



Land and Environment Court
New South Wales

Case Name: Anprisa Pty Ltd v Inner West Council

Medium Neutral Citation: [2023] NSWLEC 1768

Hearing Date(s): 6 and 8 June 2022, 26-28 April 2023, 3 November 2023, 7-8 November 2023

Date of Orders: 19 December 2023

Decision Date: 19 December 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: Proceedings 2021/228923:
The orders of the Court are:
(1) The appeal is dismissed.
(2) Development Application No DA/2021/0437 for a Stage 1 concept plan to adaptively reuse the existing site for a residential flat building development, at 40 – 76 William Street, Leichhardt, is refused.

Proceedings 2021/73128
The orders of the Court are:
(1) The appeal is dismissed.
(2) Development Application No DA/2020/0501 for a Stage 2 development to adaptively reuse the existing site for a residential flat building development, at 40 – 76 William Street, Leichhardt, is refused.
(3) The Exhibits, other than Exhibits A, 32 and 33, are returned.

Catchwords: CONCEPT DEVELOPMENT APPLICATION AND DEVELOPMENT APPLICATION – adaptive reuse of existing industrial warehouse buildings to a residential flat building development – exceedance of the floor space ratio development standard – non-compliance

with the adaptive reuse of existing buildings
development standard requiring any increase in the
floor space ratio to be generally contained within the
envelope of the existing building – non-compliance with
the landscaped areas for residential accommodation in
Zone R1 development standard

Legislation Cited: Environmental Planning and Assessment Act 1979, ss
4.23, 4.24, 8.7
Land and Environment Court Act 1979, ss 34, 39
Leichhardt Local Environmental Plan 2013, cl 4.3, 4.4,
4.6, 6.2, 6.4, 6.8, 6.11, 6.14, Sch 5
Inner West Local Environmental Plan 2022, cl 1.8A,
Sch 5
State Environmental Planning Policy No 65—Design
Quality of Residential Apartment Development, cl 4, 28

Cases Cited: Cumming v Cumberland Council (No 2) [2021]
NSWLEC 117
RebelMH Neutral Bay Pty Limited v North Sydney
Council [2019] NSWCA 130
Initial Action Pty Ltd v Woollahra Municipal Council
(2018) 236 LGERA 256; [2018] NSWLEC 118
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC
90
Wehbe v Pittwater Council (2007) 156 LGERA 446;
[2007] NSWLEC 827

Texts Cited: Australia ICOMOS, The Burra Charter: Australian
ICOMOS Charter for Places of Cultural Significance,
October 2013
Department of Planning and Environment, Apartment
Design Guide, July 2015
Leichhardt Development Control Plan 2013
Our Inner West Housing Strategy 2020

Category: Principal judgment

Parties: Anprisa Pty Ltd (Applicant)
Inner West Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
C Norton (Respondent)

Solicitors:

File Number(s): 2021/228923
2021/73128

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** These are two appeals pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of two development applications, at 40-76 William Street, Leichhardt (the site), by the Inner West Council (the Council), as follows:
 - Development Application No DA/2021/0437 (File No 2021/228923) for the Stage 1 Concept Plan for the adaptive reuse of an existing industrial warehouse development and conversion to a residential flat building development to accommodate 181 apartments over 2 levels of basement parking (the Stage 1 concept proposal).
 - Development Application No DA/2020/0501 and SECPP No PPSEC-72 (File No 2021/73128) for alterations and additions to an existing industrial warehouse development and conversion to a residential flat building development to accommodate 181 apartments over two levels of basement parking (the Stage 2 development proposal).
- 2 The appeals were subject to conciliation on 15 November 2021, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (LEC Act). As agreement was not reached, the conciliation conference was terminated, pursuant to s 34(4) of the LEC Act.
- 3 The applications were last amended on 7 November 2023 (Exhibits X, Y and Z). The amendment of the applications was unopposed and granted by the Court.

Issues

- 4 The Council's contends that the Stage 1 proposal should be refused for the following reasons (Ex 32):

"1. DEVELOPMENT CONTROL PLAN/ URBAN DESIGN

The application should be refused as the concept application that has been prepared for the Site as required by Clause 6.14 of Leichhardt Local Environmental Plan 2013 (LLEP), fails to address some of the requirements of Clause 6.14(4) and provides unsatisfactory information and responses in

relation to other requirements. The application fails to provide clear guidance for future development of the site.

Particulars

a. Clause 6.14 of LLEP (relevantly as set out below) applies to sites with an area of 3,000m² or more, the Site has an area of 6,938m², in relation to development applications which involve the erection of a building and as such applies to the application.

[Clause 6.14 quoted]

a1. The Stage 1 Development Application has formulated its development envelopes on the basis of inaccurate information and documentation in relation to existing streetscape heights and topography, a very constrained consideration of the context and insufficient consideration of the Council's current controls and the predominant character of the Distinctive Area.

b. The Concept DA the subject of this matter fails to provide sufficiently detailed controls for the land that will provide for the compatibility of a proposed development with the desired future character of the area or a form and external appearance that will improve the quality and amenity of the public domain.

c. The extent of development proposed in the Concept DA is comprehensively at odds with the current provisions of LLEP and LDCP. The significant uplift of density proposed for the Site is not justified by the very high level and basic Urban Design Study submitted with the application which seeks to post rationalise the Stage 2 Development Application scheme.

d. Deleted

e. The Urban Design Study is of limited use as a 'development control plan' in providing guidance as to the appropriate form of the development on the Site for a Stage 2 DA as:

i. Deleted

ii. Deleted

iii. Deleted

iv. The Urban Design Study ignores the generally low scale density character of the area, proposing a density of development that is well in excess of any development in the area, providing a FSR that is 290% in breach of the maximum permitted FSR on the Site pursuant to Clause 4.4 of LLEP. The breach of the maximum FSR in relation to the Site is not justified and nor are the introduction of two new buildings, one to north Street and one located within the footprint of the southern warehouse, given the FSR restrictions and the extent of FSR already available within the existing warehouse envelopes.

v. The Urban Design Study and Concept application fails to provide site specific urban design guidelines to support the proposed envelopes, adaptive reuse, architectural character and landscape outcomes.

vi. The Urban Design Study and Concept application provides envelopes and detailed layouts that seem only to replicate and justify the previously refused building forms proposed in Development Application DA/2020/0501, with only minor amendments.

vii. Inaccurate information forms the basis of the analysis of the existing context in relation to the envelopes proposed and the impact of the proposed development. As the envelopes are based on inaccurate information, justification is not provided as to whether the envelopes achieves a compatible outcome relative to the desired future character of the area, whether they will improve the quality and amenity of the public domain and whether there are sufficiently detailed development controls for the land.

viii. Provides sketches and massing diagrams which conflict with the Concept application plans.

ix. Provides a series of diagrams and plans with minimal discussion or related development controls.

f. The application fails to adequately address the requirements of Clause 6.14(4) of LLEP. In particular the application fails in relation to the following:

i. The application fails to adequately address the compatibility of the proposed FSR, height, bulk and scale with the desired future character of the area, providing an inappropriate response in relation to Clause 6.14(4)(a), (h) and (i) of LLEP.

ii. The application fails to justify the extent to which the building envelopes exceed the envelopes of the existing building and the permitted building envelope under LDCP, providing an inappropriate response in relation to Clause 6.14(4)(a), (b), (g), (h) and (i) of LLEP.

iii. The extent of the volumetric exceedence beyond the original buildings' volume diminishes the significance and legibility of the original buildings, providing an inappropriate response in relation to Clause 6.14(4)(f) of LLEP.

iv. Deleted

v. The application fails to justify any new built form, particularly forms that exceed the allowable FSR, providing an inappropriate response in relation to Clause 6.14(4)(b), (g), (h) and (i) of LLEP.

vi. The application fails to address the impacts of the development upon views from surrounding properties, providing an inappropriate response in relation to Clause 6.14(4)(c) of LLEP.

vii. The application fails to address the impacts of the development upon the solar access of surrounding properties, providing an inappropriate response in relation to Clause 6.14(4)(k) of LLEP.

viii. The application fails to appropriately consider and address the principles of ecologically sustainable development, providing an inappropriate response in relation to Clause 6.14(4)(l) of LLEP.

ix. The application fails to appropriately consider the importance of provision of genuine and significant generous, centrally located communal open space rather than access ways with landscaping providing an inappropriate response in relation to Clause 6.14(4)(o) of LLEP.

x. The application fails to appropriately consider the optimal location/s for vehicular access to the site in relation to its impact upon the surrounding road network, and in particular does not consider the potential for incorporating a primary vehicular ingress/egress point through the existing openings to William Street opposite Hubert Street, providing an inappropriate response in relation to Clause 6.14(4)(m) of LLEP.

xi. The application fails to provide appropriate pedestrian access to the site and within the site from and between buildings and areas of common open space, providing an inappropriate response in relation to Clause 6.14(4)(m) of LLEP

g. The proposed envelopes and built form, massing and distribution will not provide for the compatibility of the proposed development with the desired future character or improve the quality and amenity of the public domain based on the concept plan.

