

# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2020/1017
<b>Address</b>	317 - 335 Liverpool Road ASHFIELD NSW 2131
<b>Proposal</b>	Demolition of the existing structures on site and construction of an eight storey mixed-use development comprising ground floor retail tenancies, 28 residential apartments, two level basement parking and a communal roof top garden.
<b>Date of Lodgement</b>	27 November 2020
<b>Applicant</b>	Markham Property Development Pty Ltd
<b>Owner</b>	Frank and Sunny Pty Ltd GY Investments Australia Pty Ltd Ganghui Pty Ltd
<b>Number of Submissions</b>	Initial: (2)
<b>Value of works</b>	\$10,877,634.00
<b>Reason for determination at Planning Panel</b>	Development to which SEPP 65 applies and Development involves the demolition of a heritage item
<b>Main Issues</b>	Clause 4.6 variations to height & FSR, variations to ADG setback requirements and proposed demolition of a heritage item
<b>Recommendation</b>	Approval with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of the existing structures on site and construction of an eight storey mixed-use development comprising ground floor retail tenancies, 28 residential apartments, two level basement parking and a communal roof top garden at 317 - 335 Liverpool Road, Ashfield.

The application was notified to surrounding properties and 2 submissions were received.

The main issues that have arisen from the application include:

- A 4.68% variation to Clause 4.3 - Height of buildings within the Ashfield LEP 2013
- A 5.54% variation to Clause 4.3B - Ashfield town centre – maximum height for street frontages for certain land within the Ashfield LEP 2013
- A 12.7% variation to Clause 4.4 - Floor space ratio within the Ashfield LEP 2013
- Variations to the minimum required ADG side and rear separation distances
- Demolition of a heritage Item at 317 Liverpool Road (Item 214)

The non-compliances are acceptable given acceptable and therefore the application is recommended for approval.

## 2. Proposal

The proposal seeks to demolish the existing buildings on site and construct an 8 storey mixed use development with ground floor retail, residential apartments above and two level basement parking. The proposed development will comprise the following:

- Demolition of all existing buildings and structures on site
- Excavation for two (2) basement car parking levels with access from Markham Place. The basement will accommodate 50 car parking spaces including 1 retail disabled parking space, 4 adaptable car parking spaces, 12 retail parking spaces and car wash bay
- Construction of an eight (8) storey mixed use building containing 28 residential apartments comprising:
  - 4 x one (1) bedroom units;
  - 12 x two (2) bedroom units
  - 11 x three (3) bedroom units; and
  - 1 x four (4) bedroom unit.
- The ground floor will comprise loading bay, lift, residential lobby and garbage facilities for both the residential and non-residential components of the proposed development with four (4) retail tenancy shopfronts (470.5sqm) which run the length of Liverpool Road and Markham Avenue, as well as part of Markham Place, with a splayed corner on the rear corner to Markham Avenue;
- Concrete and timber seating with planter boxes along Markham Avenue and Markham Place; and
- Associated communal open space 490.9sqm with 82.8sqm deep soil landscaping on Level 3 and the roof.





Figure 2 – Computer generated image of proposed frontage to Liverpool Road.

## 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 (317 – 331 Liverpool Road)

Application	Proposal	Decision & Date
10.2016.89.1	Demolition of all existing structures; Construction of an 8 storey mixed use development consisting of 6 retail tenancies at ground level. Proposal also incorporated 3 basement car parking levels accommodating 43 vehicles.	Approved as Deferred Commencement on the 23 August 2016. Operational consent was granted on the 7 August 2017
10.2016.89.2	Modification application submitted to increase the number of parking spaces from 43 to 46, decrease number of approved tenancies to 5 and reduce the number of units from 28 to 26	Approved 21 September 2018
10.2016.89.3	Modification of development consent 10.2016.89.1 including amendments to approved elevations and condition C (11)	Approved 11 February 2020
PDA/2020/0205	Mixed use development	Advice Issued 15/7/2020

As outlined above the subject site is currently benefited by an operational development consent for sites known as 317 – 331 Liverpool Road. The current development application has been lodged as the applicant has now obtained the site known as 335 Liverpool Road and seeks to incorporate it into a new scheme with the other sites listed above. Such a change is outside the scope of a 4.55 modification and as such a new development application has been lodged.

**Surrounding properties**

5 Markham Place

Application	Proposal	Decision & Date
10.2014.326.1	Demolition of existing structures construction of 3-8 storey mixed use building, with 3 levels of basement parking, 4 retail shops, 93 dwelling.	Approved – 3 August 2015

17 – 20 The Esplanade Ashfield

Application No	Application Details	Decision & Date
10.2003.270.1	Strata subdivision of the residential and commercial development	Approved - 27 August 2003

4(b) [Application history](#)

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

Date	Discussion / Letter / Additional Information
24 February 2021	<p>On the 24 February 2021 Council officers contacted the applicant and outlined a request for additional information/amended plans addressing the following:</p> <ul style="list-style-type: none"> <li>- Amended plans detailing the provision of a unit a minimum 86sqm in floor area to be dedicated for the purposes of affordable rental housing in order to meet the requirements of clause 4.3A (3B).</li> <li>- Amended plans detailing an expansion to the residential lobby, to enable improved streetscape presentation and way finding.</li> <li>- Additional information addressing the requirements of CPTED with regards to the proposed shared lift/corridor to the basement and waste room.</li> <li>- Amended plans detailing a revised floor plan for units 104, 204, 105 &amp; 205.</li> <li>- Amended plans detailing revised window openings for units 106, 107, 206 &amp; 207 to improve cross ventilation and privacy</li> <li>- Amended plans detailing revised door openings for retail premises addressing Markham Avenue to enable the provision of outdoor seating in the future.</li> <li>- Amended plans detailing a revised loading dock compliant able to accommodate a HRV to enable on-site Council waste collection.</li> <li>- Amended plans detailing a reduction to the length of the proposed garage door opening</li> <li>- Amended plans detailing the relocation of 2 visitor parking spaces to residential units.</li> <li>- Amended shadow diagrams detailing the full extent of shadows to be cast by the development onto neighbouring sites.</li> </ul>

16 March 2021	The requested additional information/amended plans were provided by the applicant.
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This assessment report is based on the additional information/amended plans provided by the applicant on the 16 March 2021.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Ashfield Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. ADIP 2016 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 management of contaminated groundwater onsite and the treatment and/or 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. To ensure that these works are undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of *SEPP 55*.

#### 5(a)(ii) *State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64)*

The following is an assessment of the proposed development under the relevant controls contained in *SEPP 64*.

*SEPP 64* specifies aims, objectives, and assessment criteria for signage as addressed below. Schedule 1 of *SEPP 64* specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of *SEPP 64*.

### *Signs and Advertising Structures*

The application seeks consent for the erection of the following signage:

- Northern Elevation – Markham Place:
  - 1 x illuminated residential building identification sign zone, 1700mm wide x 700mm high;
  - 1 x top hamper business identification sign zones above retail tenancy glazed windows;
  - Public Art wall;
- Eastern elevation – Markham Avenue
  - 2 x illuminated under awning business identification sign frames 1000mm wide;
  - 3 x top hamper business identification sign zones above retail tenancy glazed windows;
- Southern Elevation – Liverpool Road
  - 3 x illuminated under awning business identification sign frames 1000mm wide;
  - 6 x top hamper business identification sign zones above retail tenancy glazed windows; Please note that the content and

The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64.

### **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.

The development is acceptable having regard to the nine design quality principles.

#### *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 IWCDCP 2016 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail. The following provides further discussion of the relevant issues:

#### *Communal and Open Space*

The ADG prescribes the following requirements for communal and open space (COS):

- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Comment:

A review of the provided solar access diagrams and proposed communal open space has highlighted that approximately 40% or 208sqm will receive direct sunlight to the principal usable part for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

This 40% of COS which receives solar access is wholly located upon the roof of the development not on level 3. The nature of the proposal having two COS areas results in a total COS of 521.7sqm or 48% of the site area, well above the minimum 25% required by the ADG. In this instance the proposal has been appropriately designed to respond to the *microclimate* and site conditions, with the roof top COS providing opportunities for sufficient sunlight in winter/ summer and level 3 providing sufficient sunlight in summer, while also providing shelter from strong winds.

In this instance the development has maximised every opportunity to provide COS to occupants and actively sought to provide spaces which can be utilised year-round. The minor variation to solar access requirements is acceptable given the orientation of the site and applicable controls (see setback requirements from Liverpool Rd). The development has provided a well-considered alternative to providing COS for occupants and meets the intention of the controls. No objection is raised to the proposed variation with the proposed 208sqm or 40% of COS which does receive winter solar access considered sufficient to meet the needs of occupants. The application is therefore recommended for support.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
650sqm - 1,500sqm	3m	7%

Comment:

The current proposal results in a variation to the minimum required 7% deep soil landscape zone and only provides 4% (44.5sqm). This landscape zone is located along the northern boundary of the site. The intention of this landscaping zone is to ensure that the site allows for and supports healthy plant and tree growth.

In this instance a variation to the minimum 7% landscaped area requirement is considered acceptable, given the site’s location within a major urban Centre, where there is having limited space for deep soil and the nature of the proposal with 100% non-residential uses at ground floor level. Regardless of the non-compliance, the proposed landscaping is considered to satisfy the intention of the control, with submitted landscape plans detailing the planting of six (6) new significant trees (capable of achieving a height of 12m) within this locality. The planting of these trees ensures an improved degree of amenity for the commercial elements on the ground floor and for residents located above and improved overall environmental performance for the site.

The proposal has incorporated and provided sufficient soil depth and space for the growth and establishment of these trees and provides an appropriate introduction of additional landscaped area/ canopy to the Ashfield Town Centre, assisting to soften the built form. In this instance

no objection is raised to the proposed landscape zone variation and the application is recommended for support.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres

Comment:

*Site Setbacks – Western Boundary*

The development proposes nil boundary setbacks along the western boundary shared with 337- 345 Liverpool Road. As prescribed within the ADG nil setbacks or no building separation is permitted for blank walls, as such the setbacks mentioned above are permitted within the ADG. Despite this, Council has undertaken a review of the proposed blank wall setbacks and their relationship to neighbouring sites. This review has highlighted that the proposed nil boundary setbacks are appropriately located to facilitate and co-ordinate with the re-development of neighbouring sites.

Acceptance of the proposed nil boundary setbacks provides opportunities for neighbouring sites to obtain a similar built form and to ensures the creation of a consistent street wall typology, as neighbouring sites also re-develop. A review of the proposed western elevation has highlighted that this nil boundary setback is to be finished with a rendered slab edge and stark wall colour (white). This elevation will be highly visible for the immediate future from the public domain, until such a time that re-development of the neighbouring site 337-345 Liverpool Road occurs. To ensure an attractive and interesting appearance to the public domain a condition of consent requiring improved visual interest to this elevation is recommended. This visual interest may take the form of material or colour changes on the wall to avoid a prominent blank expanse of white wall.

*Site Setbacks – Eastern Boundary*

A review of the current proposal has highlighted nil eastern boundary setbacks for residential levels 1 and 2 and a 2.5m setback for levels 3 to 7. Such setbacks are a variation to the minimum required 6m setbacks for habitable rooms up to 4 stories and 9m setbacks for habitable rooms up to 8 storeys as required under the ADG. The intention of this control is to ensure adequate building separation distances between sites and to ensure that they are shared equitably in order to provide reasonable external and internal privacy.

In this instance the subject site is reliant upon the neighbouring Markham Avenue to assist in providing building separation. Markham Avenue has a width of 6m. As a result, levels 1 and 2 of the proposal have a separation distance of 6m from neighbouring buildings, while levels 3 to 7 have a separation distance of 8.5m. Analysis of DA 10.2016.89.1 (currently operational on the site), has confirmed that the previously approved scheme similarly has nil boundary setbacks for levels 1 and 2 and 3m setbacks for levels 3 to 7.

The proposed eastern elevation of the current application has been designed to incorporate window openings for bedrooms, bathrooms and some living areas for a number of residential units. The window openings on levels 1 and 2 relate to bedrooms and living rooms and have

a minimum windowsill height of 1.4m (as measured from finished floor level). The design and location of these windows is such that should the neighbouring site re-develop then new windows can be located and designed to be off-set and not directly align with the subject site. The nature of the windows with a 1.4m sill height also provides additional opportunities for blocking of direct sightlines into units, while also ensuring an improved and sufficient rate of visual surveillance to Markham Lane below. No objection is raised to the proposed bedroom windows on level 1 and 2.

A review of levels 3 to 7 of the proposal has highlighted two windows along the eastern elevation. These windows relate to living rooms and bedrooms and are proposed to have a minimum sill height of 1.2m. Of these two windows the smaller windows relate to bedrooms and provide a secondary opening, with the primary window opening addressing the Liverpool Road frontage. These windows incorporate a reduced size and assist in breaking up an otherwise blank façade. The location and design of these windows is such that they will not result in privacy impacts should neighbouring sites be developed but play an important role in providing additional light and ventilation to bedrooms of the development.

The proposed bedroom windows are acceptable. With regards to the proposed larger living room windows, these windows are also secondary in nature and provide an alternative opening from the balcony opening addressing Markham Place. These windows located upon the eastern elevation have been designed to incorporate privacy screening. To ensure sufficient amenity protection from this privacy screening a design change condition requiring screening to be fixed angled and a minimum 75% block out density is recommended for the consent. The imposition of such a condition ensures reasonable opportunities for light and ventilation (with windows able to be opened and closed independent of screening), while also blocking and obscuring direct sightlines in or out of the proposed units.

Due to the site's location within the Ashfield Town Centre, orientation of the development/units and proximity of existing development, privacy impacts are considered acceptable and do not require strict compliance with the 6m and 9m boundary setback control. Instead, it is considered that the application has satisfactorily proposed design alternatives to off-set the reduced setbacks and respond to the context of the locality. For this reason, the proposed variation to the eastern boundary setbacks is acceptable.

#### *Site Setbacks – Northern Boundary*

The current proposal seeks consent for a 3m northern boundary setback (as measured from the edge of the proposed residential balconies), this setback has been reviewed and is generally acceptable due to the site's context. The subject site backs directly onto Markham Place, which measures approximately 6m in width. The proposed 3m boundary setback combined with the 6m width of Markham Place and the street setback of 13m at the recently constructed 5 Markham Place, results in a total building separation of 22m and is well over the minimum required 12m or 18m as outlined by the ADG.

This separation distance is more than sufficient to ensure reasonable privacy for occupants and neighbours, while also providing a high degree of building separation. In this instance strict numerical compliance with the 6m or 9m setback requirements is unlikely to substantially improve amenity or separation with the overall intent of the control being met through the existing context. The proposed variation is acceptable.

#### Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Comment:

The proposal is non-compliant with the requirements of A4-1 (3) of the ADG, with approximately 28% of apartments/units (8 out of 28) not receiving direct sunlight between 9am and 3pm at mid-winter. A review of the apartments which result in this non-compliance has confirmed that it is all apartments located on levels 1 and 2 addressing Liverpool Road within the southern elevation of the development. Despite this the design has provided a significant amount of COS, with numerous opportunities to obtain and enjoy solar access in winter from within the site. A review of the ADG has highlighted that the guidelines make provisions or exceptions for strict compliance with the above where sites are south facing and as such the proposed variation is considered acceptable and unavoidable given the orientation of the site.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

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

*Development with frontage to classified road (Clause 101)*

The site has a frontage to Liverpool Road, a classified road. Under Clause 101 (2) of *SEPP Infrastructure 2007*, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The application was referred to Roads and Maritime Services (RMS) for comment. RMS raised no objections with the application with regard to ingress and egress to the site which remains adequate to support the intended vehicle movements by road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

*Impact of road noise or vibration on non-road development (Clause 102)*

Clause 102 of the *SEPP Infrastructure 2007* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 40,000 vehicle. Under that clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

Liverpool Road has an annual average daily traffic volume of more than 40,000 vehicles. The applicant submitted a Noise Assessment Report with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP. Conditions are included in the recommendation.

**5(a)(vi) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)**

*Vegetation SEPP* concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application does not seek the removal of vegetation from within the site and on Council land. The application was referred to Council's Tree Management Officer who outlined no objection subject to suitable conditions of consent.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and DCP subject to the imposition of conditions, which have been included in the recommendation of this report.

#### 5(a)(vii) *Ashfield Local Environment Plan 2013 (ALEP 2013)*

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2011*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre
- Clause 4.3B - Ashfield town centre – maximum height for street frontages for certain land
- 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 5.10 - Heritage Conservation
- Clause 6.1 - Earthworks

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

The site is zoned B4 – Mixed Use under the *ALEP 2013*. The *ALEP 2013* defines the development as a shop top housing:

**shop top housing** means one or more dwellings located above ground floor retail premises or business premises.

The development is permitted with consent within the zone. The development is consistent with the objectives of the B4 – Mixed Use zone.

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

Standard	Proposal	non compliance	Complies
<p><b>Height of Building</b> Maximum permissible: 23m</p> <p>30m - by operation of clause 4.3A:</p> <p>a) the development will contain at least 1 dwelling used for the purpose of affordable rental housing; and</p> <p>b) at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing</p> <p>Clause 4.3 (2A) – any part of the building that is within 3 metres of the height limit (30m) must not include any area that forms part of the gross floor area of the building</p> <p>Clause 4.3 (B) - Ashfield town centre – maximum height for street frontages on certain land: 12m to Norton Street.</p>	<p>31.25m</p> <p>The proposal is to contain at least 1 units for affordable housing</p> <p>The proposed 1 units to be dedicated for affordable housing total 25% of additional floor area</p> <p>27m (to top of habitable floor)</p> <p>11.4m frontage to Liverpool Road</p>	<p>1.4m or 4.68%</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>0.6m or 5.54%</p>	<p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>
<p><b>Floor Space Ratio</b></p> <p>Maximum permissible: 3:1 or 3,264sqm</p>	<p>3.3:1 or 3,678.5sqm</p>	<p>414.5sqm or 12.7%</p>	<p>No</p>

The following provides further discussion of the relevant issues:

Clause 4.3 of the ALEP 2013 provides that maximum building height on any land should not exceed the maximum height shown for the land on the height of building map. The maximum permissible building height for the subject site is 23m. However, Clause 4.3A allows an additional 7m height in Ashfield Town Centre provided the development will contain at least 1 dwelling used for the purpose of affordable rental housing, and at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing.

The proposed development nominates 1 unit (unit 104) located upon level 1 of the development for affordable rental housing. This units total area is 89.1sqm which is 27% of the additional floor space (324.6sqm) above the height limit and consequently satisfy Clause 4.3A(3).

Furthermore, Clause 4.3 (2A) states “If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area”. The proposed development has a maximum of 27m height to top of the habitable floor and does not incorporate any spaces above 27m which could be readily adapted to form gross floor area.

#### Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards:

- Clause 4.3 - Height of buildings
- Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre
- Clause 4.3B - Ashfield town centre – maximum height for street frontages for certain land
- Clause 4.4 - Floor space ratio

#### *Clause 4.6 – Height of Buildings*

The applicant seeks a variation to the height of buildings development standard under Clause 4.3 of the Ashfield LEP 2013 by 4.68% (1.4metres).

