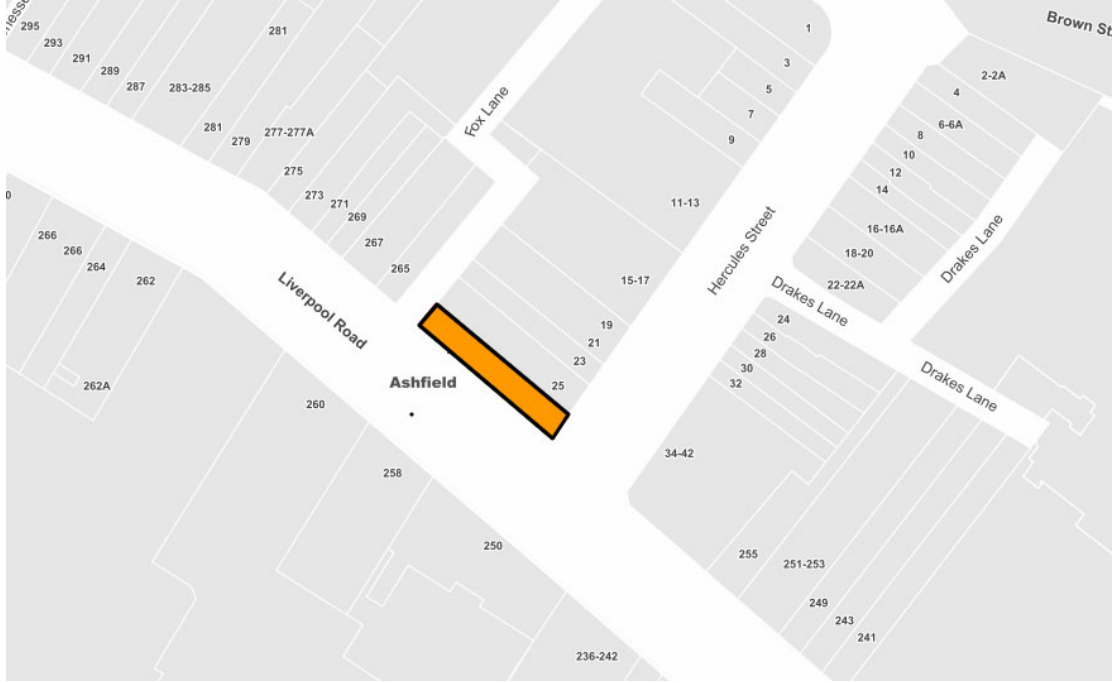





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/0266
Address	27 Hercules Street ASHFIELD NSW 2131
Proposal	Strata subdivision of an existing 2 storey commercial building
Date of Lodgement	21 April 2021
Applicant	Sky Town Planning
Owner	Proprietor of Company Title
Number of Submissions	Nil
Value of works	\$0.00
Reason for determination at Planning Panel	Heritage Item without agreement that works can proceed
Main Issues	Impact on Heritage Item Waste Management BCA Upgrades
Recommendation	Refusal
Attachment A	Plans of proposed development
Attachment B	Statement of Heritage Significance
Attachment C	BCA Report
Attachment D	Draft conditions in the circumstance the application is approved
	
LOCALITY MAP	
Subject Site	   N
Notified Area	 

1. Executive Summary

This report is an assessment of the application submitted to Council for Strata subdivision of an existing 2 storey commercial building at 27 Hercules Street ASHFIELD NSW 2131.

The main issues that have arisen from the application include:

- Impact to the Heritage Item;
- Waste Management Practices;
- BCA building upgrades.

The application was not required to be notified in accordance with the Council's Community Engagement Framework as the application is for strata subdivision only. Inadequate information has been submitted with the application to demonstrate the site is suitable for the proposed development.

The application is unsupportable and in view of the circumstances refusal of the application is recommended.

2. Proposal

Approval is sought to strata subdivide the existing building into 7 lots as follows:

- 4 lots located at ground floor;
- 1 lot located partly at ground and partly at basement level;
- 1 lot located partly at ground floor and partly at mezzanine level;
- 1 lot located on the first floor; and
- Common property - sanitary facilities and stairs.

3. Site Description

The subject site is located on the northern corner of Liverpool Road and Hercules Street, Ashfield. The site is legally described as Lot 2 in Deposited Plan 450205.

The site has a frontage to Hercules Street of approximately 5.6 metres and a secondary frontage of approximate 34.1 metres to Liverpool Road.

The site supports a two (2) storey commercial building containing seven (7) individual units. The adjoining properties support single and two storey commercial buildings.

The subject site is listed as a heritage item, namely item No.208 "Shops, offices and dwelling" under Ashfield Local Environmental Plan 2013 (ALEP 2013).



Image 1: Site Photo

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
10.2019.148.1	Unit 7 - Fitout and use of the first floor as a gym trading 5.00am to 10.00pm daily including signage.	Refused 3 March 2020
10.2018.217.1	Unit 7 - Change of use to a function centre	Refused 16 July 2019
10.2016.55.1	Sealing off doorway at the top of stairs – Unit 7	Approved 9 May 2016

4(b) Application history

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

Date	Discussion / Letter / Additional Information
21 April 2021	Application lodged
24 May 2021	<p>Additional information request sent to applicant. The following items were requested:</p> <ul style="list-style-type: none"> • Architectural plans illustrating the existing layout of the site, demolition and new works including any upgrades required by the Building Code of Australia (BCA); • Details of ongoing waste management.
7 June 2021	Written submission was provided in response to the request for information. These details are the subject of this assessment report.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 1.15 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; and*
- *State Environmental Planning Policy (Infrastructure) 2007.*

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. *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 not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

5(a)(ii) *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 site has no vehicular access and as such will not impact upon the ongoing operation and safety of Liverpool Road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

5(a)(iii) *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 2.6 - Subdivision
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 5.10 - Heritage Conservation

(i) Clause 1.2 – Aims of Plan

The proposal is inconsistent with the relevant aims of the plan, in particular Clause 2(c) as the application has not included adequate information to demonstrate that it will not have an adverse impact on the environmental and cultural heritage of Ashfield.

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

The site is zoned B4 – Mixed Use under the *ALEP 2011*. The development is for subdivision only and results in no change to the use of the site. The use of each individual unit would be subject to separate applications. As such the application is considered acceptable regarding Clause 2.3.

(ii) Clause 4.3 – Height of Buildings

The site is located in an area where the maximum height of buildings is 23 metres as indicated on the Height of Building Map that accompanies *ALEP 2013*. No change to the existing building height is proposed as part of the development.

(iii) Clause 4.4 – Floor Space Ratio

The site is located in an area where maximum floor space ratio permitted is 3:1 as indicated on the Floor Space Ratio Map that accompanies *ALEP 2013*. No change to the existing gross floor area is proposed as part of the development.

