

DATE OF DETERMINATION	25 March 2021
PANEL MEMBERS	Jan Murrell (Chair), Roberta Ryan, Sue Francis, Deborah Laidlaw, Brian McDonald
APOLOGIES	Carl Scully
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 25 March 2021, opened at 11.35am and closed at 12.25pm.

MATTER DETERMINED

PPSSEC-72 – Inner West – DA/2020/0501 at 40-76 William Street Leichhardt (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The Panel identified several key matters that would prevent the Panel from granting approval to the development application, even if it was minded to. These relate to at least two precondition matters in clauses 6.11 and 6.14 of the LLEP. Furthermore, there is a need for the Applicant to provide written requests to vary development standards under cl.4.6; and owner's consent for works relating the right of way that provides access to the subject development site.

Even if the above matters are deemed not to be fatal to the application, the Panel considers the proposal is not worthy of approval on a merits assessment and therefore the determination of the Panel is to refuse the application. This is on the basis of impacts assessed by the information provided and also the fact on a number of important or critical issues, inadequate information was provided to enable the Panel to be satisfied as to the impact of the proposal.

The Panel therefore concurs with the Council Officer's assessment report to refuse the application. The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined in the Council Officer's assessment report, as amended below.

1. Clause 6.14(3) of Leichhardt Local Environmental Plan 2013, requires a site specific development control plan, as a pre-condition to the consideration of a development application on this site, and this has not been prepared. Pursuant to clause 6.14(5) of the LEP the requirement for a development control plan cannot be waived in this case, as the development proposal does not meet any of the exemption criteria listed, including those under clause 6.14(d) and (e).
2. Clause 6.11 of Leichhardt Local Environmental Plan 2013 is not considered to be a development standard and therefore not capable of a clause 4.6 variation. If the Panel is wrong the clause 4.6

request is not supported and the proposal fails to satisfy the pre-conditions to grant development consent for adaptive reuse because it:

- results in adverse impacts to the streetscape, character and amenity of the surrounding area due to its design and its excessive bulk and scale (clause 6.11(a)); and
- fails to retain the form, fabric and features of architectural or historic features of the existing building (clause 6.11(b)); and
- involves an increase in FSR that is not contained generally within the existing building envelope (clause 6.11(c)).

Further, in relation to clause 6.11(b) of the LEP, insufficient information has been provided to satisfactorily demonstrate the extent of the existing structure and fabric to be retained, demolished or altered. Detailed measured drawings of the existing building, demolition plans and fabric analysis, and the integration of existing and new elements must also be provided to satisfy the adaptive re-use provisions.

3. The proposed development cannot be approved as it exceeds the maximum allowed floor space ratio as stipulated by Clause 4.4 of the *Leichhardt Local Environmental Plan 2013*, and the application is not accompanied by a Clause 4.6 request to vary this development standard.
4. The proposed development cannot be approved as it does not achieve the minimum landscaped area required by Clause 4.3A(3) of the *Leichhardt Local Environmental Plan 2013*, and the application is not accompanied by a Clause 4.6 request to vary this development standard.
5. The proposed development involves traffic safety and calming works within the right of carriageway over the neighbouring land at Lot 1 in DP 270151, as outlined in the submitted Traffic Report. Furthermore, the application has not been accompanied with owner's consent in relation to these works.

As a result the submitted information fails to adequately demonstrate that:

- the existing right of carriageway and footway is suitable for safe and efficient vehicular and pedestrian access and that no adverse acoustic, light glare, odour or safety impacts will arise to adjoining properties;
 - the traffic generation of the proposed development can be suitably accommodated within the existing road network given the proposed change of use involves a significant intensification of use; and
 - the required garbage truck manoeuvring can be wholly accommodated within the subject site, given the swept path diagrams indicate encroachment on neighbouring property outside of the existing easement for right of carriageway.
6. The proposed development is unacceptable having regard to its design, excessive bulk and scale, non-compliance with landscaped area and FSR standards, insufficient building separation and communal open space and adverse streetscape, traffic and internal and external amenity impacts (including overshadowing, privacy, solar access and cross ventilation. It has not demonstrated adequate regard to the design quality principles of Context and Neighbourhood Character (Principle 1), Built form and scale (Principle 2), Density (Principle 3), Sustainability (Principle 4); Landscape (Principle 5), Amenity (Principle 6) and Aesthetics (Principle 9) under Schedule 1 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* and clause 28(2)(b) of State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Buildings.

Further, pursuant to clause 28(2)(c) of State Environmental Planning Policy No. 65, Design Quality of Residential Apartment Buildings, the proposed development is inconsistent, or has not demonstrated compliance with the following provisions of the Apartment Design Guide:

- Section 3F Building Separation
- Section 3B Orientation
- Section 3D Communal Open Space
- Section 3E Deep Soil Zones
- Section 3F Visual Privacy
- Section 4A Solar and Daylight Access
- Section 4B Natural Ventilation
- Section 4C Ceiling Heights
- Section 4D Apartment Size and Layout
- Section 4E Private Open Space and Balconies
- Section 4G – Storage
- Section 4H – Acoustic privacy
- Section 4M - Facades
- Section 4O – Landscape Design
- Section 4R - Adaptive Reuse
- Section 4W – Waste Management

7. The proposed development fails to demonstrate compliance with the relevant provisions of the *Leichhardt Local Environmental Plan 2013*, having regard 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 – Landscape 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 – Flood planning;
- g) Clause 6.4 – Stormwater management;
- h) Clause 6.11 – Adaptive Reuse of Existing Buildings in Zone R1; and
- i) Clause 6.14 – Development Control Plans

8. The application fails to satisfactorily demonstrate or take account of:

- a) adequate facilities and access will be provided for waste collection by Council's garbage truck within the site;
- b) acceptable parking facilities and loading facilities will be provided in accordance with:
 - i. Leichhardt DCP 2013 Part C1.11 Parking (and relevant objectives),
 - ii. AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking,
 - iii. AS 2890.2-2018 Parking Facilities - Off-Street commercial vehicles facilities,
 - iv. AS/NZS 2890.6-2009 Off-street parking for people with disabilities; and
 - v. AS 2890.3-2015 Parking Facilities - Bicycle parking facilities.
- c) the cumulative impact of the proposal in respect of traffic and parking impacts, having regard to recent approvals in the vicinity and the current and projected on-street parking demand;
- d) the suitability of the proposed access in respect of vehicular and pedestrian safety.