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Ashfield LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Ashfield LEP justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed built form fits in with the surrounding developments and streetscape. The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre. The proposed 8 storey development is consistent with the surrounding desired future character in the Ashfield Town Centre being located in Area 1;*
- *The proposed development is considered to be compatible with the streetscape along Liverpool Road and Markham Place;*
- *The proposed building has a maximum height of 27.25m (or RL 52.85) when measured to the upper level roof form and generally meets the height control under Clause 4.3A. A 1.405m non-compliance is introduced above to and facilitate lift service to the roof garden. The lift overrun provides access to rooftop communal open space, contributing to the residential amenity of the development. This is best illustrated through figure 3 below.*
- *The lift overrun is located centrally to the built form and does not contribute to the scale of the building; and will not be visually dominant.*
- *The additional height above Clause 4.3A does not result in any additional amenity impacts to the adjoining properties with no additional overshadowing generated by the lift overrun which is being located centrally to the roof form;*

- *The proposed communal rooftop garden does not contain any floor space and is not reasonably capable of modification to include floor space area at a later stage.*
- *The variation will not result in overlooking that would adversely impact the visual privacy of adjoining properties. The communal rooftop garden is located within the height limit under Clause 4.3A and landscaping has been provided to maximise privacy; and*
- *The proposal provides access to functional open space at the roof terrace which provides additional solar access compared to the other communal space on the southern edge of the building. The proposed communal rooftop garden seeks to encourage social interaction and provide a space for relaxation for residents;*

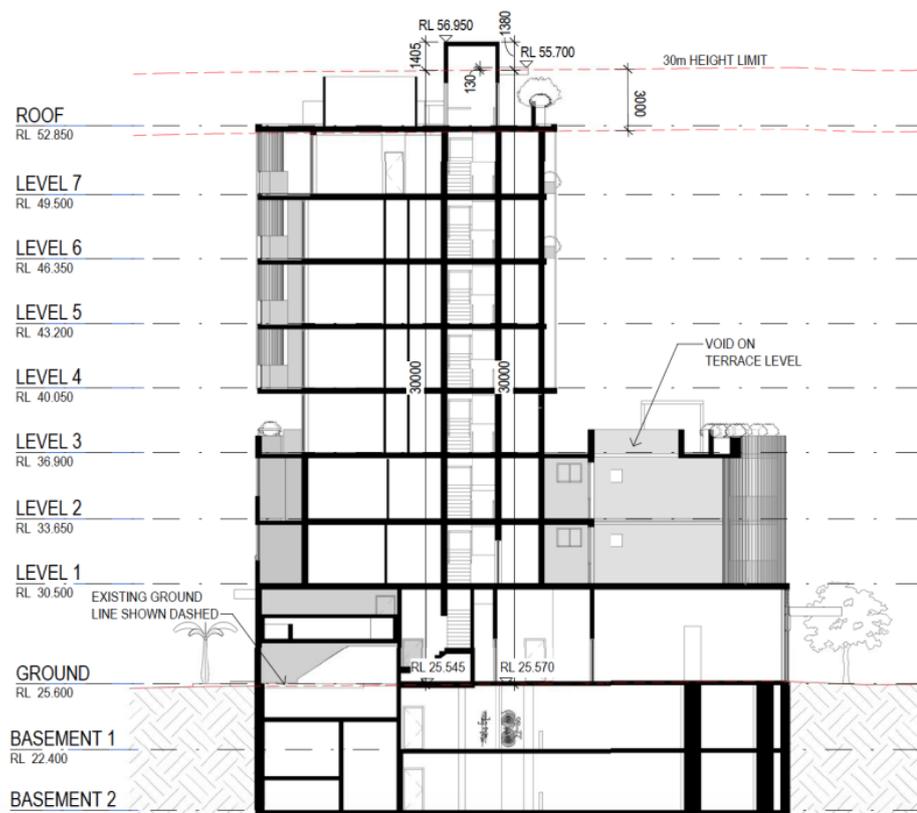


Figure 3 – Section detailing elements of the proposed height variation.

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

It is considered the development is in the public interest because it is consistent with the objectives of the B4, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield LEP for the following reasons:

- **To provide mixture of compatible land uses**

The proposal has been designed to provide 470.5sqm of retail space over 4 separate shops each addressing Markham Place or Liverpool Road and 28 residential units above. Such a land use divide is consistent with the desired future character of the Ashfield Town Centre, as seen through numerous other developments recently constructed or under construction within the same locality.

- ***To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.***

The subject site is located roughly 400m from the Ashfield Train station and is serviced by a number of bus routes. The subject site is considered to be in a highly accessible location and one which high density development should be promoted and encouraged. The development incorporates a minimum of 10 Bicycle spaces to promote and encourage active transport by residents. The design and entry of the residential foyer is highly accessible to all occupants and encourages pedestrian mobility over private vehicle transport.

- ***To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.***

The development incorporates 470.5sqm of retail floor space over 4 separate shops. These shops have been designed to be further divided or altered to become smaller or larger based on the needs of the future tenant and provide a substantially opportunity for new retail premises. The provision of these adaptable spaces and additional residential units above will place additional commercial demand within the town centre and continue to ensure its vitality and amenity.

- ***To encourage the orderly and efficient development of land through the consolidation of lots***

The proposal encourages the orderly and efficient development of land through the consolidation of two additional sites. On 4th May 2016, a development application (DA2016/89.1) was granted for a mixed-use development over the site at 317-331 Liverpool Road, Ashfield. This application seeks to further consolidate the two additional neighbouring shops, being 333 and 335 Liverpool Street as part of the overall development.

It is considered the development is in the public interest because it is consistent with the objectives of the height of buildings development standard, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield LEP for the following reasons:

- ***To achieve high-quality built form for all buildings***

The proposal has been reviewed by Council Architectural Excellence Panel (AEP) who considered the proposal acceptable, as the development reflects a high quality built form and is consistent with other built forms emerging within the locality.

- ***Maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes***

The proposal will maintain satisfactory sky exposure and daylight to existing buildings to the side and rear. The proposal will also maintain sufficient daylight and outlook to neighbouring public areas including parks and streets.

- ***Provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings***

The proposal generally represents a built form and height which is consistent with other existing developments within the locality and the desired future character. The development is not adjacent any heritage items, conservation areas or low-density residential localities which may require a built form transition or reduction in land-use intensity.

- **Maintain satisfactory solar access to existing buildings and public areas.**

The proposal will maintain and continue a generally compliant rate of solar access for neighbouring sites.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height of buildings development standard and it is recommended the Clause 4.6 exception be granted.

**Clause 4.6 – Ashfield Town Centre – maximum height for street frontage for certain land**

The applicant seeks a variation to the maximum height for street frontage for certain land development standard under Clause 4.3B of the Ashfield LEP 2013 by 5.5% (0.6m).

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Ashfield LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Ashfield LEP justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal includes a 12 metre street frontage height on Liverpool Road and complies with the control. The proposal does not afford a strict 12m setback above the wall height frontage to Liverpool Road, although it is compliant for the vast majority of the frontage. A small portion of the building intrudes within the 12 metre setback to Liverpool Road (up to approximately 0.665 metres), this is due to the site's existing shape. A small protrusion including privacy screens, planter boxes have been proposed to provide articulation to the building and to ensure the future building design is logical and absent of slanting to occur simply due to the existing site's irregular boundary.*
- *The proposal provides more greenery to the building, which is an improved outcome when viewing from Liverpool Road. The proposed minor variation to the setback on Liverpool Road will blend in with the surrounding development and will not be visually perceptible.*
- *The proposed variation results in a more logical built form outcome, whereas a strictly compliant outcome would create a slanted building form that does not provide an appropriate design or façade;*
- *The proposed variation does not create any overshadowing impacts, loss of views or loss of privacy to the neighbouring development;*
- *The proposed development is compatible within its transitioning context for the Ashfield Town Centre being located in Area 1;*

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

It is considered the development is in the public interest because it is consistent with the objectives of the B4 zone as set out above.

It is considered the development is in the public interest because it is consistent with the objectives of the Ashfield town centre – maximum height for street frontages on certain land development standard, in accordance with Clause 4.6(4)(a)(ii) of the a Ashfield LEP for the following reasons:

- ***To apply a maximum height for primary street frontages on certain land in Ashfield town centre***

The proposed variation to the 12m setback requirement from Liverpool Road, is attributed to the shape of the existing allotment. This variation relates to only a small portion of the site within the south east corner and will not be readily visible from the public domain. The minor nature of the variation will not be readily apparent to persons within neighbouring development or the public domain and as such will not impact the desired future character of a consistent streetscape to Liverpool Road.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Ashfield LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from clause 4.3B - Ashfield town centre – maximum height for street frontages on certain land development standard and it is recommended the Clause 4.6 exception be granted.

#### **Clause 4.6 – Floor Space Ratio**

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the Ashfield LEP 2013 by 12.7% or 414.5sqm.

In order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Ashfield LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Ashfield LEP justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed development is compatible within its transitioning context for the Ashfield Town Centre being located in Area 1, which specifically permits additional height subject to delivery of affordable housing. The additional FSR is directly as a result of a height control that provides for additional yield within Area 1 of the LEP. As such, it is specifically identified as a site capable of delivering additional floor space where affordable housing can be delivered through its identification in Area 1 of the LEP.*
- *The proposed development will contribute towards the housing needs of the community by providing residential accommodation;*
- *The additional FSR contributes to the 25% of the additional floor space that exceeds the 23 metres to be used for affordable rental housing and contains at least 1 dwelling, which further assists the housing affordability in the locality;*
- *The proposed development does not create any unreasonable overshadowing impacts, loss of views or loss of privacy to the neighbouring development;*

- *The proposed variation does not result in an overly dense development or outsized built form. Rather, through the provision of Clause 4.3A, the proposal will be entirely consistent with the majority of surrounding built form and density in Area 1;*
- *The proposed variation would have negligible impacts on vehicle and pedestrian traffic generation;*
- *The proposed development provides a mixed development with residential and retail uses in an accessible location;*
- *The proposed development contributes to the desired high-quality streetscape of Liverpool Road and Markham Place. The proposal features quality design and materials which will enhance the overall aesthetic of the Ashfield Town Centre.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the B4 mixed use zone as set out above.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield LEP for the following reasons:

- ***To establish standards for development density and intensity of land use***

The proposed density fits in with the surrounding developments and streetscape. The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre.

- ***To provide consistency in the bulk and scale of new development with existing development,***

The proposed development is compatible with the streetscape along Liverpool Road, Markham Place and Markham Lane. The proposal is consistent with recent developments approved within the locality including those approved at 5 Markham Place, Murrell Street and Norton Street.

- ***To minimise adverse environmental impacts on heritage conservation areas and heritage items***

The subject site has a heritage item currently located upon it. This heritage item is to be demolished in order to accommodate the current proposal. Consent for the demolition of this heritage item has previously been provided under DA 10.2016.89 which remains active/operational. The current proposal and subsequent demolition of the heritage item has been again reviewed and is considered acceptable due to the previous consent granting approval for demolition.

- ***To protect the use or enjoyment of adjoining properties and the public domain***

The proposal results in a compliant rate of solar access for neighbouring sites and will not significantly impact amenity for neighbouring residents. The proposal is expected to significantly revitalise existing areas of the Ashfield Town Centre and create a visually interesting/ renewed presentation to Markham Place, further encouraging pedestrian usage.

- ***To maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation***

It is considered that the Ashfield Town Centre is currently undergoing a period of substantial urban renewal and is likely to continue to undergo further transformation. As outlined above the western elevation has been conditioned to provide a more visually interesting façade to the public domain in order to improve streetscape while awaiting other sites to undergo re-development. The FSR variation does not place the development at odds with other recently approved developments and the building is expected to align with other neighbouring developments as they emerge.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Ashfield LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from clause 4.4 – Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

#### Clause 5.10 Heritage Conservation

A review of the sites which make up the subject site has confirmed that No. 317 Liverpool Road is listed as a local heritage item (item 214), listed under Schedule 5 of the Ashfield LEP (2013). A review of the statement of significance has highlighted that this building is identified as an Art Deco building with a splay corner that has been identified of being of historic and aesthetic significance to the Ashfield Town Centre.

As mentioned above the site is subject to a separate and current development application (10.2016.89) which granted approval for the demolition of the heritage item at 317 Liverpool Road. A review of the previous assessment report and heritage referral for this development application has highlighted that previous heritage advice regarding the demolition of this item concluded the following:

*“the corner building upon this now-amalgamated site, listed as a heritage item, did not retain an integrity of fabric, nor appear to demonstrate a level of significance that would warrant refusal of its replacement by new development”.*

The current proposal and subsequent re-request for the demolition of the existing heritage item has been reviewed by Council’s heritage advisor, who has outlined an objection to the demolition of the heritage building. Council heritage advisor has maintained this objection to demolition following the submission of amended plans and further review and analysis of the previously provided heritage fabric analysis and photographic record (required under conditions of consent for DA 10.2016.89).

As part of the assessment process Council planners have reviewed the above heritage advice and considered it against the previous site history. In this instance the original surviving fabric and elements which contribute to the streetscape is located above the existing awning on level 1, with ground floor elements altered and removed to a point of not retaining significance, this is best illustrated through figures 3 and 4 below. The retention and protection of the heritage façade would require a significant re-design of each level of the proposal (including basement). This is unreasonable as Council has previously stated that this heritage item is not worthy of retention and provided consent for the structure’s demolition (still operational).

In this instance the retention of the heritage items façade is not readily feasible and as such demolition is recommended for support. The retention of the building's façade provides reduced opportunities for the introduction of new retail spaces and limits opportunities for activation of adjacent lane known as Markham Ave. The current proposal provides a significant improvement to activation along Markham Avenue, through the introduction of significant new glazing and retail spaces. Any proposal which seeks to retain the heritage façade would either

provide a significantly reduced extent of activation or involve a substantial removal of heritage fabric to accommodate the same extent of glazing. The proposed façade retention is not considered to be in the public interest and is not recommended for retention.

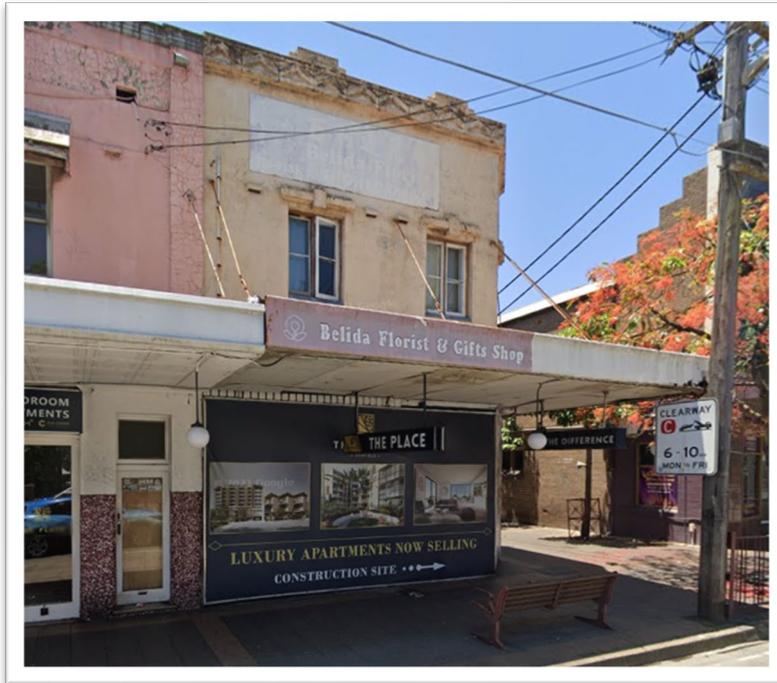


Figure 3 – 317 Liverpool Road frontage to Liverpool Road – Heritage item



Figure 3 – 317 Liverpool Road context within Liverpool Road

### 5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

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

The Draft IWLEP 2020 contains provisions for the changing of the site's zoning from the current B4 – Mixed Use Zone to B2 – Local Centre Zone. This zoning change will continue retail premises as a permissible use and will allow the construction of shop top housing. The development would essentially remain permissible and is not significantly affected by the proposed provisions of the draft LEP despite the change in zoning. A review of the draft IWLEP 2020 has confirmed that the site known as 317 Liverpool Road, continues to remain listed as an item of local heritage significance.

The development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

### 5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

<b>IWCDCP2016</b>	<b>Compliance</b>
<b>Section 2 – General Guidelines</b>	
<b>A – Miscellaneous</b>	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
4 - Solar Access and Overshadowing	Yes – see discussion
5 - Landscaping	Yes
6 - Safety by Design	Yes – see discussion
7 - Access and Mobility	Yes – see discussion
8 - Parking	Yes - see discussion
10 - Signs and Advertising Structures	Yes
15 - Stormwater Management	Yes – see discussion
<b>B – Public Domain</b>	
<b>C – Sustainability</b>	
6 – Tree Replacement and New Tree Planting	Yes
<b>D – Precinct Guidelines</b>	
Ashfield Town Centre	No – see discussion
<b>E1 – Heritage items and Conservation Areas (excluding Haberfield)</b>	
2 – Heritage Items	Yes – see discussion
8 - Demolition	Yes
<b>F – Development Category Guidelines</b>	
5 – Residential Flat Buildings	Yes

The following provides discussion of the relevant issues:

#### Ashfield Town Centre – DS.10 – Heritage Items

The current proposal results in a variation from clause DS.10.1 to 10.3 of the IWCDCP 2016, which requires development for heritage items identified in map 7 to retain the front part of the heritage building. The intention of this control is to maintain and protect key historical architectural setting for the town centre, while allowing for new development to take place

within portions which do not have heritage significance. As discussed above the existing heritage item to be demolished is permitted to be demolished under the current consent DA 10.2016.89. A detailed assessment of the proposed demolition of the heritage significant fabric has been undertaken above under the LEP assessment section.

#### Solar access and Overshadowing

The revised plans have been assessed against the provisions of Chapter A – Part 4 Solar Access and Overshadowing. Within this section residential flat buildings are required to:

- maintain existing levels of solar access to adjoining properties

Or

- ensures living rooms and principal private open space of adjoining properties receive a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June.

The shadow impacts resultant from the proposed development application are compliant with the above controls. Shadow diagrams provided by the applicant sufficiently detail that the proposed overshadowing maintains a minimum of 2 hours between 9am and 3pm on 21 June for neighbouring properties. Due to the site orientation the proposed shadows cast by the development alter throughout the day and result in each of the neighbouring properties receiving at least the minimum rate of solar access required. The solar access provided by the design is considered to be acceptable and the application is recommended for support.

#### Parking

The RMS Guide to Traffic Generating Development outlines the minimum rate of parking and requires a total of 48 car parking spaces for the development. For the residential portion of the development the minimum requirement is 36 spaces, while the parking demand for the retail of the development is 12 spaces.

Currently the development proposes 50 car spaces with the development exceeding the minimum required spaces by 2. A review of the provided traffic impact assessment has confirmed that these two additional parking spaces are to be allocated to the residential portion of the development.

The rate of parking for the residential portion of the development ensures a sufficient on-site supply of parking for residents and minimises demand for on-street parking spaces within the locality. The proposed rate of residential parking is acceptable and is recommended for support. As stated above the site is approximately 400m away from the Ashfield train station and 100m away from the Ashfield Mall and highly accessible via public transport. This high degree of accessibility is expected to reduce the likelihood of patrons visiting the retail portion of the development utilising private vehicles to access the site.

#### Retail Operation

The current application is not accompanied by information outlining details regarding the operation of the proposed retail spaces, as potential tenants and uses are not known at this time. Due to no information on hours of operation, staff numbers or patron numbers being provided as part of the current proposal, a condition of consent outlining that approval for fit out and use of the retail spaces being subject to a separate application under the *Environmental Planning and Assessment Act 1979* is recommended for the consent. The imposition of this condition allows the applicant or tenant to either obtain a DA or CDC approval for first use and operation of the retail spaces once a tenant is secured.

#### Waste Collection / Loading

The proposed loading bay is accessed from Markham Place via the same driveway as private vehicles. This space has been amended since lodgement and now includes measures to ensure pedestrian and vehicle separation and safety. The proposed loading bay is to be utilised for residential waste collection, commercial waste collection, commercial deliveries and in the event of an emergency, access for emergency service vehicles.

As part of the recommended conditions of consent a requirement for a suitably qualified traffic engineer to certify that the loading dock has been designed to accommodate Council garbage trucks prior to construction certificate has been imposed. This is to ensure that all waste and delivery collection can take place on site and will not impact the public domain or traffic movements for the locality.

### Security

As part of the current application the applicant has demonstrated an assessment of the proposal against the principles of crime prevention through environmental design ('CPTED'). This assessment has identified and recommended measures to be implemented to ensure security and safety for patrons to the club and residents living above. These measures include recommendations such as:

- Entrances should be secured and controlled via electronic cards and intercom.
- Elevator access to levels should only be available via an electronic swipe card or intercom system
- Access to the residential car park should be controlled by an electronic access door and secured by swipe card or intercom system to limit unauthorised access.
- Access should only be available to commercial car parks in business hours to deter offenders using the space in the evening or early morning.
- Access to Level 3 and Roof level communal areas should be restricted through lift access or swipe card system.

The provided recommendations outlined within this report ensure a high level of security for all persons utilising the development and are recommended for support. A condition requiring compliance with the recommendations of this report is included in the draft consent.

### Adaptable Housing

The development proposes to create two (2) units (units 403 and 503) for the purposes of adaptable housing. As part of the current assessment Council has reviewed the pre and post adaptation plans and notes that minimal alterations are required to create the adaptable layout. The proposed units are considered to meet the requirements for adaptable housing and provide a variety of layouts and unit mixes for persons with disabilities should they be required. The proposed adaptable housing is acceptable.

### Stormwater

Council's Development Assessment Engineers have reviewed the provided stormwater management plan and outlined that the proposed scheme is satisfactory, subject to conditions of consent requiring compliance with the relevant Australian Standards. These conditions have been recommended for the consent.

### 5(e) [The Likely Impacts](#)

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

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

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### 5(g) Any submissions

The application was notified in accordance with Council's policy for a period of 21 days to surrounding properties. Two (2) submissions were received in response to the initial notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Acoustic Impacts from construction and other amenity impacts from construction

Comment: Appropriate standard conditions regarding construction hours, deliveries and traffic management are included in the recommended conditions. Subject to the imposition and compliance with these conditions, amenity impacts are expected to be managed and mitigated.

Issue: Previous experiences with developer and history of non-compliance with conditions of consent and construction requirements

Comment: In the event the developer or builder does not comply with the conditioned hours of operation or other construction restrictions, neighbours can contact Council's compliance team or rangers. Council is unable to impose additional conditions regarding construction management specific to a particular applicant.

Issue: Pest control during demolition

Comment: Appropriate conditions and requirements regarding demolition and subsequent pest control or sediment will be recommended for the consent.

Issue: Traffic and parking

Comment: The proposals impact on traffic and parking within the locality has been assessed above and has been reviewed by Council's Development Engineers and Traffic Engineers. Both experts have outlined no objection to the proposal, subject to suitable conditions of consent. The development provides 2 parking spaces above the minimum requirements and is not anticipated to have a substantial impact on the traffic or parking movements of the locality, subject to suitable conditions of consent.

Issue: Acoustic impacts from development operation

Comment: The proposal is accompanied by an acoustic report which has undertaken an assessment of the potential acoustic impacts arising from the development. This report has been reviewed by Council's Environmental Health Team who outlined no objection to the proposal, subject to suitable conditions of consent. These conditions have been recommended for the consent and relate to requirements for acoustic compliance prior to the issue of an OC. Acoustic impacts arising from the residential portion of the development is expected to be in-line with that of a residential unit and is acceptable given separation distances. Acoustic impact

arising from the retail portion of the development will be assessed under a separate application once the proposed use or tenant is known.

Issue: Blocked air flow to neighbouring sites

Comment: The proposal is largely compliant with the separation distances prescribed under the ADG. The buildings separation from other buildings within the locality is sufficient to ensure privacy and amenity for occupants and neighbours and is recommended for support. The proposed building location and setbacks are not anticipated to block air flow to neighbouring sites.

### 5(h) The Public Interest

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

The proposal is not considered 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.

- Architectural Excellence Panel (AEP) – The proposal has been reviewed by Council's Architectural Excellence Panel (AEP) in accordance with the requirements of SEPP 65. The AEP initially expressed concerns regarding the ground floor residential entry/streetscape interface and apartment depths/layouts. These concerns were passed onto the applicant who has provided amended plans addressing the above matters. The provided amended plans have been assessed above and are generally compliant with the requirements of SEPP 65 and the ADG.
- Building Certification – The proposal has been reviewed by Council's Building Certification Team, who outlined no objection to the proposal, subject to suitable conditions of consent. These conditions relate to BCA, fire safety and construction method compliance and have been recommended for the consent.
- Development Engineering – Council's Development Assessment Engineering Team has reviewed the proposed basement parking, stormwater, geotechnical report and traffic impact assessment and outlined generally no objection to the amended proposal, subject to suitable conditions of consent. These conditions relate to security damage bonds, stormwater management and construction methods. Conditions provided by Council's Development Engineering Team have been incorporated into the recommended conditions of consent.
- Environmental Health – Council's Environmental Health Team have undertaken a review of the development with regards to SEPP 55 contamination, acoustics and operation of commercial food kitchens, detailed within the amended plans/ additional documentation provided by the applicant. Council's Environmental Health Team have outlined no objection to the proposal, subject to suitable conditions of consent regarding contamination management and remediation, acoustic compliance and compliance with relevant Australian Standards for food and kitchen facilities.

- Heritage Advisor – The proposal has been reviewed by Council’s Heritage Advisor and has been determined to be not supportable due to the demolition of heritage fabric. These concerns have been assessed and reviewed above within the assessment section of the report.
- Urban Forests – The proposal has been reviewed by Council’s Urban Forests Team who outlined no objection proposed landscape/planting plans. Appropriate conditions of consent regarding tree replacement and protection of neighbouring trees are recommended for the consent.
- Resource Recovery (Commercial) – The proposed commercial waste collection and disposal methods have been reviewed and are acceptable, subject to suitable conditions of consent. No objection is raised to the proposed commercial waste management scheme.
- Resource Recovery (Residential) – The proposed residential waste collection and disposal methods have been reviewed and are acceptable, subject to suitable conditions of consent. No objection is raised to the proposed residential waste management scheme, with Council garbage trucks able to collect residential waste on-site, ensuring no need for waste bins to be present to the kerb while awaiting collection.

#### 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.

- Roads Marine Services (RMS) - The proposal has been referred to RMS for review and comment. In response RMS have outlined no objection to the proposal, subject to suitable conditions of consent. These conditions are recommended for the consent.

### 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$543,893.85 would be required for the development under Ashfield Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

This contribution has been calculated off the proposed introduction of 4 residential units less than 60sqm, 12 residential units between 60-84sqm, 12 residential units greater than 84sqm and retail premises with a total GFA of 471sqm.

### 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clauses 4.3, 4.3B and 4.4 of the *Ashfield Local Environmental Plan 2013*. After considering the requests, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variations. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standards and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/1017 for Demolition of the existing structures on site and construction of an eight storey mixed-use development comprising ground floor retail tenancies, 28 residential apartments, two level basement parking and a communal roof top garden. at 317 - 335 Liverpool Road ASHFIELD NSW 2131 subject to the conditions listed in Attachment A below.

**Attachment A – Recommended conditions of consent**

**CONDITIONS OF CONSENT**

**DOCUMENTS RELATED TO THE CONSENT**

**1. Documents related to the consent**

The development must be carried in accordance with plans and documents listed below:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
11643_DA001 Issue C	Demolition Plan	28/9/2020	Nettletontribe
11643_DA003 Issue N	Site Plan	5/3/2021	Nettletontribe
11643_DA004 Issue N	Basement 1 & 2	5/3/2021	Nettletontribe
11643_DA005 Issue N	Ground Floor Plan	5/3/2021	Nettletontribe
11643_DA006 Issue P	Level 1 - Level 3 Floor Plan	5/3/2021	Nettletontribe
11643_DA007 Issue P	Level 4 - Level 7 Floor Plan	5/3/2021	Nettletontribe
11643_DA008 Issue E	Roof Plan	28/9/2020	Nettletontribe
11643_DA020 Issue F	Building Elevation - South Elevation	5/3/2021	Nettletontribe
11643_DA021 Issue F	Building Elevation - East & West Elevation	5/3/2021	Nettletontribe
11643_DA022 Issue F	Building Elevation - North Elevation	5/3/2021	Nettletontribe
11643_DA030 Issue N	Building Sections	5/3/2021	Nettletontribe
11643_DA035 Issue E	Facade Section Detail	28/9/2020	Nettletontribe
11643_DA040 Issue F	Adaptable Unit Plan	5/3/2021	Nettletontribe

11643_DA075 Issue C	Signage Strategy	5/3/2021	Nettletontribe
11643_DA076 Issue A	Public Art Concept	1/10/2020	Nettletontribe
11643_DA095 Issue F	Material & Finishes Board	28/9/2020	Nettletontribe
20060 DA 1-3 Rev A	Landscape Concept Plan	28/8/2020	Vision dynamics
20060 DA 2-3 Rev A	Landscape Concept Plan	28/8/2020	Vision dynamics
20060 DA 3-3 Rev A	Landscape Concept Plan	28/8/2020	Vision dynamics
20/0247	Building Code of Australia -Amendment one compliance report	13/10/2020	Building Certificates Australia
ESWN-PR-2019-409-2	Detailed Geotechnical Report	13/8/2020	EWSNMAN Pty Ltd
SYD2019-1063-R003B	Acoustic Assessment for DA	9/10/2020	Acouras Consultancy
6562	Arboricultural Impact Assessment	29/9/2020	Redgum Horticultural
20110 Issue C	Access Report	12/3/2021	Vista Access Architects
20100	Traffic and Parking Impact Assessment	March 2021	transport and Traffic Planning Associates

As amended by the conditions of consent.

### **DESIGN CHANGE**

#### **2. Design Change**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The western elevation is to be finished with materials or colours which promote visual interest and avoid blank presentations to the public domain. This visual interest may take the form of material changes or colour changes on the wall, with the intent being to avoid a blank expanse of white wall to the public domain.

- b. The approved landscape plans are to be updated to reflect the approved architectural plans

**FEES**

**3. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

<b>Security Deposit:</b>	\$60,00.00
<b>Inspection Fee:</b>	\$236.70

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

**4. Section 7.11 (Former Section 94) Contribution**

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$543,893.85 indexed in accordance with Ashfield Development Contributions Plan/ Developer Contributions Plan No.1 – Open Space and Recreation; ‘Developer Contributions Plan No.2 – Community Facilities and Services (2005); (“CP”) has been paid to the Council.

The above contribution is the contribution applicable as at 7 April 2021.

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Community Infrastructure Type:	Contribution \$
Local Roads	\$32,097.66
Local Public Transport Facilities	\$25,205.24
Local Public Car Parking	-
Local Open Space and Recreation	\$444,846.36
Local Community Facilities	\$19,662.68
Plan Preparation and Administration	\$22,081.90
<b>TOTAL</b>	<b>\$543,893.85</b>

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

\*NB A 0.75% credit card transaction fee applies to all credit card transactions.

#### **5. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

#### **GENERAL CONDITIONS**

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

The recommendations contained in the acoustic report prepared by Acouras Consultancy reference SYD2019-1063-R003B dated 9 October 2020 must be implemented.

#### **7. Contamination – Remedial Action Plan (No Site Auditor Engaged)**

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Aargus, reference ES8053/2 dated 29 October 2020, the *Contaminated Land Management Act 1997* and the *State Environmental Planning Policy No 55*.

#### **8. Hazardous Materials Survey**

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

#### **9. Tree Protection**

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council’s Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council’s *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent and Arboricultural Impact Assessment Report prepared by Redgum Horticultural, dated 29/09/2020, throughout the development.

Tree No.	Botanical/Common Name	Location
1	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	Markham Avenue
2	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	Markham Avenue
3	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	Markham Avenue
4	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	Markham Avenue

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed.

**10. Project Arborist**

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

**11. Works to Trees**

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
<i>Syzygium smithii</i> cvs. (Lilly Pilly)	Remove street tree
<i>Syzygium smithii</i> cvs. (Lilly Pilly)	Remove street tree

The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree/s removal.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

#### **12. Boundary Alignment Levels**

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

#### **13. Awnings without Lighting**

The proposed awning must be of cantilever type and be set back at least 600mm from the kerb line. The total width of the awning that extends beyond the road alignment must not exceed 3600mm. The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council or the RTA to do so.

#### **14. Awnings with Lighting**

The proposed awning must be of cantilever type and be set back at least 600mm from the kerb line. The awning must include pedestrian lighting (Category P3-AS1158) and must be maintained and owned by the property owner(s). The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council to do so. The lighting must be not be obtrusive and should be designed so that it does not shine into any adjoining residences.

#### **15. Dry-weather Flows**

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be "tanked" preventing the ingress of seepage or groundwater.

#### **16. Rock Anchors**

This consent does not grant consent for any rock anchors on the road reserve or Council land.

#### **17. TfNSW - Building and Structures**

All buildings and structures including signage (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Liverpool Road boundary.

**18. TfNSW - Redundant Crossings**

The redundant driveway on the Liverpool Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and guttering and new gutter crossing on Liverpool Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to [developerworks.sydney@transport.nsw.gov.au](mailto:developerworks.sydney@transport.nsw.gov.au). A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

**19. TfNSW - Stormwater**

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon Liverpool Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au). A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

**20. TfNSW - Excavation**

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au).

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

**21. TfNSW - Clause 101 ISEPP**

The proposed development, noting its use, should be designed, as per the requirements of Clause 101 (2)(c) of the State Environmental Planning Policy (Infrastructure) 2007 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from Liverpool Road. These measures shall be certified by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a Construction Certificate.

**22. TfNSW - Public Utility Adjustment**

The developer shall be responsible for all public utility adjustment/relocation works, etc necessitated by the above/approved work and as required by the various public utility authorities and/or their agents.

**23. TfNSW - Car parking**

The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.

**24. TfNSW - Swept Paths**

The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTRROADS.

**25. TfNSW - Construction Zone**

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Liverpool Road.

**26. TfNSW - Road Occupancy License**

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Liverpool Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

**27. Separation of Commercial and Residential Waste and Recycling**

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

**28. Privacy**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating that proposed privacy screens along the eastern elevation of

residential levels 3 to 7 have been amended to be fixed and achieve a minimum block out density of 75%.

### **29. Use of Retail Premises**

The fit out and use of the retail spaces located upon the ground floor of the development is subject to a separate application under the Environmental Planning & Assessment Act 1979. The fit out and use of the retail spaces is not approved by this application.

### **30. Car Parking**

The development must provide and maintain within the site:

- a. A total of 50 car parking spaces must be paved and line marked;
- b. 4 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 28 car parking spaces for residential units
- d. 7 visitor car parking spaces must be provided and marked as visitor car parking spaces
- e. 12 Retail car spaces
- f. 3 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- g. 10 Bicycle storage capacity within the site;
- h. 1 Carwash bays; and
- i. 1 Loading docks/bays.

### **31. Residential Flat Buildings – Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

### **32. Residential Flat Buildings – Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

### **33. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 2 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

**34. Waste Management Plan**

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

**35. Erosion and Sediment Control**

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

**36. Standard Street Tree Protection**

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

**37. Works Outside the Property Boundary**

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

**38. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

**PRIOR TO ANY DEMOLITION****39. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

#### 40. Construction Traffic Management Plan – Detailed

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);

- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **41. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

#### **42. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining property/ies to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

#### **43. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **44. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

**PRIOR TO CONSTRUCTION CERTIFICATE****45. Noise General – Acoustic Report**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

**46. Light Spill**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

**47. Car Wash Bay – Design**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with certification confirming that all wastewater generated from the car wash bay will be discharged to the sewerage systems in accordance with the requirements of Sydney Water.

**48. Tree Planting in the Public Domain**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Public Domain/Street Tree Planting Plan and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. Five (5) new trees shall be located within the footpath outside the subject property on Liverpool Road. The species of tree selected shall be *Zelkova serrata* "Green Vase"
- b. The trees are to be planted at five (5) metre spacings;
- c. All planting stock size shall be minimum 200 litres;
- d. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*.
- e. The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture;
- f. The tree pit dimensions and staking detail shall be in accordance with Detail 10 on page C44 of the *Ashfield Street Tree Strategy 2015, Part C*.
- g. The awning configuration must be detailed on the plan. All construction plans shall show the awning on the Liverpool Road frontage to be setback around the street trees. The awning must be setback a minimum of 1200mm from the back of the kerb for a minimum distance of 1800mm either side of each tree location; and

- h. It must be demonstrated that adequate soil volume can be provided for the street trees. Tree planting details, soil specification and cell vault construction details (in accordance with the manufactures specifications and details) must be submitted to the satisfaction of Council's Urban Forest Manager before the issue of a Construction Certificate. The plans must include dimensions for tree pits and details of a cell vault style structure with a minimum of 20-30m<sup>3</sup> available soil volume for each tree. Refer to Appendix 6.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014 for indicative detail, noting that structural soil is not approved in this case. Note: The soil vault may require a drainage system if the surrounding soil type will not naturally provide adequate drainage.

#### 49. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing Nos D01 to D05 prepared by SYJ Consulting Engineers and dated 25 September 2020, as amended to comply with the following;
- b. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from the rainwater tank by gravity to Council's piped drainage system;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- e. The Drainage Plan must detail the proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. The proposed rainwater tank shall be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use. Considering the scale of the project, the rainwater tank size shall be determined based on the supply and demand model. Alternatively, rainwater tank size shall be increased from 10,000 L to 20,000 L

- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment;
- h. Details of the 1 in 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided;
- i. An overland flowpath must be provided within the setback to the side boundary;
- j. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
  - 1. Comply with all relevant Australian Standards;
  - 2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
  - 3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
  - 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
  - 5. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank;
  - 6. Subsurface flows must be collected at the point of ingress to the basement;
  - 7. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system; and
  - 8. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- k. No nuisance or concentration of flows to other properties;
- l. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- m. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary for the stormwater outlet;
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- o. Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:
- p.

Pollutant	Baseline Pollution (kg/ha/yr)	Annual Load	Retention Criteria

Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500	90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less than 5mm	900	85% reduction of average annual load
Total Phosphorous	2	65% reduction of average annual load
Total Nitrogen	15	45% reduction of average annual load
Hydrocarbons (Oil and Grease)		90% reduction of average annual load – no visible discharge
Toxicants		100% containment of toxicants

- q. A water balance model must be submitted to accompany the water re-use proposal;
- r. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets; and
- s. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.

**50. Structural and Geotechnical Report**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. If required, 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, must 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; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

#### **51. Public Domain Works – Prior to Construction Certificate**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The construction of heavy duty vehicular crossing and removal of all redundant vehicular crossings to the site;
- b. New concrete/concrete pavement/ granite footpath and kerb and gutter along the frontages of the site (Liverpool Road and Markham Place) . The existing footpath pattern along Liverpool Road shall be maintained. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer;
- c. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.
- d. Connection of the private drainage system to Council's piped drainage system must be at a stormwater drainage pit at a level 300mm above the invert of the outgoing pipe; and
- e. Installation of a stormwater outlet to the kerb and gutter.

All works must be completed prior to the issue of an Occupation Certificate.

**52. Waste Collection**

Prior to the issue of a Construction Certificate the Certifying Authority must be provided with plans including swept paths prepared by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that demonstrate that waste collection can be collected on-site by a Council Standard Resource Recovery Vehicle entering via reversing and exiting in a forward direction. Council Resource Recovery Vehicle Specifications are as follows:

Dimension	Measurement
Length:	9.4 metres
Width:	2.5 metres
Height (travel):	4.5 metres
Weight (loaded):	26 tonnes
Turning Circle:	26 metres

**53. TfNSW - Hoarding**

If hoarding is required to facilitate the development within the Liverpool Road road reserve a separate Section 138 approval under the Roads Act 1993 will be required from TfNSW. Documentation provided must clearly demonstrate that clearance widths for pedestrians are maintained in accordance with AUSTRROADS Guide to Road Design Part 6A: Paths for Walking and Cycling (Section 5 Design Criteria), it does not impact pedestrian movements on the footpath with consideration given to all users and demonstrate how the hoarding shall not obstruct line of sight to for all users to traffic control signals, driveways or other critical road infrastructure.

**54. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Inner West Comprehensive Development Control Plan (DCP) 2016 and must include doorways/entrance points of 1200mm.

**55. Bulky Waste Storage Area – Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Inner West Comprehensive Development Control Plan (DCP) 2016

The bulky waste storage area must have a doorway of minimum 1200mm to accommodate large items. The path of travel through the chute room to the bulky waste storage room must be a minimum of 1200mm wide, and be free of trip hazards or other obstacles.

**56. Waste Transfer Route**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

**57. Each Residential Level is to have Access to a Disposal Point for All Waste Streams**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

**58. Waste and Recycling collection**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure that Council's Heavy Rigid Vehicles are able to safely enter and leave the premises for the purposes of collecting waste and recycling.

The plans are to meet the approval of Council's Engineers.

**59. Commercial - Additional Storage Space**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that additional space has been allocated on site for the storage of reusable items such as crates and pallets and/or compaction equipment.

**60. Future Food Use - Mechanical Ventilation Provision**

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-

conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

#### **61. Enclosure of Fire Hydrant**

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

#### **62. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

#### **63. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

#### **64. Fibre-ready Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

**65. Consolidation of Lots**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

**66. Green Roofs, Walls and Facades Report**

Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a report prepared by a suitably qualified person demonstrating that the proposed landscape plan and details of any green roofs, wall and facades are consistent with [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#) including but not limited to using species selected from the suggested species list, water proofing and drainage.

**DURING DEMOLITION AND CONSTRUCTION****67. Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

**68. Imported Fill Materials**

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

**69. Tree Protection**

To protect the laneway trees, the existing tree guards are to remain in place through all stages of the development and in accordance with Council's *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
1	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree) Markham Avenue
2	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree) Markham Avenue
3	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree) Markham Avenue
4	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree) Markham Avenue

**70. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

**71. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

#### **72. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **73. Underground Petroleum Storage System (UPSS) – Decommissioning – Validation**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report prepared by a suitably qualified and experienced person. The report is to confirm that the underground petroleum storage system has been removed, replaced or decommissioned in accordance with the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008*, the *Protection Environment Operations Act 1997* and Australian Standard AS4976-2008: The removal and disposal of underground petroleum storage tanks.

#### **74. Noise – Acoustic Report**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority’s Noise Policy for Industry and Noise Control Manual and conditions of Council’s approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

#### **75. Noise From Road, Rail & Aircraft – Compliance**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;

- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of Acouras Consultancy dated 9 October 2020.

#### **76. Contamination – Disposal of Soil**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

#### **77. Contamination – Validation (No Site Audit Statement Required)**

Prior to the issue of an Occupation Certificate, the Principal Certifier and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.

The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines *Consultants Reporting on Contaminated Sites* and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.

#### **78. Car Wash Bay – Trade Waste Agreement**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a copy of the Sydney Water Trade Waste Agreement for the disposal of wastewater from the premises.

#### **79. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

The Landscape Plan prepared by Vision Graphics, dated 28/08/2020, has been updated to show 5 x *Zelkova serrata* "Green Vase" street trees on Liverpool Road and 6 x *Livistona australis* (Cabbage Tree Palms) in Markham Place. The tree stock is to conform to AS2303—*Tree stock for landscape use*.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences).

If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

#### **80. Project Arborist Certification**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

#### **81. Public Domain Works**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Heavy duty concrete vehicle crossing at the vehicular access location;
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete/concrete pavement footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2- "Roadworks Specifications".

#### **82. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

#### **83. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

#### **84. Whiteway Lighting - New**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the Under awning lighting matches the existing Whiteway lighting scheme in the area.

**85. Undergrounding Power – Major development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the existing overhead power cables along Markkham Place frontage of the site have been relocated underground with appropriate street lighting and new steel standard poles. The street lighting must be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet the lighting category required by Council and RMS. In addition the design must also comply with AS4282 to ensure that no injury is caused to the amenity of the surrounding area by light overspill or obtrusive light.

**86. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a. The car park has been completed, line marked and all signage relating to car parking erected;
- b. A notice has been clearly displayed at the Markham Place frontage to indicate that visitor parking is available within the property; and
- c. Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

**87. Public Domain - Major Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

**88. Dilapidation Report – Post-Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

**89. Stormwater Drainage and Road Works – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans;
- b. Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage connection works to the Council pipe by an accredited operator; and
- c. Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.

**90. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSR system commissioned and stormwater quality improvement device and any pumps installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

**91. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site retention/re-use facilities and stormwater quality improvement device and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

**92. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a. Restrictions on the Use of Land related to OSR and stormwater quality improvement devices;
- b. Restrictions on the Use of Land related to Stormwater Surface Flow Paths;
- c. Positive Covenant related to retention (OSR) system;
- d. Positive Covenant related to stormwater quality improvement devices; and
- e. Positive Covenant related to Stormwater Surface Flow Paths.

The wording in the Instrument must be in accordance with Councils Standard wording.

**93. Basement/Retaining Wall Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards.

**94. Waste and Recycling Servicing**

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that waste and recycling collection will be provided by Council only. The evidence is to be in the form of an application via Council for new waste services. The applicant is not to use private as well as Council servicing.

Reason: This will result in the residents having to pay for two waste services which is unfair as well as unnecessary.

**95. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

**96. Shopping Trolley Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a shopping trolley management plan which specifies a management system that will be used to ensure that shopping trolleys are not abandoned on the surrounding area.

**97. Section 73 Certificate**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

**98. Verification and Maintenance of Green Roofs, Walls and Facades Works**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence demonstrating that the works have been carried out in accordance with the Green Roofs, Walls and Facades Report that was submitted at Construction Certificate Stage and a maintenance plan that is consistent with the [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#).

**99. Affordable Housing**

Prior to the issue of any occupation certificate, a restriction is to be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that:

1. Unit 104 must be used for the purposes of affordable housing, and
2. As per Council resolution from the 30 October 2018 (C1018(2) Item 11), the affordable housing units are to be managed by a registered community housing provider in perpetuity.

**ON-GOING****100. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

**101. Commercial Waste/Recycling Collection**

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

**102. Tree Establishment**

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

**103. Operation and Management Plan**

The Operation and Management Plan for the on-site retention/re-use and stormwater quality improvement devices and Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

**104. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

**105. Loading/unloading on site**

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

**106. Bin Storage**

All bins are to be stored within the site. All bins are to be returned to the property within 12 hours of having been emptied.

**107. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

**108. Green Roofs, Walls and Facades Establishment**

The plantings within the Green Roofs, Walls and Facades as part of this consent are to be maintained in a healthy and vigorous condition for 12 Months from the issue of an Occupation Certificate. If any of the planting are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).

### **ADVISORY NOTES**

#### **Mechanical Ventilation System Certification**

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

#### **Underground Petroleum Storage System (UPSS) – Decommissioning**

The removal, replacing or decommissioning of an underground petroleum storage system must comply with the requirements of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*, the *Protection of the Environment Operations Act 1997* and Australian Standard AS4976-2008: The removal and disposal of underground petroleum storage tanks.

#### **Transport and Disposal of Hazardous and Dangerous Goods**

Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.

#### **Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

#### **Arborists standards**

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

#### **Tree Protection Works**

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

#### **Tree Pruning or Removal (including root pruning/mapping)**

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

#### **Electrical Substations**

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

#### **Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;

- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

#### **Easement and Covenant Process**

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site retention/reuse facilities (OSR) and stormwater quality improvement devices (SQIDS):

- a. Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the rainwater tank and SQIDS with finished surface levels and volume of storage available. Also, the outlet pipe to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

b. Engineer's Certificate

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- c. The capacity of the rainwater tank;
- d. The emergency overflow system being in place;
- e. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- f. Basement car park pumps are class one zone two; and
- g. OSR pumps and SQIDS have been installed and commissioned.

c. Restriction-As-To-User

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the rainwater tank and stormwater quality improvement device (SQIDS). This is to ensure that works, which could affect the function of the rainwater tank and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer.

d. A Maintenance Schedule.

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

**Recycling / Garbage / Organics Service Information and Education**

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

**Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

**Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

**Failure to comply with conditions**

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

**Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**Notification of commencement of works**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. The name and licence number of the principal contractor; and
  - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. The name of the owner-builder; and
  - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**Permits from Council under Other Acts**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

**Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

**Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

**Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces

are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

**Dial before you dig**

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

**Useful Contacts**

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

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

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig 1100  
[www.dialprior toyoudig.com.au](http://www.dialprior toyoudig.com.au)

Landcom 9841 8660  
 To purchase copies of Volume One of "Soils and Construction"

Long Service Corporation Payments 131441  
[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

NSW Food Authority 1300 552 406  
[www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

NSW Government [www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)  
[www.diysafe.nsw.gov.au](http://www.diysafe.nsw.gov.au)

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92  
[www.sydneywater.com.au](http://www.sydneywater.com.au)

Waste Service - SITA 1300 651 116  
Environmental Solutions [www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

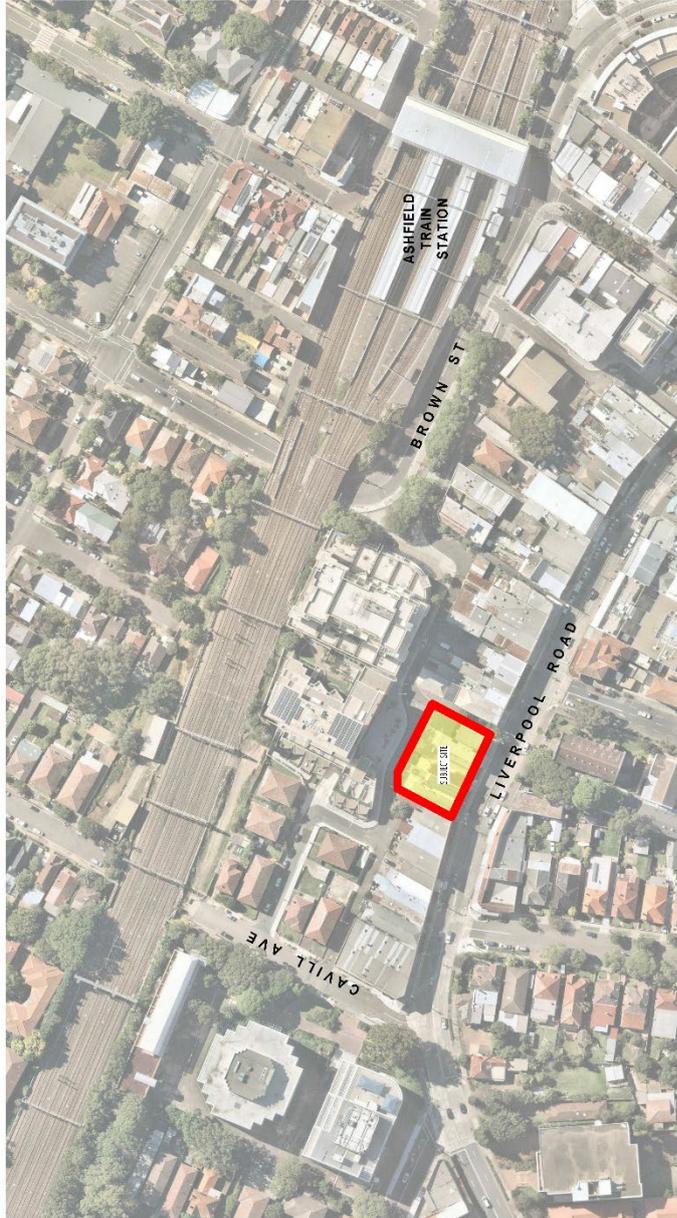
Enquiries relating to work safety and asbestos removal and disposal.

**Street Numbering**

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Plans of proposed development

No.:	Sheet Name
DA000	Drawing List & Location Plan
DA001	Demolition Plan
DA002	Site analysis
DA003	Site Plan
DA004	Basement 1 & 2
DA005	Ground Floor Plan
DA006	Level 1 - Level 3 Floor Plan
DA007	Level 4 - Level 7 Floor Plan
DA008	Roof Plan
DA020	Building Elevation - South Elevation
DA021	Building Elevation - East & West Elevation
DA022	Building Elevation - North elevation
DA025	Photomontage
DA030	Building Sections
DA035	Facade Section Detail
DA036	Building Height Diagram
DA040	Adaptable Unit Plans
DA050-1	Shadow Diagram - Winter - Sheet 1
DA050-2	Shadow Diagram - Winter - Sheet 2
DA051-1	Shadow Diagram - Summer - Sheet 1
DA051-2	Shadow Diagram - Summer - Sheet 2
DA055	Solar Analysis - Winter - Sheet 1
DA056	Solar Analysis - Winter - Sheet 2
DA070	Area Plans & Development Summary
DA075	Signage Strategy
DA076	Public Art Concept
DA095	Material & Finishes Board



LOCATION PLAN (NOT TO SCALE)

PROJECT NAME <b>MIXED USE DEVELOPMENT</b> PROJECT ADDRESS <b>317-335 LIVERPOOL RD, ASHFIELD 2131 NSW</b>	DRAWING LIST & LOCATION PLAN SKL SKL A1 VIS <b>11643_DA000 E</b>		
DEVELOPMENT APPLICATION		MARGHAM PROPERTY DEVELOPMENT	

**nettletontribe**

**Development Data**

317-335 Liverpool Road, Ashfield  
 Project no. 11643

Development Application  
 Date: 5.03.2021  
 Revision: G

Site Area = 1088 m<sup>2</sup>  
 Max FSR = 3 : 1  
 Max GFA = 3264 m<sup>2</sup>

Retail Area	GFA	NSA
Size (m <sup>2</sup> )	470.5	463.5
GFA	<b>470.5</b>	<b>463.5</b>
Efficiency		98%

**Ashfield LEP 2013**  
 "gross floor area" means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes--  
 (a) the area of a mezzanine, balcony, porch, verandah, or an attic, and  
 (b) habitable rooms, auditoriums, cinemas, and the like, in a basement or attic, but excludes--  
 (c) any area for common vertical circulation, such as lifts and stairs, and  
 (d) any basement--  
 (e) storage, and  
 (f) vehicular access, loading areas, garbage and services, and  
 (g) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and  
 (h) car parking, and  
 (i) any space used for the loading or unloading of goods (including access to it), and  
 (j) terraces and balconies with outer walls less than 1.4 metres high, and  
 (k) voids above a floor at the level of a storey or storey above.

Residential Area	STUDIO	1 BED	2 BED	3 BED	4 BED	TOTAL UNITS	GFA	GSA	NSA	Solar (2hr)	Cross Vent.
Size (m <sup>2</sup> )							50.8				
GF	2	4	1	0	7	670.5	603.7		3	4	
L1	2	4	1	0	7	670.5	603.7		3	4	
L2	0	1	2	0	3	289.6	284.6		3	2	
L3	0	1	2	0	3	332.1	284.6		3	2	
L4	0	1	2	0	3	332.1	284.6		3	2	
L5	0	1	2	0	3	332.1	284.6		3	2	
L6	0	1	2	0	3	332.1	284.6		3	2	
L7	0	0	1	1	2	324.6	285.7		2	2	
<b>TOTAL UNITS</b>	<b>0</b>	<b>4</b>	<b>12</b>	<b>11</b>	<b>1</b>	<b>28</b>	<b>3002.3</b>		<b>2631.5</b>	<b>20</b>	<b>18</b>
Unit Mix	0%	14%	43%	39%	4%			Efficiency	86%	71%	64%

Total	GFA =	NSA =
<b>Total</b>	<b>3472.8</b>	<b>3095</b>
Proposed FSR	=	3.2 : 1
Deep Soil Area	=	82.8 m <sup>2</sup> (7.6% of site area)
Communal Open Area	=	490.9 m <sup>2</sup> (45.1% of site area)
No. Adaptable unit provided (10%) =		3 unit
No. Silver Livable Housing provided (20%) =		6 unit

Disclaimer:  
 All areas and yields are approximate and indicative only, they are subject to further design development and Council approval.

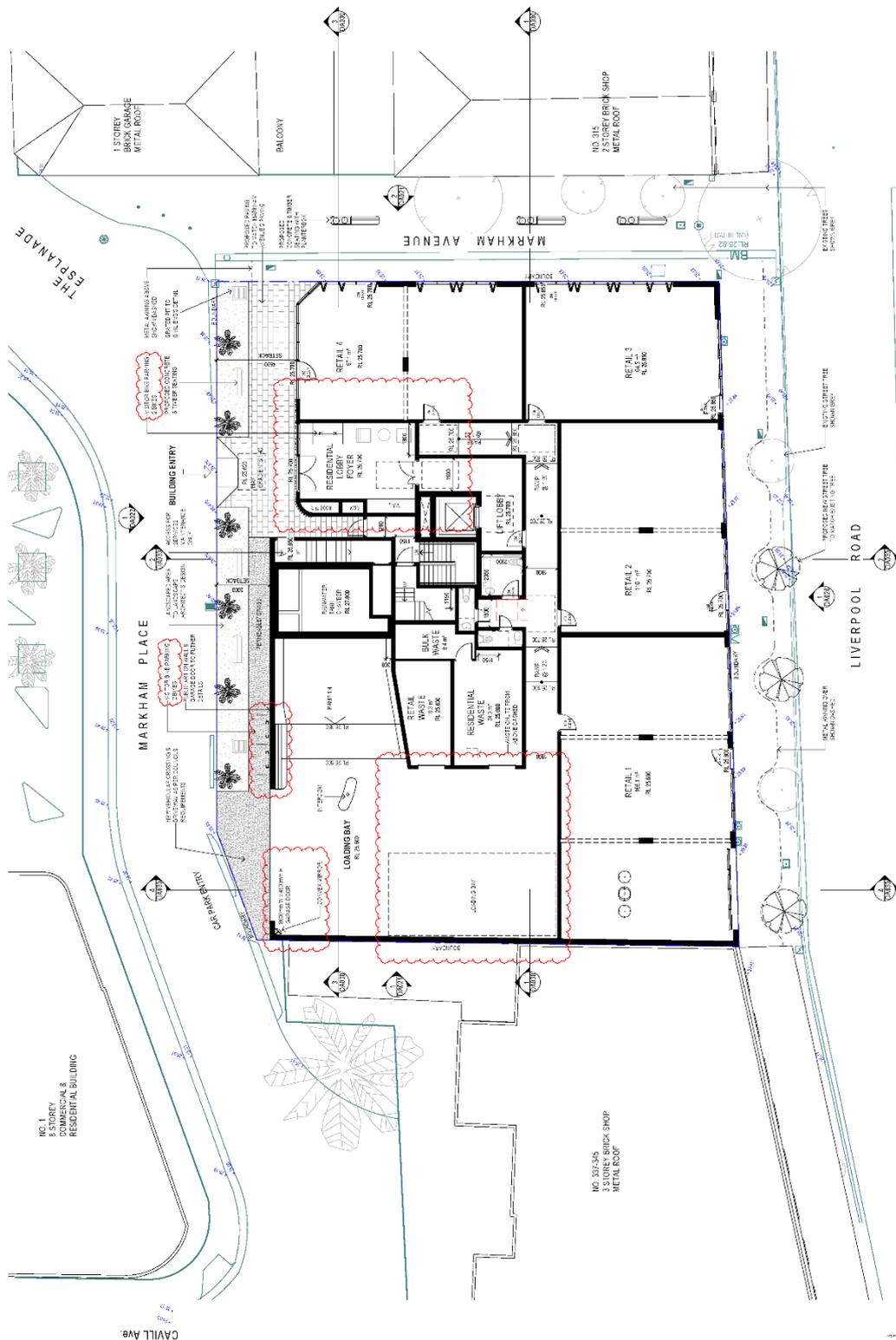
Parking Schedule	
Car Parking	
Retail Car Spaces Required (1/40m <sup>2</sup> )	12 cars
Residential Car Spaces Required (1/1 unit)	28 cars
Residential Visitor Car Spaces Required (1/4 units)	7 cars
<b>Total Car Spaces Required</b> (incl. 1 retail accessible visitor & 3 adaptable car spaces)	<b>47 cars</b>
<b>Total Car Spaces Provided</b>	<b>50 cars</b>
Motorcycle Parking	
Motorcycle Spaces Required (1/25 cars)	3 motorcycle
<b>Total Motorcycle Spaces Required</b>	<b>3 motorcycle</b>
<b>Total Motorcycle Spaces Provided</b>	<b>3 motorcycle</b>
Bicycle Parking	
Retail Bicycle Spaces Required (1/250m <sup>2</sup> GFA)	2 bikes
Retail Visitor Bicycle Spaces Required (1/20 employees)	1 bikes
Residential Bicycle Spaces Required (1/10 unit)	3 bikes
Residential Visitor Bicycle Spaces Required	3 bikes
<b>Total Bicycle Spaces Required</b>	<b>9 bikes</b>
<b>Total Bicycle Spaces Provided</b>	<b>10 bikes</b>





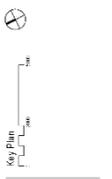






nettleontribe  
 1/22/2024  
 11643\_DA006

SYL	DL	AI	Scale
11643	DA006	Q	1:100



**DEVELOPMENT APPLICATION**

Project Name  
**MIXED USE DEVELOPMENT**

Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

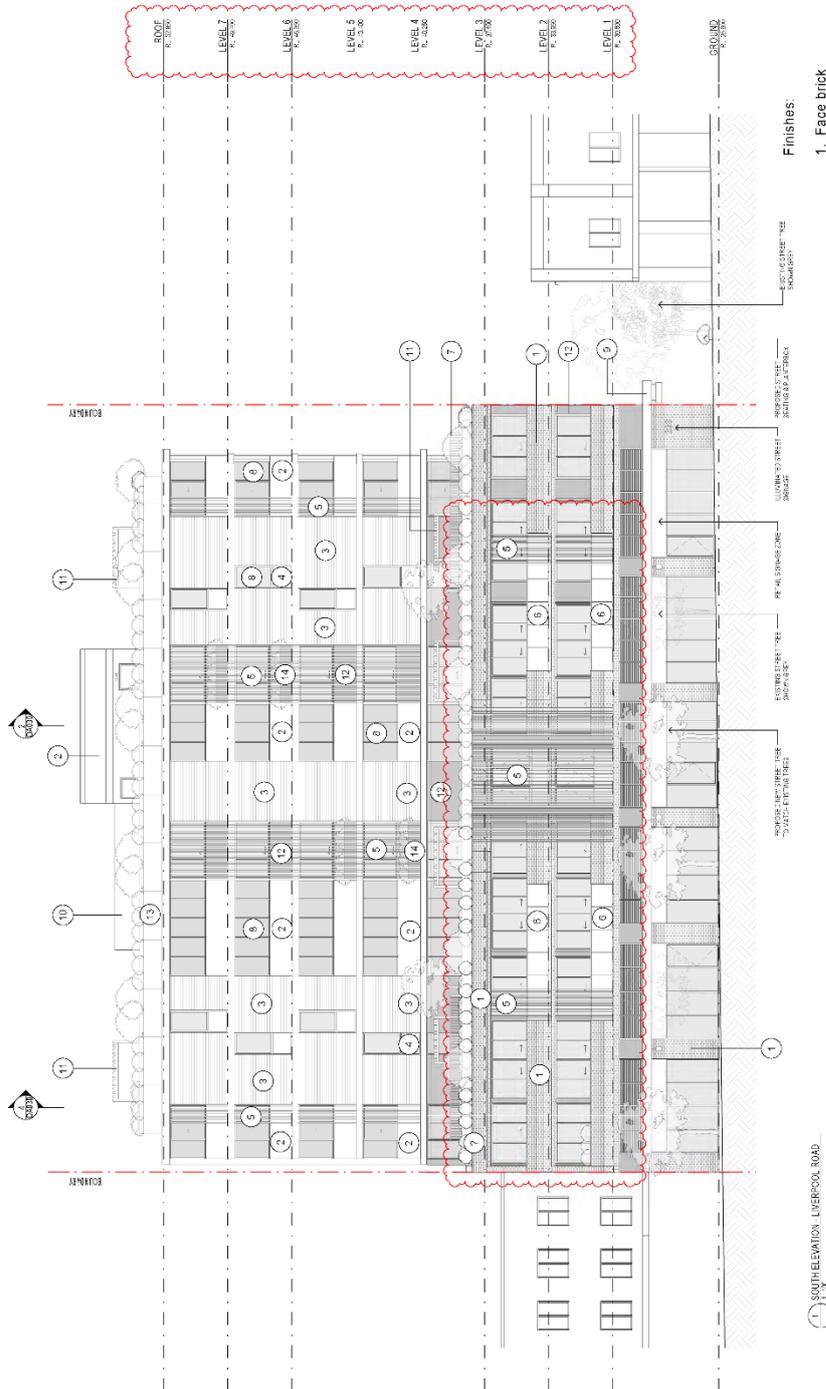
NO.	REVISION	DATE

MARKHAM PROPERTY DEVELOPMENT









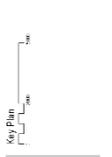
1 SOUTH ELEVATION - LIVERPOOL ROAD

Finishes:

1. Face brick
2. Rendered slab edge & wall - white
3. Fibre cement cladding - light grey
4. Aluminium framed windows - black
5. Fixed & operable vertical timber look privacy screen
6. Frameless glass balustrade
7. Metal balustrade/fence - vertical & black
8. Vision glass shop front
9. Metal Awning - white
10. Vertical metal cladding - dark grey
11. Timber look aluminium pergola
12. Rendered wall - black
13. Planterbox wall - white
14. Planterbox wall - black

**nettleontribe**  
 1/222 STONEY CREEK RD, STONEY CREEK NSW 1570  
 T: 02 9633 0000

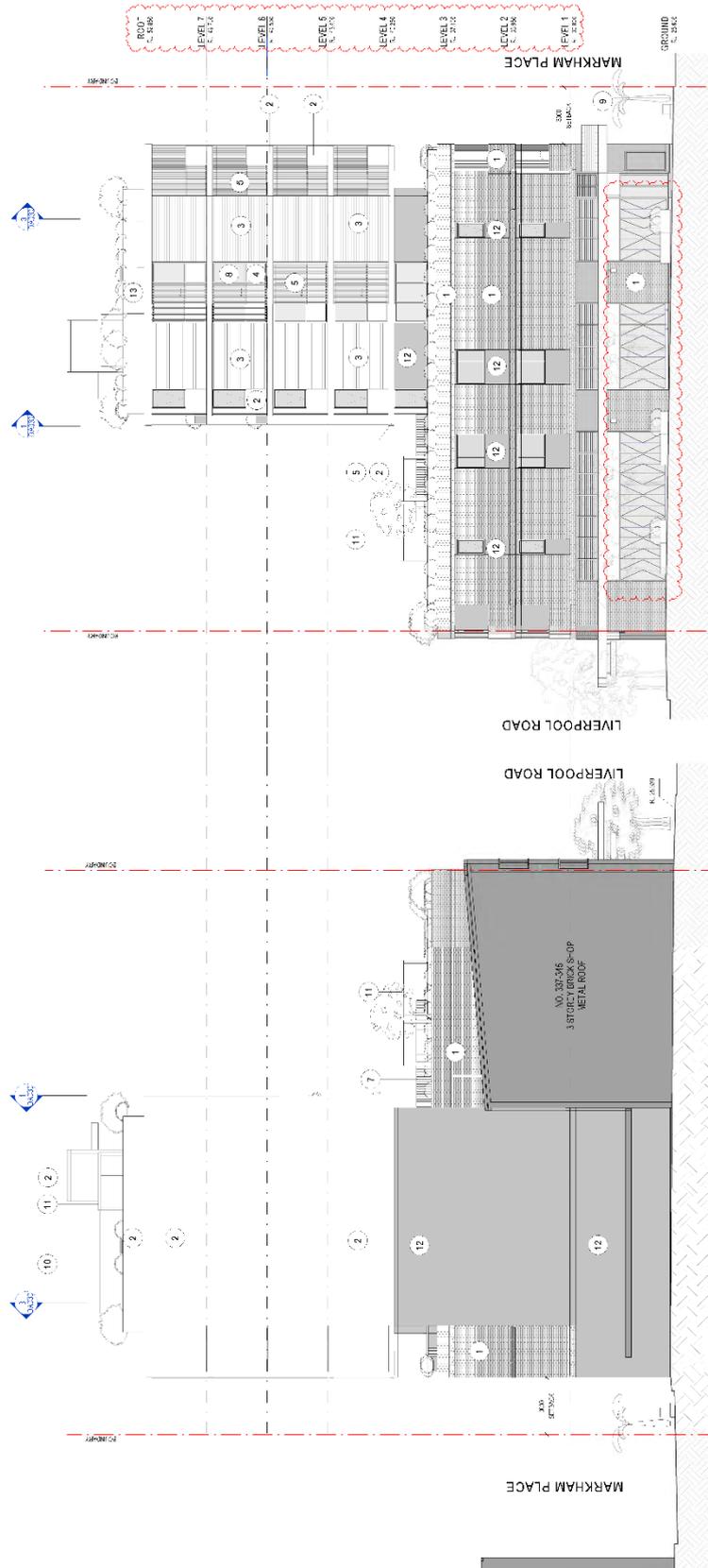
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Project Address	317-335 LIVERPOOL RD, ASHFIELD 2131 NSW
Project No.	11643_DA020
Scale	As indicated
Revision	F



**DEVELOPMENT APPLICATION**

MARKHAM PROPERTY DEVELOPMENT

No.	Description	Date



- Finishes:**
1. Face brick
  2. Rendered slab edge & wall - white
  3. Fibre cement cladding - light grey
  4. Aluminum framed windows - black
  5. Fixed & operable vertical timber look privacy screen
  6. Frameless glass balustrade
  7. Metal balustrade/fence - vertical & black
  8. Vision glass shop front
  9. Metal Awning - white
  10. Vertical metal cladding - dark grey
  11. Timber look aluminium pergola
  12. Rendered wall - black
  13. Planterbox wall - white
  14. Planterbox wall - black

**nettleontribe**  
 nettleontribe.com.au  
 11643 DA021 F

**Project Name**  
 MIXED USE DEVELOPMENT

**Project Address**  
 317-335 LIVERPOOL RD, ASHFIELD 2131 NSW

**Project No**  
 11643 DA021

**Project Stage**  
 F

**MARKHAM PROPERTY DEVELOPMENT**

**DEVELOPMENT APPLICATION**

**WEST ELEVATION**  
 1:100

**FAST ELEVATION - MARKHAM AVENUE**  
 1:100

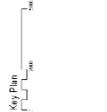


Finishes:

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13. Planterbox wall - white
14. Planterbox wall - black

**nettleontribe**  
 1/120 WYNDHAM STREET, SYDNEY NSW 1513  
 T: 02 9550 1234 E: info@nettleontribe.com.au

Project Name	Building Elevation - North elevation		
Project Address	STYL	SKL	AT
	As indicated		
	11643_DA022		
	F		



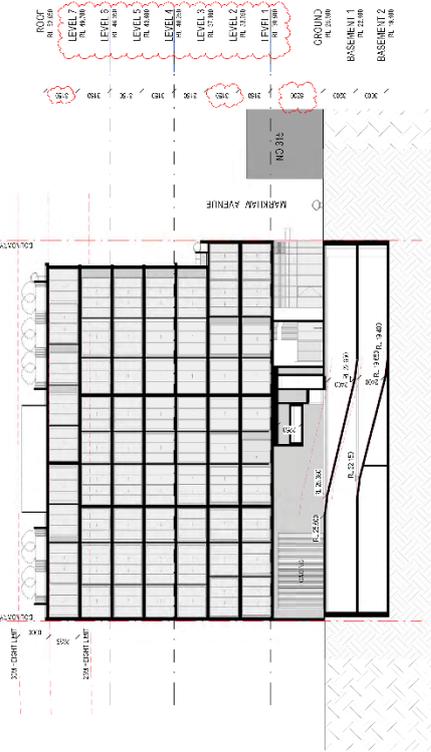
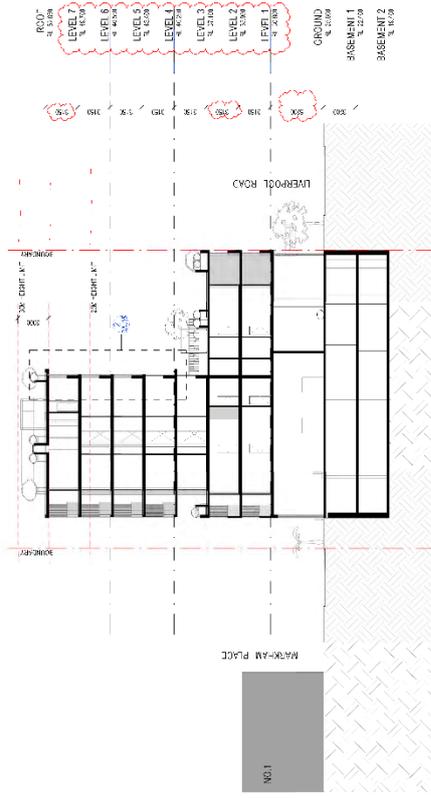
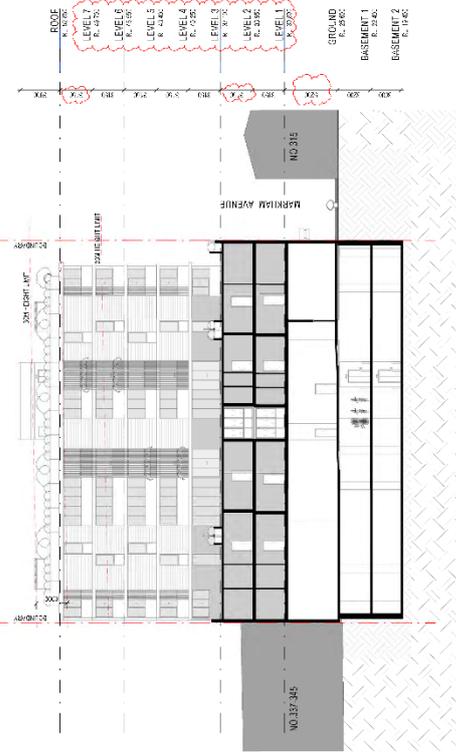
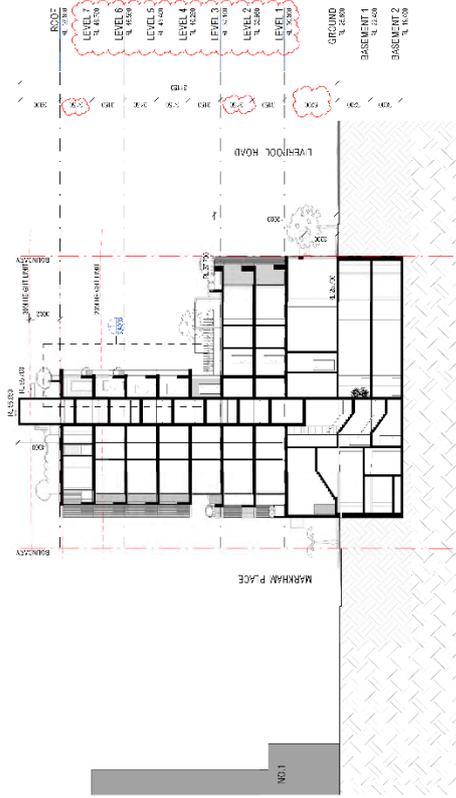
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 MIXED USE DEVELOPMENT  
**Project Address**  
 317-335 LIVERPOOL RD, ASHFIELD 2131 NSW

**DEVELOPMENT APPLICATION**

NO.	DATE	REVISION

**MARKHAM PROPERTY DEVELOPMENT**





Project Name  
**MIXED USE DEVELOPMENT**

Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

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Scale: 1:200

North Arrow: N

Project Name  
**MIXED USE DEVELOPMENT**

Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

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Scale: 1:200

North Arrow: N

Project Name  
**MIXED USE DEVELOPMENT**

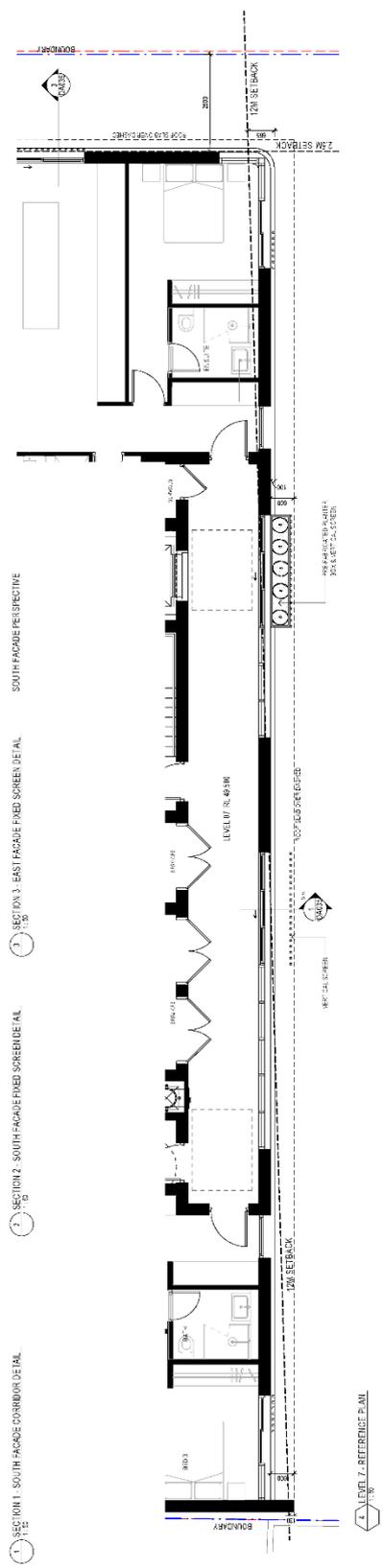
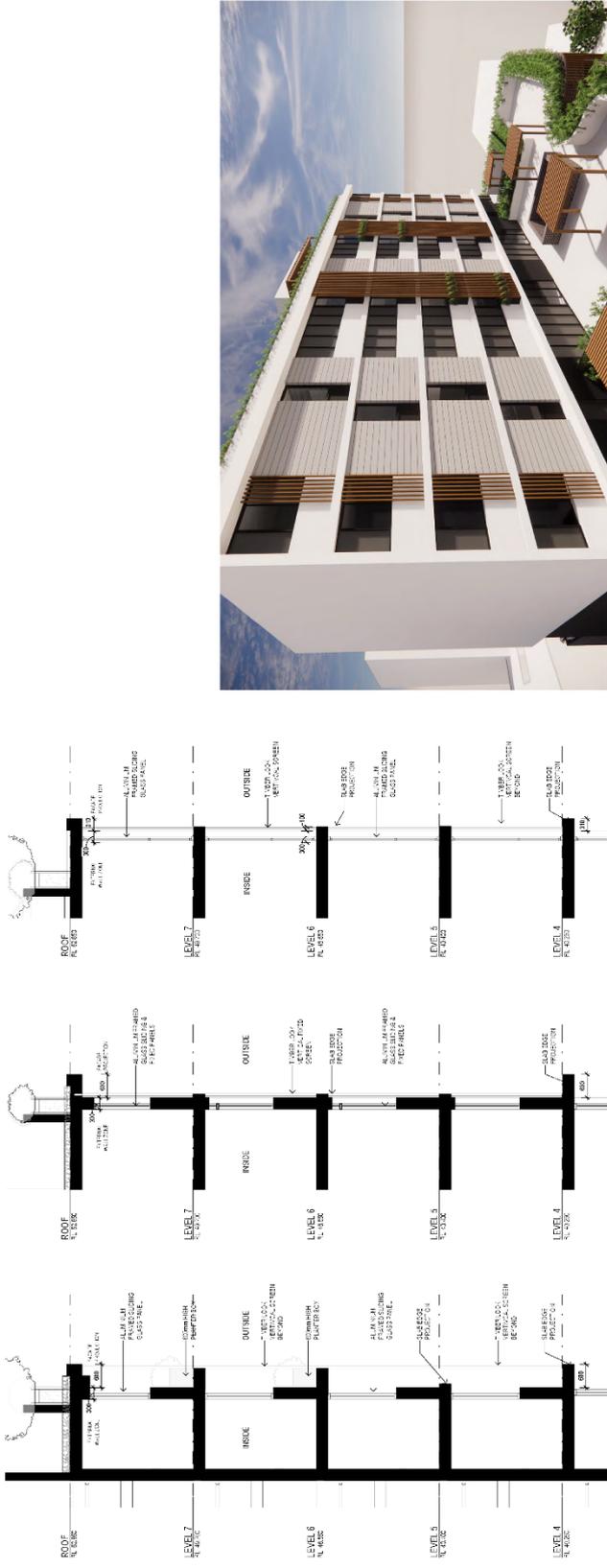
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Scale: 1:200

North Arrow: N



**MARKHAM PROPERTY DEVELOPMENT**

NO.	REVISION	DATE

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11/12/2024  
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11/12/2024

**DEVELOPMENT APPLICATION**

**MARKHAM PROPERTY DEVELOPMENT**

**nettletontribe**

11/12/2024  
11/12/2024  
11/12/2024

**MIXED USE DEVELOPMENT**

**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

**SECTION 1 - SOUTH FACADE CORRIDOR DETAIL**

**SECTION 2 - SOUTH FACADE FIXED SCREEN DETAIL**

**SECTION 3 - EAST FACADE FIXED SCREEN DETAIL**

**SECTION 4 - SOUTH FACADE CORRIDOR DETAIL**

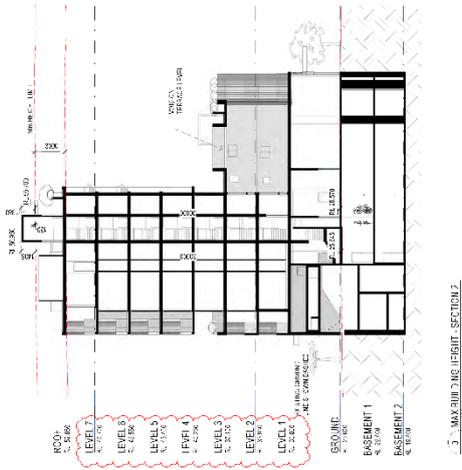
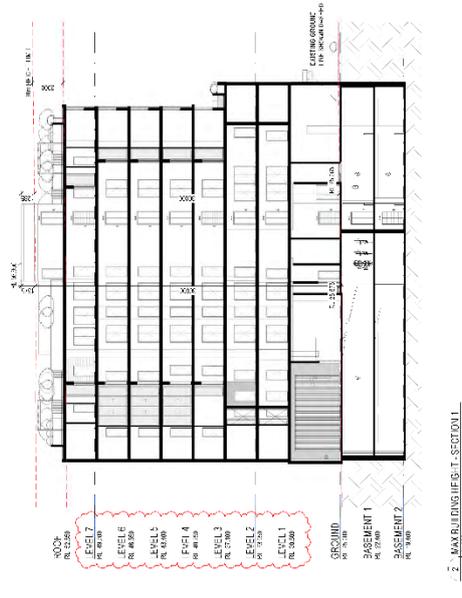
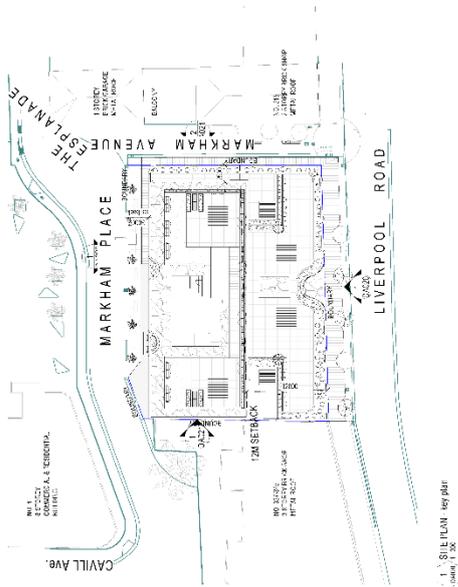
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**MIXED USE DEVELOPMENT**

**Project Address**  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

**Scale**  
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**Sheet No.**  
**111643\_DA035**

**Revision**  
**E**



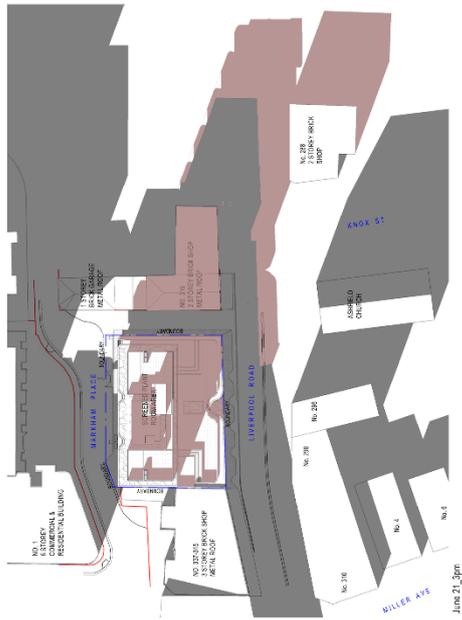
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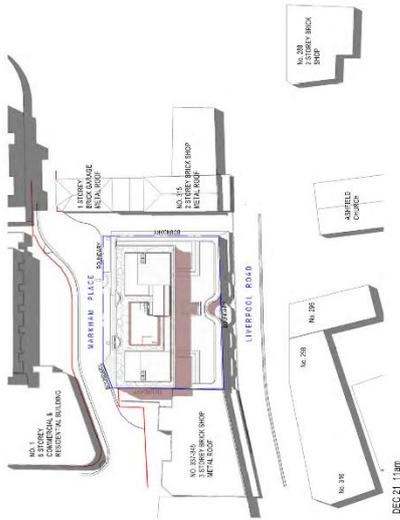
Project Name  
**MIXED USE DEVELOPMENT**  
 Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

MARKHAM PROPERTY DEVELOPMENT  
 DEVELOPMENT APPLICATION

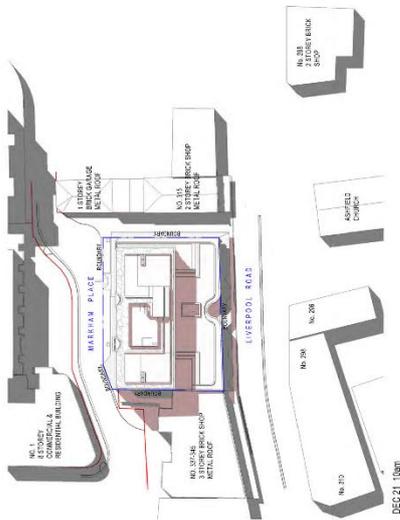






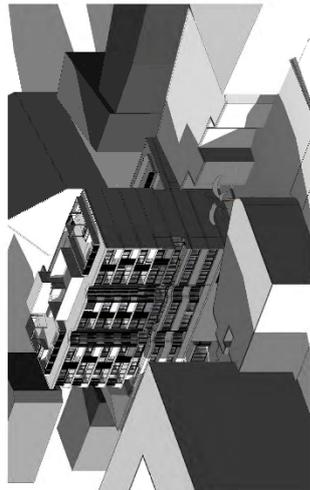


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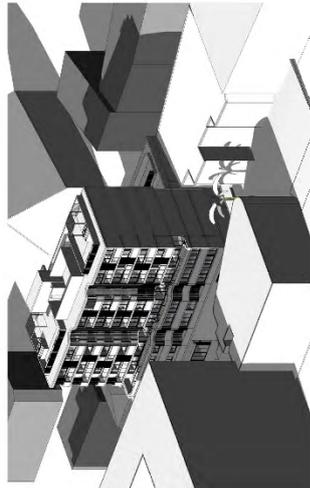




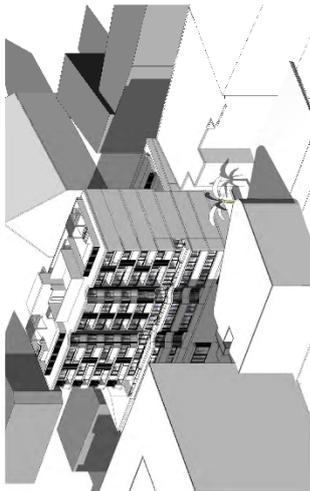




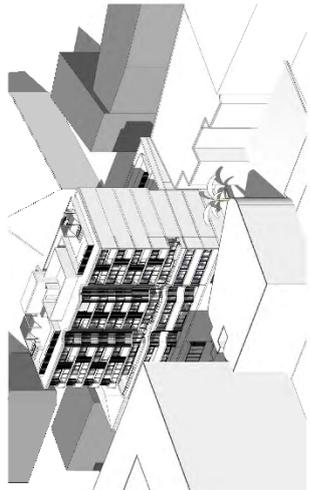
June 21\_Sm\_West



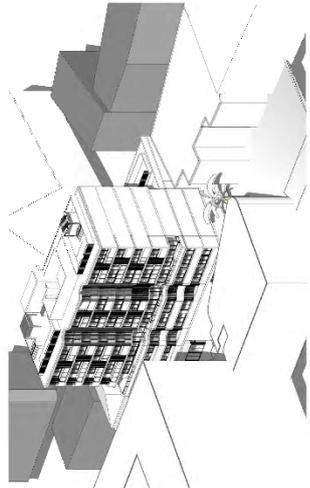
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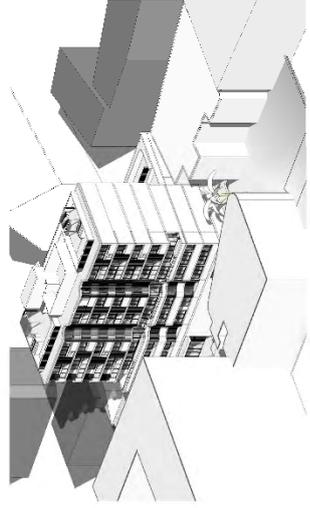
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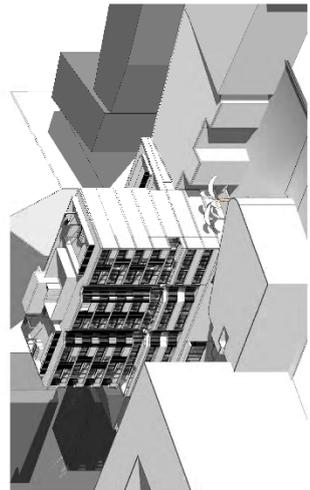
June 21\_NW\_West



June 21\_NE\_West



June 21\_NW\_West



June 21\_NE\_West

MARKHAM PROPERTY DEVELOPMENT

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

DEVELOPMENT APPLICATION

Project Name  
**MIXED USE DEVELOPMENT**

Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**

Key Plan

Scale: 1:1000

Sub-Analyst: Winder Sheet 2

AT SKL AT NZ

11643\_DA066

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100/102-104/106/108/110/112/114/116/118/120/122/124/126/128/130/132/134/136/138/140/142/144/146/148/150/152/154/156/158/160/162/164/166/168/170/172/174/176/178/180/182/184/186/188/190/192/194/196/198/200/202/204/206/208/210/212/214/216/218/220/222/224/226/228/230/232/234/236/238/240/242/244/246/248/250/252/254/256/258/260/262/264/266/268/270/272/274/276/278/280/282/284/286/288/290/292/294/296/298/300/302/304/306/308/310/312/314/316/318/320/322/324/326/328/330/332/334/336/338/340/342/344/346/348/350/352/354/356/358/360/362/364/366/368/370/372/374/376/378/380/382/384/386/388/390/392/394/396/398/400/402/404/406/408/410/412/414/416/418/420/422/424/426/428/430/432/434/436/438/440/442/444/446/448/450/452/454/456/458/460/462/464/466/468/470/472/474/476/478/480/482/484/486/488/490/492/494/496/498/500/502/504/506/508/510/512/514/516/518/520/522/524/526/528/530/532/534/536/538/540/542/544/546/548/550/552/554/556/558/560/562/564/566/568/570/572/574/576/578/580/582/584/586/588/590/592/594/596/598/600/602/604/606/608/610/612/614/616/618/620/622/624/626/628/630/632/634/636/638/640/642/644/646/648/650/652/654/656/658/660/662/664/666/668/670/672/674/676/678/680/682/684/686/688/690/692/694/696/698/700/702/704/706/708/710/712/714/716/718/720/722/724/726/728/730/732/734/736/738/740/742/744/746/748/750/752/754/756/758/760/762/764/766/768/770/772/774/776/778/780/782/784/786/788/790/792/794/796/798/800/802/804/806/808/810/812/814/816/818/820/822/824/826/828/830/832/834/836/838/840/842/844/846/848/850/852/854/856/858/860/862/864/866/868/870/872/874/876/878/880/882/884/886/888/890/892/894/896/898/900/902/904/906/908/910/912/914/916/918/920/922/924/926/928/930/932/934/936/938/940/942/944/946/948/950/952/954/956/958/960/962/964/966/968/970/972/974/976/978/980/982/984/986/988/990/992/994/996/998/1000





Concept Sketch



Mock-ups



Artist's Profile & Bio



Miguel Gonzalez (BA, M.Litt) Australian born in Venezuela, currently based in Sydney's Northern Districts. With a background in architecture and design, he has worked in various roles in the creative industry. He has recently moved to Sydney, which is becoming a fulfilling city for him. He is currently working as a Creative Director for private clients as well as corporate and institutional projects, creating artworks, murals and installations. Miguel has been part of national and international collaborative and solo exhibitions, as well as public art projects. He is currently the Creative Director of Lit Creative Inc. (Pty) Ltd for profit creative community & co-working space and co-owner of Lit Creative Studio (art & design projects).

Samples of artist's works



DATE: 11/05/2024 11:50 AM

MARRAM PROPERTY DEVELOPMENT

NO.	DESCRIPTION	DATE

DEVELOPMENT APPLICATION

Project Name  
**MIXED USE DEVELOPMENT**  
Project Address  
**317-335 LIVERPOOL RD, ASHFIELD 2131 NSW**



Public Art Concept			
SHL	GL	AT	ITS
11643	DA076	A	A

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we believe in public art that is visible, we are 1/2  
 1/2 the people who make the world a better place  
 1/2 the people who make the world a better place



Attachment C- Clause 4.6 Exception to Development Standards

317-335 Liverpool Road, Ashfield

Clause 4.6 Variation to primary street setback  
Clause 4.3B Ashfield town centre – maximum height or street frontages on certain land

On behalf of  
Tricon Management Group Pty Ltd  
October 2020



## Project Director

Kate Bartlett

## Contributors

Joe Wang

Camilla Firman

\* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

## Contact

Mecone

Suite 1204b, Level 12, 179 Elizabeth Street  
Sydney, New South Wales 2000

[info@mecone.com.au](mailto:info@mecone.com.au)

[mecone.com.au](http://mecone.com.au)

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## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 317-335 Liverpool Road, Ashfield (subject site).

The proposed development seeks the demolition of the existing structures on site and construction of an 8 storey mixed use shop top development comprising 30 residential units over the ground floor retails, two (2) level basement parking and a communal rooftop garden.

We specifically request to vary the development standard for the primary street frontage setback under Clause 4.3B Ashfield maximum height for street frontages on certain land of the Ashfield Local Environmental Plan 2013 (ALEP 2013).