1A. VEHICULAR AND PEDESTRIAN ACCESS PLANNING

The amended plans and information that the Court granted leave for on 19th December 2022 does not respond to or address the contentions listed below, nor the items of disagreement within the Supplementary Joint Expert Report on Traffic (dated 10 October 2022).

Furthermore, the revised plans have resulted in additional non-compliances and concerns with respect to AS2890.1:2004 (cars) and AS280.3:2015 (bicycles). In particular concern is raised with Basement Level 1 (DA107-P20, dated 9 December 2022) with the combined effects of narrowed vehicular ramp access and the introduction of a non-compliant width for access to the large bicycle storage area, as outlined below:

i) The two-way vehicular access paths shown on the amended plans are non-compliant along the modified ramp detail.

ii) There lacks detail regarding the necessary traffic management treatments for the one-way clockwise circulation.

iii) Two-way bicycle access paths non-compliant per Clause 2.6 of AS2890.3:2015.

iv) Questionable structural detail regarding the lack of column adjacent to the single visitor space in the northeast area, adjacent to the stairwell, which in turn will potentially affect the manoeuvring into and out of that visitor space.

The application should be refused as inadequate consideration has been given to the planning of vehicular and pedestrian access to and within the site and accordingly the application fails to appropriately address Clause 6.14(4)(m) of LLEP as follows:

(m) overall transport hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, with particular regard to public transport, pedestrians and cyclists,

Particulars

a. The optimal vehicular access location for the site is via William Street, opposite Hubert Street, utilising a roundabout traffic control device. This location would provide access off the widest street and provide access at the lowest point on the site (providing easier access to basement levels), through existing openings in the buildings. This access point would minimise traffic and parking impacts upon the surrounding street network. It is appropriate in developing design controls in a Concept Application to ensure the development provides vehicular access at the optimal location, particularly when a significant increase in density of development is proposed.

b. The opportunity for safe / optimum vehicular access in William Street opposite Hubert Street via the provision of a roundabout traffic control device

has not been fully explored by the Applicant. Such a design approach would mitigate impacts that would otherwise occur at the intersections of William Street with North Street or Francis Street and resolve adverse traffic/on-street parking impacts that arise with a vehicular access via either North or Francis Street.

c. Access at William Street could also accommodate service vehicular access to the site, given that the existing site has used this access point for its low frequency service vehicle activity point. A service area with sufficient loading space and headroom for the collection of waste and for deliveries could be achieved either at ground level or in a lower basement area that is separated from the main vehicular access for resident and visitor cars to the basement car park.

d. Provision of vehicular access from North Street has not been justified as being the most appropriate response for the site, given the narrow width of North Street, limited passing opportunities and the potential for an increase in reversing vehicles, all of which should be avoided wherever possible if an alternative safe vehicular access exists for the development.

e. The concept plan provides unacceptably poor pedestrian access to and within the development. Any concept plan for such a large site and development should make provision for separate and direct pedestrian access to each existing/proposed building from the public street network and the car park, including a dignified and equitable form of disabled access.

2. FLOOR SPACE RATIO

The application should be refused as it proposes a floor space ratio (FSR) in excess of the maximum permitted FSR of 0.5:1 pursuant to Clause 4.4(2B)(c)(iv) of LLEP and is not accompanied by a well-founded Clause 4.6 variation request.

Particulars

a. The application indicates that the proposed gross floor area (GFA) of the development is either 13,039.01m² (at page 45 of the Urban Design Report), which on a site area of 6,938m² would result in a FSR of 1.88:1. The maximum permitted GFA on the Site pursuant to Clause 4.4 of LLEP (as follows) is 3,469m². Accordingly, the proposal breaches the maximum FSR control pursuant to Clause 4.4 of LLEP by 9,573.13m², a breach of 276%. According to the figure in the FASEE, the proposed GFA is an increase of 3,470.65m² over the agreed existing GFA of 9,567.63m² on the Site, or a 36.3% increase.

...

a1. Deleted

a2. The proposed FSR calculation utilised in the clause 4.6 request is not agreed as it does not include all elements of the building that constitute GFA as defined, inappropriately excluding garbage storage areas not in the basement, internal walls and balconies.

a3. The calculation of GFA excludes the area of Building A previously identified as a community gym, which it is now claimed to be for plant notwithstanding it has a balcony and sliding glazed doors fronting William Street and that the plant area in Building A is significantly greater than for any of the other buildings.

b. The Clause 4.6 variation request seeking to justify the breach of the 0.5:1 FSR standard is not well-founded for the following reasons:

i.- x. Deleted

xi. The request fails to provide sufficient environmental planning grounds to support the variation of the control.

xii. The request fails to establish that compliance with the control is unreasonable or unnecessary.

g. The application is not consistent with Objective (a)(i) of Clause 4.4 of LLEP as the proposed development is not compatible with the desired future character as identified in Section C2.2.3.4 Helsarmel Distinctive Neighbourhood and the design criteria in Section 12 of Appendix B of Leichhardt Development Control Plan 2013 (LDCP) in relation to building bulk, form and scale.

h. The application is not consistent with Objective (a)(ii) of Clause 4.4 of LLEP as the proposed development does not provide a suitable balance between landscaped areas and the built form.

i. The application is not consistent with Objective (a)(iii) of Clause 4.4 of LLEP as the proposed development does not minimise the impact of the bulk and scale of the building upon the streetscape and amenity of adjoining properties and amenity within the proposed development.

j. The design of the development has not demonstrated adequate regard to the design quality principle of Density (Principle 3) under Schedule 1 of SEPP 65, pursuant to clause 28(2)(b) of SEPP 65.

3. ADAPTIVE REUSE OF EXISTING BUILDINGS

The application should be refused as the application claims to be proposed in part pursuant to Clause 6.11 of Leichhardt Local Environmental Plan 2013 (LLEP) as adaptive reuse of the existing buildings, but is inconsistent with the provisions of Clause 6.11 of LLEP and the design criteria in Section 12 of Appendix B of LDCP.

Particulars

a. The three matters contained in Clause 6.11 of LLEP, identified following, if considered to be development standards, would either need to be satisfied or the application would need to be accompanied by a well-founded Clause 4.6 variation request in order for the development to be granted consent.

Clause 6.11 Adaptive reuse of existing buildings in Zone R1

...

a1. The extent of demolition and the bulk and form proposed by the additional levels is not adaptive reuse of the existing former warehouse buildings as it does not conserve the heritage values of the buildings. The design of proposed Building B seeks to "relocate" substantial floor space from the rear of the building which is to be demolished, to the front and on top of the reconstructed building. The proposal does not constitute an adaptive reuse as it is not sympathetic to the existing buildings and their historic context, does not work within the existing building envelope and volumes, does not insert new work, or make changes that enhance and complement the heritage values of the buildings. Rather, the design demolishes the rear portion of the

building and the roof and internally removes or covers almost all of the existing fabric. The proposal will result in facadism, contrary to objective (a) of 6.11(1) of the LLEP. It does not constitute adaptive “reuse” but rather significant demolition of a warehouse building and construction of a new residential flat building.

b. The significant increase in height proposed for Building B fronting William Street results in a bulk and scale that is inconsistent with the existing character of the area and is not consistent with the identified desired future character or the design criteria in Section 12 of Appendix B of LDCP. The development will adversely affect the streetscape and character of the area as viewed from William Street and North Street and diminishes the significance of the historic buildings that are retained, failing to satisfy criterion (a) of LLEP cl 6.11(3).

b1. The new setback to the eastern portion of the additions to Building B (ie 4.25m and then 10m) creates a ziggurat form that is discouraged by the ADG at Objective 3F-1 Design Guidance Point 1 and is not characteristic of warehouse typologies either, failing to satisfy criterion (a) of clause 6.11(3) of LLEP.

c. The architectural expression of the new works could be distinct, however should interpret meaningful features such as the existing roof forms and the rhythm of the existing building fabric, which is lacking in the design. The development will adversely affect the streetscape and character of the area as viewed from William Street and North Street and as such does not satisfy criterion (a) of LLEP cl 6.11(3). Further, the development does not retain the form, fabric and features of the architectural and historic features of the existing building, because the proposed works include significant demolition of the buildings, including all sawtooth, curved and hipped roof forms, floor levels, including cross bracing and columns, removal of all window frames and glazing from facades, increasing window openings and insertion of additional openings, removal of the lift and other alterations, failing to satisfy criterion (b) of LLEP cl 6.11(3).

d. The demolition of the southern building on the Site and construction of a new building to a height significantly in excess of that of the existing building is inconsistent with the existing character of the area and is not consistent with the identified desired future character and the design criteria in Section 12 of Appendix B of LDCP. This component of the development is now identified in the Statement of Environmental Effects to not constitute adaptive reuse. Accordingly, as this component of the development does constitute adaptive reuse, the Court cannot be satisfied of criterion (a) of LLEP cl 6.11(3).

e. The demolition of the southern building on the Site results in the loss of the integrity of the architecture of the buildings and does not retain the form, fabric and features of the architectural and historic features of the existing building, failing to satisfy criterion (b) of LLEP cl 6.11(3) (regardless of whether or not this component of the development constitutes adaptive reuse).

f. The significant increase in floor space within the development of the Site is not generally contained within the envelope of the existing buildings and as such does not satisfy criterion

(c) of LLEP cl 6.11(3). The criteria requires two assessments to be made, firstly, what is the “envelope of the existing building” and secondly, whether the increased floor space is located “generally” within that envelope. IWLEP was recently made and a change to the wording of this provision which removed

the word “generally”, clarifies that additional storeys and/or buildings cannot satisfy this criterion.

The “envelope of the existing building” is determined by the floor slab, roof and external walls of the buildings existing on the Site. The increase in floor space proposed by the development includes an additional storey above the roof of Building A, the significant demolition of a warehouse building and construction of a new residential flat building at Building B and the construction of two new buildings (Buildings C and D) on part of the Site. Such increases in floor space are not “generally contained within the envelope of the existing building”.

g. The development will “adversely affect the amenity of the surrounding area” by way of unacceptable visual bulk impacts, overshadowing, loss of privacy and loss of views/outlook due to the excessive height and FSR proposed, failing to satisfy criterion (a) of LLEP cl 6.11(3).

h. The development is inconsistent with Objectives (c) and (d) of Clause 6.11(1) of LLEP as it does not provide for a satisfactory level of amenity for future residents and does not ensure that the quality or amenity of existing buildings in the area is not adversely affected.

i. The design of the development has not demonstrated adequate regard to the design quality principles of Built form and scale (Principle 2) and Aesthetics (Principle 9) under Schedule 1 SEPP 65, pursuant to clause 28(2)(b) of SEPP 65.

j. Pursuant to clause 28(2)(c) of SEPP 65, the proposed development is inconsistent with Section 4R - Adaptive Reuse of the Apartment Design Guide as addressed above.

k. The cl 4.6 request provided in relation to cl 6.11(3) of LLEP is not well-founded for the following reasons:

- It does not establish that the development is consistent with the objectives of cl 6.11(1);
- It does not establish sufficient environmental planning grounds to justify the variation to the control requiring any increase in FSR to be “generally contained within the envelope of the existing building”; and
- It does not establish that the proposal constitutes adaptive reuse, which in cl.6.11(3) requires “the change of use to residential accommodation of a building on land”. The amended design does not provide for a change of use of a building, but rather the substantive demolition of Building B and construction of a new building whilst retaining limited elements of the previously existing building.

4. LANDSCAPE AREA

The application should be refused as it proposes inadequate deep soil, for the built form proposed, and landscape area for the Site. The application does not satisfy the minimum 20% of the site area required as landscaped area pursuant to Clause 4.3A of LLEP and is not accompanied by a well- founded Clause 4.6 variation request in relation to the control. The application does not provide adequate deep soil when assessed against Clause 28(2)(b) and (c) of SEPP 65 and the Apartment Design Guide.

Particulars

a. The provisions of Clause 4.3A of LLEP (see following) require a minimum landscaped area of 20% of the area of the site for residential accommodation in the R1 General Residential zone, which with a site area of 6,938m² would equate to a landscaped area of 1,387.6m².

[Clause 4.3A Landscaped areas for residential accommodation in Zone R1 quoted]

Landscaped Area

b. The application indicates that the development provides between 451.41m² and 1,513.92m² of landscaped area. The application does not include a plan that shows the areas of the site to be landscaped area. dependent upon how both “landscaped area” and “site area” is [sic] “interpreted”. Therefore, the clause 4.6 request does not identify the extent of variation to the control which is being sought and as such cannot be determined to be well-founded. [The Council submitted that the numerical figures have changed, refer to Ms Gordon’s evidence].

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iii. Deleted

iv. Deleted

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vii. Deleted

b1. The variation in the calculations is not agreed. The landscape provision on the Site is 451.41m², equating to 6.5% of the site area, with the other calculations inappropriately including many areas that are not consistent with the definition of landscaped area (as follows):

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

b2. The calculations are not agreed calculations as some of the calculations rely upon deletion of the ROW from the site area used for the calculation, which is inconsistent with clause 4.5(3) as follows:

[Clause 4.5(3) quoted]

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

c. Deleted

d. Deleted

e. The application has not established it is consistent with Objective (a) of Clause 4.3A(1) of LLEP as it is unclear whether the proposed development provides for landscape areas that are suitable for substantial tree planting.

f. The application has not established it is consistent with Objective (a) of Clause 4.3A(1) of LLEP as it is unclear whether the proposed development provides for landscape areas that are suitable for the enjoyment of residents having regard the availability of solar access in winter.

g. The application is not consistent with Objective (b) of Clause 4.3A(1) of LLEP as the proposed development does not provide for a landscaped corridor between adjoining properties, particularly in relation to Buildings C and D and the adjoining southern properties and Building C and the eastern properties.

h. The application is not consistent with Objective (e) of Clause 4.3A(1) of LLEP as the lack of provision of onsite landscaping results in unacceptable site density.

i. The application is not consistent with Objective (f) of Clause 4.3A(1) of LLEP as the proposed development does not limit the building footprints to ensure adequate provision is made for landscaped areas.

j. The design of the development has not demonstrated adequate regard to the design quality principle of Landscape (Principle 5) under Schedule 1 SEPP 65, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 and clause 28(2)(b) of SEPP 65.

j1 The deletion of Building D and the conversion of the space to common landscaped area would assist in providing adequate landscaped area on the site that benefits from solar access and room for growth.

j2 The reduction of the size of the basement (by reducing the density on the site) would allow for deep soil tree planting along the southern boundary compatible with the bulk of the development.

Deep Soil

k. Pursuant to clause 28(2)(c) of SEPP 65, it is unclear whether the proposed development is consistent with Section 3E Deep Soil Zones of the Apartment Design Guide (ADG). A minimum of 7% of the Site (being 485.55m² based on the site area of 6,938m²) is required as deep soil landscape area pursuant to the design criteria of Section 3E Deep Soil Zones of the ADG, with areas of deep soil required to have minimum dimensions of 6m. This provision also provides design guidance that on properties 1,500m² and over, 15% of the site area may be provided as deep soil dependent upon the context. The application indicates a deep soil area of 563.56m² is proposed, equating to 8.13% of the site area (only if the pavers in the deep soil along the western boundary are deleted).

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Given the size and dimensions of the Site, the demolition of the southern building and much of Building B and the height of the proposed development, landscaping of a significant scale should be provided and the proposal should comply with Design Criteria 1 and design guidance of Section 3E Deep Soil Zones of the ADG.

k1 The deletion of Building D and the conversion of the space to deep soil landscaped area would assist in providing adequate deep soil [landscaped] area on the site.

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- 6. Deleted
- 7. Deleted

8. STREETScape AND HERITAGE IMPACT OF ADAPTIVE REUSE BUILDINGS

The application should be refused as the alterations and additions to the existing industrial buildings will have an unacceptable impact upon the streetscape and the important architectural and heritage features of the existing industrial buildings on the Site.

Particulars

a. The alterations and additions to the existing industrial buildings are not consistent with the controls and objectives of Section 12 – Warehouses and Factories of Appendix B of LDCP. In particular, the proposal is inconsistent with Controls C1, C2, C4, C5, C6, C7 and C10 (see following).

C1 Development shall:

- a. ensure that alterations and additions to a warehouse or factory do not compromise their structural integrity;
- b. retain the significant fabric and building elements;
- c. contribute to the streetscape and character of the municipality; and
- d. maintain the contribution that warehouses make to area character through their characteristic form, massing, scale and proportions.

C2 The scale and form of the factory or warehouse is to be retained.

C4 The robust masonry form of the building is to remain visually dominant.

C5 The rhythm of openings is to be respected. Two smaller openings may be combined where there is no removal of original significant elements.

C6 Existing painted signs that contribute to the buildings significance and to the streetscape character are to be retained.

C7 Vertical additions are only possible for flat roofed buildings which are well set back behind a parapet and with a horizontal profile in keeping with the simple building form and strong parapet line.

C10 Sawtooth roof profiles must not be altered.