Clause 5.10 – Heritage Conservation

The subject site is identified as being a heritage item under the provisions of ALEP 2013, namely item No.208 “Shops, offices and dwelling”. No architectural plans have been submitted with the application to illustrate and confirm the upgrade works that are proposed as detailed in the Building Code of Australia (BCA) report submitted with the application.

As no existing or proposed plans have been submitted with the application the proposal has not demonstrated that the development has been appropriately designed to minimise impacts to the heritage significance of the building in accordance with Clause 5.10(4) of ALEP 2013. This matter is discussed further under the heading “*Chapter E1, Heritage items and Conservation Areas (excluding Haberfield)*”.

5(b) 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 LEP Amendment contains provisions for amendments to the Clause 1.2 - Aims of the Plan and Clause 5.10 – Heritage Conservation and the application was assessed against the following relevant clauses of the Draft IWLEP 2020:

(i) Clause 1.2 – Aims of Plan

The proposal is inconsistent with the relevant aims of the plan, in particular Clause 2(j) as the application has not included adequate information to demonstrate that it will not have an adverse impact on the environmental heritage and surrounding residential amenity.

(ii) Clause 5.10 Heritage Conservation

The application has not provided adequate information to demonstrate it satisfies the objectives 1(a) and 1(b) of Clause 5.10 of the Draft IWLEP 2020 as no plans have been submitted with the application to demonstrate that the development has been appropriately designed to minimise impacts to the heritage significance of the building

5(d) Development Control Plans

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

IWCDCP2016	Compliance
Section 2 – General Guidelines	
A – Miscellaneous	
9 - Subdivision	No – see discussion
C – Sustainability	
3 – Waste and Recycling Design & Management Standards	No – see discussion
E1 – Heritage items and Conservation Areas (excluding Haberfield)	
2 – Heritage Items	No – see discussion
7 – Subdivision and lot consolidation affecting heritage items or in heritage conservation areas	No – see discussion

Chapter A, Miscellaneous – Part 9 Subdivision

Performance Criteria (PC) 6 and Design Solutions (DS) 6.1 – 6.6 require consideration to be given to strata subdivision to ensure lots are appropriately arranged and have all required facilities.

The proposal includes strata subdivision into 7 lots with additional areas dedicated for common property. Details submitted with the application identify that there is no waste storage area on site rather waste is stored on Council land in Fox Lane. As the application is for strata subdivision Council must be satisfied that appropriate waste storage is provided on site in accordance with DS6.3 and waste must be stored wholly within the site boundaries to ensure there are no impacts to the surrounding amenity. As such, the application has not demonstrated the subdivision will not adversely impact the amenity of the area as no waste facilities are provided on site.

In addition to the above, the Building Code of Australia (BCA) report submitted with the application details upgrades will be required to the existing building to meeting the BCA standards. The report details the upgrades including ramps to be demolished, installation of balustrades and handrails and inclusion of non-habitable areas within the existing building. No demolition, existing or proposed plans have been submitted with the application to confirm the changes that will be undertaken and proposed use of spaces. Architectural plans were requested to illustrate the changes however they were not submitted. Therefore, the application has not adequately demonstrated that the proposal will meet the requirements of the BCA and inadequate information has been submitted with the application to thoroughly assess the proposed strata subdivision.

Therefore, the proposal has not submitted adequate information to demonstrate it has appropriate on-site facilities and is appropriate for strata subdivision and as such the proposed is inconsistent with Section 2, Chapter A, Part 9 of CIWDCP 2016.

Chapter C, Sustainability– Part 3 Waste and Recycling Design & Management Standards

A Waste Management Plan was not submitted with the application and the documentation submitted with the application details that waste is stored on Council land in Fox Lane. Additional information was requested requiring details of waste management practices to be submitted with the application to demonstrate consistency with the relevant provisions in Part 3 of CIWDCP 2016 however the additional information did not include any information to illustrate any waste facilities on site.

Given no Waste Management Plan illustrating sufficient waste storage area is provided wholly with the site, the proposed development is not considered acceptable regarding Section 2, Chapter 3, Part 3 of CIWDCP 2016.

Chapter E1, Heritage items and Conservation Areas (excluding Haberfield)

The site is listed as a heritage item under the provisions of ALEP 2013, namely item No.208 “Shops, offices and dwelling”. The application includes internal modifications to the existing building as detailed in the BCA report. The modifications appear to include demolition of some components including ramps, kitchen facilities and installation of balustrades and new stairs including to the existing bay window on the Hercules Street first floor elevation. No demolition, existing plans or floor plans have been submitted to illustrate and clarify the works proposed. The BCA report and Heritage Impact Statement do not provide clear guidance on the works proposed and instead detail potential upgrade options to bring the building into compliance with BCA standards. Therefore, a thorough assessment of the proposed development against the relevant objectives and controls relating to interior elements of Heritage Items in Part 2.3 of Chapter E1 could not be undertaken as the proposed works have not been clearly detailed.

In addition to the above, the proposal includes strata subdivision of an existing heritage item. Part 7.1 of Chapter E1 contains objectives and controls to ensure subdivision of heritage items does not affect their significance. It is considered that strata subdivision of the subject site is inconsistent with the relevant objectives and controls as it will impact on the setting of the Heritage Item and may result in inconsistent presentation of the façade. This is due to a portion of the building above the awning being proposed as part of Lot 5 and common property with the rest of the building above the awning being proposed as Lot 7.

Given the above, the proposal is not considered acceptable with regard to the objectives and controls contained in Part 2.3 and Part 7 of Section 2 Chapter E1 of CIWDCP 2016.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality for the reasons outlined in this report.

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

It is considered that the proposal will have an adverse impact on the surrounding locality and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

The application was not required to be notified in accordance with Council's Community Engagement Framework.

5(h) The Public Interest

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

The proposal is contrary to the public interest.

5(i) Inadequate Information

As discussed throughout this report the application has provided inadequate information and documentation to illustrate that the development complies with the relevant provisions and will not have significant adverse impacts on the amenity of the surrounds. Specifically, the following has not been included with the application:

- Architectural plans including demolition plan, existing and proposed floor plans, sections and elevations to illustrate the works proposed to the Heritage Item and the spaces that will be nominated as non-habitable.
- A Waste Management Plan detailing the location of waste storage has not been included to demonstrate compliance with Section 2, Chapter 3, Part 3 of the CIWDCP 2016.

As such, the application as submitted lacks information in order to undertake a full and proper assessment of some aspects of the application in accordance with the Environmental Planning & Assessment Act 1979.

6 Referrals

6(a) Internal

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

- Heritage; and

- Building Certification.

6(b) External

The application was not required to be referred to any external bodies.

7. Conclusion

The proposal does not comply 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 has not provided adequate information to demonstrate the proposal will not result in any significant impacts on the amenity of the surrounding properties and heritage item and is not considered to be in the public interest.

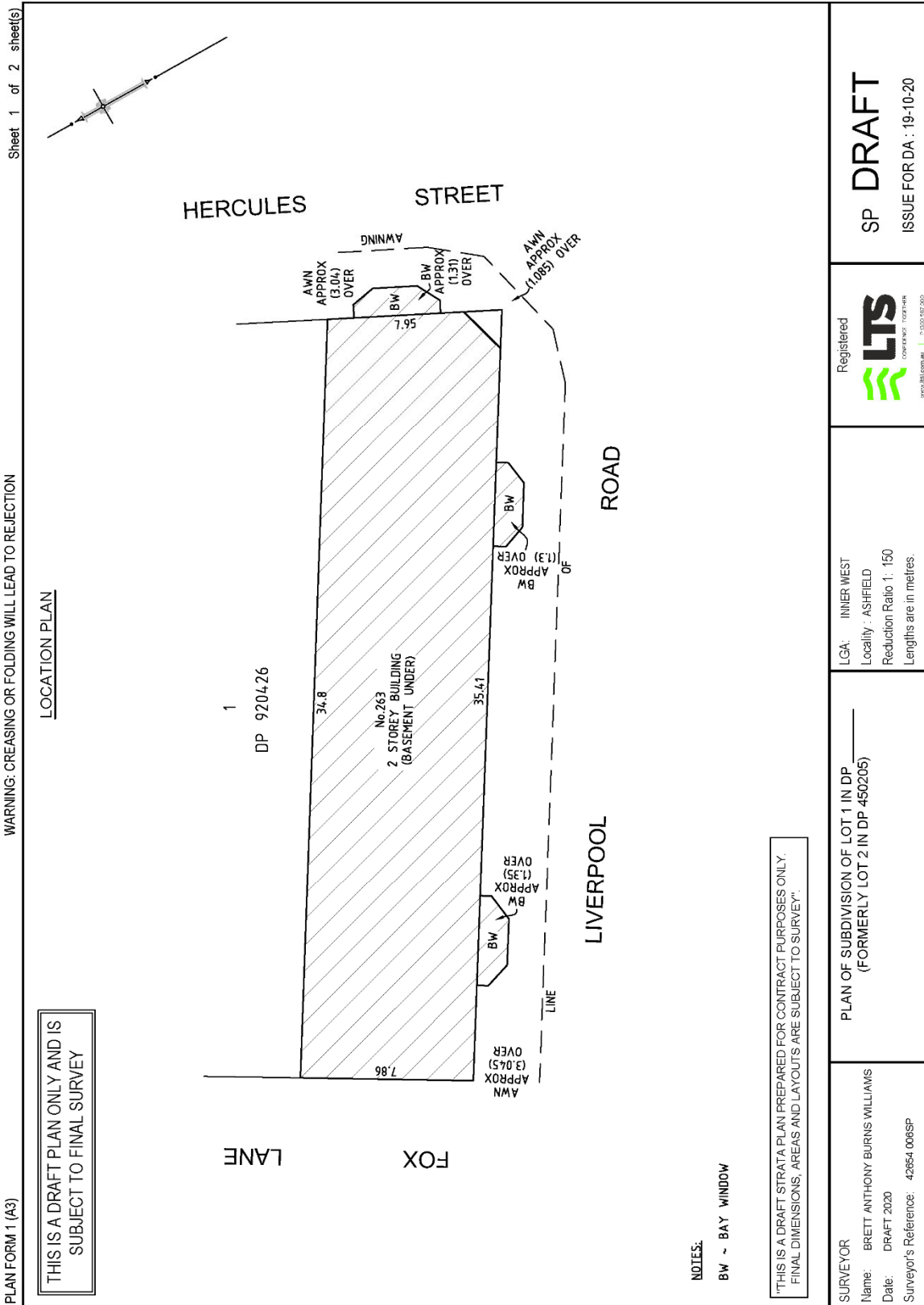
The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

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*, refuse Development Application No. DA/2021/0266 for Strata subdivision of an existing 2 storey commercial building at 27 Hercules Street ASHFIELD NSW 2131 for the following reasons:

1. Inadequate information has been submitted with the application to determine the impacts upon the heritage item and as such the development is inconsistent with Clause 5.10(5) of *Ashfield Local Environmental Plan 2013* and Section 2, Chapter E1, Part 2 and 7 of the Comprehensive Inner West Development Control Plan 2016.
2. Inadequate information has been submitted with the application to demonstrate the proposed strata subdivision will have waste management facilities and be adequately upgraded and as such the development is inconsistent with Section 2, Chapter A, Part 9 of the Comprehensive Inner West Development Control Plan 2016.
3. The information submitted with the application details no waste storage area is provided on site and will result in adverse amenity impacts on the surrounds and as such does not comply with Section 2, Chapter 3, Part 3 of the Comprehensive Inner West Development Control Plan 2016.
4. The application has failed to adequately demonstrate that the site is suitable for the development in relation to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
5. The application as submitted has not provided adequate information in order to undertake a full and proper assessment of the application in accordance with the Environmental Planning & Assessment Act 1979.

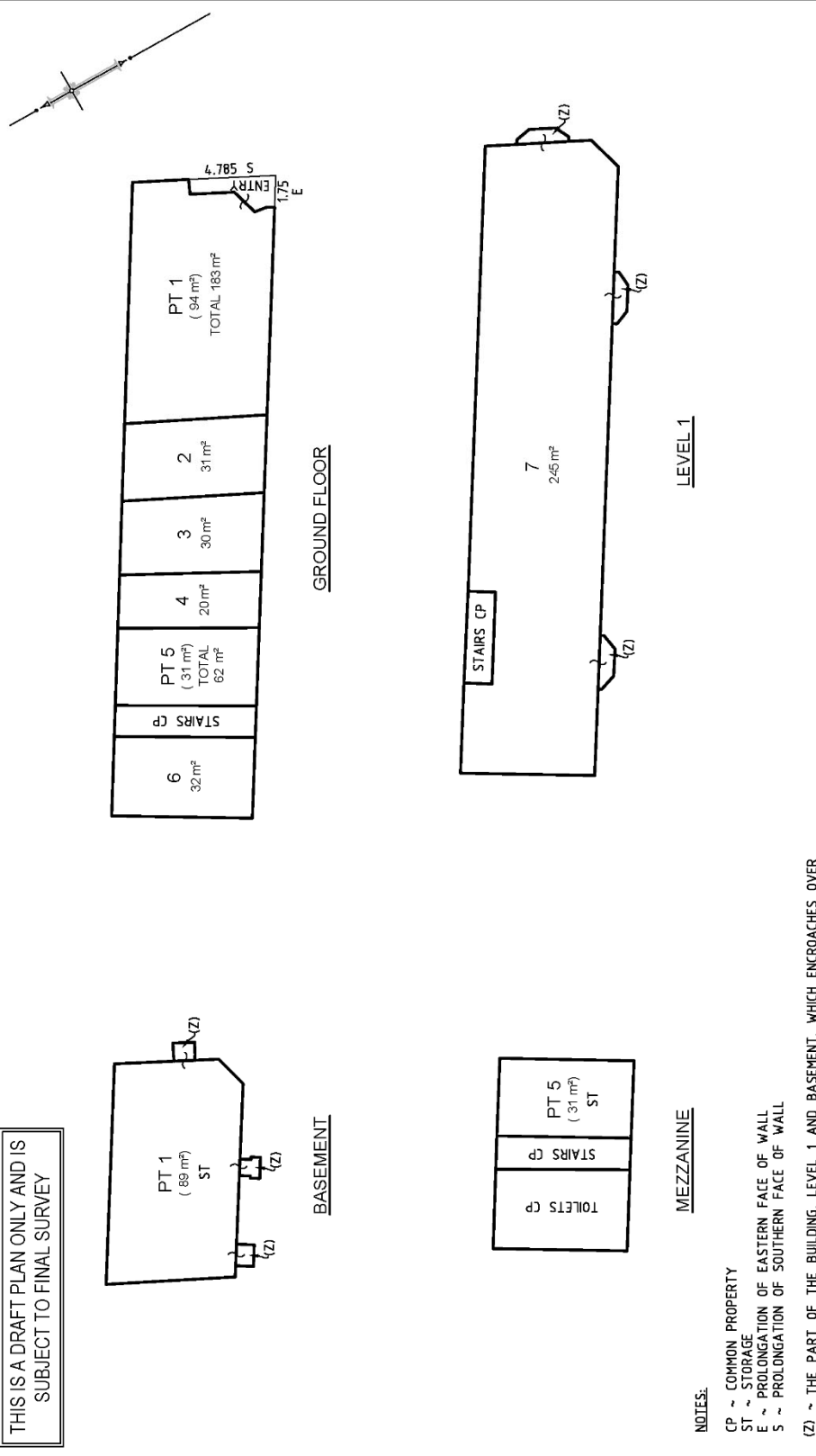
Attachment A – Plans of Proposed Development



WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 1 (A3)

THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO FINAL SURVEY




THIS IS A DRAFT STRATA PLAN PREPARED FOR CONTRACT PURPOSES ONLY. FINAL DIMENSIONS, AREAS AND LAYOUTS ARE SUBJECT TO SURVEY.

NOTES:

- CP ~ COMMON PROPERTY
- ST ~ STORAGE
- E ~ PROLONGATION OF EASTERN FACE OF WALL
- S ~ PROLONGATION OF SOUTHERN FACE OF WALL
- (Z) ~ THE PART OF THE BUILDING, LEVEL 1 AND BASEMENT, WHICH ENCROACHES OVER THE PARCEL BOUNDARY IS FOR THE EXCLUSIVE USE OF THE RESPECTIVE ADJOINING LOT. THE PROVISIONS OF THE ACT APPLY TO THIS AREA OTHER THAN THOSE RELATING TO OWNERSHIP AND CERTIFICATION OF TITLE.

MEZZANINE

SURVEYOR Name: BRETT ANTHONY BURNS WILLIAMS Date: DRAFT 2020 Surveyor's Reference: 42854.006SP	PLAN OF SUBDIVISION OF LOT 1 IN DP _____ (FORMERLY LOT 2 IN DP 450205)	LGA: INNER WEST Locality: ASHFIELD Reduction Ratio 1: 200 Lengths are in metres.	Registered  www.lts.com.au 0200 502 000	SP DRAFT ISSUE FOR DA : 19-10-20
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Attachment B – Statement of Heritage Impact

261-263 LIVERPOOL ROAD and 27 HERCULES STREET: **Shops and other occupancies**

Brief description

A two-storey complex of eclectic design including Georgian Revival and Arts-&-Crafts detailing. Above the suspended awning the Liverpool Road facade is symmetrical, with a centre motif of grouped windows under a low-pitched pediment and raised parapet; this is flanked by plain and oriel windows. This pleasing arrangement continues around the splayed corner into Hercules Street. One shopfront includes what appears to be original Monel Metal window framing.

Outline history

There was a house and shop on this corner as early as 1889. It was a two-storey Free Classical building owned by James Fox and occupied by H H Hodgens, grocer and draper, for many years. In 1923 a building application was lodged by R A Gale to enlarge the property to include six lock-up shops and a billiard saloon, to the design of Sydney architects Morrow & DePutron. The shops were increased to eight and the property was sold to the Georgiades family. It became known as *Gale's Buildings* and was acquired by Washington H Soul, Pattinson & Co in 1926 and occupied by that firm from 1929. The corner business was a fruiterer. The billiard saloon had gone by 1961.

Reason for listing

This property has an interesting history and excellent townscape value. It is also a good example of the work of a well-known Inter-War architectural practice. *Criteria (a), (b), (c).*

Other relevant documentation

Rate Books, south ward, 1889-1906; Valuer-General's records, 1908-61; BA No 1820 of 1923; all in Ashfield Council Archives. *Sands Directories.*



.....
Ashfield Town Centre *Page 92*

Attachment C - BCA Report



Level 6, 210 Clarence Street, Sydney NSW 2000
 All Correspondence to: PO Box Q1440
 Queen Victoria Building NSW 1230
 BCA Logic ABN: 29 077 183 192 | Unit Trust ABN: 96 402 469 940
 Phone: 02 9411 5360 | Fax: 02 9411 5420
 Email: info@bcalogic.com.au | Web: www.bcalogic.com.au

16 May 2019

Souls Corner (Ashfield) Pty Ltd
 c/o – Conti Property Group
 PO Box 443
 Concord NSW 2137

Email: charlie@montilawyers.com.au

Dear Mr Charlie Monti,

**Re: 263 Liverpool Road, Ashfield
 Fire Safety Upgrade Report to Accompany Application for Strata Subdivision**

Reference is made to our appointment to provide Building Code of Australia (BCA) consultancy services including a BCA assessment of the existing building which contains commercial and retail tenancies over two storeys and include a fire safety upgrade strategy in accordance with Section 37 of the Strata Schemes (Freehold Development) Act 1973.

Further to our site inspection on Monday 29 May 2017, outlined below is a summary of the pertinent Building Code of Australia matters and recommendations to upgrade the building to a reasonable level of fire and life safety.