9. The proposed development involves removal and relocation of an existing drainage easement over the subject property that benefits adjoining properties to the south and re-direction of stormwater runoff through neighbouring properties to the east. Furthermore the application has not been accompanied by owner's consent from the affected parties in relation to the removal of the existing drainage easement and creation of new drainage easement.

Further, insufficient information has been provided to satisfactorily demonstrate that no adverse stormwater runoff impacts will arise to adjoining properties, contrary to:

- a) Clause 6.4 of Leichhardt Local Environmental Plan 2013; and
- b) Leichhardt DCP 2013 Parts E1.1.2, E1.2.2 (Controls C1, C2, C3, C4, C5, C6, C7), E1.2.3 (Controls C1, C2, C3), E1.2.4 (Controls C1, C2, C3, C4, C5), and E1.2.5 (Controls C4, C5, C6, C7).

10. Insufficient information has been provided to satisfactorily demonstrate that the proposed development will not be adversely impacted by flooding and that no adverse flooding impacts will arise to adjoining properties, contrary to Clause 6.3 of *Leichhardt Local Environmental Plan 2013* and Leichhardt DCP 2013 Part E1.3.1 (Controls C1, C3, C8, C9, C10).

11. Insufficient information has been provided to satisfactorily address impacts relating to the geotechnical and ground water conditions within the subject site and adjoining properties during construction and occupation relating to existing structures, soil stability, drainage patterns, ground water and all other matters required to be addressed under Clause 6.2 of *Leichhardt Local Environmental Plan 2013*.

12. The proposed development is inconsistent with, or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, having regard 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;
- p) Part E: Water; and
- q) Appendix B: Section 12 – Building Typologies (Warehouses and factories).

13. The proposal will result in unacceptable, adverse environmental impacts in the locality, having regard to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.

14. Given the lack of critical information and the identified impacts, the application has failed to demonstrate that the site is suitable for the proposed development, having regard to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
15. Relevant planning issues raised in public submissions include unresolved impacts and the application is considered contrary to the public interest pursuant to Section 4.15 (1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*.

CONDITIONS



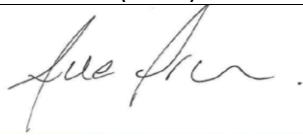
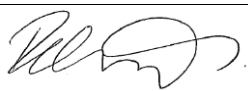

Not applicable.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Right of way: owner's consent for necessary works; suitability of narrow row for the access and intensification
- Garbage room location and impact on adjoining properties
- Traffic impacts
- Truck movements
- Parking
- Safety
- Not Adaptive reuse
- Accessibility – light rail over capacity
- Flooding and overland flow path
- Overlooking and privacy
- Bulk, Scale and density
- Overdevelopment of site
- Overshadowing
- Impacts on amenity for existing residential properties.

The Panel considers that many concerns raised by the community are relevant and valid in this case and have assisted the Panel in making its determination.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Roberta Ryan
 Sue Francis	 Deborah Laidlaw
 Brian McDonald	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-72 – Inner West – DA/2020/0501
2	PROPOSED DEVELOPMENT	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.
3	STREET ADDRESS	40-76 William Street, Leichhardt
4	APPLICANT/OWNER	Anprisa Pty Ltd / Mr Dennis Lewy, Mr Garry Lewy, Ms Monica A Lewy
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy – Building Sustainability Index (BASIX) State Environmental Planning Policy (Infrastructure) 2007 Leichhardt Local Environmental Plan 2013 Draft Environmental Planning Instruments: <ul style="list-style-type: none"> Draft Inner West Local Environmental Plan 2020 Development control plans: <ul style="list-style-type: none"> Leichhardt Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 10 March 2021 Clause 4.6 variation request – clause 6.11 LEP 2013 Written submissions during public exhibition: 122 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Maureen Lummow, Peter Gillard, Jennifer Aaron, Ben Slee, Rema Lolas, Kate Falconer, Anthony Kunz, Lucie Farrugia, Bianca Marcocci, Michael Baker, Cameron Grant Council assessment officer – Eltin Miletic, Luke Murtas On behalf of the applicant – Nil Total number of unique submissions received by way of objection: 122
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 8 October 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Carl Scully (Chair), Roberta Ryan, Deborah Laidlaw <u>Council assessment staff</u>: Rachel Josey, Martin Amy, Eltin Miletic, Katerina Lianos Site inspection: The Panel visited the site independently, prior to 25 March 2021

		<ul style="list-style-type: none"> • Applicant Briefing: 12 November 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Roberta Ryan, Deborah Laidlaw ○ <u>Applicant representatives</u>: Mitchell Favalaro, Kate Bartlett, Andrew Darroch, Paul Buljevic, Weiger Meijer, Edward Doueihi, David Flannery <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Final briefing to discuss council's recommendation: 25 March 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Roberta Ryan, Sue Francis Brian McDonald, Deborah Laidlaw ○ <u>Council assessment staff</u>: Eltin Miletic, Luke Murtas, Rachel Josey, Sean Howie
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied