






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Panel Ref./Application No.	PPSEC-72 (DA/2020/0501)
Address	40-76 William Street LEICHHARDT NSW 2040
Proposal	Adaptive reuse and alterations and additions to existing industrial warehouse structures and conversion into a residential flat building of up to 6 storeys accommodating 181 residential apartments above two levels of basement car parking, and associated works
Date of Lodgement	16 July 2020
Applicant	Anprisa Pty Ltd
Owner	Mr Dennis Lewy Mr Garry Lewy Ms Monica A Lewy
Number of Submissions	122 objections
Value of works	\$56,529,000.00
Reason for determination at Planning Panel	Development with a CIV of \$30,000,000
Main Issues	Site specific DCP requirement; FSR variation; Adaptive reuse provisions; Owner's consent for works to right of way; SEPP 65 design quality principles; Flooding and stormwater; Tree impacts; Traffic and access arrangements; Waste management; and Neighbouring amenity impacts
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This report is an assessment of the application submitted to Council for adaptive reuse and alterations and additions to existing industrial warehouse structures and conversion into a residential flat building of up to 6 storeys accommodating 181 residential apartments above two levels of basement car parking, and associated works at 40-76 William Street Leichhardt.

The application was notified to surrounding properties and 122 submissions were received raising objections to the proposal.

The main issues that have arisen from the application are as follows:

- The proposal has not been accompanied with a site specific DCP as per Clause 6.14 of Leichhardt Local Environmental Plan (LLEP) 2013 and Council considers that the requirement cannot be obviated given the subject proposal involves a significant increase to existing height and gross floor area (and would generally only be considered as a part of a formal Planning Proposal to amend the LEP).
- The proposal fails to satisfy the Adaptive Reuse provisions under Clause 6.11 of LLEP 2013 given it is considered that the proposal:
 - adversely affects the streetscape, character and amenity of the surrounding area;
 - will not retain the form, fabric and features of any architectural or historic features of the existing building; and
 - involves an increase in FSR that is not contained generally within the existing building envelope.
- No Clause 4.6 request has been submitted to vary the minimum Landscape Area of 20% under Clause 4.3A and permitted FSR of 0.5:1 under Clause 4.4 of LLEP 2013.
- The application is not accompanied by owner's consent for works to the existing right of way including any pavement upgrades, line marking, convex mirrors, speed humps, signage as required by the applicant's Traffic Report.

The application fails to satisfy the above key pre-requisites to consent and as such, there is no power to grant consent and only a limited merit assessment has been undertaken.

However, the following issues have also arisen in the assessment of the application:

- SEPP 65 design quality principles (Context, Scale, Density, Landscape, Amenity)
- Neighbouring amenity impacts (overshadowing, visual privacy, acoustic amenity)
- Flooding and stormwater management
- Traffic and access arrangements
- Tree impacts
- Waste management

In light of the above, the application cannot be supported and is recommended for refusal.

2. Proposal

Council is in receipt of a Development Application (DA) from Anprisa Pty Ltd for the adaptive reuse of an existing 1 to 4 storey warehouse building with part demolition and substantial

alterations and additions to provide a 5 to 6 storey residential apartment development containing 181 units above 2 levels of basement parking at 40-76 William Street, Leichhardt.

The proposal involves an increase to existing gross floor area from 10,060sqm to 15,064sqm (or increase in FSR from 1.45:1 to 2.17:1) and a 6.69m increase to the existing building height from RL20.51 to RL 27.2.

Communal open space areas of 1465.8sqm at ground level and 298.9sqm on Level 4 are proposed.

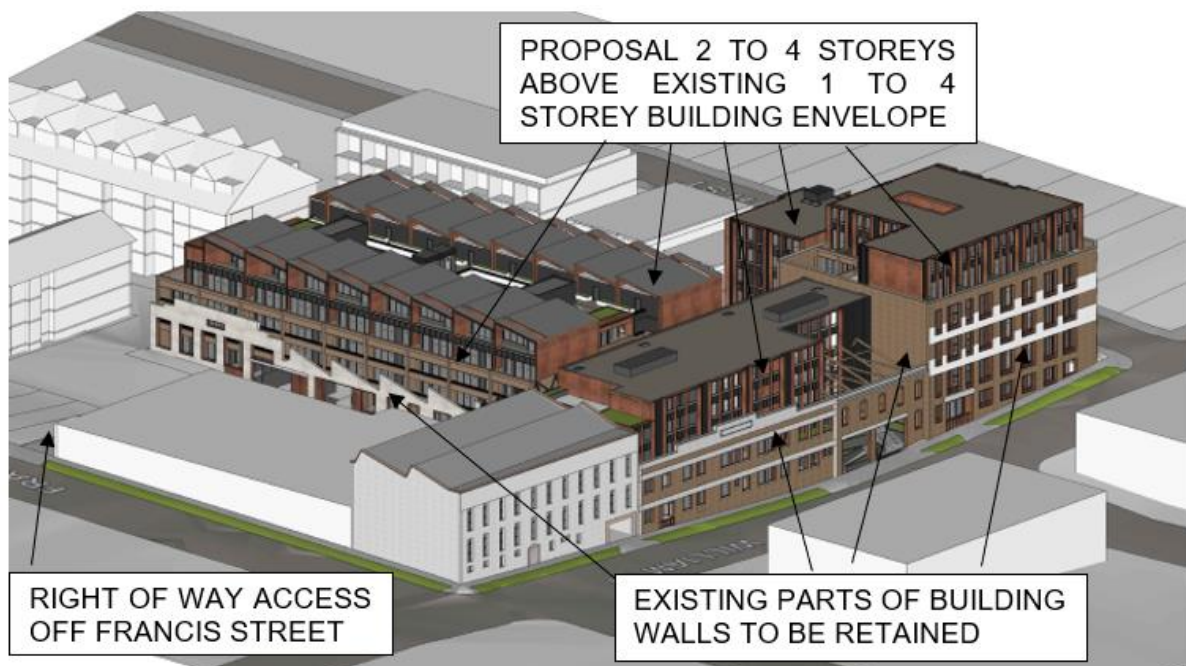
The following unit mix is proposed:

- 58 x 1 bedroom (32.04%);
- 92 x 2 bedrooms (50.83%); and
- 31 x 3 bedrooms (17.13%).

A total of 158 residential car spaces, 23 visitor parking spaces, 1 car share parking space, 3 car wash spaces, 8 motorcycle spaces and 110 bicycle spaces are proposed within the basement. Waste storage areas are proposed within the basement with a common waste collection and loading area proposed at ground level adjacent to the driveway.

Vehicular entry and exit is proposed via an existing right of way off Francis Street. Proposed works to the existing driveway include line marking, convex mirrors, speed humps, signage etc as outlined within the submitted Traffic Report.

A 3D view of the proposed development looking south-west towards the intersection of William Street and Francis Street is shown below.



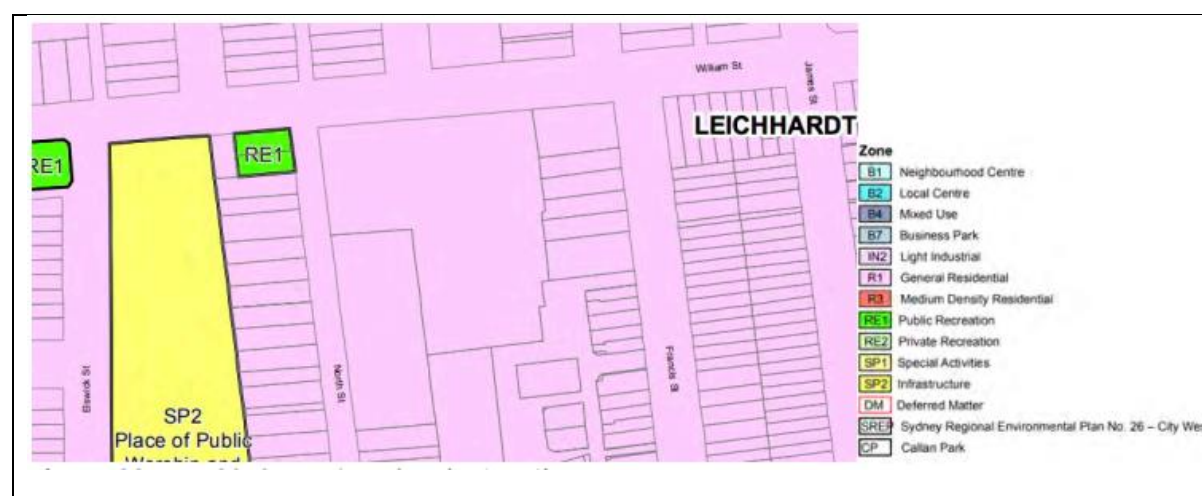
3. Site Description

The subject site is located on the southern side of William Street, between North Street and Francis Street. The site consists of one allotment and is generally L – Shaped with a total area of 6,938sqm and is legally described as Lot 2, DP 789576.