Due to time expired since the inspection of the property and provision of the original report, this Report has been reviewed and updated to reflect compliance with Building Code of Australia 2019.



Figure 1: Site located on the northern side of Liverpool Road Ashfield. (Photo courtesy of Google Maps)

Purpose - The purpose of this document is to provide a high level BCA assessment of the existing building to identify any current areas of deficiency and non-compliance with the deemed-to-satisfy provisions of the Building Code of Australia, 2019 (BCA2019) and assessment of the relevant Building Regulatory Legislation applicable at the time of original construction of the overall building.

Fire Safety Upgrading requirements are also to be provided, where it is considered occupant fire and life safety is currently deficient. The report also takes into consideration the existing level of compliance of the subject development, makes recommendations on works required to achieve general compliance with either the Deemed-to-Satisfy or performance based provisions of BCA2019 as applicable. N.B. The upgrading strategy detailed below should not be construed as upgrading to achieve strict compliance with the current deemed to satisfy provisions of the BCA2019. Any upgrading recommendations contained below are to address any current deficiencies in occupant fire and life safety provisions within the building.

Basis of Assessment - The content of this report reflects: -

- (a) High level inspection of the existing building on Monday 29 May 2017;
- (b) Assessment against the deemed-to-satisfy provisions of Sections C, D & E of the Building Code of Australia, 2019 incorporating the NSW variations where applicable;

Limitations - This review does not include nor imply any detailed assessment for design, compliance or upgrading for: -

- the structural adequacy or design of the existing building;
- the inherent derived fire-resistance ratings of any existing structural elements of the building (unless specifically referred to); and
- the design basis and/or operating capabilities of any existing electrical, mechanical or hydraulic fire protection services (unless specifically referred to).

This review does not include, or imply compliance with:

- (a) The relevant provisions of the Disability Discrimination Act
- (b) The provision of disabled access to the subject building portion in accordance with the relevant provisions of Part D3 and F2.4 of BCA2019
- (c) The Disability (Access to Premises – Building) Standards 2010;
- (d) The relevant provisions of Sections B, F, G, H and J of BCA2019 (unless specifically referred to);
- (e) Demolition Standards not referred to by the BCA;
- (f) Occupational Health and Safety Act;
- (g) Construction Safety Act;
- (h) Requirements of other Regulatory Authorities including, but not limited to, Telstra, Water Supply Authority, Electricity Supply Authority, RMS, Work Cover, Department of Planning, Council, Transport Sydney and the like;
- (i) Previous conditions of Development Consent issued by the local Consent Authority unless specifically referred to;
- (j) Compliance of individual tenancy fit outs; and
- (k) This review does not assess the safety of the particular aspects of the building but merely the minimum standards called up by the provisions of BCA2019 where appropriate.

Building Description - From site inspection, the original building was likely constructed in the early 20th Century (1900's). The subject building has undergone internal and external alterations to the building since this original Construction period. The building is constructed of loadbearing external and internal masonry brick walls and timber floors.

No information or documentation has been provided in relation to previous construction works and compliance with building regulations or local planning controls. Strata manager has provided information and documentation of recent Fire Order works issued by Ashfield Council. The Fire Order relates to both 25 & 27 Hercules Street, with 27 Hercules Street being 263 Liverpool Road which is the property subject to this report.

BCA Description - For the purposes of the Building Code of Australia 2019 (BCA2019) the existing building the subject of this review may be described as follows.

- **Description:** The building consists of:
 - Ground Floor: Six (6) individual retail tenancies facing Liverpool Street.
 - First Floor: Currently unoccupied however was recently used as an office tenancy.
- **Rise in Storeys** - The existing building has a rise in storeys of two (2). The basement storage area under the café/burger tenancy is not counted in the rise in storeys.
- **Classification** - The building has been classified as follows which are the proposed classes as a result of the Development Consent Application refurbishment works.

<i>Class</i>	<i>Level</i>	<i>Description</i>
7b	Basement	Storage (only under corner café tenancy)
6	Ground Level	Retail tenancies
5	First Floor	Office tenancy

- **Effective Height** - The existing building has an effective height less than 12m.
- **Type of Construction Required (Table C1.1)** - If designed/constructed today, the base building would be required to be of Type C construction.
- **Floor Area and Volume Limitations (Table C2.2)** - The existing Class 5/6/7b building will comply with Clause C2.2 fire compartment size.
- **Fire Compartments** - The following fire compartments have been assumed:
 1. The whole building is currently considered one fire compartment as the building is connected by a non-fire-isolated stair.

Building Inspection: The inspection was undertaken in the morning of Monday 29 May 2017. Access was provided to the ground floor retail tenancies and first floor office.

Existing fire safety measures in the building

Annual Fire Safety Statement: There is no existing annual fire safety statement for the building.

From site inspection and Fire Order documentation, the existing fire safety measures in the building are listed below.

- First Floor: Emergency lighting to most of the floor, exit signs and portable fire extinguishers (PFE).
- Ground Floor: Retail tenancies – some have emergency lighting and exit signs and some have PFE's.

Fire Safety Schedule to entire Building with Upgrade Recommendations of this Report

Outlined in the Table below is a schedule of the existing and proposed fire safety measures required by the recommendations of this report for the building to be upgraded.

Item	Existing & Proposed Essential Fire Safety Measure	Minimum standard of performance, i.e. BCA clause and/or Australian Standard to be achieved
1.	Emergency lighting	BCA2019 E4.2, E4.4 & AS/NZS 2293.1-2018
2.	Exit Signs	BCA2019 E4.5, E4.8 & AS/NZS 2293.1-2018
3.	Fire Doors (Enclosure underneath stairs)	BCA2019 D2.8 & AS 1905.1-2015
4.	Fire Hose Reel System (First Floor only)	BCA2019 E1.4 & AS 2441-2005
5.	Fire seals protecting openings in fire resisting components of the building	BCA2019 C3.15, Manufacturer's Specification & AS1530.4-2005
6.	Lightweight Construction (FRL 60/60/60 Enclosure underneath stairs)	BCA2019 D2.8, Spec C1.8 & Manufacturer's Specification
7.	Paths of travel, stairways, passageways and exits.	Clause 184-186 of EP&A Regulation 2000
8.	Portable fire extinguishers	BCA2019 Clause E1.6, Table E1.6 & AS 2444-2001
9.	Performance Solution Report (Extended travel distance on First Floor)	To be Prepared by C10 Accredited Fire Engineer
10.	Fire & Life Safety Upgrade Report: Requirements within Table 1 of the Report are to be maintained and certified annually as part of Annual Fire Safety Statement	Fire & Life Safety Upgrade Report, by BCA Logic, Ref: 108079-2, dated 16 May 2019.
11.	Fire Hydrant System (Street Hydrant Coverage)	BCA2019 E1.3 & AS 2419.1-2005

Note: Street hydrant coverage is not required to be included on the Annual Fire Safety Statement.