This Clause 4.6 Variation Request demonstrates that compliance with Clause 4.3B, subclause (3) is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Achieves the objective of the setback development standard in Clause 4.3B of ALEP 2013;
- Achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- Has sufficient environmental planning grounds to justify the variation;
- Is consistent with the applicable and relevant State and regional planning policies; and
- Therefore, is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the ALEP 2013.

## 2 Clause 4.6 Exception to Development Standards

Clause 4.6 of the ALEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 enables a variation to any development standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;

- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. To provide flexibility in the application of the relevant control; and
2. To achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal and the findings of *AlMaha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 as referred to in *Baron Corporation Pty Ltd v City of Sydney* [2019] NSWLEC 61 ('Baron').

Clause 4.6 of the ALEP 2013 reads as follows:

**Clause 4.6 Exceptions to development standards**

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) *that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and*

- (b) that there **are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the **public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- ...
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (emphasis added)
- ...

### 3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the primary street frontage setback as set out in Clause 4.3B/(3) of the ALEP 2013. Clause 4.3B states:

**4.3B Ashfield town centre – maximum height for street frontages on certain land**

- (1) The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.
- (2) This clause applies to land identified as "Area 1" on the Height of Buildings Map.
- (3) Despite clauses 4.3 (2) and 4.3A (3), the maximum height of that part of a building that has an entrance or lobby on the ground floor facing Liverpool Road, Norton or Hercules Streets or Markham Place, Ashfield (a primary street frontage) is 12 metres for a distance of 12 metres from the primary street frontage away from the road.
- (4) Subclause (3) does not apply to development on land identified as "Area 3" on the Key Sites Map if the consent authority is satisfied that the development results in a building of a high quality design, having regard to the surrounding buildings.

As identified on the ALEP 2013 Height of Buildings Map (extract provided in

**Figure 1**), the subject site is located in Area 1.



**Figure 1.** Height of Buildings Map (extract)  
Source: ALEP 2013

## 4 Extent of variation to the development standard

The proposal includes a 12 metre street frontage height on Liverpool Road and complies with the control. However, the proposal does not afford a strict 12m setback above the wall height frontage to Liverpool Road for the full length. A small portion of the building intrudes within the 12 metre setback to Liverpool Road (up to approximately 0.665 metres at the eastern boundary) due to the site's existing shape (Refer to figure below).

The proposed FSR presents a variation of 5.54% to the 12m setback control fronting Liverpool Road.

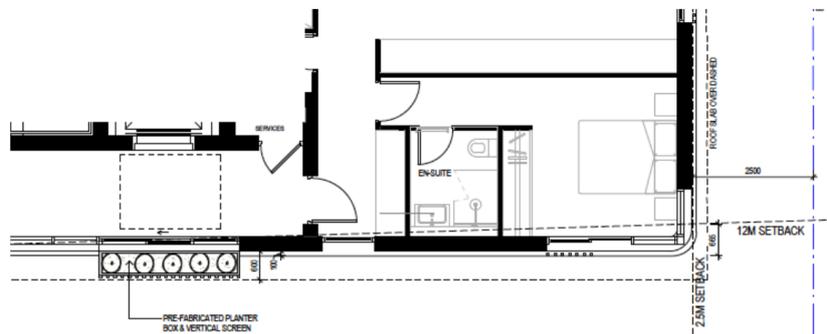


Figure 2 Level 7 – Reference Plan  
Source: Nettletontribe

## 5 Objectives of the standard

The objectives of the Clause 4.3B Ashfield town centre – maximum height for street frontages on certain land are as follows;

### 4.3B Ashfield town centre – maximum height for street frontages on certain land

- (1) The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.

## 6 Objectives of the zone

The objectives of the B4 Mixed-Use zone are as follows;

### 1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.

- To encourage the orderly and efficient development of land through the consolidation of lots.

## 7 Assessment

### 7.1 Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the primary street setback under Clause 4.3B/(3) is unreasonable and unnecessary given the following;

- As detailed in *Williams v Ku-ring-gai Municipal Council [2017] NSWLEC 1098*, *Wehbe v Pittwater Council [2007] NSWLEC 827 at [44]-[48]*, a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
- Wehbe Test 1, as described in Williams, is relevant to the proposed variation to the FSR development standard:
  - Wehbe Test 1 – the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Wehbe Test 1 – Objectives of the Standard are achieved

**(1) The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.**

The proposal includes a 12 metre street frontage height on Liverpool Road and complies with the control. The proposal does not afford a strict 12m setback above the wall height frontage to Liverpool Road, although it is compliant for the vast majority of the frontage. A small portion of the building intrudes within the 12 metre setback to Liverpool Road (up to approximately 0.665 metres), this is due to the site's existing shape. A small protrusion including privacy screens, planter boxes have been proposed to provide articulation to the building and to ensure the future building design is logical and absent of slanting to occur simply due to the existing site's irregular boundary.

The proposal provides more greenery to the building, which is an improved outcome when viewing from Liverpool Road. The proposed minor variation to the setback on Liverpool Road will blend in with the surrounding development and will not be visually perceptible (Refer to figure below).



**Figure 3** Photomontage – Liverpool Road  
Source: Nettleontribe

## 7.2 Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, *Pain J* held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. *Pain J* also held that in order for a Clause 4.6 Variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

On appeal, Leeming JA in *Four2Five vs Ashfield Council* NSWCA 248 acknowledged *Pain J*'s approach, but did not necessarily endorse it, instead restating *Pain J* and saying:

*“matters of consistency with objectives of development standards remain relevant, but not exclusively so.”*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent *Initial Action Class 1 appeal* (LEC 2019 1097), where she stated that *“the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24])* ...

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and*

*form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see S1.3(g) of the EPA Act)."*

The proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways:

- The proposed minor variation to the setback on Liverpool Road will blend in with the surrounding development and will not be visually perceptible;
- The proposed variation only occurs due to the irregular existing block pattern of the site, which would be considered an anomaly within the streetscape;
- The proposed variation results in a more logical built form outcome, whereas a strictly compliant outcome would create a slanted building form that does not provide an appropriate design or façade;
- The proposal provides more greenery to the building, which is an improved outcome when viewing from Liverpool Road;
- The proposed variation does not create any overshadowing impacts, loss of views or loss of privacy to the neighbouring development;
- The proposed development is compatible within its transitioning context for the Ashfield Town Centre being located in Area 1;
- The proposed development provides a mixed development with residential and retail uses in an accessible location; and
- The proposed development contributes to the desired high quality streetscape of Liverpool Road and Markham Place. The proposal features quality design and materials which will enhance the overall aesthetic of the Ashfield Town Centre.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land. In addition, it is noted that the proposed development will still produce a contextually appropriate outcome consistent with the objectives of the development standards, despite the non-compliances with the numerical provisions.

### 7.3 Clause 4.6 (4) (a) (i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the findings of *Commissioner Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

#### 7.4 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings;

##### 7.4.1 The objectives of the particular standard

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3B Ashfield town centre – maximum height for street frontages on certain land within the ALEP2013 notwithstanding the non-compliance with the standards.

##### 7.4.2 The objectives for development within the zone in which the development is proposed to be carried out

The site falls within the B4 Mixed Use zone. As outlined below, the proposed development is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone;

- **To provide a mixture of compatible land uses.**

The proposal includes a shop-top housing development comprising ground floor retail and residential apartments above, which is permissible in the zone. The proposal will also offer 25% affordable housing above the 23m height to assist with the housing affordability in the locality. The subject proposal is considered consistent with the zone objective as it delivers a compatible land use within the B4 zone.

- **To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**

The proposed development is highly accessible, and in close proximity to a number of transport options. The site is located approximately 400m (5min walk) south east of Ashfield Station which services journeys on the T1, T2, T3 and T9 rail lines. The site is also serviced by a number of bus routes which provides services to a number of inner west and city destinations.

Furthermore, the proposal incorporates 10 bicycle parking spaces and 3 motorcycle parking spaces which complies with the DCP requirement. The subject site is surrounded by a series of footpaths which encourage walking and cycling.

- **To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.**

The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre. The proposed retail tenancies at the ground floor will generate additional employment opportunities and business activities into the area. The proposal is consistent with the desired future character of the locality.

- **To encourage the orderly and efficient development of land through the consolidation of lots.**

The proposal encourages the orderly and efficient development of land through the consolidation of two additional sites. On 4<sup>th</sup> May 2016, a development application (DA2016/89.1) was granted for a mixed-use development over the site at 317-331 Liverpool Road, Ashfield. This application seeks to further consolidate the two additional neighbouring shops, being 333 and 335 Liverpool Street as part of the overall development.

## 8 Any matters of significance for State or regional environmental planning

The contravention of the primary street setback under Clause 4.3B of the ALEP 2013 does not raise any matter of State or regional planning significance.

## 9 Secretary's concurrence

The *Planning Circular PS 18-003*, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. where the development contravenes a numerical standard by less than 10%, Council is the consent authority.

## 10 Conclusion to variation to FSR standard

This written request is for a variation to the primary street setback development standard, under Clause 4.6 of the ALEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because:

- The proposal achieves the objectives of the development standards in Clause 4.3B Ashfield town centre – maximum height for street frontages on certain land under the ALEP 2013;

- The proposed development achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- The proposal will deliver a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation; and
- The proposed development is in the public interest.



## 317-335 Liverpool Road, Ashfield

Clause 4.6 Variation to Floor Space Ratio (FSR)

On behalf of  
Tricon Management Group Pty Ltd  
October 2020



## Project Director

Kate Bartlett

## Contributors

Joe Wang

Camilla Firman

\* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

## Contact

Mecone

Suite 1204b, Level 12, 179 Elizabeth Street  
Sydney, New South Wales 2000

info@mecone.com.au  
mecone.com.au

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## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 317-335 Liverpool Road, Ashfield (subject site).

The proposed development seeks the demolition of the existing structures on site and construction of an 8 storey mixed use shop top development comprising 30 residential units over the ground floor retails, two (2) level basement parking and a communal rooftop garden. We specifically request to vary the development standard for the maximum floor space ratio under Clause 4.4 Floor Space Ratio of the Ashfield Local Environmental Plan 2013 (ALEP 2013).

This Clause 4.6 Variation Request demonstrates that compliance with the Floor Space Ratio (FSR) development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Achieves the objective of the FSR development standard in Clause 4.4 of ALEP 2013;
- Achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- Has sufficient environmental planning ground to support the variation to the standard;
- Is consistent with the applicable and relevant State and regional planning policies; and
- Therefore is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the ALEP 2013.

## 2 Clause 4.6 Exception to Development Standards

Clause 4.6 of the ALEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 enables a variation to any development standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;

- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. To provide flexibility in the application of the relevant control; and
2. To achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal and the findings of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 as referred to in *Baron Corporation Pty Ltd v City of Sydney* [2019] NSWLEC 61 ('Baron').

Clause 4.6 of the ALEP 2013 reads as follows:

**Clause 4.6 Exceptions to development standards**

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) *that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and*

- (b) that there **are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the **public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- ...
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (emphasis added)
- ...

### 3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the maximum FSR development standard as set out in Clause 4.4 of the ALEP 2013. Clause 4.4 states:

#### 4.4 Floor Space Ratio

- (1) The objectives of this clause are as follows—
  - (a) to establish standards for development density and intensity of land use,
  - (b) to provide consistency in the bulk and scale of new development with existing development,
  - (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,
  - (d) to protect the use or enjoyment of adjoining properties and the public domain,
  - (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

As identified on the ALEP 2013 Floor Space Ratio Map (extract provided in **Figure 1**), the subject site has a maximum FSR limit of **3:1**.

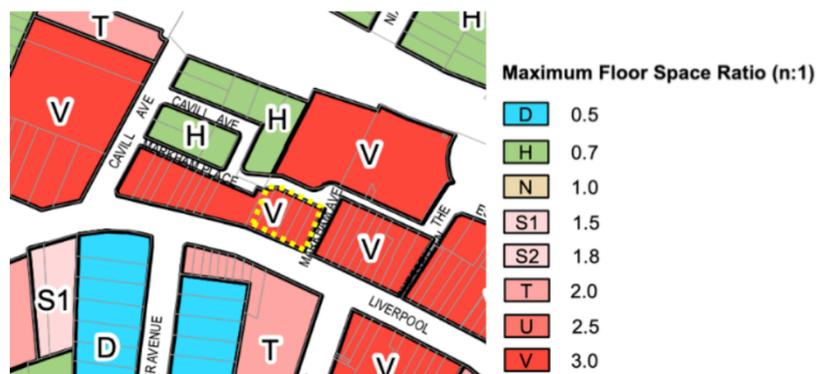


Figure 1. Floor Space Ratio Map (extract)  
Source: ALEP 2013

## 4 Extent of variation to the development standard

The proposed built form seeks an FSR of **3.2:1** and therefore there will be a 0.2:1 non-compliance with the 3:1 FSR control. The variation to the Floor Space Ratio (FSR) control is attributed to the additional building height which is permitted under Clause 4.3A Exception to the maximum height of buildings in Ashfield Town Centre.

The 3:1 FSR control is relevant to Clause 4.3 Height of buildings which identifies the site with a height limit of 23m. In accordance with Clause 4.3A of the ALEP 2013, the proposal will dedicate 25% of the additional floor space that exceeds 23 metres to be used for affordable rental housing and contains at least 1 dwelling, therefore the proposal is eligible for additional height up to 30 metres. However, the increased height permitted on the site is not accompanied by additional FSR and therefore requires a variation to the FSR standard.

The proposed FSR presents a variation of 6.67% to the FSR development standard.

## 5 Objectives of the standard

The objectives of the Clause 4.4 Floor Space Ratio of ALEP 2013 are as follows:

### 4.4 Floor Space Ratio

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

- (a) *to establish standards for development density and intensity of land use,*
- (b) *to provide consistency in the bulk and scale of new development with existing development,*
- (c) *to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- (d) *to protect the use or enjoyment of adjoining properties and the public domain,*
- (e) *to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*

## 6 Objectives of the zone

The objectives of the B4 Mixed-Use zone are as follows:

### 1 Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.*
- *To encourage the orderly and efficient development of land through the consolidation of lots.*

## 7 Assessment

### 7.1 Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the Floor Space Ratio standard is unreasonable and unnecessary given the following:

- As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]-[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
- Wehbe Test 1, as described in *Williams*, is relevant to the proposed variation to the FSR development standard:
  - Wehbe Test 1 – the objectives of the standard are achieved notwithstanding non-compliance with the standard;

#### 7.1.1 Wehbe Test 1 – Objectives of the Standard are achieved

##### **Clause 4.4 Floor Space Ratio**

###### **(a) to establish standards for development density and intensity of land use,**

- The proposed density fits in with the surrounding developments and streetscape. The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre.
- The proposed development contributes to the housing affordability in the locality. The proposal includes 30 residential apartments and four ground level tenancies. The proposal will dedicate 25% of the additional floor space that exceeds 23 metres to be used for affordable rental housing and contains at least 1 dwelling.
- Given that the additional height is permitted through the LEP, it is considered that the additional FSR enabled through the extra height is anticipated when considering density and intensity of land use at the site.

###### **(b) to provide consistency in the bulk and scale of new development with existing development,**

- The proposed development is considered to be compatible with the streetscape along Liverpool Road, Markham Place and Markham Lane;
- The proposal is consistent with recent developments approved along the streetscape that permit a bulk and scale of up to 30 metres where affordable housing is provided;
- The proposal does not create any unreasonable overshadowing, loss of privacy and views onto the neighbouring developments; and
- The proposed bulk and scale is consistent within the Ashfield Town Centre area.

**(c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,**

- The subject site is not located in a heritage conservation area and has been assessed as not likely to result in an adverse impact on nearby heritage items. The demolition of the heritage items at 317 Liverpool Road has been demonstrated as acceptable in order to achieve a site amalgamation with as more suitable streetscape presentation as detailed in the Statement of Heritage Impact by GBA Heritage.

**d) to protect the use or enjoyment of adjoining properties and the public domain,**

- The proposal will provide a high quality, architecturally designed development which is respectful of the character of the area;
- The proposal includes high quality landscaping and a public art plan which will enhance the surrounding public domain along Markham Ave and Markham lane;
- The proposal does not create any significant loss of solar access to adjoining properties or the surrounding public domain as demonstrated in the solar analysis in **Appendix 1**; and
- The proposal does not create any adverse view loss and privacy issues to the neighbouring properties.

**(e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.**

- The proposal presents a 3 storey frontage on Liverpool Road and the tower element is located generally in accordance with the setback requirement of the ALEP 2013;
- The variation of the FSR does not negatively contribute to the building's bulk and scale which makes the development unacceptable when viewing from public; and
- The scale of the desired future surrounding development has been considered and the proposed development is to be compatible within its transitioning context for the Ashfield Town Centre being located in Area 1.

## 7.2 Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, *Pain J held in Four2Five vs Ashfield Council [2015] NSWLEC 90* that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a Clause 4.6 Variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

On appeal, Leeming JA in *Four2Five vs Ashfield Council NSWCA 248* acknowledged Pain J's approach, but did not necessarily endorse it, instead restating Pain J and saying:



*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent *Initial Action Class 1 appeal* (LEC 2019 1097), where she stated that *"the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24])*

...

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see S1.3(g) of the EPA Act)."*

The proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways;

- The proposed development is compatible within its transitioning context for the Ashfield Town Centre being located in Area 1, which specifically permits additional height subject to delivery of affordable housing. The additional FSR is directly as a result of a height control that provides for additional yield within Area 1 of the LEP. As such, it is specifically identified as a site capable of delivering additional floor space where affordable housing can be delivered through its identification in Area 1 of the LEP.
- The proposed development will contribute towards the housing needs of the community by providing residential accommodation;
- The additional FSR contributes to the 25% of the additional floor space that exceeds the 23 metres to be used for affordable rental housing and contains at least 1 dwelling, which further assists the housing affordability in the locality;
- The proposed development does not create any unreasonable overshadowing impacts, loss of views or loss of privacy to the neighbouring development;
- The proposed variation does not result in an overly dense development or oversized built form. Rather, through the provision of Clause 4.3A, the proposal will be entirely consistent with the majority of surrounding built form and density in Area 1;
- The proposed variation would have negligible impacts on vehicle and pedestrian traffic generation;
- The proposed development provides a mixed development with residential and retail uses in an accessible location; and

- The proposed development contributes to the desired high-quality streetscape of Liverpool Road and Markham Place. The proposal features quality design and materials which will enhance the overall aesthetic of the Ashfield Town Centre.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land. In addition, it is noted that the proposed development will still produce a contextually appropriate outcome consistent with the objectives of the development standards, despite the non-compliances with the numerical provisions.

### 7.3 Clause 4.6 (4) (a) (i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the findings of *Commissioner Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Consent Authority under Clause 4.6(4) (a) (i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

### 7.4 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings;

#### 7.4.1 The objectives of the particular standard

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.4 Floor Space Ratio within the ALEP2013 notwithstanding the non-compliance with the standards.

7.4.2 The objectives for development within the zone in which the development is proposed to be carried out

The site falls within the B4 Mixed Use zone. As outlined below, the proposed development is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone;

- **To provide a mixture of compatible land uses.**

The proposal includes a shop-top housing development comprising ground floor retail and residential apartments above, which is permissible in the zone. The proposal will also offer 25% affordable housing above the 23m height to assist with the housing affordability in the locality. The subject proposal is considered consistent with the zone objective as it delivers a compatible land use within the B4 zone.

