... Signature of Director</p> <p style="text-align: center; margin-top: 10px;">Ben Fife</p> <p>..... NAME (please print)</p>	<div style="text-align: center; margin-top: 10px;"> </div> <p>..... Signature of Director/secretary</p> <p style="text-align: center; margin-top: 10px;">Susan Vuong</p> <p>..... NAME (please print)</p>
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If space is insufficient use additional annexure sheet			
Surveyor's Reference: 50984 003DP			

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PLAN FORM 6A (2019) DEPOSITED PLAN ADMINISTRATION SHEET Sheet 4 of 4 sheet(s)	
18/01/2024 Office Use Only	Office Use Only <h1 style="margin: 0;">DP1275280</h1>
Registered: PLAN OF CONSOLIDATION OF LOTS 1 IN DP1272898 & LOT 6 IN DP1266673	This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2017</i> Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> Signatures and seals- see 195D <i>Conveyancing Act 1919</i> Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.
Subdivision Certificate number: Date of Endorsement:	
MORTGAGEE: PERPETUAL NOMINEES LIMITED	
<p style="text-align: center;"> Perpetual Nominees Ltd ACN 000 733 700 by its Attorney pursuant to Power of Attorney dated 18 September 2014 Registered No. 134 Book 4676 Who states that he/she has received no notice of revocation of the Power of Attorney. </p> <p style="text-align: center;"> Attorney Name: Position: Trent Franklin Senior Client Manager </p> <p style="text-align: center; margin-top: 20px;"> Witness Stavroul Frost Client Service Officer L18, 123 PITT ST SYDNEY </p> <p style="text-align: center; margin-top: 20px;"> If space is insufficient use additional annexure sheet </p>	
Surveyor's Reference: 50984 003DP	

Document Set ID: 39604214
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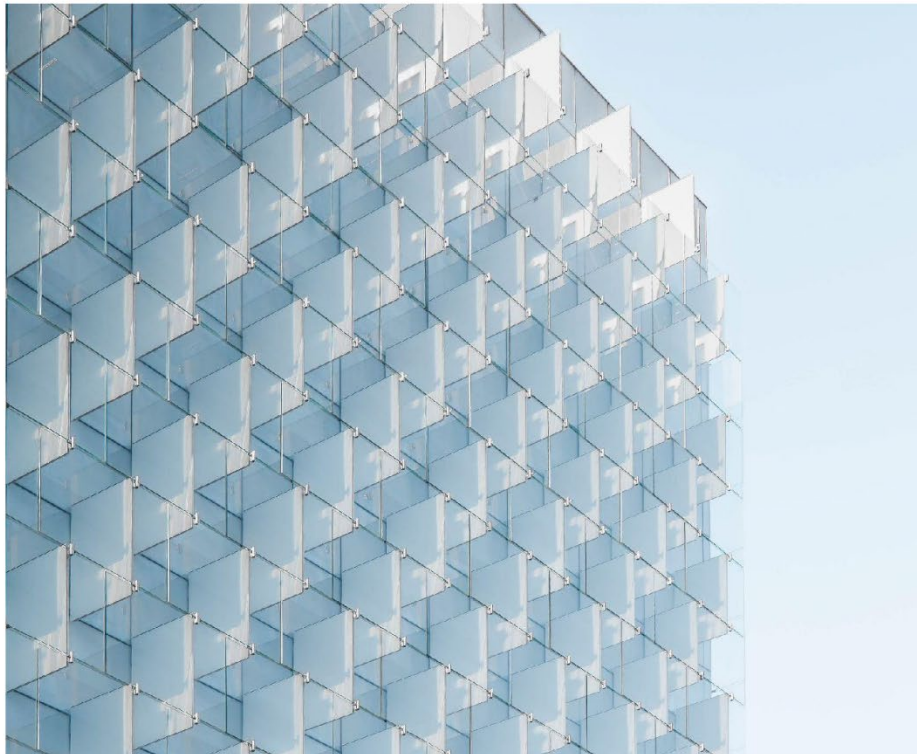
Attachment C – Section 4.6 Exception to Development Standards

WILLOWTREE PLANNING



12 September 2024

Ref: WTJ23-366
Contact: Asher Richardson



CLAUSE 4.6 VARIATION REQUEST FLOOR SPACE RATIO

PROPOSED ADDITION OF INTERNAL MEZZANINE TO UNIT 1

Unit 1, 233 Catherine Street, Leichhardt
Lot 1 DP 1275280

—
Prepared by Willowtree Planning Pty Ltd
on behalf of TAP III Leichhardt Pty Ltd

Clause 4.6 Variation - Floor Space Ratio

Proposed addition of internal mezzanine to Unit 1
 Unit 1, 233 Catherine Street, Leichhardt (Lot 1 DP 1275280)



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

DOCUMENT CONTROL TABLE			
Document Reference:	WTJ23-366_Clause 4.6 Variation Request		
Contact	Peter Braga		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 - 10/05/2024 Draft for client review	Peter Braga Town Planner	Asher Richardson Associate	Asher Richardson Associate
Version No. 2 - 21/05/2024 Final	Peter Braga Town Planner	Asher Richardson Associate	
Version No. 3 - 12/09/2024 Final	Peter Braga Town Planner	Asher Richardson Associate	

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Clause 4.6 Variation - Floor Space Ratio

Proposed addition of internal mezzanine to Unit 1
 Unit 1, 233 Catherine Street, Leichhardt (Lot 1 DP 1275280)



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SYDNEY | BRISBANE

Clause 4.6 Variation - Floor Space Ratio

Proposed addition of internal mezzanine to Unit 1
 Unit 1, 233 Catherine Street, Leichhardt (Lot 1 DP 1275280)



PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation Request (Variation Request) has been prepared in support of a Development Application (DA) for the addition of an internal mezzanine at Unit 1, 233 Catherine Street, Leichhardt (the Subject Site).

The Subject Site is zoned E4 General Industrial, pursuant to the *Inner West Local Environmental Plan 2022* (IWLEP2022) and is located within the Inner West Local Government Area (LGA). The proposed development is permissible with consent within the E4 General Industrial zone and is considered contextually appropriate. The proposed development is generally consistent with the objectives and provisions of IWLEP2022, with the exception of Clause 4.4 - Floor Space Ratio, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under IWLEP2022. It considers various planning controls, strategic planning objectives and existing characteristics of the Subject Site and concludes that the proposed non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.4 of the IWLEP2022, the Subject Site is subject to a maximum FSR of **1:1**. The proposed development will result in a FSR of **1.24:1**. **TABLE 1** below provides a summary of the variation.

TABLE 1. CLAUSE 4.4 OF IWLEP2022 VARIATION SUMMARY			
IWLEP2022	IWLEP2022 Development Standard	Maximum Proposed	Proposed Development Non-Compliance
Clause 4.4 - Floor Space Ratio	1:1 (4,216sqm GFA)	1.24:1 (5,210.85sqm GFA)	The proposed development seeks consent for a maximum FSR of 1.24:1 which is a 24% variation from the development standard.

1.3 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed variation from Clause 4.4 - Floor Space Ratio of IWLEP2022 and has been prepared in accordance with the requirements of Clause 4.6 of IWLEP2022 which includes the following objectives:

- (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 Variation - Floor Space Ratio

Proposed addition of internal mezzanine to Unit 1
 Unit 1, 233 Catherine Street, Leichhardt (Lot 1 DP 1275280)



Under the provisions of Clause 4.4 of the IWLEP2022, the Subject Site is subject to a maximum floor space ratio (FSR) of **1:1**. The proposal involves the construction of a new internal mezzanine level to Unit 1 with an additional gross floor area (GFA) of 150sqm. The proposal results in the building having a total FSR of **1.24:1**, which exceeds the maximum FSR development standard by 994.85sqm or 24%.

The construction of the mezzanine would support the ongoing use of the Subject Site for the purpose of light industries and assist in meeting the specific requirements of the tenants of Unit 1.

As discussed in **Section 2.2** of the SEE, a Development Application (DA/2023/1099) was approved by Council which included a new mezzanine and other changes that include additional GFA to Units 3, 4 and 5.