Fire Safety Upgrade Works

The primary objective of any fire upgrading works is to achieve a means of fire and occupant safety within the context of the objectives of the Building Regulations (i.e.; Building Code of Australia 2019) namely: -

- (a) the safety of persons in the event of a fire;
- (b) the prevention of fire; and
- (c) the suppression of fire.

The items referred to below clearly identify the existing deficiencies when the deemed-to-satisfy provisions of BCA2019 are applied prescriptively to the existing building. However, as outlined above, BCA2019 is now a fully performance based document with the prescriptive deemed-to-satisfy provisions being only one of the two methods of satisfying these performance provisions. With existing buildings strict compliance with the prescriptive deemed-to-satisfy provisions of BCA2019 is often unlikely and impractical without carrying out massive reconfiguration of the existing building due to the age, use or existing architectural design of the building. Accordingly, where a deficiency within an existing building has been identified it may not necessarily result in that deficiency being required to be upgraded to strictly meet the deemed-to-satisfy provisions of BCA2019. If, due to specific site circumstances, it can be shown that the deficiency still satisfies the performance provisions of BCA2019 as a performance solution then this deficiency would not require upgrading.

Notwithstanding the above, Section 37 of the Strata Schemes (Freehold Development) Act 1973 requires the local council to consider if an Order No 6 (Fire Order) in Section 121B of the Environmental Planning & Assessment Act 1979 has been issued on the building. This provision naturally triggers a duty of care in Council to consider whether an Order No 6 should be issued on the building to ensure, including but not limited to, the building has appropriate measures to protect persons using the building in the event of fire and to facilitate their egress in the event of fire. It is also appropriate for council to ensure the building complies with the Category 1 fire safety provisions applicable to the building’s proposed use.

Similar to clause 93 and 94 of the Environmental Planning & Assessment Regulation 2000 the local council have discretionary powers with an Order No 6 on the level of upgrading deemed necessary, being either a total upgrade to satisfy the provisions of the BCA or partial upgrade depending on the age, design, existing construction and circumstances of the particular building.

Notwithstanding the above legislative criteria – if the levels of occupant fire and life safety are considered to be deficient by Council, or NSW Fire & Rescue, an Order No 6 Fire Order can still be issued on the building owner to upgrade the existing levels of fire and life safety.


The following Category 1 Fire Safety Provisions applicable to the proposed building in terms of its total floor area and Classification of Building. It is noted the total building floor area provided with the draft Strata Plan would appear to provide a total floor to be more than 500m² therefore a fire hydrant system is required. Refer to the Table below for more information on street hydrant coverage.


BCA Performance Requirement	General Description/Intent of Performance Requirement
EP1.3	Fire Hydrant system is required to serve a building with a total floor area greater than 500m ² .

With reference to the legislative criteria above, the following Table identifies the appropriate fire and life safety upgrade recommendations for the subject building.

Fire & Life Safety Upgrade Recommendations


Table 1: Fire Safety Upgrade Works

Item	BCA Deficiency	Comment / Upgrade Works
1.	First Floor Office: Existing emergency lighting coverage and exit signage is not satisfactory	Upgrade the coverage of the emergency lighting and exit signs to comply with BCA Part E4 and AS/NZS 2293.1-2018. Emergency lighting shall be provided throughout the floor and above all stairways and exit signs shall be upgraded to current 'running man' symbols in accordance with AS/NZS 2293.1-2018.
2.	First Floor Office: Travel distance from the furthest point on the eastern side of the storey exceeds 20m to an exit (BCA D1.4)	Address the non-compliance with a Fire Engineered Performance Solution by an Accredited C10 Fire Engineer. When the Development Application for Strata Subdivision is approved, Council shall incorporate conditions in the consent to address the travel distance non-compliance by compliance with this report or compliance with the Performance Requirements of BCA 2019.
3.	First Floor Office: Eastern elevation has two doors which could open onto the roof of the awning below. No balustrade provided (D2.16)	As the doors open outwards, provide a compliant balustrade with a minimum 1m above the FFL in accordance with D2.16. Alternatively, remove the doors and propose a new wall and/or window opening which complies with the requirements D2.24(c) where required.
		
4.	First Floor Office: The western end of the office has a raised floor area and openable windows with a sill height less than 865mm (D2.24)	It appears the raised floor level is 4m or more above the footpath level below. As such, the openable sash windows are required to have a sill height at 865mm. Numerous windows have a sill height much lower than 865mm. Required to construct a barrier in front of the window not less than 865mm above the floor which must not permit a 125mm sphere to pass through it and not have any horizontal elements

Item	BCA Deficiency	Comment / Upgrade Works
		to facilitate climbing between 150mm and 760mm above the floor in accordance with D2.24(c) & (d). Alternatively, permanently fix the bottom sash from opening to ensure a barrier with a minimum of 865mm is achieved. Note: The glass in the bottom sashes shall be checked for compliance with AS 1288-2006 as they are subject to human impact. If required, glass shall be replaced to comply with AS 1288.
		
5.	First Floor Office: The existing ramp from the main office area up to the raised floor area on the western end is less than 1m exit width and gradient is too steep with no handrail.	The existing ramp shall be demolished and a new stairway shall be provided between the floor levels with a clear 1m exit width in accordance with D1.6 & D2.13. Handrails shall be provided to the stair in accordance with D2.17.

Item	BCA Deficiency	Comment / Upgrade Works
		
6.	First Floor Office: All existing fibre board and timber linings do not comply with fire hazard properties (C1.10)	All existing fibre board and timber linings shall be removed and replaced with wall and ceiling linings which comply with C1.10 & Specification C1.10.
7.	First Floor Office: The exit stairs handrails are non-compliant.	Provide compliant handrails in accordance with D2.17.
8.	First Floor Office: The final exit stair leading to the exit door opening onto Liverpool Road does not have a compliant landing in front of the exit doors.	Ashfield Council Fire Order, dated 1 April 2010, point 11: This required the existing exit doors to be rectified to comply with D1.6, D2.20 and D2.21. The current doors comply with these BCA clauses with a 750mm clear, outward opening door and compliant door lever. However, to accommodate the door swing outwards and not to encroach over the boundary onto the footpath, the door has been placed directly adjacent the last step in the stairway causing a non-compliance with the D2.15 as they is a step adjacent the doorway. As the works comply with the existing Fire Order, it is assumed Council are satisfied with this non-compliance in lieu of providing a compliant exit door. No further action required. Refer photo below.

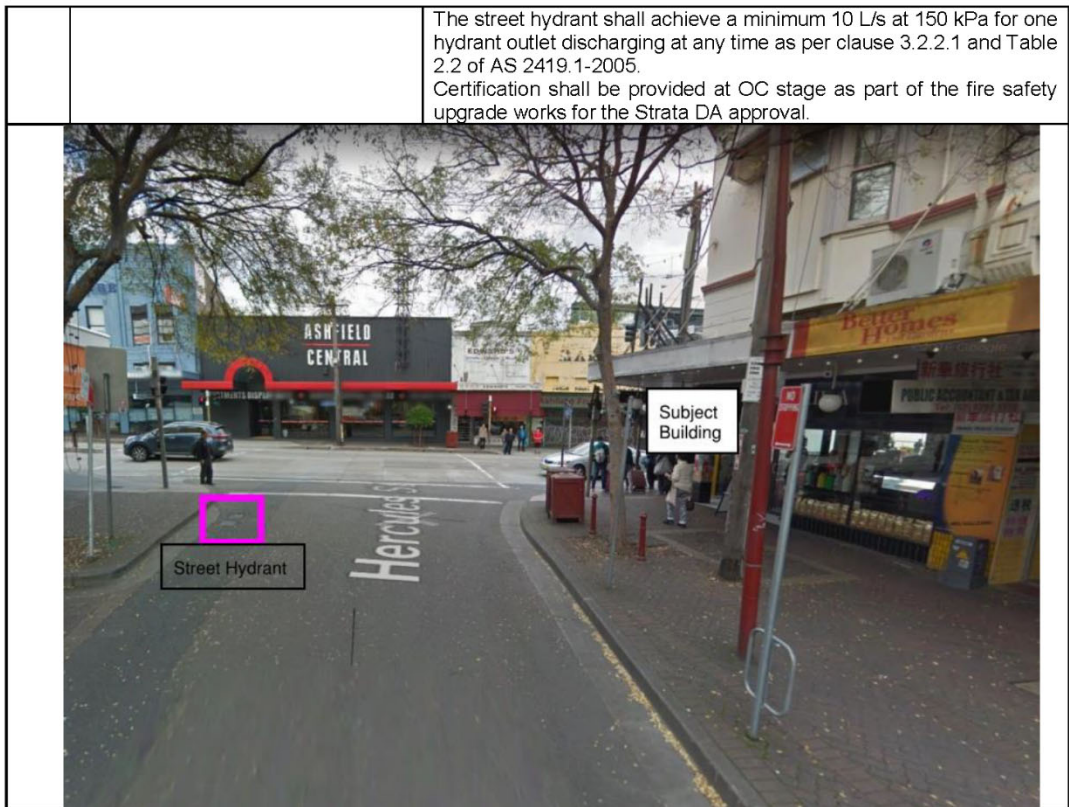
Item	BCA Deficiency	Comment / Upgrade Works
		
9.	<p>Not all tenancies are provided with portable fire extinguishers (BCA E1.6)</p>	<p>Portable fire extinguishers must be provided to all tenancies in accordance with clause E1.6 & Table E1.6 of the BCA and must be selected, located and distributed in accordance with Sections 1, 2, 3 and 4 of AS 2444-2001. Each tenancy will have at least one portable fire extinguisher in accordance with AS BCA E1.6 & 2444-2001.</p> <p>All existing extinguishers are to be inspected and certified to comply with AS 2444-2001.</p>
10.	<p>Optometrist: The stairway leading up to the first floor level is only 530mm wide and does not comply with riser and going dimensions (D1.6 & D2.13). Ceiling height is less than 2100mm (F3.1).</p>	<p>Council discretion is requested to allow the existing first floor and stairway to remain with the following upgrade recommendations:</p> <ol style="list-style-type: none"> 1. First floor level is to be used for non-habitable purposes only such as storage. Kitchen and office use and furniture/fixtures are to be removed from this level. 2030mm ceiling height is considered acceptable for storage use. 2. Storage room underneath the stair which serves as the exit stair for first floor office storey shall be fire rated with 60/60/60 construction and a fire door -/60/30 in accordance with D2.8. Any service penetrations through a fire-resistant element shall be fire sealed as per BCA C3.15. 3. The existing stair is considered similar to a stairway under AS 1657-2013. D2.18 allows a stairway to a non-habitable

Item	BCA Deficiency	Comment / Upgrade Works
		<p>room in a Class 2 SOU to comply with AS 1657. Council discretion is requested to allow the existing stairway to remain as it serves a non-habitable room accessed on an infrequent basis.</p> <ol style="list-style-type: none"> 4. Carpet is to be removed from the stair and non-slip nosing strips shall be provided in accordance with Table D2.14. Nosing strips shall have a 30% luminance contrast to the stair tread and comply with Clause 11.1(f)&(g) of AS 1428.1-2009. 5. New handrail is required to one side of the stair in accordance with D2.17 and shall be of a colour which provides 30% luminance contrast to the background to improve safety. 6. Balustrade to the stair opening on First Floor shall achieve 1m minimum height from the FFL. 7. Additional lighting is required over the stairway in accordance with F4.4 and AS/NZS 1680.0-2009. 8. Emergency lighting is required on the First Floor and over the stairway in accordance with AS/NZS 2293.1-2018.
		
11.	<p>Café/Burger Tenancy: Store room in the basement level does not achieve 2100mm ceiling height (F3.1). The stairway is less than 1000mm wide and does not comply with riser and going dimensions (D1.6 & D2.13). Basement is only provided with a single exit (D1.2).</p>	<p>Council discretion is requested to allow the existing basement store room and stairway to remain with the following upgrade recommendations:</p> <ol style="list-style-type: none"> 1. Basement level is to be used for non-habitable purposes only such as storage. Currently used for storage only. 2. The basement level has one exit and all areas are within 20m to the exit. The only non-compliance with D1.2 (c) is the basement floor area exceeds 50m² being 89m². It is requested Council discretion be applied to allow the existing single exit to remain as all points on the floor are within 20m to the exit and the area is occupied by staff only on an infrequent basis.

Item	BCA Deficiency	Comment / Upgrade Works
		<ol style="list-style-type: none"> 3. The existing stair is considered similar to a stairway under AS 1657-2013. D2.18 allows a stairway to a non-habitable room in a Class 2 SOU to comply with AS 1657. Council discretion is requested to allow the existing stairway to remain as it serves a non-habitable room accessed on an infrequent basis. 4. Non-slip nosing strips shall be provided in accordance with Table D2.14. Nosing strips shall have a 30% luminance contrast to the stair tread and comply with Clause 11.1(f)&(g) of AS 1428.1-2009. 5. Balustrade shall be provided to the open side of the stair in accordance with D2.16. 6. New handrail is required to one side of the stair in accordance with D2.17 and shall be of a colour which provides 30% luminance contrast to the background to improve safety. 7. Additional lighting is required over the stairway in accordance with F4.4 and AS/NZS 1680.0-2009. 8. Emergency lighting is required in the basement and over the stairway in accordance with AS 2293.1-2005.