The site has a frontage to William Street of 90.88 metres and a secondary frontage of approximately 45.72 metres to North Street. The site is affected by a right of carriageway of variable width and has the benefit of a 5.5 metre wide right of carriageway to Francis Street.

The site supports a two and four storey building formerly part of the Cyclops Toy Factory. The adjoining properties support two to four storey buildings.

The subject site is not listed as a heritage item or within a conservation area, but is in the vicinity of a heritage item. The property is zoned R1 General Residential and identified as a flood prone lot.



4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
PREDA/2019/201	<p>Residential redevelopment including new 3 storey building, alterations and additions to existing buildings including basement car park to create a residential apartment complex.</p> <p>NOTE: Council advised that a Planning Proposal and site specific DCP would be required to determine an appropriate density/scale of development.</p>	Advice letter issued 25/2/20

4(b) Application history

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

Date	Discussion / Letter / Additional Information
11/8/2020	<p>Council sent a request for information advising that the proposal could not be supported given the proposal fails to satisfy the key pre-conditions to grant of consent under Leichhardt Local Environmental Plan (LLEP) 2013:</p> <ul style="list-style-type: none"> • The proposed FSR is 2.17:1 (GFA of 15,064sqm), being a 49% increase from the existing FSR and a 334.7% variation of the permitted FSR. No Clause 4.6 request has been submitted to vary the permitted Floor Space Ratio (FSR) of 0.5:1; • Clause 6.11(3)(c) requires the consent authority to be satisfied prior to the grant of consent for an adaptive reuse that any increase in FSR is generally contained within the envelope of the existing building; and • Clause 6.14 requires a site specific Development Control Plan to be prepared prior to the grant of consent unless the consent authority is satisfied that the development only involves alterations and additions to an existing building that do not significantly increase the height or gross floor area of the building, and do not have significant adverse impacts on adjoining buildings of the public domain, and do not significantly alter any aspect of the building when viewed from public places; <p><i>NOTE: On 25 February 2020, Council issued Pre-DA advice to the applicant for a similar proposal and recommended that the proposed height and FSR beyond the existing building envelope would necessitate a Planning Proposal and a site specific DCP.</i></p>
18/8/2020	<p>The applicant submitted legal advice contending that the existing building envelope refers to a notional available building envelope with 45 degree height planes taken from the top of the existing external walls as opposed to an envelope defined by the current existing building and the requirement under Clause 6.11(3)(c) for any increase in FSR to be generally contained within the existing building envelope is a development standard that may be varied under a Clause 4.6 request.</p>
8/10/2020	<p>Briefing held with Council staff and Sydney Eastern City Planning Panel members Carl Scully (Chair), Deborah Laidlaw and Roberta Ryan outlining the key issues with the proposal and noting that the proposal could not be supported given the proposal fails to satisfy the key pre-conditions to grant of consent.</p>
22/10/2020	<p>Council sent a detailed request for information advising that the proposal could not be supported given the proposal fails to satisfy the</p>

	key pre-conditions to grant of consent under Clauses 4.4/4.6, 6.11 and 6.14 of LLEP 2013 and design quality principles under SEPP 65 and that insufficient information has been provided to enable a full and proper assessment of the impacts of the proposal in relation to the extent of retention of the existing building, flooding, stormwater, earthworks, traffic, parking, trees, waste management and neighbouring amenity including noise, overshadowing, visual privacy and view sharing.
22/10/2020	Council's Assessment Officer, Eltin Miletic, called the Applicant, and offered to arrange a meeting with the Applicant's team and relevant Council staff ahead of the joint briefing with the Panel. The Applicant advised that they would confirm availabilities and contact Council to arrange a suitable time for a meeting.
3/11/2020	Following no response from the Applicant, Council's Assessment Officer, Eltin Miletic, called the Applicant, and again offered to arrange a meeting with the Applicant's team and relevant Council staff ahead of the joint briefing with the Panel. The Applicant advised that they would confirm availabilities and contact Council to arrange a suitable time for a meeting. No further response was received from the Applicant.
10/11/2020	Joint briefing held with Council staff, Applicant representatives and Sydney Eastern City Planning Panel members Carl Scully (Chair), Deborah Laidlaw and Roberta Ryan outlining the key issues with the proposal and noting that the proposal would need to be substantially reduced in height and bulk to resolve the issues raised. The Applicant advised that amended plans and documents and a separate Concept Plan DA would be submitted to address the issues raised. No further response was received from the Applicant following the joint briefing.
25/2/2021	Council's Assessment Officer, Eltin Miletic, sent an email to the Applicant advising that no response or updates had been received and the final assessment of the application would be undertaken by 5 March 2021 with a view to final determination by the Panel.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *Leichhardt Local Environmental Plan (LLEP) 2013*
- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

5(a)(i) *Leichhardt Local Environmental Plan (LLEP) 2013*

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.3A – Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood planning
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise
- Clause 6.11 – Adaptive reuse of existing buildings in Zone R1
- Clause 6.13 – Diverse housing
- Clause 6.14 – Development control plans for certain development

The following provides further discussion of the key pre-requisites to grant of consent:

1. A site specific DCP is required to be prepared under Clause 6.14 of LLEP 2013

Clause 6.14 of LLEP 2013 requires a site specific DCP to be prepared that provides for detailed development controls to be prepared for the land given the site has an area of over 3,000sqm and the development involves an increase to gross floor area of an existing building by more than 5%. In this instance, the subject site has an area of 6,938sqm and the proposal involves an increase to the existing gross floor area of 49.74%.

It is noted that Clause 6.14(5)(d) dispenses with the need for a DCP if the proposal involves only alterations and additions to an existing building that:

- (i) do not significantly increase the height or gross floor area of the building, and*
- (ii) do not have significant adverse impacts on adjoining buildings or the public domain, and*
- (iii) do not significantly alter any aspect of the building when viewed from public places.*

The Applicant contends that the proposal meets the above criteria on the basis that “*the works are largely comprised within the existing height and floor space ratio, will not increase any adverse impacts on the adjoining buildings or the public domain and will not significantly alter the aspects of the building when viewed from public places.*”

However, it is considered that the proposal fails to satisfy the above criteria given:

- The proposal does not *only* involve alterations and additions to an existing building due to the significant extent of proposed demolition to the existing buildings and extensive new building facing North Street;
- The proposal involves significant increases to both gross floor area and height of the building, with the existing gross floor area increased from 10,060sqm to 15,064sqm (or 49.74%) and an additional 2 to 4 storeys above the existing 1 to 4 storey building height (or 6.69m from RL20.51 to RL 27.2);
- The proposal results in significant adverse impacts on adjoining buildings and the public domain due to the excessive height and bulk of the proposal (as discussed further below); and
- The proposal will significantly alter several aspects of the building as viewed from public places given the extent of proposed additions protruding beyond the existing building form.

3D views of the proposed development looking south-west towards the intersection of William Street and Francis Street (top) and south-east towards the intersection of North Street and Francis Street (bottom) indicating the extent of proposed additions beyond the existing building form and new building facing North Street are shown below.



Further, despite advising Council staff and the Panel on 10 November 2020 that a Concept Plan DA would be submitted in lieu of the requirement for a site specific DCP, the Applicant has not submitted a Concept Plan DA and has not provided any further information or amended plans to address this requirement.

Therefore, on this basis alone, there is no power to grant consent to the proposal and the application must be refused.

2. The proposal fails to satisfy the Adaptive Reuse Provisions under Clause 6.11(3) of LLEP 2013

Clause 6.11(3) of LLEP 2013 states:

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.

It is acknowledged that the proposal involves a change of use to residential accommodation of a building within the R1 General Residential zone that was constructed before the commencement of this clause.

However, as discussed further below, the proposal fails to satisfy the Adaptive Reuse provisions under Clause 6.11 of LLEP 2013 given it is considered that the proposal:

- adversely affects the streetscape, character and amenity of the surrounding area;
- will not retain the form, fabric and features of any architectural or historic feature of the existing building; and
- involves an increase in FSR that is not contained generally within the existing building envelope.

Council's Architectural Excellence Panel has reviewed the proposal and provided the following comments:

1. Adaptive Reuse:

a. The Panel restates its earlier view that the general site planning strategy has some urban design merit and notes that some genuine attempt has been made in improving the address and connectivity of the southern-most building to North Street, (consistent with Panel design recommendations at the pre-DA meeting).

b. The Panel notes the DCP establishes floor space incentives for the adaptive reuse of identified warehouse buildings, where this additional floor space is generally contained within the envelope defined by the existing warehouse volume. However, the extent of new additions evident in the DA proposal, are situated well above and beyond the volume of the existing warehouses, and for this reason the proposal clearly exceeds the intent of the DCP and is not supported by the Panel.

c. The Panel is additionally concerned this volumetric exceedance of the existing warehouse buildings diminishes the significance of the heritage buildings.

d. The DA documentation should clearly identify those elements of the existing warehouses proposed to be retained, reinstated, altered, demolished and/or added to. The current DA information contains multiple errors and inconsistencies regarding the integration of existing and proposed new work within the warehouses.

On balance though, the Panel considers the extent to which the original buildings and their interior spaces are retained potentially contributes to the proposals' architectural design merit - subject to satisfactory amendment of the total proposed building volume as discussed in b. and c. above.

e. Further to the previous point, the Panel also identifies numerous conflicts between the internal space planning of the proposed new apartments alongside the location of existing structural columns and external walls within the north western corner warehouse building. The Panel notes that further resolution is required for numerous functional aspects within the layouts.

2. Density & Contextual Fit:

a. The Panel discussed the proposed floor space ratio (approximately 2.17:1) significantly exceeds the maximum permissible floor space ratio (0.5:1), which is an outcome of the significant additions proposed beyond the original envelope of the existing warehouse buildings (the floor space ratio of these existing buildings is estimated at 1.5:1). The proposed built form, massing and density outcomes of the proposal are significantly greater than those anticipated by the Inner West LEP and the DCP.

b. The Panel also expressed concerns regarding the visual impact of the proposed massing on the public domain and associated overshadowing impacts created by the southern building upon the townhouses located further to the south.

c. The Panel considers the new built form addressing North Street with a part 4-5 storey height does not create an appropriate built form transition to the adjacent 2 storey townhouses south along North Street.

d. The Panel notes that a significant number of apartments located within the buildings addressing William Street and North Street are disconnected from the basement carpark proposed in the southern part of the site.

e. The Panel expresses concern about the proposed building separation distances for the rear building, particularly where primary outlook for new apartments is across side boundaries to existing neighbours, and recommends the proposed separation distances be consistent with Part 2F Building Separation and Part 3F.5 Visual Privacy of the SEPP 65 Apartment Design Guide

f. The second bedrooms of apartments configured with gallery access and a central courtyard building rely on common circulation corridors for natural light and ventilation, which potentially creates visual and acoustic privacy issues for approximately 65 apartments within the proposal. Details to mitigate against privacy loss should be provided.

3. Communal Open Space:

a. The Panel considers there to be a lack of generous, centrally located communal open space given the scale of the proposal. The Panel recommends a more significant communal open space should be provided between the northern and the southern buildings, and this open space could extend for the full width of the site from the eastern boundary to the rear of the western building addressing North Street.

b. Deep soil areas should also be provided for environmental and landscape benefits, allowing planting of trees with large canopies. These deep soil areas should ideally be co-located with the recommended communal open space.

4. Architectural Expression:

a. The Panel supports adaptive reuse of the existing buildings and retention of a significant extent of the existing fabric wherever possible, and considers that any new works, whilst being architecturally distinct, should interpret meaningful features such as the existing roof forms and the rhythm of the existing building fabric.

Notwithstanding the Panels' concerns for the excessive scale and form of the proposal, aspects of the architectural expression are positive and capable of support.

b. The Panel appreciates the developing architectural expression presented in the elevations and photomontages, and considers that the proposal would benefit from a significant reduction in the overall massing and density.

Council's Heritage Advisor has reviewed the proposal and provided the following comments:

The drawings prepared by PBD Architects, dated 1 June 2020, and the Heritage Impact Statement prepared by Weir Phillips, dated June 2020, were reviewed as part of this assessment.

The proposal includes what is described as the adaptive reuse and alterations and additions to existing industrial warehouse structures and conversion into a residential flat building of up to 6 storeys accommodating 181 residential apartments above two levels of basement car parking, and associated works.

Pre-DA advice was sought for the proposed Residential redevelopment and adaptive reuse of existing warehouse building and associated works, including basement car parking at 40-76 William Street, Leichhardt (PREDA/2019/201). The application was referred to council's heritage specialist who did not support the proposal and recommended a redesign to retain and adaptively reuse the existing former Cyclops factory. Additional information was requested to enable a proper heritage assessment of the proposal on the building...

The following design changes and information are to be submitted to ensure that the development is in accordance with the adaptive reuse provisions of Clause 6.11 of LLEP 2013:

1. A detailed significance assessment of the site and buildings must be undertaken and submitted that clearly illustrates the staging of development of the factory buildings, the roof types, structural systems, roof trusses, saw tooth roofs, timber cross bracing, etc, including the dates of the various sections of façades, steel windows etc. The detailed significance assessment must include:

a. detailed archival research relating to the site (not general information relating to the entire suburb) including:

b. previous building applications to council need can be obtained under a GIPA application;

c. research files on Air Raid Protection held at the NSW State Archives & Records and resources at the National Archives of Australia;

d. a comparative analysis of other similar warehouse buildings within the Sydney region; and

e. an illustrated table describing each element within each factory building and whether or not it is original/early or dates from later works. The extent of survival of the original fabric needs to be identified by a Heritage Architect and not generalist Heritage Consultants.

2. The proposal is to be redesigned to work within the existing volumes of the buildings and retain existing floor to ceiling heights and retain the existing roof form, including roof trusses. It is recommended that the design be amended to incorporate the following design changes:

a. the proposal must be redesigned to work within the existing building envelopes and significant building spaces;

b. retain and incorporate significant components and spaces into the design. The treatment of the fenestration of the proposal, including window openings, must relate to, and respect the detailing within the existing facades;

c. basement parking must be located away from significant buildings;

d. existing openings must be retained. Entries to the site must utilise existing openings;

e. retain existing steel window frames and repair wherever possible in situ with the existing façade. If existing steel window frames cannot be retained and repaired, they are to be replaced with like for like, in materials and design. Windows must be retained in all window openings in the facades. Removing windows for balconies is not acceptable;

f. new openings (to the existing buildings) are discouraged. If necessary, they should follow a similar proportion and solid to void ratio as existing openings.

3. The proposed additions are to be redesigned so that the architectural detailing and rhythm of any additions must complement that in the existing facades.

4. Openings must be vertically proportioned, employing traditional design and materials (metal frame). Dominancy must be given to masonry/solid elements rather than glazed areas.

5. A revised materials schedule is to be resubmitted for consideration and in accordance with the following:

a. materials, finishes, textures and colours must be appropriate to the existing buildings and the original contributory buildings within the streetscape;

b. greys and blacks are not acceptable and must be avoided, aside from the metal fencing. Light, warm, earthy, tones are to be used; and

c. a pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours "Windspray" or "Wallaby".

6. The following information is to be provided:

a. a full set of demolition drawings need to be provided clearly illustrating the extent of demolition proposed of each level and elevations of the buildings clearly showing the extent proposed to be demolished;

b. measured drawings of the existing buildings including existing floor plans, elevations, sections and structural drawings of the existing warehouse building. These drawings must include the survival of the internal fabric, such as roof trusses, cross bracing, saw tooth roofs, etc;

c. architectural drawings must clearly identify parts of the warehouse proposed to be retained, reinstated, altered, demolished and/or added;

d. documentation should identify the potential conflicts between any functional requirements of a residential flat building alongside the adaptive reuse;

e. photomontages of view corridors to the site from William and North Streets looking back to the proposal.

Based on the comments provided from Council's Architectural Excellence Panel and Heritage Advisor, the development will adversely affect the streetscape, character and amenity of the surrounding area and will not retain the form, fabric and features of any architectural or historic feature of the existing building.

It is noted that the Applicant contends that Clause 6.11(3)(c) is a development standard that can be varied pursuant to a Clause 4.6 request. Whilst Council disagrees that it is a development standard, subject to satisfactorily addressing Clauses 6.11(3)(a) and (b), some flexibility can be applied to an increase in gross floor area if:

- any increase in FSR is generally within the *existing* building envelope (not a *notional potential* building envelope); and
- a Clause 4.6 request is submitted with respect to any proposed breach to the maximum permitted FSR of 0.5:1.

The Applicant indicates that the proposed Gross Floor Area (GFA) outside the existing building envelope is 2,432sqm (or 19.25% over the proposed GFA contained within the existing building envelope).

However, this is based on a *notional potential building envelope* with a 45 degree height plane taken from the top of the existing external walls, as opposed to the existing building envelope determined by reference to the existing roof form and pitch, ridge heights, eaves heights, wall heights, and setbacks.

Based on the information provided, it appears that the existing gross floor area of the current building is 10,060sqm. The proposed increase in FSR is 49.74% and the proposed increase in floor space protrudes an additional 2 to 4 storeys above the existing 1 to 4 storey building form.

Further, detailed existing roof and floor plans, elevations and sections with dimensions and RLs have not been provided to demonstrate the extent of retention/demolition of the existing building. Revised GFA Diagrams are required to demonstrate that any increase in FSR is generally contained within the existing building envelope (determined by reference to the existing roof form and pitch, ridge heights, eaves heights, wall heights, and setbacks).

Therefore, due to the lack of information demonstrating the retention of existing building form, fabric and features, extent of increase of FSR not being generally within the existing building envelope, and resulting adverse impacts to the streetscape, character and amenity to the surrounding area, there is no power to grant consent to the proposal under Clause 6.11(3).

3. Clause 4.6 requests have not been submitted to vary the minimum Landscape Area of 20% under Clause 4.3A or permitted FSR of 0.5:1 under Clause 4.4 of LLEP 2013

Putting aside the applicant's contention that Clause 6.11(3)(c) is a development standard, Clause 6.11 does not "switch off" Clause 4.4 and as such, it is considered that the development standard being varied is the maximum permitted FSR of 0.5:1 pursuant to Clause 4.4 of LLEP 2013.

Whilst a Clause 4.6 request has been submitted in relation to the proposed extent of increase in FSR beyond the existing building envelope under Clause 6.11(3)(c), no Clause 4.6 request in relation to Clause 4.4 has been submitted as a part of the proposal.

In addition, it is considered that a Clause 4.6 request is required in relation to the proposed Landscaped Area given the proposed Landscaped Area clear of any buildings or structures is 7.01% (or 486.2sqm), which results in a shortfall of 901.4sqm (or 64.9%) below the required 20% of the site area.

Therefore, in the absence of any Clause 4.6 requests to vary Clauses 4.3A and 4.4 of LLEP 2013, there is no power to grant consent to the proposal and the application must be refused.

In light of the above, only a limited merit assessment has been undertaken. However, the following merit issues have also arisen from the application:

Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R1 – General Residential under the LLEP 2013.

The application proposes the conversion of an existing self storage warehouse to residential apartment buildings, which is permitted with consent within the R1 – General Residential zone.

The objectives of the zone are as follows:

- *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.

The proposed development is not considered to be consistent with the above objectives given adverse streetscape and amenity impacts arise.

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

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Permitted: [0.5:1]	2.17:1 (15,064sqm)	334.2% (11,595sqm)	No
Landscape Area: 20%	7.01% (486.2sqm)*	64.9% (901.4sqm)*	No* (see Note)
Site Coverage: 60%	59.9% (4,155.1sqm)	N/A	Yes

NOTE: The Applicant's Landscape Area calculation of 1,454sqm (or 21%) predominantly includes proposed landscaping above basement. The proposed Landscaped Area clear of any buildings or structures (which satisfies the LEP definition of Landscaped Area) is 7.01% (or 486.2sqm), which results in a shortfall of 901.4sqm (or 64.9%).

The following provides further discussion of the relevant issues:

Clause 4.6 Exceptions to Development Standards

As outlined in the table above, whilst the proposal does not result in any change to the existing site coverage, the proposal results in a breach of the following development standards:

- Clause 4.3A – Landscape area
- Clause 4.4 – Floor Space Ratio

The applicant seeks an increase to the existing FSR from 1.45:1 (10,060sqm) to 2.17:1 (15,064sqm), which does not comply with the FSR development standard of 0.5:1 under Clause 4.4 of the LLEP 2013.

In addition, the proposed Landscaped Area clear of any buildings or structures (which satisfies the LEP definition of Landscaped Area) is 7.01% (or 486.2sqm), which results in a shortfall of 901.4sqm (or 64.9%) below the required 20% of the site area pursuant to Clause 4.3A of the LLEP 2013.

No Clause 4.6 requests to vary the minimum landscape area under 4.3A or maximum permitted FSR under Clause 4.4 have been submitted.

It is noted that the Applicant contends that Clause 6.11(3)(c) is a development standard that can be varied pursuant to a Clause 4.6 request. Whilst Council disagrees, a written request

has been submitted to Council in accordance with Clause 4.6(3) of the LLEP 2013 justifying the proposed contravention of Clause 6.11(3)(c), which is summarised as follows:

- *The amount of GFA contained generally within the existing building envelope is 12,632sqm (1.82:1). This includes GFA contained within the 45-degree sight plan, which is consistent with the approach under Control 3.2/C16 of the Leichhardt DCP 2013 on how building envelope is determined. The subject application seeks a variation to the floorspace permitted outside the existing building envelope of 2,432sqm (0.35:1).*
- *This is inconsistent with Clause 6.11(3)(c), which requires additional FSR beyond the site control of 0.5:1 to be **'generally contained'** within the existing building envelope. The proposal includes a total GFA of 15,064sqm (2.17:1), of which the 12,632sqm of GFA (1.82:1) contained within the 45-degree sight plan is **generally contained** within the envelope after redevelopment. As such, the extent of variation is 19.23% above the maximum FSR permitted in Clause 6.11.*
- *Objectives of this clause are met notwithstanding the numerical non-compliance:*

a. to provide for the adaptive reuse of existing buildings for residential accommodation,

The proposal will meet this Objective by delivering a high-quality adaptive re-use of existing, poorly utilised industrial buildings with 181 new dwellings of differing typology including a range of apartment types and sizes and terrace/townhouse style dwellings.

b. to retain buildings that contribute to the streetscape and character of Leichhardt,

The proposal is accompanied by a detailed Heritage Impact Statement, which finds that, despite the numerical variation in Clause 6.11(3)(c) the proposal still contributes to the streetscape and character by:

- *The proposed alteration and additions have been carefully designed to maintain the fabric, positive construction and streetscape character of the industrial buildings to the historic and aesthetic significance of the Helsarmel Distinctive Neighbourhood; and*
- *The proposed alteration and additions have been carefully designed to maintain the fabric, positive construction and streetscape character of the industrial buildings to the historic and aesthetic significance of the Helsarmel Distinctive Neighbourhood.*

Accordingly, the proposal is considered to meet this objective.

c. to provide satisfactory amenity for future residents of the area,

In accordance with the submitted SEPP 65 and Design Verification Statement, the development has been carefully designed to ensure a high standard of amenity for future residents of the development, while ensuring amenity is retained for surrounding developments. Accordingly, this objective is met.

d. to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.

The alterations and additions to the existing buildings were carefully designed in consultation with Weir Phillips to ensure they were appropriate for the quality and amenity of existing buildings in the area, as referenced earlier. The new proposed building on North Street is appropriately stepped down, which provides a balanced

transition between the developments to the north and south. In addition, the proposal ensures that there is no change in the relationship of the industrial building with the shop/residence heritage item at 2 Hubert Street, and no significant view corridors to or from nearby heritage items will be impacted. Accordingly, this objective is met.