- b. The height, bulk and scale of the development is excessive in relation to the existing and desired future development in the streetscapes of William Street and Francis Street and from other public viewing positions.
- c. The height of the additions to industrial buildings B and the new Building C is excessive and detracts from the heritage and architectural value of the retention of the buildings and of the adjoining Cyclops Toys building (38 William Street).
- d. Deleted

e. Deleted

f. The extent of demolition of the roof trusses, the lift shaft and goods lifts, the internal configuration and some columns detract from the heritage and architectural value of the retention of the buildings.

g. Deleted

h. The design of the development has not demonstrated adequate regard to the design quality principles of Context and Neighbourhood Character (Principle 1) and Built form and scale (Principle 2) under Schedule 1 SEPP 75, pursuant to clause 28(2)(b) of SEPP 65.

9. STREETSCAPE IMPACT OF PROPOSED BUILDING

The application should be refused as the proposed building immediately to the north of 39-45 North Street (Building D) is of unacceptable design and provides an unacceptable visual transition between the existing industrial building and the low scale and density residential development in North Street.

Particulars

a. The proposed Building D does not constitute the adaptive reuse of an existing industrial building and is a new residential building. A new building is not justified and is unnecessary when this area could have been designed as a landscape open space and entry to the rear portion of the development.

b. Deleted

c. Deleted

d. Deleted

e. Deleted

f. Deleted

10. IMPACTS UPON ADJOINING PROPERTIES

The application should be refused as it will result in unacceptable impacts upon adjoining properties.

Particulars

a. The design of the western side of Building C appears to orient all living rooms and balconies for apartments above ground level to the west. The living areas and balconies only have a 9.0m setback from the rear 39-59 North Street. The inadequate separation distance results in unacceptable privacy impacts to those properties, which given the significant difference in density and building typology proposed should be treated as if they are located in a lower density zone. On that basis, pursuant to clause 28(2)(c) of SEPP 65, the proposed development is inconsistent with Section 3F Visual Privacy of the ADG, which would require a setback of 12m for the fifth level.

b. Deleted

c. Deleted

d. The excessive height of the southern envelope results in unacceptable visual bulk as viewed from the rear of the dwelling and rear courtyards of 39-59 North Street and from within the development to the south and east of the

Site. The visual bulk as viewed from development to the south is not ameliorated by significant deep soil tree planting.

e. The excessive height of Buildings A and C result in unacceptable shadow impact upon adjoining properties to the west and south in North Street and within the Allen Estate.

f. Deleted

h. The excessive height of the development results in the loss of outlook and district views to surrounding properties.

i. The use of the right of carriageway and the location of the service area, and access thereto, has the potential to result in the loss of acoustic amenity to adjoining properties to the east and south.

j. The use of the existing right of carriageway is likely to result in adverse safety, light glare and odour impact upon adjoining properties.

k. Deleted

l. Deleted

11. ACCESS UTILISING THE RIGHT OF CARRIAGEWAY

The application should be refused as it has not been demonstrated that the right of carriageway providing access from Francis Street can provide appropriate vehicular and pedestrian access to the proposed development.

Particulars

a. No assessment has been made of the prevailing vehicular access opportunities and constraints surrounding the Site, including, but not limited to, the following matters:

i. The terms of the existing right-of-way/easement for access with respect to its legal width and height, functional width and height, vehicle size limits (if any) and existing peak hourly and daily vehicle/pedestrian volumes.

ii. The width of the vehicular carriageways of the frontage roads (i.e. North Street, William Street and Francis Street) and on-street parking restrictions that may inhibit new driveway locations.

iii. On-street parking usage levels.

iv. Restrictions on driveway locations in accordance with AS2890.1-2004 and AS2890.2- 2018.

v. Swept path tests of the maximum size commercial vehicles that will service the site conducted at the critical public road junctions, at the relevant driveway location (s) and internally extending to and from the service area/loading dock.

b. The application has not demonstrated that sightlines to pedestrians can be provided at the egress to Francis Street as required by AS2890.1:2004.

c. Pedestrian access is proposed along the right of carriageway to Francis Street however the existing construction of the right of carriageway does not provide a separated pedestrian path and the full width of the right of carriageway is required for vehicular movements. It has not been demonstrated that pedestrian use of the right of carriage way can be safely provided. It has also not been established that an accessible path of travel is possible within the right-of- carriageway.

d. The application has not demonstrated that the right of carriageway to Francis Street is suitable for all expected vehicular movements to and from the Site, including Medium Rigid and Council Garbage Truck and the provision for passing of vehicles within the right of way such that unsafe reverse movements are not required to facilitate vehicle passing.

e. An assessment of vehicles movements along the right of way, including the increase compared to the existing use, and the suitability of the existing construction of the right of carriageway for the number of movements and type of vehicles has not been provided based on a survey of existing vehicle movements and an appropriate assessment of post development movements.

f. No details have been provided of any necessary infrastructure upgrades to the right of carriageway.

g. To the extent that works may be proposed within the right of carriageway to make it suitable for the proposal, such works must be detailed and owner's consent provided for the making of an application to carry out the works."

The site and its context

- 5 The site has an area of 6,938m². The site consists of one allotment and is generally L-shaped. The site has a frontage to William Street of 90.88m and a secondary frontage to North Street of 45.72m. The site is burdened by a right of carriageway of variable width and has the benefit of a 5.5m wide right of carriageway to Francis Street. The site is burdened by a drainage easement.



Figure 1: Map of site and surrounds, site coloured red, right of carriageway outlined in blue and heritage item outlined in black.

- 6 The site contains a group of industrial buildings that were part of the former Cyclops Toy factory complex and is currently used by a storage hire company and a motorcycle/moped repair business.

- 7 Building A at the corner of William and North Streets is a four-storey building. Building B is a two-storey building fronting William Street, and the southern portion of Building B is a single storey. The buildings, typical of industrial buildings, have parapets surrounding the roof form. The roof forms range from a double pitched form to saw-tooth form, however the southern portion of the southern building element has an unusual, curved roof form.
- 8 The surrounding area is largely residential and of low scale, consisting of one to two storey dwellings. The majority of the surrounding dwellings are located on small allotments and are either small freestanding dwellings, attached dwellings or semi-detached dwellings.
- 9 Adjoining the site to the south-west are two-storey (and two-storey over semi-basement parking) town houses developed in the form of terrace housing in groups of two, three and more dwellings.
- 10 Adjoining the site to the east is a former industrial building of one and three storey construction that previously formed part of the toy factory, which has been converted for adaptive reuse for residential purposes. The residential use has been generally contained within the building envelope of the former factory buildings. The factory signage facing William and Francis Streets has been retained (and restored) on the facades of this building.
- 11 To the south and south-east of the site is a large residential development on a former industrial site. This development contains a large mix of dwelling forms including two storey townhouses, three storey terraces and residential flat buildings of two - three storey (plus attic) construction above one level of parking. This development is located on higher ground than the site.

Background and the proposal

- 12 The building envelopes are described as follows (Ex 32, pp 2-3):

“Adaptive Reuse

The building element on the corner of William and North Streets is proposed to be converted into a residential flat building. The existing four levels of the building are to be converted, with the exception of the space created by the removal of the lift shaft, goods lift and access. An additional two levels are proposed in an “L” shaped form around the removed lift shaft, goods lift and access.

The northern third of the middle building element fronting William Street is being converted into a two level high space providing pedestrian access to William Street. A proposed east-west pedestrian spine for the development is to be created by the demolition of the southern third of the building element (along with the southern third of the easternmost building element). The middle portion of this building element is to provide a short north-south pedestrian spine at ground level and residential apartments. Three additional residential levels are to be added to this building element.

The northern two thirds of the easternmost building element fronting William Street is proposed to be converted into a residential flat building with the southern third to be demolished to create the east-west pedestrian spine of the development. The top floor of the building element is proposed to have a variable setback from the eastern boundary (approximately 5-6m)

New Buildings

A new residential flat building is proposed fronting North Street, to the south of the existing building element at the corner of William and North Streets. This building is free standing and has a minimal front and southern boundary setback. The building is five storeys (excluding the two levels of basement carpark) and has a three storey presentation to North Street, with the fourth floor setback, and a five storey presentation to the east. The balconies to the rear of this building have a separation of 12m from the balconies on all but the topmost level of the southern residential flat building. This building is separated from the building element at the corner of William and North Streets by approximately 4m.

A new residential flat building is proposed within the retained external walls of the southern building element. The building does not utilise the retained walls of the existing building, but rather is an entirely new building located within the walls. The proposed northern and southern walls abuts the existing walls, effectively enclosing many of the existing openings in those walls, with the central portion of the walls “framing” the pedestrian entrance at the northern side. The western wall provides “enclosure” to the ground floor private courtyards, as does the majority of the eastern wall. The new building is designed in the shape of a rectangle with central open access corridors at all levels and two sets of centrally located access stairs and a lift shaft. The building is five storeys (excluding the two levels of basement carpark), other than the middle northern and southern elements which are four storeys with common roof top open space at the fifth level.

A two storey basement carpark is proposed under the two new buildings, to be constructed just within the footprint of the four walls of the existing southern building element (which are to be retained) and underneath a portion of the western wall (which is retained)."