This Variation Request has been prepared having consideration for the additional GFA and FSR variation approved as part of DA/2023/1099. **TABLE 2** below summarises the extent of variations proposed as part of this DA and other approvals on the Subject Site.

TABLE 2. GFA AND FSR DETAILS			
Component	Approved	Proposed under DA/2023/1099	Proposed under this DA
Site Area	4,216sqm		
Additional GFA	N/A	+ 496.85sqm	+ 150sqm
GFA	4,564sqm	5060.85sqm	5,210.85sqm
Additional FSR	N/A	+ 0.12	+ 0.04
FSR	1.08:1	1.20:1	1.24:1
Percentage increase	N/A	+ 12%	+ 4%
Extent of variation to FSR	8%	20%	24%

As detailed above, the building currently under construction on the Subject Site has an FSR of 1.08:1 which constitutes an 8% variation to the development standard. Additional GFA approved as part of DA/2023/1099 would result in a further 12% variation if approved, bringing the total variation to the FSR development standard to 20%.

The proposal seeks consent for an additional 150sqm GFA, constituting an additional 4% variation to the FSR development standard. Whilst the additional GFA proposed as part of this DA is minor in the scheme of the total GFA for the Subject Site, the compounding increases to FSR result in a total variation of 24%.

The circumstances of the Subject Site and the proposal warrants an appropriate degree of flexibility in the application of the development standard to achieve the best outcome for the Site.



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**PART B THRESHOLDS THAT MUST BE MET****2.1 INTERPRETING CLAUSE 4.6**

Clause 4.6 of the IWLEP2022 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) **compliance with the development standard is unreasonable or unnecessary** in the circumstances, and*
- (b) there are **sufficient environmental planning grounds to justify the contravention** of the development standard.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*



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Accordingly, a consent authority must be satisfied:

- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3 and 4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the floor space ratio development standard prescribed by Clause 4.4 of the IWLEP2022.



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**PART C STANDARDS BEING OBJECTED TO****3.1 OVERVIEW**

The Subject Site is zoned E4 General Industrial and is subject to the underlying objectives of the varied standard as well as the E4 General Industrial zone under the IWLEP2022.

3.2 CLAUSE 4.4 FLOOR SPACE RATIO UNDER IWLEP2012

Clause 4.4 of IWLEP2022 identifies the following objectives:

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

Pursuant to Clause 4.6, the proposal seeks exception to the floor space ratio of 1:1.

3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the proposed addition of an internal mezzanine to Unit 1. The Subject Site is subject to a maximum FSR development standard of 1:1 and the development proposes a maximum FSR of 1.24:1. The proposal would exceed the FSR applicable to the Subject Site by a maximum of 0.24, which represents a 24% variation. The area of non-compliance is the addition of a mezzanine located within Unit 1.

As noted in **TABLE 2** above, previous development on the Subject Site already exceeds the maximum FSR of 1:1. The mezzanine proposed under this DA comprises the addition of 150sqm of GFA and constitutes an additional 0.4:1 FSR.

In its current form, the proposal represents the most orderly efficient use of the Subject Site and allows the site to be developed to its full employment-generating potential. The addition of the mezzanine does not result in any change to the external appearance of the building and allows the use of the approved volume of the Unit to its full potential.

This Variation Request has been prepared in accordance with the objectives of Clause 4.4 - Floor space ratio and the E4 General Industrial zone objectives prescribed by IWLEP2022.



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PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.4 OF IWLEP2022

Pursuant to Clause 4.4 of IWLEP2022 exception is sought from the FSR standard applicable to the Subject Site.

4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone. Pursuant to Clause 4.6 of IWLEP2022, the proposal seeks exception to the FSR pursuant to Clause 4.4 of IWLEP2022.