- The purpose of Clause 6.11 is to enable former commercial and industrial buildings in residential zones to be converted for residential uses rather than be simply demolished or left to fall into disrepair (demolition by neglect).*
- The purpose of this application, is to enable sensitive and high-quality adaptive re-use of these important early 20th century industrial buildings, that preserves the significance of the site as an early twentieth century industrial complex pioneered by John Heine and Sons, who were one of the first companies in Australia to produce automated machinery and the iconic Cyclops tricycles, bicycles and toys.*
- Where the proposed development exceeds the existing building envelopes, the additions have been carefully designed to be recessive, through stepping back and utilising recessive materials, so that they clearly read as a contemporary addition that does not take away from the importance of the original buildings*
- The additions have been carefully designed to ensure appropriate amenity for future residents of the development and existing dwellings, including through amenity provisions such as appropriate building setbacks, solar compliance, cross ventilation and communal space and landscaping. Many of these controls would not have been able to be met if the development was to strictly comply with Clause 6.113(c).*
- The proposal represents a balance between ensuring appropriate amenity for existing and future residents, while still enabling an economic development that ensures the heritage of the existing buildings can be retained and enhanced*

The applicant's written rationale does not adequately demonstrate compliance with the FSR development standard is unreasonable in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant's submission has had regard to the incorrect objectives.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the R1 – General Residential zone and the objectives of the FSR development standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013 for the following reasons:

- The proposed development fails to demonstrate that it is compatible with the desired future character of the area in relation to building bulk, form and scale given it necessitates unsympathetic changes to the existing building form and adverse streetscape and amenity impacts arise.
- The proposal fails to comply with the adaptive reuse requirements of Clause 6.11
- The proposal fails to protect and enhance the amenity of existing and future residents and the neighbourhood.

The concurrence of the Secretary of the Department of Planning may be assumed for matters determined by the Panel.

The proposal thereby fails to accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013. For the reasons outlined above, there are insufficient planning grounds to justify the departure from the FSR development standard and it is recommended that the Clause 4.6 exception not be granted.

Clause 6.2 Earthworks

Insufficient information has been provided to enable a full and proper assessment of the earthworks impacts of the proposal and as such, the earthworks requirements of Clause 6.2 of LLEP 2013 have not been satisfactorily addressed.

In this regard, Council's Engineering Section has provided the following comments:

- *As the proposed development includes significant excavation within the zone of influence of the adjacent road reserve, an integrated Structural and Geotechnical Engineering report must be submitted. The report must address the following issues at a minimum:*

- a. The basement must be fully tanked to prevent the ingress of subsurface flows.*

- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.*

- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.*

- d. All components of the basement, including footings and subsoil drainage, must be shown on the plans and be located entirely within the property boundary.*

- e. No adverse impact on surrounding properties including Council's footpath and road.*

- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.*

- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.*

- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.*

Clause 6.3 Flood planning

Insufficient information has been provided to enable a full and proper assessment of the flooding impacts of the proposal and as such, the flooding requirements of Clause 6.3 of LLEP 2013 and Part E of Leichhardt DCP 2013 have not been satisfactorily addressed.

In this regard, Council's Engineering Section has provided the following comments:

• The applicant has prepared a flood report and flood model to assess compliance with flood planning requirements of the DCP2013. The use of an alternative flood model to assess the development site is not supported as the Flood Model used for the Leichhardt Flood Study which has been prepared in accordance with the Floodplain Development Manual process is available for this purpose. Notwithstanding, the following issues are raised:

a. Insufficient details have been provided to substantiate the appropriateness of the flood model prepared, including input data, calibration to the Council Flood Model etc.

b. The flood model results appear to differ from the modelling results provided in the Council issued flood certificate. Examples include:

i. Table 1.1 of the flood report shows a significant difference in flood levels at Point A in comparison to the Council issued flood certificate.

ii. The flood certificate shows the flood waters trapped at the rear of the site to be high hazard in a 100 year flood event.

c. A full range of flood events must be assessed to determine the flood impact of the proposal.

d. The proposal appears to redirect flood flows that are currently trapped/blocked in the existing case around the proposed development site to William Street. Further details are required to substantiate that this does not result in increased flood levels in the lower catchment areas and existing and proposed surface levels must be shown on the plans including at the rear of the site to clearly identify flood flow paths.

e. It appears flood flows may be able to flow from the rear of the site to the west, via the western side boundary rather than to the east. Further clarification is required regarding the existing and proposed drainage paths.

f. The flood impact report Figure A2.7 appears to indicate an increase in flood levels adjacent property 1-5 Hubert Street and 38 William in the range of 50-100mm in the 100 year flood event. Clarification required.

g. The estimated peak flow of 0.11m³/s from uphill lands arriving at the rear of the site in the 100 year flood event appears low considered the potential catchment.

h. The basement crest and other access points to the development, including the Garbage Room and Service Lift, must be no lower the Flood Planning Level (FPL), or where the basement access is within/adjacent a high hazard area the greater of FPL and PMF levels.

i. All openings to the basement including for ventilation must be shown on the plans and demonstrated to be at or above FPL.

j. Based on the Figure A2-5 it appears the dwellings at the rear of the site and along the western side of the proposed development are below the FPL based on flood flows passing through the site from uphill lands.

k. Units B.006 and B.005 must be raised to no lower than RL 9.65m AHD based on the adjacent flood level of 9.15m AHD shown on the Flood certificate. William Street frontages below the FPL. Unit B.007 may also need to be raised.

l. Further details of the proposed flood mitigation measures must be provided demonstrating the proposed works will function as per the modelling. Proposed inlet to the culvert, connection/discharge method to William Street and the flood event at which the system activates, the hazard associated with inlet and discharge and methods to address risk to public in the road/footpath.

m. Blockage and safety associated with culvert must be addressed include how flows enter the culvert. Clarification as to the design of the culvert as flood storage or flood conveyance. It is assumed flood storage will be required to offset downstream impacts.

n. The Flood Risk Management Report must address the relevant provisions of Section E1.3.1 of Council's DCP 2013 including Controls C1, C3, C8, C9, C10.

Clause 6.4 Stormwater management

Insufficient information has been provided to enable a full and proper assessment of the stormwater management of the proposal and as such, the provisions of Clause 6.4 of LLEP 2013 and Part E of Leichhardt DCP 2013 have not been satisfactorily addressed.

In this regard, Council's Engineering Section has provided the following comments:

- Further information is required relating to Leichhardt DCP2013 Part E requirements for stormwater management including the design of OSD/OSR and water treatment. The following issues are raised:*

- a. The existing and proposed drainage systems must be clearly shown on the plans including pipe systems that service uphill lands (if any) and drain through neighbouring properties.*

- b. Drainage of all areas within the subject site are required to be managed on site via the proposed site drainage system and discharge to the Council underground drainage system on William Street. Drainage through adjoining properties 80-84 Francis Street and 38 William Street is not supported.*

- c. The site is burdened by a drainage easement shown on dealing F666500. This easement appears to conflict with the proposed works. Further information is required including the location of the easements, pipes and proposed changes to the easements/pipes.*

- d. The OSD calculations including orifice and volumes must be amended to address any bypass flows.*

- e. Options to incorporate OSD into flood culvert design for flood storage and provide reduced flooding downstream should be investigated.*

- f. Details of the connection to Council system must be provided including operation of the system in the case of flooding in William Street.*

- g. The OSR/RWT tanks appear small relative to the scale of the proposed development and it is unclear the benefit the tank would provide. Furthermore it must be demonstrated the OSR/RWT tanks are suitably protected from contamination by surface flows particularly noting they are located within the proposed 100year flood flow path.*

h. The water treatment devices must be designed with highflow bypass such that pollutants captured in the treatment chamber are not resuspended during larger storm events.

i. Floor drains within the basement vehicle areas are not supported. Drains should also be used where necessary to collect subsurface flows (in the case the basement is not tanked) at the point of ingress e. base of the walls and to collect surface flows at the base of unprotected ramps.

j. All modelling to substantiate the design.

Clause 6.13 Diverse Housing

The proposal complies with the diverse housing requirements where at least 25% of the total number of dwellings are self-contained studio or one-bedroom dwellings and no more than 30% of dwellings contain 3 or more bedrooms.

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

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

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will require remediation in accordance with *SEPP 55*.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. Conditions to ensure that these works are undertaken, would need to be included in any consent issued in accordance with Clause 7 of *SEPP 55*.

5(a)(iii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). *SEPP 65* prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

Based on the information provided (and as outlined in the Architectural Excellence Panel's comments), the proposal is not considered acceptable having regard to the following design quality principles under SEPP 65:

- **Principle 1: Context and neighbourhood character**

- *Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*
- *Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*
- *Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

- **Principle 2: Built form and scale**

- *Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*
- *Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*
- *Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

- **Principle 3: Density**

- *Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*
- *Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

- **Principle 5: Landscape**

- *Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*
- *Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.*
- *Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*

- **Principle 6: Amenity**

- *Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*
- *Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP certain requirements contained within LDCP2013 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3-4 of the ADG prevail.

The following provides further discussion of the relevant issues:

- Section 3B Orientation
 - a. It is not considered that the building types and layouts respond appropriately to the streetscape and site given the excessive bulk and scale and resultant concerns in relation to solar access within the site and overshadowing of adjoining properties (as outlined further below).
 - b. The proposal has not been articulated where possible to minimise the extent of the impacts e.g. removing proposed storeys in their entirety or deleting Building D.
- Section 3D Communal Open Space
 - a. The proposal fails to provide a minimum useable communal open space area of 25% of the site area given the pedestrian entry from William Street is not considered to be communal open space and the remaining ground floor areas are generally thoroughfares that do not cater for a variety of recreational activities, and BBQ facilities are only proposed on the two rooftop areas within Building C.
 - b. Consideration should be given to deleting Building D to provide for additional functional communal open space.
- Section 3E Deep Soil Zones
 - a. Clarification is required that a minimum 7% of site area with a 6m dimension is achieved clear of any structures and paving given the deep soil zone to the rear of Building A illustrates permeable paved areas as deep soil areas not suited for a variety of healthy plant and tree growth.
 - b. Consideration should be given to deleting Building D to provide for additional deep soil landscaping.
- Section 3F Visual Privacy

- a. Minimum separations of 9m from the communal open space and eastern side of Building B, Level 4, and 6m from Level 3, are not provided as required to the adjoining property to the east at 38 William Street.
 - b. Minimum separations of 12m from the western side of Building C, Level 4, and 9m from ground to Level 3, are not provided as required to the adjoining low density residential properties to the west at 39-45 North Street.
 - c. Minimum separations of 12m from the eastern side of Building C, Level 4, and 9m from ground to Level 3, are not provided as required to the adjoining low density residential properties to the east facing Allen Street.
 - d. Minimum separations of 9m from the southern side of Building C, Level 4, and 9m from ground to Level 3, are not provided as required to the adjoining property to the south.
 - e. Minimum separation of 6m from the southern side of Building D is required to the adjoining property to the south at 39-45 North Street.
 - f. Minimum separation of 12m is required between Building A and Building D.
- Section 4A Solar and Daylight Access
 - a. Insufficient information has been provided to determine whether compliance is achieved, given there appears to be a discrepancy between the alignment of true north shown on the submitted shadow diagrams and solar access views do not appear to correspond with the submitted survey plans.
 - b. Insufficient information has been provided to determine whether sufficient access to daylight will be available to all habitable rooms within the predominantly single aspect apartments of Buildings A and B given the reliance on existing openings.
 - c. Further, clarification is sought in relation to solar access compliance for units on the ground floor to Level 3 (inclusive) within Building B.
- Section 4B Natural Ventilation
 - a. Insufficient information has been provided to determine whether sufficient natural ventilation will be available to all habitable rooms within the predominantly single aspect apartments of Buildings A and B given the reliance on existing openings.
- Section 4C Ceiling Heights
 - a. Whilst it appears that minimum ceiling height can be achieved, the proposed floor to ceiling heights where existing floors are to be retained as part of the proposal are unclear based on the information provided given the existing floor and ceiling levels are not clearly indicated on all plans, elevations and sections.
- Section 4D Apartment Size and Layout
 - a. Insufficient information has been provided to determine whether the layout of rooms is functional, well organised and provides a high level of amenity within

apartments of Building A given there appear to be conflicts with the existing columns and structure to be retained.

- Section 4E Private Open Space and Balconies
 - a. Whilst proposed balconies are generally compliant, it appears that ground floor apartments at the eastern elevation of Building C and rear facing units (2 x 1 bedroom) of Building A only maintain usable courtyard areas clear of landscaping of 1m in depth for the affected 2 bedroom units.
- Section 4M Facades
 - a. Whilst it is acknowledged that there are elements of the architectural expression that are positive (as noted by the Architectural Excellence Panel), the proposed bulk and scale of the additions to the existing buildings and new building (Building D) are out of character with the predominately low density residential area adjoining the site.
 - b. The additional storeys will exceed the height of the adjoining adaptive reuse development *Cyclops Factory* at 38 William Street. A suitable transition between the subject site and this adjoining site have not been provided. The proposal will dominate this building as well.
 - c. The scale of the proposal, namely the additional floors and new building is excessive in scale. Despite the new additional storeys being setback from the street frontage, due to the fall of the site these additions will be exacerbated.
- Section 4R Adaptive Reuse
 - a. It is considered that the excessive bulk and scale of the additions detract from the existing building and the existing streetscape context.

5(a)(iv) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

A valid BASIX Certificate was submitted with the application and would be referenced in the event that consent were granted.

5(a)(v) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)*

Proximity to overhead electricity lines (Clause 45)

SEPP Infrastructure provides guidelines for development immediately adjacent to overhead electricity lines. The application was referred to Ausgrid for comment in accordance with Clause 45 of the *SEPP Infrastructure 2007*. Ausgrid raised no objections to the development.

5(a)(vi) *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The subject site is not within the Foreshores and Waterways Area.

5(b) Draft Environmental Planning Instruments

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

- Draft Inner West Local Environmental Plan 2020

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

The general intent of the Draft IWLEP 2020 is to harmonise the existing planning controls from Leichhardt, Marrickville and Ashfield into a consolidated LEP and as such, the assessment of the proposal is generally consistent with the amended provisions contained in the Draft IWLEP 2020. In particular, the adaptive reuse provisions and requirement for a site specific DCP to be prepared prior to grant of any consent that currently apply to the site are proposed to remain under the draft IWLEP.

In addition, it is considered that the Draft IWLEP 2020 is not imminent or certain given the early stage of the planning proposal and as such, little if any weight can be applied to these draft provisions. Further, it is assumed that a savings provision will apply under the Draft IWLEP 2020 to ensure that applications lodged prior to any commencement of the IWLEP 2020 will continue to be assessed under the former provisions.

5(d) Development Control Plans

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

LDCP2013	Compliance
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	No
C1.2 Demolition	N/A
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A

C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No
C1.12 Landscaping	No
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	No
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.4 Helsarmel Distinctive Neighbourhood, Leichhardt	No
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No
C3.2 Site Layout and Building Design	No
C3.3 Elevation and Materials	No
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Refer to SEPP 65
C3.9 Solar Access	No + Refer to SEPP 65
C3.10 Views	No
C3.11 Visual Privacy	Refer to SEPP 65
C3.12 Acoustic Privacy	No
C3.13 Conversion of Existing Non-Residential Buildings	No – see discussion
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	No
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes

E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	No
E1.1.3 Stormwater Drainage Concept Plan	No
E1.1.4 Flood Risk Management Report	No
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	No
E1.2.3 On-Site Detention of Stormwater	No
E1.2.4 Stormwater Treatment	No
E1.2.5 Water Disposal	No
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	No
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

C1.11 Parking

Whilst the proposal complies with the numerical car parking requirements of LDCP 2013, insufficient information has been provided to enable a full and proper assessment of the proposed parking layout, access and loading arrangements, and as such, the access, traffic and parking requirements of Part C Section 1 under Leichhardt DCP 2013 have not been satisfactorily addressed.

In this regard, Council's Engineering Section has provided the following comments:

- *The Report must identify all streets and road users that will be impacted upon by the development and provide recommendations on treatments / measures for addressing any issues identified.*
- *The study area for the traffic assessment must extend to include the area bounded by Darley Road, Norton Street and Allen Street and must assess the adequacy of the existing pedestrian facilities in the local road network to access the site and the surrounding public transport nodes including the light rail and bus stops.*
- *The Report must include, but not be limited to, the following:*
 - a. *SIDRA analysis of the following intersections during a weekday am and pm peak with and without the development:*
 - *James Street/Darley Road/City West Link*
 - *Norton Street / City West Link*
 - *William Street / Darley Road*
 - *William Street / Norton Street*
 - *Charles Street / Darley Road*

- *Hubert Street / Darley Road*
- *Francis Street / Darley Road*
- *Elswick Street / Allen Street*
- *Allen Street / Norton Street*

b. The Traffic Report must include a detailed assessment of all vehicles likely to access the site during construction including details of the size, number, and frequency of vehicles entering the site and proposed construction traffic routes. The Plan must include the expected timeframe for each phase of construction.

c. The report must include an assessment of the likely impact of the proposed development on the existing on street parking in the surrounding streets.

d. A Parking Occupancy Survey must be undertaken and included within the Assessment. The Survey must be undertaken at hourly intervals between 7am and 11pm on two weekdays (including a Friday) and a Saturday outside school holidays, and must include the following areas:

- *William Street, between Elswick Street and Norton Street*
- *Francis Street, between Darley Road and William Street*
- *Francis Street, between William Street and the road closure*
- *Francis Street, between the road closure and Allen Street*
- *Hubert Street, between Darley Road and William Street*
- *Charles Street, between Darley Road and William Street*
- *North Street, between William Street and Allen Street*

e. Address the suitability of the proposed vehicular access location(s) including with respect to the number of vehicular movements, sightlines to pedestrians and vehicles, width of driveway, access by Garbage Trucks and large service vehicles, impact on traffic flows within the road network, including William Street which is expected to be busy during peak times and impact/issues relating to the intersection of William Street and Hubert Street.

- *The estimated Net Traffic Impacts traffic increase of +4 vehicles in morning peak and -3 vehicle trips during evening peak must be substantiated by actual survey of the existing site and use of appropriate traffic generation rates for the proposed development. In this regard the appropriateness of the average Sydney weekday trip rates provided by TDT 2013/04a must be justified noting that the surveys include relatively significant range of trip rates and variation in proximity to public transport between the subject site and the survey sites.*

- *The development proposes vehicular access to the site, including for waste trucks, at Francis Street via the Right of Way adjacent 20 Francis Street. The documentation provided is insufficient to demonstrate this proposal is suitable for the development. This following issues are raised:*

a. Sightlines to pedestrians are not provided at the egress to Francis Street as required by AS2890.1:2004.

b. It appears pedestrian access is proposed along the Right of Way to Francis Street however it is noted that the right of way does not provide a separated pedestrian path and the full width of the right of way is required for vehicular movements.

c. An assessment of vehicles movements along the right of way, including increase from the existing case, and the suitability of the proposed access for the number of movements and type of vehicles is required. The assessment must be based on survey of existing vehicle movements, appropriate assessment of post development movements and consideration of any necessary infrastructure upgrades e.g. pavement, line marking etc

d. All works to the proposed right of way to make it suitable for the proposal must be detailed and legal rights/owners consent demonstrated

e. Consideration of alternative access arrangements has not been provided. Options may include:

i. Loading access via existing vehicular crossing at William Street

ii. Ingress via existing right of way for light vehicles only.

iii. Egress for light vehicles at an appropriate alternative location.

• The internal access and parking must comply with Leichhardt DCP2013 and current Australian Standards including AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking, AS 2890.2-2018 Parking Facilities - Off-Street commercial vehicles facilities, AS/NZS 2890.6-2009 Off-street parking for people with disabilities and AS 2890.3-2015 Parking Facilities - Bicycle parking facilities. The following issues are raised:

a. A loading dock must be provided both for waste collection and for general loading. The suitability of the size and design of the loading dock/service bays must be demonstrated. Service bays for B99 vehicles must be a minimum of 0.5m wider than a standard parking space and a minimum of 2.0m longer.

b. Sightlines to pedestrians and vehicles are required at the vehicular egress points to the garbage room and basement.

c. The vehicle access to the waste room must be offset from the pedestrian entry to the building.

d. Doorways exiting to vehicular access areas must be physically protected from vehicular movement by kerb/bollards. These physical restrictions must not impact vehicular movements.

e. Swept paths show garbage truck encroaches on neighbouring property.

f. It must be demonstrated that the waste collection area is accessible by Council's waste vehicle. Council Resource Recovery Vehicle Specifications are as follows:

i. Length: 9.4 metres

ii. Width: 2.5 metres

iii. Height (travel): 4.5 metres

iv. *Weight (loaded): 26 tonnes*

v. *Turning Circle: 26 metres*

g. Insufficient headroom provided to garbage area. The Garage area must also be raised to flood planning level.

h. All dimensions, ramps gradients, headroom, curved ramp radius, ramp widths demonstrating compliance must be shown on the plans and longsections.

i. Parking spaces for persons with a disability must be located adjacent the lifts.

j. Bicycle parking must be appropriately located for access and designed for security class C parking for visitors at ground level and security Class A bike lockers for residents at ground level or no lower than Basement level 1 in close proximity to the lift and vehicle entry.

k. The car wash bays appear to be insufficient dimensions. They must be increased in width (minimum 2.7m each) with additional 0.3m clearance on each end space to provide sufficient areas to wash a car. The bays must also be bunded and drain to sewer.

- *A travel plan must be prepared and submitted for the development in accordance DCP2013 Part C (Place) Section C1.11 Parking Controls C27 and C28.*

- *The parking facilities should be designed to include/enable electric vehicle charging.*

- *Full details of all easements existing and property must be provided and owners consent for all works. The following issues are raised:*

a. Council records indicate that the site is burdened by a drainage easement benefitting 69 Allen Street, and a Right of Carriageway benefitting the properties to the east. Any proposed works must not constrain or impact these existing easements, without prior written consent from the benefitted property.

b. The proposal to utilise the existing drainage system at the rear of the subject property that is suggested to drain through the rear of the adjoining properties 80-84 Francis Street and 38 William Street is not supported as it is not necessary and furthermore the legal rights to drain through the neighbouring property and the suitability has not been demonstrated.

c. Owners consent is required for the proposed works within the neighbouring property along the Right of Way to Francis Street including any pavement upgrades, linemarking, convex mirrors, speed humps, signage etc.

C1.12 Landscaping / C1.14 Tree Management

Insufficient information has been provided to enable a full and proper assessment of the tree and landscaping impacts of the proposal and as such, the tree management and landscaping requirements of Part C Section 1 under Leichhardt DCP 2013 have not been satisfactorily addressed.

In this regard, the submitted Arborist Report and Landscape Plan are to be updated to address the following comments provided from Council's Tree Management and Landscaping Section:

A review of the submitted Arboricultural Impact Assessment, prepared by Angela Maroney, dated 28/11/2019 has been undertaken. It is anticipated that trees 1-10 will remain viable in the landscape post works due to existing landscape features acting as natural root barriers as well as previous pruning works undertaken from trees over adjoining boundary lines.

A review of the submitted Landscape Concept Plan, prepared by Site Image Landscape Architects, DWG No. 101-110, issue B as well as the Typical Details Plan, DWG No. 501, issue A have raised concerns in relation to available soil volumes for proposed trees to be planted on site.

Due to the limited deep soil areas on site, further planting details are required to demonstrate that soil volumes of 20-30m³ can be achieved to support mature canopy specimens in the landscape in the long term. Dimensions for tree pits and details of a vault style structural soil to allow for adequate soil volume to be achieved on site would be considered.

All newly planted trees must be positioned a minimum distance of 1.5m from any boundary or structure and 2m from any dwelling.