Planning framework

- 13 The applications are subject to the provisions of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) at cl 4(1), including the Apartment Design Guide (ADG), at cl 28(2)(c).
- 14 The site is zoned R1 General Residential pursuant to the Leichhardt Local Environmental Plan 2013 (LEP 2013) (cl 1.8A of the Inner West Local

Environmental Plan 2022). Residential flat buildings are a nominate permissible use with consent in the zone. The objectives of the R1 zone, to which regard must be had, are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

- 15 There is no height of buildings development standard for the site, pursuant to cl 4.3 of LEP 2013.
- 16 The floor space ratio (FSR) development standard for the site is 0.5:1, pursuant to cl 4.4(2B)(c)(iv) of LEP 2013.
- 17 The Council submits that the mandatory considerations under cll 6.2, 6.4 and 6.8 of LEP 2013 have been satisfied by the relevant documents provided in the applications. I am satisfied that the mandatory considerations under these clauses are met on the basis of this submission.
- 18 Clause 6.11 of LEP 2013 is in the following terms:

6.11 Adaptive reuse of existing buildings in Zone R1

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

- (a) to provide for the adaptive reuse of existing buildings for residential accommodation,
- (b) to retain buildings that contribute to the streetscape and character of Leichhardt,
- (c) to provide satisfactory amenity for future residents of the area,
- (d) to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.

(2) This clause applies to land in Zone R1 General Residential.

(3) Development consent must not be granted to the change of use to residential accommodation of a building on land to which this clause applies that was constructed before the commencement of this clause unless the consent authority is satisfied that—

(a) the development will not adversely affect the streetscape, character or amenity of the surrounding area, and

(b) the development will retain the form, fabric and features of any architectural or historic feature of the existing building, and

(c) any increase in the floor space ratio will be generally contained within the envelope of the existing building.

19 Clause 6.14 of LEP 2013 applies to the proposal at subcll (2)(a) and (c).

Subclause (3) is in the following terms:

(3) Development consent must not be granted to development to which this clause applies unless a development control plan that provides for detailed development controls has been prepared for the land.

20 The Stage 1 application is made pursuant to s 4.23(2) of the EPA Act, which is in the following terms:

(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

21 Section 4.23(3) of the EPA Act is in the following terms:

(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

22 The development control plan referred to in subcl (3) of cl 6.14 under LEP 2013 must provide all of the following, at subcl (4):

(a) the compatibility of the proposed development with the desired future character of the area,

(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,

(c) whether the proposed development has an adverse impact on view corridors,

(d) the site's suitability for the proposed development,

(e) the existing and proposed mix of land uses,

(f) cultural, heritage and archaeological issues,

(g) streetscape constraints,

(h) the height, bulk, scale, massing and modulation of buildings,

- (i) the heights of buildings with street frontages,
- (j) environmental constraints, including contamination and acid sulfate soils,
- (k) environmental impacts such as overshadowing, wind and reflectivity,
- (l) whether the proposed development incorporates the principles of ecologically sustainable development,
- (m) overall transport hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, with particular regard to public transport, pedestrians and cyclists,
- (n) the proposed development's relationship and integration with existing and proposed public transport facilities,
- (o) the overall landscaping of the site,
- (p) stormwater management.

23 The Leichhardt Development Control Plan 2013 (DCP 2013) applies to the proposal at A1.5. The site is within the Helsarmel Distinctive Neighbourhood, at C2.2.3.4. The existing character and desired future character of the neighbourhood is described as follows:

“Existing Character

Most of Helsarmel Estate was subdivided into small lots during the 1880s economic boom giving the streetscape coherence by its regular grid pattern. However, development was slow and continued well into the 1900s.

There is a predominant low scale character and consistency of residential form in the majority of Helsarmel Distinctive Neighbourhood. This development is in the form of detached, single storey cottages on small lots, demonstrating a variety of architectural styles and building materials. Many of these dwellings are Federation or post-war styles, with scattered examples of Californian bungalows and workers' cottages. These dwellings reflect the consistent and regular allotment pattern found on such streets as James Street, Charles Street and Elswick Street North.

In direct contrast to the predominant low scale character of the surrounding neighbourhood, a large residential development occupies most of the former John Heine site (at 69 Allen Street comprising of 141 two to three storey units and townhouses) and is bordered by Francis Street, Allen Street, William Street and North Street.

The character of the Helsarmel Distinctive Neighbourhood is heavily influenced by the regular road pattern and subdivision layout. The streets are mostly wide and tree-lined, with a strong residential character. The street pattern is almost completely north-south, with the only east-west streets being Allen, Short and William Street, Darley Road and the City West Link.

Other than the Pioneer Memorial Park, public open space is limited within the Helsarmel Distinctive Neighbourhood, with two small parks located on the corner of North and William Street and on the corner of Darley Road and Falls Street. Where streets are lined with trees, such as Francis and James Street between William and Allen Street, the vegetative corridor contributes significantly to the character and amenity of the streetscape.

Leichhardt Bus Depot and former tram shed are located off Derbyshire Road are significant features within the Helsarmel Distinctive Neighbourhood.

Desired Future Character

Objective

O1 To facilitate development that is consistent with the Desired Future Character and Controls for the Distinctive Neighbourhood.

Controls

C1 Maintain the character of the Helsarmel Distinctive Neighbourhood by keeping development complementary in architectural style, form and materials.

C2 Maintain and enhance the predominant low scale 'cottage' character of the residential streets.

C3 Preserve and enhance the weatherboard cottages and Californian bungalows scattered throughout Helsarmel Distinctive Neighbourhood.

C4 Preserve the consistency of the subdivision pattern in this area.

C5 Preserve and enhance the availability of views, both of city landmarks and local features.

C6 Maintain the prevalence of street trees in addition to mature and visually significant trees on private land.

C7 Encourage street tree planting throughout Helsarmel Distinctive Neighbourhood.

C8 Encourage and enhance landscaping in the front building setback throughout Helsarmel Distinctive Neighbourhood.

C9 Building wall height is to be a maximum of 3.6m, with the exception of development along Darley Road where there is potential for higher, more dense development, where a maximum building wall height of 6.0m shall apply.

C10 Development is to be consistent with any relevant Sub Area objective(s) and condition(s)."

- 24 The Council submits that the site at 69 Allen Street referred to under existing character above is the "Allen Estate", the development of which was approved in 1992.
- 25 Section C3.13 applies to the conversion of existing non-residential buildings and is in the following terms:

"C3.13 CONVERSION OF EXISTING NON-RESIDENTIAL BUILDINGS

Objectives

O1 Development encourages the adaptive reuse of non-residential buildings for residential uses that:

- a. retain heritage value of the building;

- b. maximise the environmental benefits of recycling buildings and minimises waste;
- c. provide a high level of resident amenity;
- d. is compatible with the character of the neighbourhood and streetscape;
- e. represent high quality urban and architectural design; and
- f. does not have a significant adverse amenity impact on surrounding land.

Controls

C1 The existing character of the building is retained and/or enhanced.

C2 Increases in floor space are contained within the existing building envelope.

C3 The amount of demolition is minimised and the amount of recycling of site and building materials is maximised.

C4 The conversion provides an adequate level of residential amenity in terms of acoustic privacy, private open space, solar access and visual privacy.

Note: Due to the larger scale and form of some non-residential buildings, innovative design measures that retain the heritage value of the building such as removing internal parts of the building to create courtyards or open to the sky atria may be appropriate to achieve residential amenity and areas for open space with appropriate drainage.

C5 The appearance of the building integrates with and enhances the streetscape.

C6 Landscaped open space to incorporate a planting area is provided to cater for the recreation needs of residents and enhance the environmental sustainability of the development.”

- 26 Section 12, Appendix B Building Typologies of DCP 2013, Warehouses and factories, is in the following terms:

“SECTION 12 – WAREHOUSES AND FACTORIES

Background

The defining characteristics of a Warehouse or Factory are as follows:

- 1880s – 1930s;
- two to five storeys with high floor to ceiling heights and an open floor plan giving one very large space;
- warehouses and factories are large, simple rectangular buildings that are often built to the lot boundary. They are of face brick with regularly spaced, recessed, 'punched' openings and little ornamentation;
- façade decoration is generally limited to brick detailing around windows; and
- roofs are either flat or near flat and concealed behind simple, horizontal parapets or have a distinctive sawtooth pattern or large gables.

Objectives

O2 To facilitate development that is compatible with this Building Typology.

Controls

C1 Development shall:

- a. ensure that alterations and additions to a warehouse or factory do not compromise their structural integrity;
- b. retain the significant fabric and building elements;
- a. contribute to the streetscape and character of the municipality; and
- b. maintain the contribution that warehouses make to area character through their characteristic form, massing, scale and proportions.

C2 The scale and form of the factory or warehouse is to be retained.