Clause 4.4 of IWLEP2022 sets out specific objectives. Those objectives under IWLEP2022 are responded to in **TABLE 3** below:

TABLE 3. CONSISTENCY WITH THE CLAUSE 4.4 OBJECTIVES	
Objective	Response
<i>(a) to establish a maximum floor space ratio to enable appropriate development density,</i>	<p>The proposed development will result in the addition of 150sqm of GFA, representing a minor increase to the approved development on the Subject Site. The proposed development will not result in any significant intensification of the use of the Subject Site that will have adverse amenity impacts on the surrounding development. Traffic generation and car parking have been adequately considered within the SEE and assessed as part of the Traffic and Parking Impact Assessment (Appendix 4).</p> <p>Additionally, the proposed density is considered appropriate for the Subject Site as the development supports the use of Unit 1 for the purpose of light industries and assists in meeting the objectives of the E4 General Industrial zoned land (further contemplated in TABLE 4).</p> <p>The purpose of this objective to enable appropriate development density seeks to restrict the overdevelopment of sites that may have an impact on the amenity of the area and nearby residents. The increased 150sqm of GFA will be used for light industrial purposes and it has been demonstrated throughout the SEE that the additional density will not result in any adverse impacts on the amenity of the area and nearby dwellings by way of traffic and parking impacts, acoustic privacy, visual privacy, bulk and scale, overshadowing, or the like.</p>



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TABLE 3. CONSISTENCY WITH THE CLAUSE 4.4 OBJECTIVES	
Objective	Response
<i>(b) to ensure development density reflects its locality,</i>	<p>The resultant density of the Subject Site is appropriate for the capacity of the locality in terms of infrastructure and services. The exceedance in floor space (in this case, due to the addition of mezzanine) does not give rise to any impacts on the locality.</p> <p>The additional floor space above the 1:1 prescribed under Clause 4.4 does not cause any traffic or parking issues on the surrounding road network as it creates negligible additional traffic or truck movements. The traffic analysis indicates that the proposed development can operate at a satisfactory level of service in both the AM and PM peak periods.</p> <p>Furthermore, no changes to the approved building envelope are proposed as part of this development. The proposal will maintain its approved built form that has been designed to be of appropriate scale within the locality. The single storey nature of the development as viewed from Catherine Street and the public domain is consistent with the desired future character of the area and is consistent with the scale of other nearby buildings. The additional GFA will not result in any material increase to the bulk and scale of the building and the building will remain consistent with the desired future character of the area.</p>
<i>(c) to provide an appropriate transition between development of different densities,</i>	<p>The density of the proposed development reflects the locality and provides an appropriate land use intensity and scale within the area.</p> <p>The proposed development is compatible with the surrounding area and adjoining similar industrial developments. The Subject Site has been configured with respect to the surrounding industrial and residential properties and the existing and desired character of the area through a sophisticated and modern industrial development. Furthermore, the proposed mezzanine is located entirely internal to the existing industrial unit.</p> <p>The proposed development would not cause any visual impact, view obstruction, privacy intrusion or loss of solar access to any adjoining development or the public domain.</p> <p>It is considered that the proposed development will result in an improvement to the existing light industrial Unit 1 and contribute positively to the light industrial use of the Subject Site.</p>
<i>(d) to minimise adverse impacts on local amenity,</i>	<p>The proposed mezzanine is located entirely internal to the approved industrial unit and therefore would have no adverse</p>



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TABLE 3. CONSISTENCY WITH THE CLAUSE 4.4 OBJECTIVES	
Objective	Response
	<p>impacts on the local amenity regarding visual impact, overshadowing, view obstruction, privacy intrusion or loss of solar access.</p> <p>Furthermore, the proposed additional GFA on the Subject Site is anticipated to result in negligible intensification of use on the Subject Site in regard to traffic and parking generation. As noted within the Traffic and Parking Impact Assessment (Appendix 4), the Subject Site can accommodate the increased parking demand caused by the additional GFA.</p> <p>The Noise Impact Statement (Appendix 7) has adequately assessed any potential noise impacts on surrounding sensitive receivers. The statement concluded that the proposed operation is predicated to comply with the relevant noise emission criteria of Inner West Council, NSW guidelines and Australian Standards, following the incorporation of the recommendations outlined above. The recommendations of the Noise Impact Statement should be incorporated into the conditions of consent as part of any consent granted.</p> <p>Accordingly, the proposed development is considered suitable as there will be no adverse impacts on the local amenity in regard to traffic, car parking and noise</p>
<p><i>(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.</i></p>	<p>The proposed development is entirely internal, the approved industrial unit and would have no impact on any tree canopy.</p> <p>Neighboring private properties will not be impacted as a result of the proposed development. This includes the surrounding industrial development to the north, south and east and the residential development on the other side of Catherine Street the west. Given the scale and internal nature of the proposal, the operations of all surrounding sites will not be impacted.</p> <p>Furthermore, the public domain will not be impacted as the proposed development is entirely internal to the approved industrial unit and there is negligible traffic, car parking and acoustic impacts.</p>

4.2 OBJECTIVES OF THE ZONE

The Subject Site is zoned E4 General Industrial pursuant to the IWLEP2022. Therefore, consideration has been given to the E4 General Industrial zone objectives in **TABLE 4** below:



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TABLE 4. CONSISTENCY WITH THE E4 GENERAL INDUSTRIAL ZONE OBJECTIVES	
Objective	Response
<i>To provide a range of industrial, warehouse, logistics and related land uses.</i>	The proposed development, for the purpose of light industries within Unit 1, is considered highly compatible with regard to the use of the other industrial units located on the Subject Site and adjoining sites. The proposed development would positively contribute to the desired industrial character of the Subject Site. The use is permitted with consent within the E4 General Industrial zone and will assist in meeting the specific requirements of tenants.
<i>To ensure the efficient and viable use of land for industrial uses</i>	The proposed development is for the purpose of light industries and is located on land designated for industrial purposes. Accordingly, the proposed development supports the intended use of the land. The additional GFA increase the viability of the Site as it provides greater space and flexibility for tenants within an approved industrial unit to meet their specific operational requirements without any adverse amenity impacts.
<i>To minimise any adverse effect of industry on other land uses</i>	The proposed development and the exceedance does not result in any additional or unacceptable impact on other land uses. The proposed development is not readily visible from any residential-zoned land or other sensitive receiver and therefore does not result in any unreasonable bulk and scale impacts. In addition, the nature of operations associated with future tenancies would have no direct adverse impact on any surrounding land uses given: <ul style="list-style-type: none"> ▪ Sufficient parking is provided on Site. ▪ The road network would continue to operate a satisfactory level of service in the AM and PM peak periods. ▪ Noise and air impacts would comply with EPA requirements. ▪ The bulk and scale of the development would not overshadow or adversely affect amenity of surrounding industrial properties. All development will be wholly contained within the Site and will not interfere with the operation of surrounding land uses.
<i>To encourage employment opportunities</i>	The proposed development supports the use of the Subject Site for the purpose of light industries that is an employment-generating opportunity to the immediate community and wider



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TABLE 4. CONSISTENCY WITH THE E4 GENERAL INDUSTRIAL ZONE OBJECTIVES	
Objective	Response
	<p>locality within the Inner West LGA during both the construction and operational phases of development.</p> <p>The exceedance is also consistent with this objective. The variation effectively provides for additional GFA to support a variety of tenancy sizes and configurations on the Site and, in doing so, encourages employment opportunities.</p>
<p><i>To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers</i></p>	<p>It is understood that "other land uses" relates to other permissible uses in the zone that are not industrial in nature, such as take away food and drink premises. The proposed development is not inconsistent with this objective.</p> <p>The proposal is for the addition of a mezzanine to support the approved industrial use of the land. Notwithstanding, given no adverse amenity impacts would result from the proposed development, the construction of a mezzanine would not inhibit this zone objective from being achieved on surrounding properties.</p>
<p><i>To protect industrial land in proximity to Sydney Airport and Port Botany and the Eastern Economic Corridor</i></p>	<p>The Subject Site is not considered to be located in proximity to Sydney Airport, Port Botany or the Eastern Economic Corridor.</p> <p>Notwithstanding, the proposed development supports the continued industrial use of the Subject Site.</p>
<p><i>To retain existing and encourage new industrial uses to meet the needs of the community</i></p>	<p>The proposed addition of a mezzanine supports the existing approved use of the Subject Site for the purpose of light industries.</p> <p>Additionally, the proposed mezzanine is in response to the market demands of industrial tenants that have identified that this Site is ideally located to operate from and service the local and broader communities.</p>

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In view of the particular circumstances of this case, strict compliance with Clause 4.4 of the IWLEP2022 is considered to be both unnecessary and unreasonable.