C3.9 Solar Access

Insufficient information has been provided to enable a full and proper assessment of the potential overshadowing impacts of the proposal and as such, the solar access requirements of Part C Section 3 under Leichhardt DCP 2013 have not been satisfactorily addressed. In this regard, revised shadow diagrams, 3D views and elevations are to be provided corresponding with true north as identified on the submitted survey and clearly identifying any adjoining private open space, balconies and living area windows to the east, south and west. Any additional overshadowing where the required amount of solar access is not currently achieved to adjoining properties is not considered to be reasonable and is to be addressed to ensure reasonable solar access is maintained.

C3.10 Views

Insufficient information has been provided to enable a full and proper assessment of the potential view impacts of the proposal and as such, the view sharing requirements of Part C Section 3 under Leichhardt DCP 2013 have not been satisfactorily addressed. In this regard, an analysis of potential existing view lines towards the city/water from adjoining properties is to be provided. Any impact to existing views arising from the significantly non-compliant FSR or building siting and design is not considered to be reasonable and is to be addressed to ensure reasonable view sharing is maintained.

C3.12 Acoustic Privacy

Insufficient information has been provided to enable a full and proper assessment of the acoustic impacts on adjoining residential receivers from the increased use of the driveway. In this regard, the submitted Acoustic Report is to be updated to address the potential acoustic impacts from the increased use of the driveway on adjoining residential receivers to the north and south.

C3.13 Conversion of Existing Non-Residential Buildings

The proposal fails to satisfy the following objectives and controls:

- *O1 Development encourages the adaptive re-use of non-residential buildings for residential uses that:*
 - *retain heritage value of the building;*
 - *provide a high level of resident amenity;*
 - *is compatible with the character of the neighbourhood and streetscape;*
 - *represent high quality urban and architectural design; and*
 - *does not have a significant adverse amenity impact on surrounding land.*
- *C1 The existing character of the building is retained and/or enhanced.*
- *C4 The conversion provides an adequate level of residential amenity in terms of acoustic privacy, private open space, solar access and visual privacy.*

Part D Waste Management

Insufficient information has been provided to enable a full and proper assessment of the waste management impacts of the proposal and as such, the waste management requirements of Part D under Leichhardt DCP 2013 have not been satisfactorily addressed.

In this regard, the submitted Waste Management Plan and details shown on the architectural plans are to be updated to address the following comments provided from Council's Waste Management Section:

- *The proposed loading zone has been designed for a medium rigid vehicle, which is considered inadequate for proposed waste collection.*
- *The WMP describes use of eDiverter chute system, which is not permitted in former Leichhardt given chutes are to be for disposal of general waste only and use of mechanical diverters to separate waste within a single chute are not permitted under Part D of Leichhardt DCP 2013.*

5(e) The Likely Impacts

The assessment of the application demonstrates that the proposal will have an adverse impact on the locality in terms of streetscape, traffic and parking, flooding, trees, stormwater, and amenity.

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

The site is zoned R1 General Residential. It is considered that the proposal is not suitable for the site and will have an adverse impact in terms of streetscape, traffic and parking, flooding, trees, stormwater and amenity and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

The application was notified in accordance with Council's Policy for a period of 30 days to surrounding properties. As a result, 122 submissions were received.

The following issues raised in submissions have been discussed in Sections 5(a) and (d) of this report:

- Not an adaptive reuse
- FSR variation / Out of character / Overdevelopment / Excessive bulk and scale
- Poor amenity
- Misuse of the right of carriageway
- Pedestrian safety (insufficient sightlines on right of carriageway due to existing adjoining buildings)
- Noise (from increased use of right of carriageway)
- Traffic
- Overshadowing
- Loss of views/sightlines/outlook from adjoining properties
- Visual privacy
- Impacts to water table/overland flow

The grounds of objection raised are generally considered valid, have not been satisfactorily addressed and support the recommended refusal of the application.

5(h) The Public Interest

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

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage: Not supported
- Development Engineer: Not supported
- Landscaping: Not supported
- Waste Management: Not supported
- Health: No objections subject to conditions
- Building: No objections subject to conditions

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid: No objections subject to conditions

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the development if the proposal is determined by grant of consent.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A financial contribution would be required for the development under Leichhardt Section 94 Contributions Plans as follows:

Contribution Plan	Capped Contribution
Community Facilities	\$476,183.21
Open Space	\$3,115,735.68
Local Area Traffic Management	\$24,949.60
Bicycle	\$3,131.51
Total	\$3,620,000.00

8. Conclusion

This application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is considered to be unsatisfactory. The proposal fails key preconditions and threshold issues and does not comply with the aims, objectives and design parameters contained in State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Buildings, Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will result in adverse impacts in terms of heritage and amenity. The application is considered unsupportable and refusal of the application is recommended.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 6.11(3)(c) of *Leichhardt Local Environmental Plan 2013*. After considering this request, the Panel is not satisfied that the Clause 4.6 request can be allowed. Further, the proposal is required to be supported a Clause 4.6 request to vary the development standard for Landscaped Area in Clause 4.3A of the *Leichhardt Local Environmental Plan 2013* and the application fails to include such a request.
- B. That the Sydney Eastern City Planning Panel as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2020/0501 for adaptive reuse and alterations and additions to existing industrial warehouse structures and conversion into a residential flat building of up to 6 storeys accommodating 181 residential apartments above two levels of basement car parking, and associated works at 40-76 William Street LEICHHARDT NSW 2040 for the following reasons at Attachment A.

Attachment A – Recommended reasons for refusal

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 2.3 – Zone objectives and Land use Table;
 - b) Clause 4.3A – Landscapes Area;
 - c) Clause 4.4 – Floor Space Ratio;
 - d) Clause 4.6 – Exceptions to development standards;
 - e) Clause 6.2 – Earthworks;
 - f) Clause 6.3 – Stormwater management;
 - g) Clause 6.4 – Flood planning; and
 - h) Clause 6.11 – Adaptive Reuse of Existing Buildings in Zone R1
 - i) Clause 6.14 – Development control plans for certain development
2. The proposed development cannot be approved as a site specific DCP has not been prepared and the requirement cannot be obviated given the development involves a significant increase to existing height and gross floor area pursuant to Clause 6.14 of Leichhardt Local Environmental Plan 2013.
3. The proposed development cannot be approved as it fails to satisfy the pre-conditions to grant of development consent for adaptive reuse under Clause 6.11 of Leichhardt Local Environmental Plan 2013.
4. The proposed development cannot be approved as it breaches the permitted Floor Space Ratio as stipulated by Clause 4.4, and no Clause 4.6 request to vary this standard under Leichhardt Local Environmental Plan 2013 has been received.
5. The proposed development cannot be approved as it breaches the minimum Landscaped Area requirement as stipulated by Clause 4.3A, and no Clause 4.6 request to vary this standard under Leichhardt Local Environmental Plan 2013 has been received.
6. The proposed development is inconsistent and / or has not demonstrated sufficient regard to the design quality principles of Context and Neighbourhood Character (Principle 1), Built form and scale (Principle 2), Density (Principle 3), Landscape (Principle 5), and Amenity (Principle 6) given non-compliance with Landscaped Area, FSR and adaptive reuse provisions and adverse impacts in relation to streetscape, amenity, and open space and relevant objectives of the Apartment Design Guide under Clause 30 of State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Buildings, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979.
7. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Clause C1.0 – General Provisions;
 - b) Clause C1.1 – Site and Context Analysis;
 - c) Clause C1.3 – Alterations and Additions;
 - d) Clause C1.11 – Parking;
 - e) Clause C1.12 – Landscaping;

- f) Clause C1.14 – Tree Management;
- g) Clause C2.2.3.4 – Helsarmel Distinctive Neighbourhood;
- h) Clause C3.1 – Residential General Provisions;
- i) Clause C3.2 – Site Layout and Building Design;
- j) Clause C3.3 – Elevations and Materials;
- k) Clause C3.9 – Solar Access (overshadowing);
- l) Clause C3.10 – Views;
- m) Clause C3.12 – Acoustic Privacy;
- n) Clause C3.13 – Conversion of Existing Non-Residential Buildings;
- o) Part D, Section 2 – Resource Recovery and Waste Management; and
- p) Part E: Water.

8. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
9. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
10. The grounds of objection raised in public submissions are valid and approval of this application is considered contrary to the public interest due to the adverse impacts, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Attachment B – Plans of proposed development

Attachment C- Clause 4.6 Exception to Development Standards