C3 Lightweight balconies, canopies and sun shading devices may be affixed to the facades so long as there is a clear distinction between the original fabric and the contemporary addition and they don't detract from the original industrial character of the building.

C4 The robust masonry form of the building is to remain visually dominant.

C5 The rhythm of openings is to be respected. Two smaller openings may be combined where there is no removal of original significant elements.

C6 Existing painted signs that contribute to the buildings significance and to the streetscape character are to be retained.

C7 Vertical additions are only possible for flat roofed buildings which are well set back behind a parapet and with a horizontal profile in keeping with the simple building form and strong parapet line.

C8 Decorative roof elements that undermine the strong horizontal parapet line are strongly discouraged.

C9 Contemporary additions should be distinguishable from the original fabric.

C10 Sawtooth roof profiles must not be altered."

Public submissions

- 27 Eight resident objectors gave evidence onsite at the commencement of the hearing. The objectors' concerns are broadly covered by the Council's contentions in both matters.

Expert evidence

- 28 The Applicant relied on the expert evidence of Adam Haddow (urban design), Jeff Mead (planning), James Phillips (heritage), Ben Liddell (traffic), Samer El Haddad (stormwater) and Eric Gerges and Zlatko Gashi (engineering).
- 29 The Council relied on the expert evidence of Gabrielle Morrish (urban design), Kerry Gordon (planning), Sinclair Croft (heritage), Craig McLaren (traffic) and Joseph Bertacco (stormwater).
- 30 The experts prepared joint reports as follows:

- Urban design and planning: Exhibit 35,
- Heritage: Exhibits 24 and 31,
- Traffic Exhibits: 25, 26 and 27.
- Stormwater: Exhibits 7 and 8.

31 The urban design, planning, heritage, and traffic experts gave oral evidence.

THE STAGE 1 CONCEPT PROPOSAL

Contention 1 Development Control Plan/Urban Design

32 The Applicant submitted that it is open to me to find that a development control plan for the site (or a concept development application to satisfy the requirement for a development control plan, pursuant to s 4.23(2) of the EPA Act) is not required if I am satisfied that such a plan would be unreasonable or unnecessary in the circumstances, pursuant to cl 6.14(5) of LEP 2013.

33 In my view, a development control plan (or a concept development application) is a reasonable and necessary requirement in all of the circumstances of this matter, because the development standards, development objectives and controls for the site are collectively unresponsive to the existing built form and character of the site, despite an explicit objective in LEP 2013 to retain and adaptively reuse former warehouse buildings for residential use. A development control plan (or a concept development application) is necessary for the following reasons:

- A site specific LEP amendment for the site has not been prepared.
- I accept and agree with Mr Mead's evidence that the FSR development standard for the site of 0.5:1 is a generic standard applied widely across the R1 zone, without reference to the existing built form on the site, which, it is agreed by the planning experts, has an existing FSR of 1.38:1, much greater than the standard. In this circumstance, where a significant exceedance of the development standard is contemplated and seemingly justified by the existing and valued built form of the former industrial warehouse buildings on the site, a development control plan (or a concept development application) is required to analyse and establish building envelopes and an appropriate future form as a residential development.
- I accept and agree with Mr Mead's evidence that the controls for the Helsarmal Distinctive Neighbourhood at C2.2.3.4 of DCP 2013 appear to be addressed to the low scale cottage character of the precinct, and not to the existing scale and character of the site. I accept and agree with Ms Morrish's evidence that the site has an established warehouse character in contrast to the low-density

residential cottage character of the precinct. The character statement makes no reference to the site or its distinctive character.

- I accept and agree with Mr Mead's evidence that the desired future character should have considered the existing built form on the site, given that cl 6.11 of LEP 2013 (and cl 6.11 of the Inner West LEP 2022) seeks the retention and adaptive reuse of existing buildings (constructed before the commencement of those plans) as residential development.
- I accept and agree with Mr Mead's evidence that the existing development at 69 Allen Street on the adjoining site should not be wholly disregarded in understanding the built form context and established character of the locality.

34 The concept development application is to contain the information required to be included in the development control plan by cl 6.14(4) of LEP 2013, pursuant to s 4.23(3) of the EPA Act. I accept and agree with Ms Morrish's evidence that the Stage 1 proposal does not adequately address all the items listed under subcl (4) (Ex 35, par 1.4.5). The Urban Design Study (Ex X, tab 3) does not include detailed development controls sufficient to guide a Stage 2 proposal.

35 Option 3 of the 'Design Principles Massing' in the Urban Design Study states that the option is:

““not dense enough” despite its significant scale, indicating that lower density options have been discarded in a pre-emptory manner, and without indicating what the minimum desirable density should be or how it was determined”

36 I accept the Council's submission that the design massing studies in the Urban Design Report do not appear to have considered the potential for development compliant with the relevant controls, such as a lower FSR (closer to the FSR of the existing development), fewer storeys added to Building B, a smaller building in place of Building C, or the omission of Building D. The Urban Design Study does not indicate what the minimum desirable density is and how the proposed density was determined.

Contention 1A Vehicular and Pedestrian Access Planning

37 I accept the experts' agreement that heavy vehicle access to and from the site via the Francis Street right of way is acceptable (Ex 25, par 9).

38 I accept the experts' agreement that resident vehicular access to the site via North Street is acceptable (Ex 3, pars 12-14), subject to the parking changes along the northern end of North Street shown on the plan in Appendix E to

Ex 3. I accept the experts' agreement that the 4 parking spaces lost on North Street (to permit 71% of the traffic accessing and departing from the site from the northern end of North Street according to Mr Liddell) can be provided on William Street (Ex 3, par 48).

39 The Council's contention that the optimal vehicular access location for the site is via William Street and opposite Hubert Street utilising a roundabout traffic control device is not made out by the evidence before me, for the following reasons:

- I accept Mr Phillips evidence that the William Street roundabout (shown on Ex 30) favoured by Mr McLaren to provide resident vehicular access to the site through Building B, but not proposed by the applications, would have a detrimental impact on the identified heritage significance of the local heritage item at 2 Hubert Street. The round-about would require signage, speed humps and protective barriers, which would detract from the principal view of the heritage item along William Street (Ex 30, p 3).
- I accept Mr Liddell's evidence that there is limited scope to change the southern kerb alignment because the existing building façade of Building B is located on the boundary, and this would require a pedestrian crossing within the footprint of Building B (as shown on Ex 30), which is undesirable for pedestrian amenity and safety (Ex 25, par 25). I accept Mr Phillips' evidence that the extensive changes required to the opening in Building B in order to extend the turning circle of the roundabout into the footprint of Building B will result in the opening not resembling the original opening, and this would have an adverse impact on the ability to interpret the façade pattern of Building B (Ex 31, p 3).

Contention 2 Floor Space Ratio (FSR)

40 I accept the Council's submission that no precise FSR can be determined for development within the envelope of a concept proposal. I accept the submission that the Stage 2 proposal provides one form of indicative spatial layout, however there is no requirement for that layout to be realised with the approval of the Stage 1 proposal. I accept the Council's submission that it is obvious that the development within the Stage 1 proposal would significantly exceed the FSR development standard, and accordingly, it is appropriate to require a cl 4.6 written request in relation to the contravention of cl 4.4(2B)(c)(iv) of LEP 2013, notwithstanding that the exact exceedance cannot be quantified at the concept development application stage.

Contravention of the FSR development standard

- 41 The Stage 1 proposal has an estimated FSR of 1.91:1 (Ex Z, tab 4, p 4). The FSR development standard for the site is 0.5:1.
- 42 The Applicant provided a written request seeking to justify the contravention of the development standard under cl 4.4(2B)(c)(iv) of LEP 2013 (Exh Z, tab 4).
- 43 The FSR of the existing development on the site is 1.38:1 (Ex Z, tab 4, p 4).
- 44 Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 at [13] “*Initial Action*”). The consent authority must form two positive opinions of satisfaction under cl 4.6(4)(a). As these preconditions are expressed in terms of the opinion or satisfaction of a decision-maker, they are a “jurisdictional fact of a special kind”, because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent (*Initial Action* [14]). The consent authority, or the Court on appeal, must be satisfied that the Applicant’s written request has adequately addressed the matters required to be addressed by cl 4.6(3) and that the proposal development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4), as follows:
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- 45 On appeal, the Court has the power under cl 4.6(2) to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and

Environment, pursuant to s 39(6) LEC Act, but should still consider the matters in cl 4.6(5) of LEP 2013 (*Initial Action* at [29]).

The Applicant's written request to contravene the FSR development standard

- 46 The first opinion of satisfaction required by cl 4.6(4)(a)(i) is that the Applicant's written request seeking to justify the contravention of a development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3) (see *Initial Action* at [15]), as follows:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard
- 47 The Applicant bears the onus to demonstrate that the matters in cl 4.6(3) have been adequately addressed by the written request in order to enable the Court, exercising the functions of the consent authority, to form the requisite opinion of satisfaction (*Initial Action* at [25]). The consent authority has to be satisfied that the Applicant's written request has in fact demonstrated those matters required to be demonstrated by cl 4.6(3) and not simply that the Applicant has addressed those matters (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [4]).
- 48 The common ways in which an Applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] ("*Wehbe*") and repeated in *Initial Action* [17]-[21]:
- the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
 - the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
 - the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
 - the development standard has been abandoned by the council;
 - the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

49 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

50 The Applicant's written request justifies the contravention of the FSR development standard on the bases that compliance is unreasonable or unnecessary because the objectives of the development standard are met, notwithstanding the non-compliance with the numerical standard (Wehbe 1); and that the zoning of the site is unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary (Wehbe 5).

Wehbe 1

51 The relevant objectives of the FSR development standard under cl 4.4(1) of LEP 2013 are as follows:

(a) to ensure that residential accommodation—

(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and

(ii) provides a suitable balance between landscaped areas and the built form, and

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

...

52 The written request notes that the description of the desired future character for the Helsarmel Distinctive Neighbourhood in DCP 2013 does not refer to the existing built form or character of the site. To summarise, the written request states that the proposal is compatible with the desired future character of the area as it retains and adaptively reuses two buildings that are a significant part of the urban fabric of the locality, and that the most significant addition to the site, Building C, is not viewed within the streetscape. The proposal does not affect the existing low scale cottage character that exists in parts of the neighbourhood.

53 According to the written request, the proposal integrates built form within a landscaped setting. The proposal contains a significant landscape corridor to the south of Building B, within the context of a constrained site. The proposal provides an area equivalent to 21.7% of the site area as landscaping, including deep soil areas and planting on structure. The existing development on the site

fails to provide an appropriate balance between landscape area and built form, as the existing development is devoid of any vegetation or landscaped screening. The reduction in site coverage, when comparing the existing development to the proposal, allows for a substantial increase in landscaping.

- 54 The written request states that the proposal minimises the impacts of the bulk and scale of the building envelopes by receding the upper-level addition/s to Buildings A and B. Building C, the most substantial addition to the site, is not visible from William Street.

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- 55 The written request notes that the FSR of the existing development on the site is 1.38:1, well in excess of the development standard. The built form on the site was extant at the time LEP 2013 was made, so that the development standard applied to the site under LEP 2013 did not take into account the existing built form on the site. The development standard therefore cannot have been based on any rigorous study or urban design analysis of the site. The development standard conflicts with cl 6.11 to the extent that adherence to the numerical development standard would require, upon re-development, demolition of parts of the existing warehouse buildings which is contrary to the objectives of cl 6.11. It is considered that the zoning of the land is unreasonable and inappropriate in that where a residential zone was retained on the site, the existing form of buildings would reflect the scale and density that would be more appropriately included in a R3 zone. At the very least, the planning controls should have reflected a consideration of the existing built form.

Environmental planning grounds

- 56 The grounds relied on by the Applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature, and environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]) as they refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* at [23]). The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development

standard, not the development as a whole (*Initial Action* at [24] and *Cumming v Cumberland Council* (No 2) [2021] NSWLEC 117 at [78]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

57 The written request cites the following environmental planning grounds as justifying the contravention of the FSR development standard:

- The proposal includes the adaptive reuse of Buildings A and B consistent with the objectives of cl 6.11 of LEP 2013. The retention of Buildings A and B exceeds the FSR development standard for the site.
- Compliance with the FSR development standard would require demolition of existing fabric on the site.
- The new Building C provides a residential flat building with high amenity and addresses potential amenity impacts on adjoining sites.
- The former excavation of the site permits additional gross floor area (GFA) to be located at a lower level than adjoining land which reduces bulk, scale and visual impact.
- The additional density on the site has been designed in response to detailed urban design analysis which provides for a design solution that is contextually appropriate.
- The proposal removes a prohibited use from the site and replaces it with a permissible land use which is more compatible with the pattern of land use in the locality.
- The proposal upgrades the existing buildings.
- There is a social benefit in providing additional housing in this location.
- The proposal is consistent with the aims of the Inner West Housing Strategy and the site provides an opportunity to increase the housing stock in the locality.
- There is an absence of any significant material amenity impacts on surrounding properties and the future occupants of the proposal.

Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone

58 The second opinion of satisfaction in cl 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that

the development is in the public interest (*Initial Action* at [27]). The consent authority must be directly satisfied about the matters in cl 4.6(4)(a)(ii) (*Initial Action* at [26]).

Findings regarding the cl 4.6 written request to contravene the FSR development standard

- 59 I accept the Council's submission that the Inner West Housing Strategy (the Strategy) (Ex 36) does not include the site (Figure 43), as the site is south of William Street, and the Strategy identifies the area to the north of William Street as one of the areas suitable for potential addition dwelling in medium density developments. Furthermore, I accept the Council's submission that the Strategy addresses the potential for a specific housing typology that is not relevant to this application. For these reasons, the Strategy is not an environmental planning ground justifying the exceedance of the FSR development standard for the Stage 1 proposal.
- 60 I accept the Applicant's position that there are sufficient environmental planning grounds to justify the exceedance of the FSR development standard for the site, because the existing building envelopes on the site exceed the FSR development standard. The FSR development standard for the site of 0.5:1 is a generic standard applied widely across the R1 zone, without reference to the existing built form on the site, which, it is agreed by the planning experts, has an existing FSR of 1.38:1. Clause 6.11 of LEP 2013 seeks the adaptive reuse of existing buildings in the R1 zone, so the bulk and scale of the existing development is very relevant to the opportunities and constraints of this site. I accept that the reasoning in the written request identified as "Wehbe 5" and that the FSR development standard for the site, given the existing built form on the site coupled with the policy for adaptive reuse of former industrial developments under cl 6.11 of LEP 2013, is inappropriate. The R1 zoning is not necessarily unreasonable or inappropriate.
- 61 In my view, the other environmental planning grounds cited by the written request are not focused on the aspect of the development that contravenes the development standard, but merely promote the development as a whole.

- 62 I do not accept that the proposal has no amenity impacts. The height and location of the building envelope of Building C reduces the solar access to adjoining Buildings 2 and 3 fronting North Street, see contention 10 below.
- 63 The Apartment Design Guide has as the objective for solar and daylight access at 4A-1, “to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space”. Design criterion 1 is for 70% of apartments in a building to receive a minimum of 2 hours direct sunlight between 9am and 3pm on the winter solstice. I accept and agree with Ms Gordon’s evidence that the Stage 1 proposal (based on the internal spatial planning of the Stage 2 proposal) results in inadequate solar access to new Buildings C and D, as only 56.1% of apartments in Building C and 25% of apartments in Building D achieve the criterion, and 21.2% of apartments in Building C and 25% of apartments in Building D achieve no solar access at all on the winter solstice. I accept that the underperformance of Building A (60.9%) is justified because it is for the adaptation of an existing building.
- 64 For these reasons, the Stage 1 proposal is not consistent with the objectives of the FSR development standard.
- 65 The Stage 1 proposal does not provide a suitable balance between landscaped area and the built form. The proposed retention of the building form of Buildings A and B, and the demolition of the existing structure at the rear of Building B, allows for the provision of a generous internal landscaped courtyard over the basement parking. I accept and agree with Ms Morrish’s evidence that a significant opportunity of the configuration and context of the site is to provide an east-west landscaped pedestrian spine connecting North Street and the right-of-way, as shown in Figure 2.10.4.4 of Ex 35. A generous landscaped internal courtyard and pedestrian link would be a focus of the development and provide an opportunity to configure Building C to achieve better solar access to apartments. Instead, the Stage 1 proposal confines the landscaped areas to the boundary setbacks and relatively narrow corridors between buildings.

Contention 3 Adaptive Reuse of Existing Buildings

- 66 The site is not identified as a heritage item or within a heritage conservation area under Sch 5 to LEP 2013 (nor under Sch 5 to the Inner West LEP 2022). I

accept and agree with Mr Phillips' evidence that it is misleading and unnecessarily restraining to apply the provisions of the Australian ICOMOS Charter for Places of Cultural Significance 2013 (the Burra Charter) regarding adaptive reuse, or the definition of adaptive reuse in a publication by the Heritage Council of NSW to the interpretation of adaptive reuse under cl 6.11 of LEP 2013. As the site is not identified as a heritage item, nor is it within a heritage conservation area, the reinvention of the site as a residential development should not be constrained by philosophical notions of adaptation applied to heritage places. Had the Council wanted the existing fabric on the site to be treated thus, it has had ample opportunity to list the site as a local heritage item.

- 67 The term 'adaptive reuse' under cl 6.14 is undefined by LEP 2013. Incorporating the existing buildings on the site into the new development requires juggling the constraints and opportunities posed by those structures, hopefully enabling an outstanding architectural solution which would never have been achieved without the need to re-interpret the existing built forms. It requires a respectful (yet it can be a potentially robust) response to the existing buildings. Adaptive reuse in this context is not intended to achieve the conservation, retention and interpretation of a heritage item. It need not be wholly deferential. It can be playful. The history of towns and cities is a story of successive layers upon existing urban fabric. The urban design response to the constraint of the existing industrial warehouse buildings on the site should be articulated and tested by the concept development application. It is not necessary to attempt to contain the definition of adaptive reuse in the sense of converting and recycling architecture, as the concept proposal must be specific and responsive to the particular and unique constraints and opportunities of this site.
- 68 The adaptive reuse of buildings, including redundant industrial buildings, and places other than heritage items and heritage conservation areas, is contemplated by the ADG at 4R. The ADG acknowledges that non-residential buildings often have dimensions, layouts and orientations that are not designed for residential use and so a balance must be achieved between retention and the quality of the residential amenity. The ADG objective for design solutions

and design guidance for adaptive reuse are very relevant to this site. The discussion, objectives and design guidance provides the best guidance for a project such as this one, and not the heritage publications regarding heritage items and heritage conservation areas.

- 69 I accept that cl 6.11(3) of LEP 2013 imposes certain mandatory considerations, however, it does not direct one to a definition of adaptive reuse specific to conserving the identified heritage significance of an item while adapting the item for a new use. For this reason, I do not accept the Council's contention that the extent of demolition and the bulk and form proposed by the additional levels necessarily means that the concept development application is not an adaptive reuse project. I am satisfied that the existing built form on the site is sufficiently retained and identifiable in the concept proposal to be characterised as adaptive reuse of the existing built form.

Contravention of the development standard under cl 6.11 of Leichhardt Local Environmental Plan 2013

- 70 The Applicant submits that the proposal complies with the standards under cl 6.11(3)(a) and (b), however the proposal does not comply with the standard under (c), as the increase in the FSR is not generally contained within the envelope of the existing buildings.
- 71 The Applicant provided a written request seeking to justify the contravention of the development standard under cl 6.11(3)(c) of LEP 2013 (Ex Z, tab 6).

The Applicant's written request to contravene the cl 6.11(3) of Leichhardt Local Environmental Plan 2013 development standard

- 72 The Applicant's written request justifies the contravention of the cl 6.11(3) of LEP 2013 development standard on the basis that compliance is unreasonable or unnecessary, as follows:
- The objectives of cl 6.11 and the zone are achieved.
 - The site should not have been subject to the FSR, site coverage and landscaped as applied under LEP 2013 due a fundamental incompatibility of planning provisions with the site and this has resulted in the strict provisions of cl 6.11 being inappropriate for the site.
- 73 The environmental planning grounds cited by the written request are as follows:

- The exceedance of the standard is small in scale; one additional storey to the existing four storeys of Building A, and three additional storeys to the existing two storeys of Building B.
 - The proposal is a redistribution of existing GFA and the displaced GFA is to be located within the new storeys.
 - The proposal will have positive physical impacts.
- 74 The exceedance of the development standard is not small in scale, nor can it be justified as a redistribution, as the proposed FSR significantly exceeds the agreed existing FSR. The proposal simply does not comply with the standard in cl 6.11(c) as any increase in GFA is not generally contained within the envelopes of the existing development. Furthermore, the numerical calculations disregard proposed GFA that under the definition contributes to the proposed FSR.
- 75 The “positive physical impacts” which are listed in the written request merely promote the development as a whole.
- 76 The FSR of the proposal is plainly an increase in the FSR of the site overall, which exceeds the volume of the existing building envelopes. I accept and agree with Mr Haddow’s evidence that the adaptive reuse nature of the proposal justifies a non-compliance with the standard under cl 6.11. A better approach would be to determine the proposed building envelopes in terms of the opportunities and constraints of this site to justify the allocation of additional GFA of the proposal beyond the existing building envelopes.

Contention 4 Landscape Area

- 77 I accept and agree with the Council’s submission that the lack of adequate separation between Building B and Building C, and the overall footprint and design of Building C, result in inadequate space being available for the provision of meaningful landscaping. This submission is made out by the inadequate solar performance of Building C. Refer to paragraphs [63] – [65] above.
- 78 The Stage 1 proposal does not provide a suitable balance between landscaped area and the built form. A generous landscaped internal courtyard and pedestrian link would be a focus of the development and provide an opportunity to configure Building C to achieve better solar access to

apartments. Instead, the Stage 1 proposal confines the landscaped areas to the boundary setbacks and relatively narrow corridors between buildings.

Contention 8 Streetscape and Heritage Impact of Adaptive Reuse Buildings

- 79 I do not accept the Council's submission that the height, bulk and scale of the proposed additions to Buildings B and the new Building C are necessarily excessive and detract from the heritage and architectural value of the retained buildings and the adjoining former warehouse building at 38 William Street. The focus should be on the objective of Section 12 – Warehouses and Factories of Appendix B of DCP 2013, to facilitate development that is compatible with the retained buildings, as well as that which maintains or improves the amenity of adjoining development and achieves a high level of amenity for the future residents of the development.

Contention 9 Streetscape Impact of Proposed Buildings

- 80 I do not accept the Council's contention that Building D does not constitute the adaptive reuse of an existing industrial building and is a new building. The Stage 1 proposal is for the adaptive reuse of *the site*, and as such a new building in the context of the part-retention and adaptive reuse of the existing industrial warehouse buildings on the site is a part of the overall vision to create a unique residential apartment complex.
- 81 I accept the Council's contention that the building envelope for Building D is unacceptable as Building D is substantially overshadowed by Building A, so that only one of the four proposed apartments in Building D will receive at least 2 hours of solar access on the winter solstice.

Contention 10 Impact upon Adjoining Buildings

- 82 According to Ms Gordon, the building envelope of Building C results in a small reduction in solar access during the mornings between 9am and 9:15am on the winter solstice to the living rooms and courtyards at the rear of the terrace houses fronting North Street identified as Buildings 2 and 3 (Ex Z, tab 7, views from the sun). In Ms Gordon's view, this small reduction in solar access is significant because those dwellings already receive less than 2 hours of solar access during the morning of the winter solstice. In her opinion, this impact is unacceptable.

- 83 I accept and agree with Ms Gordon's evidence. Maintaining the existing limited solar access to the rear of the dwellings in Buildings 2 and 3 fronting North Street on the winter solstice should have been a key constraint to defining an appropriate building envelope for Building C. This is particularly so given the substantial increase in GFA the Stage 1 proposal represents when compared to the existing development on the site, and the absence of a height of buildings development standard. I am satisfied that the Council's contention that the excessive height of Building C results in unacceptable overshadowing of the adjoining properties to the west and south in North Street is made out.

Conclusion

- 84 I am not satisfied that the Stage 1 proposal, including the Urban Design Study, adequately addresses the information required to be provided by a site-specific development control plan listed under cl 6.14(4) of LEP 2013.
- 85 I am not satisfied that the cl 4.6 written request to contravene the FSR development standard for the site adequately justifies the exceedance of the development standard for the Stage 1 proposal. I do accept that the GFA of the existing development of the site, coupled with the policy for the adaptive reuse of former industrial developments under cl 6.11 of LEP 2013, is a sufficient environmental planning ground to justify the exceedance of the FSR development standard. The proposal is contrary to the objectives of the FSR development standard under LEP 2013.
- 86 I am satisfied that the Council's contention that the excessive height of Building C results in unacceptable overshadowing of the adjoining properties in Buildings 2 and 3 fronting North Street is made out by the evidence before me. In my view, the maintenance of the existing solar access to the rear of the North Street properties should have been a key constraint to defining the Stage 1 concept building envelope of a new Building C.
- 87 The Stage 1 concept proposal must be determined before consideration of the Stage 2 development proposal, pursuant to cl 6.14(3) of LEP 2013 and s 4.23(2) of the EPA Act. As the Stage 1 concept proposal is refused, the Stage 2 development application must be refused, pursuant to s 4.24(2) of the EPA Act.

Orders

Proceedings 2021/228923

88 The orders of the Court are:

- (1) The appeal is dismissed.
- (2) Development Application No DA/2021/0437 for a Stage 1 concept plan to adaptively reuse the existing site for residential flat buildings, at 40 – 76 William Street, Leichhardt, is refused.

Proceedings 2021/73128

89 The orders of the Court are:

- (1) The appeal is dismissed.
- (2) Development Application No DA/2020/0501 for a Stage 2 development to adaptively reuse the existing site for residential flat buildings, at 40 – 76 William Street, Leichhardt, is refused.
- (3) The Exhibits, other than Exhibits A, 32 and 33, are returned.

Susan O'Neill

Commissioner of the Court

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