Strict compliance with the standard is unnecessary as:

- The proposal would not increase the bulk, scale or visual appearance of the existing building;



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- The proposed variation to the FSR will not give rise to any unacceptable environmental or amenity impacts to surrounding peripeties or the public domain in relation to views, overshadowing, solar access, noise and visual privacy;
- Refusing consent to the additional GFA would not deliver any measurable environmental or amenity benefits.

In accordance with the Court's findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

We have set out above a detailed assessment against the objectives of the development standard and also accordingly, adopted test 1 in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of Clause 4.4 - Floor space ratio are satisfied notwithstanding the variation.

- It is noted that the portion of the proposed development that provides additional GFA to exceed the FSR development standard, being a mezzanine, is not visible from any public place and does not add any additional bulk to the approved built form.
- While compliance may be achieved by reducing the GFA of the proposed development, this is considered to undermine the functionality of the building; and the operational requirements the end-users will be unable to be facilitated. The proposed development seeks to provide a variety of tenancy spaces and configurations to suit the need of a spectrum of future industrial tenants. Furthermore, all required car parking for the industrial units can be accommodated on the Subject Site.
- It is noted that the proposed development and the exceedance does not result in any additional or unacceptable impact on other land uses, and the proposed development is not readily visible from any residential-zoned land or other sensitive receiver. The proposed development does not result in any unreasonable impacts on adjoining development in respect of overshadowing, visual bulk, privacy or other amenity impacts due to the proposed works being entirely internal.

The proposal does not conflict with the intent of the development standard and zone as demonstrated above, notwithstanding the proposed numeric variation.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Subject Site. The objectives of the relevant clause and E4 General Industrial zone would be upheld as a result of the proposed development. In light of the above, the application of the FSR development standard is therefore unreasonable and unnecessary in response to the proposed development.



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**4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the FSR:

- The proposed development is entirely consistent with the underlying objective(s) or purpose of the FSR standard, as demonstrated in **Section 4.1**.
- The proposed development fully achieves the objectives of the IWLEP2022 for the E4 General Industrial zone, as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The additional floor space above the 1:1 prescribed under Clause 4.4 does not cause any network or capacity issues on the surrounding road network. Traffic analysis for the proposed development indicates that the effect of additional density caused by the additional industrial floor area does not cause any discernible impact on the locality by way of traffic.
- Further to the above, the proposed development makes adequate provision for onsite car parking to support the floor space proposed, thus negating reliance on external car parking to support the land uses. In this respect, the proposed development contains all operations within the Subject Site boundaries and allows sufficient area so as to not adversely affect any land external to the Subject Site. In this regard, the effect of additional density caused by the additional floor area does not cause any discernible impact on the locality by way of parking pressure. The additional car parking spaces triggered by the additional floor space is negligible and is accommodated on Subject Site.
- The proposed development ultimately seeks to facilitate construction and operation of an industrial unit. The proposed mezzanine is considered a key attribute in creating an internal building environment that would ensure the delivery of suitable industrial facilities required to support the operations of the future tenants involved and thereby enabling the productive use of the Subject Site.
- The additional FSR would facilitate the proposal for light industries and related purposes which specifically suit the needs of the future tenants and maximise the operational efficiencies of the premise.
- There would be no impacts on any sensitive receptors due to the proposal in relation to solar access, privacy or visual bulk as the mezzanine is located entirely internal to the approved industrial unit.
- The proposal would operate in accordance with the approved use of the Subject Site for the purpose of light industries. Accordingly, the proposed industrial unit would have no adverse or non-



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compliant acoustic outcomes on any nearby residential, industrial or commercial receivers during daytime, evening or night-time periods.

- The proposed development would remain compatible with industrial land uses in light of the above.
- Compliance with the remaining development standards applicable to the Subject Site is achieved. There would be no measurable environmental or amenity benefits in maintaining the standard nor would this support the provision of warehouse and other light industrial uses which caters to the operational needs of the end users and the market needs of the industry.
- The proposed development would support the productive economic use of the Subject Site that is ideally located within an area zoned for such permissible industrial-related use, as-well-as being located within close proximity to major commercial centres (Sydney CBD) and nearby transport infrastructure, such as bus networks and the wider regional road network.