- **To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**

The proposed development is highly accessible, and in close proximity to a number of transport options. The site is located approximately 400m (5min walk) south east of Ashfield Station which services journeys on the T1, T2, T3 and T9 rail lines. The site is also serviced by a number of bus routes which provides services to a number of inner west and city destinations.

Furthermore, the proposal incorporates 10 bicycle parking spaces and 3 motorcycle parking spaces which complies with the DCP requirement. The subject site is surrounded by a series of footpaths which encourage walking and cycling.

- **To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.**

The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre. The proposed retail tenancies at the ground floor will generate additional employment opportunities and business activities into the area. The proposal is consistent with the desired future character of the locality.

- **To encourage the orderly and efficient development of land through the consolidation of lots.**

The proposal encourages the orderly and efficient development of land through the consolidation of two additional sites. On 4<sup>th</sup> May 2016, a development application (DA2016/89.1) was granted for a mixed-use development over the site at 317-331 Liverpool Road, Ashfield. This application seeks to further consolidate the two additional neighbouring shops, being 333 and 335 Liverpool Street as part of the overall development.

## 8 Any matters of significance for State or regional environmental planning

The contravention of the FSR standard does not raise any matter of State or regional planning significance.

## 9 Secretary's concurrence

The *Planning Circular PS 18-003*, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. Where the development contravenes a numerical standard by less than 10%, Council is the consent authority.

## 10 Conclusion to variation to FSR standard

This written request is for a variation to the Floor Space Ratio development standard, under Clause 4.6 of the ALEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because:

- The proposal achieves the objectives of the development standards in Clause 4.4 Floor Space Ratio under the ALEP 2013;
- The proposed development achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- The proposal will deliver a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation; and
- The proposed development is in the public interest.



# 317-335 Liverpool Road, Ashfield

Clause 4.6 Variation to Building Height

On behalf of  
Tricon Management Group Pty Ltd  
October 2020



## Project Director

Kate Bartlett

## Contributors

Joe Wang

Camilla Firman

\* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

## Contact

Mecone

Suite 1204b, Level 12, 179 Elizabeth Street  
Sydney, New South Wales 2000

info@mecone.com.au  
mecone.com.au

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## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 317-335 Liverpool Road, Ashfield (subject site).

The proposed development seeks the demolition of the existing structures on site and construction of an 8 storey mixed use shop top development comprising 30 residential units over the ground floor retails, two (2) level basement parking and a communal rooftop garden. We specifically request to vary the development standard for the maximum building height under Clause 4.3 Height of Buildings and Clause 4.3A of the Ashfield Local Environmental Plan 2013 (ALEP 2013).

This Clause 4.6 Variation Request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context.

This Clause 4.6 variation seeks variation to Clause 4.3 height of buildings, which is permitted by Clause 4.3A of the ALEP 2013. The proposal seeks a further minor variation to Clause 4.3A of the ALEP for the lift overrun, which is located at the centre of the built form and does not result in unreasonable amenity impacts. This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Achieves the objective of the development standard in Clause 4.3 and Clause 4.3A of ALEP 2013;
- Achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- Is consistent with the applicable and relevant State and regional planning policies;
- Has sufficient environmental planning grounds to support the variation;
- Therefore is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the ALEP 2013.

## 2 Clause 4.6 Exception to Development Standards

Clause 4.6 of the ALEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 enables a variation to any development standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:



- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. To provide flexibility in the application of the relevant control; and
2. To achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal and the findings of *AlMaha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 as referred to in *Baron Corporation Pty Ltd v City of Sydney* [2019] NSWLEC 61 ('Baron').

Clause 4.6 of the ALEP 2013 reads as follows:

**Clause 4.6 Exceptions to development standards**

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written*

request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and
  - (b) that there **are sufficient environmental planning grounds to justify contravening the development standard**.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the **public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**, and
  - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- ...
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).  
(emphasis added)
- ...

### 3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the maximum height of building development standard as set out in Clause 4.2/(2) and Clause 4.3A/(3) of the ALEP 2013. Clause 4.3 and Clause 4.3A states:

#### **4.3 Height of buildings**

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

- (a) *to achieve high quality built form for all buildings,*
- (b) *to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes,*
- (c) *to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings,*
- (d) *to maintain satisfactory solar access to existing buildings and public areas.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area.*

(2B) *Subclause (2A) does not apply to development on land identified as "Area 3" on the Key Sites Map if the consent authority is satisfied that the development achieves the objectives of this clause.*

#### **4.3A Exception to maximum height of buildings in Ashfield town centre**

- (1) *The objective of this clause is to increase the supply of affordable rental housing by providing height incentives for the development of certain types of affordable rental housing.*
- (2) *This clause applies to development for the following purposes on land identified as "Area 1" on the Height of Buildings Map—*
  - (a) *residential flat buildings,*
  - (b) *shop top housing that forms part of a mixed use development.*
- (3) *Despite clause 4.3 (2), development consent may be granted to development to which this clause applies that exceeds the maximum height shown for the land on the Height of Buildings Map (the maximum height) by no more than 7 metres if—*
  - (a) *the development will contain at least 1 dwelling used for the purpose of affordable rental housing, and*
  - (b) *at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing.*

(4) In this clause, affordable rental housing has the same meaning as in State Environmental Planning Policy (Affordable Rental Housing) 2009.

As identified on the ALEP 2013 Height of Buildings Map (extract provided in **Figure 1**), the subject site has a building height limit of 23 metres. The site is also located in Area 1 for the purpose of a shop top housing development. Therefore, the site is eligible for a maximum height of up to 30 metres, if 25% of the additional floor space that exceeds 23 metres is to be used for affordable rental housing and contains at least 1 dwelling.



Figure 1. Height of Buildings Map (extract)  
Source: ALEP 2013

#### 4 Extent of variation to the development standard

This Clause 4.6 variation supports a development application for a mixed-use shop-top housing development at 317-335 Liverpool Road, Ashfield. This Clause 4.6 application request a variation to Clause 4.3 height of buildings, which is permitted by Clause 4.3A of the ALEP 2013. The proposal seeks a further minor variation to Clause 4.3A of the ALEP for the lift overrun located at the centre of the built form.

The site has a height limit of 23m under Clause 4.3 of the LEP. The proposed building has a maximum height of 27.25m (or RL 52.85) when measured to the upper level roof form, in accordance to Clause 4.3A, this meets the height control at this point of the building. The proposed variation to the 30m height development standard is confined to the lift overrun being a maximum height of 31.405m (RL 56.95). The lift overrun is located centrally to the built form.

The proposed height of the roof line represents a variation of 18.48% (from 23m to 27.25m) which is permitted under Clause 4.3A. The proposal seeks a further minor variation of 1.405m or 4.68% variation with the height control under Clause 4.3A. The portion of the lift overrun exceeding the 30m height control is shown in the following section diagram:





Figure 2 Section Plan 1

Source: Nettleontribe

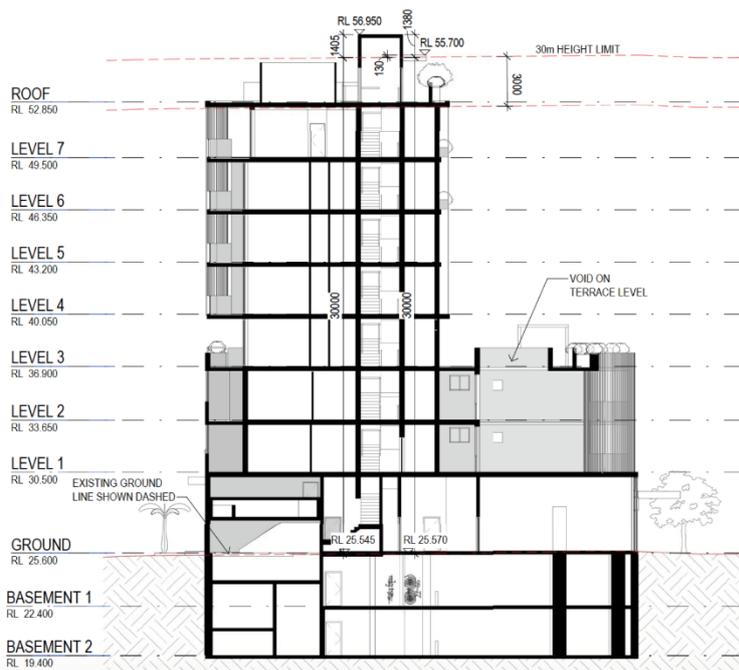


Figure 3 Section Plan 2

Source: Nettleontribe



## 5 Objectives of the standard

The objectives of the Clause 4.3 Height of Buildings and 4.3A Exception to maximum height of buildings in Ashfield town centre are as follows;

### 4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
- (a) *to achieve high quality built form for all buildings,*
  - (b) *to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes,*
  - (c) *to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings,*
  - (d) *to maintain satisfactory solar access to existing buildings and public areas.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area.*
- (2B) *Subclause (2A) does not apply to development on land identified as "Area 3" on the Key Sites Map if the consent authority is satisfied that the development achieves the objectives of this clause.*

### 4.3A Exception to maximum height of buildings in Ashfield town centre

- (1) *The objective of this clause is to increase the supply of affordable rental housing by providing height incentives for the development of certain types of affordable rental housing.*
- (2) *This clause applies to development for the following purposes on land identified as "Area 1" on the Height of Buildings Map—*
- (a) *residential flat buildings,*
  - (b) *shop top housing that forms part of a mixed use development.*
- (3) *Despite clause 4.3 (2), development consent may be granted to development to which this clause applies that exceeds the maximum height shown for the land on the Height of Buildings Map (the maximum height) by no more than 7 metres if—*
- (a) *the development will contain at least 1 dwelling used for the purpose of affordable rental housing, and*
  - (b) *at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing.*
- (4) *In this clause, affordable rental housing has the same meaning as in State Environmental Planning Policy (Affordable Rental Housing) 2009.*

## 6 Objectives of the zone

The objectives of the B4 Mixed-Use zone are as follows;

### 1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.
- To encourage the orderly and efficient development of land through the consolidation of lots.

## 7 Assessment

### 7.1 Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the Height of Buildings standard is unreasonable and unnecessary given the following;

- As detailed in *Williams v Ku-ring-gai Municipal Council [2017] NSWLEC 1098*, *Wehbe v Pittwater Council [2007] NSWLEC 827 at [44]-[48]*, a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
- Wehbe Test 1, as described in *Williams*, is relevant to the proposed variation to the height development standard:
  - Wehbe Test 1 – the objectives of the standard are achieved notwithstanding non-compliance with the standard;

#### 7.1.1 Wehbe Test 1 – Objectives of the Standard are achieved

#### Clause 4.3 Height of Buildings

##### Objective (a) to achieve high-quality built form for all buildings

- The proposed built form fits in with the surrounding developments and streetscape. The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre. The proposed 8 storey development is consistent with the surrounding desired future character in the Ashfield Town Centre being located in Area 1;
- The proposed development is considered to be compatible with the streetscape along Liverpool Road and Markham Place; and
- The proposed building has a maximum height of 27.25m (or RL 52.85) when measured to the upper level roof form and generally meets the height control under Clause 4.3A. A 1.405m non-compliance is introduced above to

facilitate lift service to the roof garden. The lift overrun provides access to rooftop communal open space, contributing to the residential amenity of the development.

**Objective (b) to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes**

- The proposed development is considered to be compatible within its transitioning context for the Ashfield Town Centre in respect of the scale of the desired future surrounding development;
- The lift overrun is located centrally to the built form and does not contribute to the scale of the building; and
- The proposal includes sufficient setbacks to the existing surrounding buildings and includes high quality streetscape.

**Objective (c) to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings**

- The subject site is not located in a heritage conservation area and has been assessed as not likely to result in an adverse impact on nearby heritage items. The demolition of the heritage items at 317 Liverpool Road has been demonstrated as acceptable in order to achieve a site amalgamation with a more suitable streetscape presentation as detailed in the Statement of Heritage Impact by GBA Heritage.

**Objective (d) to maintain satisfactory solar access to existing buildings and public areas.**

- The proposal will create additional overshadowing onto the neighbouring development to the east. However, most of the properties fronting Liverpool Road consist of shop top houses and other commercial developments. Therefore, the overshadowing generated by the proposal is considered acceptable; and
- The proposal generally complies with the height control permitted under Clause 4.3A. The minor variation to the 30m height development standard of the lift overrun is located central to the built form which does not create any additional overshadowing onto the neighbouring properties.

**Clause 4.3A Height of Buildings**

**(1) The objective of this clause is to increase the supply of affordable rental housing by providing height incentives for the development of certain types of affordable rental housing.**

- The proposal will dedicate 25% of the additional floor space area resulting from that part of the building which is over the 23m height control as affordable rental housing. This is consistent with the objective of Clause 4.3A. Details of the dedication will be finalised during the assessment period.

## 7.2 Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, *Pain J* held in *Four2Five vs Ashfield Council [2015] NSWLEC 90* that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. *Pain J* also held that in order for a Clause 4.6 Variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

On appeal, Leeming JA in *Four2Five vs Ashfield Council NSWCA 248* acknowledged *Pain J*'s approach, but did not necessarily endorse it, instead restating *Pain J* and saying:

*“matters of consistency with objectives of development standards remain relevant, but not exclusively so.”*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent *Initial Action Class 1 appeal* (LEC 2019 1097), where she stated that *“the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24]) ...*

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see S1.3(g) of the EPA Act).”*

The proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways;

- The development proposal presents an 8 storey built form to the public domain. The lift overrun is centrally located ensuring the portion of the building exceeding the height control under Clause 4.3A will not be visually dominant;
- The development proposal has a maximum height of 27.25m measured to the upper level roof form meeting the building height development standard permitted under Clause 4.3A. The minor variation to Clause 4.3A will not be visible from the surrounding public domain, and therefore does not present any additional bulk and scale, with the building height being consistent with the intent of the planning controls for the subject site;
- The variation to the building height under Clause 4.3A does not attempt to affect the planning outcome for the locality. Rather, the variation is a function

of provided lift access to the rooftop communal open space and is consistent with the character in the locality;

- The additional height above Clause 4.3A does not result in any additional amenity impacts to the adjoining properties with no additional overshadowing generated by the lift overrun which is being located centrally to the roof form;
- The proposal provides access to functional open space at the roof terrace which provides additional solar access compared to the other communal space on the southern edge of the building. The proposed communal rooftop garden seeks to encourage social interaction and provide a space for relaxation for residents;
- The variation will not result in overlooking that would adversely impact the visual privacy of adjoining properties. The communal rooftop garden is located within the height limit under Clause 4.3A and landscaping has been provided to maximise privacy; and
- The proposed communal rooftop garden does not contain any floor space and is not reasonably capable of modification to include floor space area at a later stage.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land for community housing, community services and local commercial services. In addition, it is noted that the proposed development will still produce a contextually appropriate outcome consistent with the objectives of the development standards, despite the non-compliances with the numerical provisions.

### 7.3 Clause 4.6 (4) (a) (i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the findings of *Commissioner Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Consent Authority under Clause 4.6(4) (a) (i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

7.4 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings;

7.4.1 The objectives of the particular standard

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clauses 4.3 Height of Buildings Control and Clause 4.3A Exception to maximum height of buildings in Ashfield town centre within the ALEP2013 notwithstanding the non-compliance with the standards.

7.4.2 The objectives for development within the zone in which the development is proposed to be carried out

The site falls within the B4 Mixed Use zone. As outlined below, the proposed development is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone;

- **To provide a mixture of compatible land uses.**

The proposal includes a shop-top housing development comprising ground floor retail and residential apartments above, which is permissible in the zone. The proposal will also offer 25% affordable housing above the 23m height to assist with housing affordability in the locality. The subject proposal is considered consistent with the zone objective as it delivers a compatible land use within the B4 zone.

- **To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**

The proposed development is highly accessible, and in close proximity to a number of transport options. The site is located approximately 400m (5min walk) south east of Ashfield Station which services journeys on the T1, T2, T3 and T9 rail lines. The site is also serviced by a number of bus routes which provides services to a number of inner west and city destinations.

Furthermore, the proposal incorporates 10 bicycle parking spaces and 3 motorcycle parking spaces which complies with the DCP requirement. The subject site is surrounded by a series of footpaths which encourage walking and cycling.

- **To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.**

The proposal responds to the mixed use (or shop-top housing) density character of the Ashfield Town Centre. The proposed retail tenancies at the ground floor will generate additional employment opportunities and business activities into the area. The proposal is consistent with the desired future character of the locality.

- **To encourage the orderly and efficient development of land through the consolidation of lots.**

The proposal encourages the orderly and efficient development of land through the consolidation of two additional sites. On 4<sup>th</sup> May 2016, a development application (DA2016/89.1) was granted for a mixed-use development over the site at 317-331 Liverpool Road, Ashfield. This application seeks to further consolidate the two additional neighbouring shops, being 333 and 335 Liverpool Street as part of the overall development.

## 8 Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

## 9 Secretary's concurrence

The *Planning Circular PS 18-003*, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the clause exceeds 10% for the subject site.

## 10 Conclusion to variation to Height standard

This written request is for a variation to the Height of Building development standard, under Clause 4.6 of the ALEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because:

- The proposal achieves the objectives of the development standards in Clause 4.3 Height of Buildings and Clause 4.3A Exceptions to maximum height of buildings in Ashfield town centre under the ALEP 2013;
- The proposed development achieves the objectives of the B4 Mixed Use zone under ALEP 2013;
- The proposed variation to Clause 4.3 height of buildings is permitted under Clause 4.3A of the ALEP 2013. A further minor variation to Clause 4.3A for the lift overrun is located at the centre of the built form and does not result in unreasonable amenity impacts;
- The additional height over Clause 4.3A facilitates lift access to the functional open space at the roof terrace with additional solar access and encourages social interactions;
- The proposal will deliver a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation; and
- The proposed development is in the public interest.



## Attachment D – Statement of Heritage Significance

**317 LIVERPOOL ROAD: Shops and dwelling(s?)**

**Brief description**

This small building at the corner of Markham Place has a splayed corner and Art Deco embellishment including the parapet. There are two streetfront occupancies and the fenestration above the suspended awning is simple.

**Outline history**

This land was originally the backyard of Michael Boylson’s terrace, part of which still survives on the north side of Markham Place, facing the railway. Markham Place cut through the terrace sites as well as providing rear access to the sites facing Liverpool Road, including this one. Though a building stood here earlier, the first record of the present structure is a building application lodged at the end of 1929 by Frederick Paton, owner-builder, for the erection of a ‘6 room brick shop & flat.’ Paton sold the property in 1934 to Andronicus Karonis, butcher. In 1961 it was a ‘Shop Flat & LU Shop Garage’ owned by Andrew Carr, butcher, of Bellevue Hill. It is now a florist’s shop and a restaurant.

**Reason for listing**

A well-scaled streetscape element displaying an unusual example of Art Deco decoration. *Criteria (a), (c).*

**Other relevant documentation**

Valuer-General’s records, 1926-61; BA No 5920 of 1929.



*The pink two-storeyed attached building on the left is not part of this listing*