For the reasons outlined above, it is considered that the proposed variation to the FSR under Clause FSR is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under IWLEP2022.

4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **TABLE 5** below assesses the proposed development against the objects of the EP&A Act.

TABLE 5. EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposed development is considered to be in the public interest as it would contribute towards meeting the demand for increased employment opportunities and promote the economic welfare of the Inner West LGA, as identified in A Metropolis of Three Cities, and the Eastern City District Plan. Additionally, the proposed development would be of social benefit as it would provide employment-generating opportunities for the immediate locality.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal is not inconsistent with this objective.



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TABLE 5. EP&A ACT OBJECTIVES	
Objective	Response
<i>(c) to promote the orderly and economic use and development of land,</i>	<p>The provision of additional floor space through a mezzanine achieves a balanced outcome with respect to achieving the floor space density required for the Subject Site to successfully operate whilst ensuring acceptable environmental impacts in terms of:</p> <ul style="list-style-type: none"> ▪ visual amenity ▪ noise ▪ traffic generation ▪ stormwater management <p>The proposed development therefore accords with this objective.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<p>The proposed development will not negatively impact the delivery and maintenance of affordable housing.</p>
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	<p>The proposed development would not create the risk of serious or irreversible damage to the environment.</p> <p>Ultimately, the proposed development would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain.</p> <p>The proposed development would not impact on the conservation of biological diversity or the ecological integrity of the locality.</p>
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The Subject Site is located nearby the following heritage item as identified in Schedule 5 of the IWLEP2022:</p> <ul style="list-style-type: none"> ▪ Item I1088, being 'Street trees—row of Port Jackson Figs' located directly adjacent to the Subject Site within the Catherine Street road reserve. <p>The proposed development is located entirely internal to the existing industrial unit as approved. Accordingly, there will be no impact on the heritage significance of the item by the proposed development.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	<p>The proposed development is located entirely internal to the approved industrial building and supports the use of the Subject Site for its intended purpose of industrial development whilst having no additional adverse amenity impacts.</p>
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of</i>	<p>The proposed development can be constructed and maintained without health and safety risks to future tenants.</p>



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TABLE 5. EP&A ACT OBJECTIVES	
Objective	Response
<i>the health and safety of their occupants,</i>	
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The proposed development is considered to be local development, for which the Consent Authority will be Inner West Council.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA is subject to the relevant public notification requirements.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.4 of IWLEP2022 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation does exceed 10% and would be required to be determined by the Local Planning Panel.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with Clause 4.4 of IWLEP2022 will result in:

- Reduce employment opportunities as strict compliance with the 1:1 FSR limit will undermine the functionality of the development and hinder the efficient use of the floor space of the building which is an employment-generating development in the Inner West LGA
- Not meet the operational requirements of modern industrial development. This is evident in the FSR controls prescribed by the environmental planning instruments in other LGAs where there is no FSR limit prescribed for industrial zoned land.

Further to the above, in the event the development standard was maintained, the resulting benefits to the adjoining properties and wider public would be nominal. It is noted that strict compliance with clause 4.4 would inhibit the development from operating at its full capacity, by not facilitating the operational requirements of the end users, which would ultimately impact on the future industrial land uses on the Subject Site. As such, it has been demonstrated that the additional FSR is reasonable and necessary for the proposed warehouse development, which will support industrial land uses in the Inner West LGA. As such, there is no genuine or identifiable public benefit to be achieved in maintaining the FSR for the Subject Site.



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**4.8 SUMMARY**

For the reasons outlined above, it is considered that the variation to Clause 4.4 of IWLEP2022 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of IWLEP2022, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.7** as part of the Third Limb satisfied);
- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.8** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the proposed variation to the maximum FSR control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.4 of IWLEP2022.



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**PART E CONCLUSION**

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.4 of IWLEP2022 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The proposal will capitalise on the Subject Site's full planning potential;
- The proposal satisfies the objectives of the E4 General Industrial zone and Clause 4.4 of IWLEP2022;
- No unreasonable environmental impacts are introduced as a result of the Proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by Council.



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