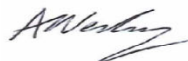


	Essential Fire Services	Comment / Upgrade Works
12.	Fire Hose Reels: As the fire compartment is over 500m ² fire hose reels are required to serve the building.	<p>The building (fire compartment) has a floor area greater than 500 m² (measured at 514m² including ground & first floor, mezzanine and basement under café) therefore it must be served by a fire hose reel system complying with AS2441-2005.</p> <p>The following upgrade is proposed:</p> <ol style="list-style-type: none"> 1. First Floor: A single fire hose reel shall be located within 4m of the exit stair in accordance with AS 2441-2005. 2. Council discretion is requested to allow provision of portable fire extinguishers for each ground floor tenancy in lieu of a hose reel per tenancy. Due to the small area and low population within each tenancy, portable fire extinguishers are deemed suitable for staff to conduct early response to any fire event. Each tenancy will have at least one portable fire extinguisher in accordance with AS BCA E1.6 & 2444-2001. See Point 9 in Table above.
	Category 1 Fire Safety Provisions	Comment / Upgrade Works
13.	EP1.3 – BCA2019 Clause E1.3 The building is served by an external fire hydrant in the north-west corner of the site.	<p>The building has a floor area greater than 500 m² (measured at 514m² including ground & first floor, mezzanine and basement under café) therefore it must be served by a fire hydrant system complying with AS2419.1-2005.</p> <p>Coverage can be provided in accordance with AS 2419.1-2005 from the street hydrant when a 60m hose is connected to the FRNSW pumping appliance.</p>



If you require any further information or explanation of the above, please do not hesitate to contact the undersigned.

Yours faithfully,



Alex Newberry (0466 811 720)
Senior Building Regulations Consultant
BCA Logic Pty Ltd

ANNEXURE A

See attached Fire Order dated 1 April 2010 which is applicable to 27 Hercules Street Ashfield, which is also known as 263 Liverpool Road.

**Ashfield Council****ORDER**Contact: M Kountourogianis
Tel: 9716 1800**ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979
ORDER UNDER TABLE TO SECTION 121B & 121D**Proprietor Of Company Title
C/- Conti Property Group
PO Box 443
CONCORD NSW 2137**DATE:** 1 April 2010**SUBJECT PREMISES:** 27 Hercules Street ASHFIELD 2131**ORDER NO.:** Environmental Planning & Assessment Act 1979, Section
121B, Orders No.6**CIRCUMSTANCES:**

The provision for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire, or prevent the spread of fire or ensure or promote the safety of persons in the event of fire in the building.

DETAILS OF THE ORDER:

Carry out repairs and alterations to the existing building(s) fabric and also install fire safety measures in the building in accordance with the attached scope of works.

COMPLIANCE DATE:

The items listed in the scope of works must be complied with within ninety (90) days from the date hereon.

NON-COMPLIANCE:

It is an offence to not comply with this Order. The maximum penalty for an offence is \$1,100,000 and to a further daily penalty not exceeding \$110,000. If this order is not complied with, Council may carry out the work and recover the cost of doing so from you.

APPEAL:

You may appeal to the Land and Environmental Court against the Order, or a specific part of the Order, within 28 days after the service of this Order upon you.

AUTHORITY FOR THE ORDER:

This Order has been issued under delegated authority from Council.

260 Liverpool Road Ashfield NSW 2131 DX 21221 Ashfield Tel (02) 9716 1800 info@ashfield.nsw.gov.au

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Note: The issue of this order does not imply that any necessary approvals or consents are in force for the existing use.

REASON FOR ORDER:

1. The premises constitutes a fire hazard because in regards to fire resistance it does not:
 - a) safeguard people from illness or injury due to a fire in a building;
 - b) safeguard occupants from illness or injury while evacuating a building during a fire,
 - c) facilitate the activities of emergency services personnel,
 - d) avoid the spread of fire between buildings.
2. The premises constitutes a fire hazard because in regards to access and egress it does not:
 - a) provide, as far as is reasonable, people with safe, equitable and dignified access to—(i) the building; and
(ii) the services and facilities within the building; and
 - b) safeguard occupants from illness or injury while evacuating in an emergency.
3. The premises constitutes a fire hazard because in regards to fire fighting equipment it does not:
 - a) safeguard occupants from illness or injury while evacuating during a fire; and
 - b) provide facilities for occupants and the *fire brigade* to undertake fire-fighting operations.
4. The premises constitutes a fire hazard because it does not:
 - a) Provide sufficient fire protection in relation to the prevention of fire spreading between the sole occupancy units,
 - b) Provide adequate safeguards so that the occupants can evacuate the building safely in the event of a fire.

SCOPE OF WORKS

Works to be performed

1. Provide a self closing -/120/30 fire rated door (in accordance with DA Approval No 2005.286) with a single handed action lock to the new door opening created to the northern boundary wall between No 25 and No 27 Hercules Street, Ashfield (to the first floor level) in accordance with Clauses C3.5 & C3.7 of the Building Code of Australia 2009.
2. Raise the existing non compliant balustrade height constructed to the first floor level (adjacent the new internal stairs and Proeye premises) located in No 25 Hercules Street, Ashfield to 1000mm in accordance with the provisions of DA No 2005.286 and Clause D2.16 of the Building Code of Australia 2009.
3. Ensure that the enclosed off area located directly beneath the newly constructed staircase (in the bakery) leading up from No 25 Hercules Street, Ashfield into No 27 Hercules Street, Ashfield is fire rated in accordance with the provisions of DA Approval No 2005.286 and the provisions of Clause D2.8 of the Building Code of Australia 2009.
4. Raise the existing ceiling height as built over the newly constructed staircase leading up from No 25 Hercules Street, Ashfield into No 27 Hercules Street, Ashfield so that a minimum head clearance of 2.0m is achieved throughout in accordance with the provisions of DA No 2005.286 and clause D1.6 of the Building Code of Australia 2009.

5. Re swing the existing inwards opening exit door located to the ground floor level at No 25 Hercules Street, Ashfield acting as a required secondary exit from No 27 Hercules Street, Ashfield, so that it swings in the direction of egress in accordance with the provisions of Condition No E21 of DA Approval No 2005.286 and Clause D2.20 of the Building Code of Australia 2009.
6. Ensure that the above mentioned exit door to the ground floor level is also provided with a readily openable (without a key from the inside) single handed action lock to the door located within 900mm-1200mm from the floor surface in accordance with the provisions of Clause D2.21 of the Building Code of Australia 2009.
7. Ensure that the metal electrical meter cabinet installed within the path of travel to an exit (which is located on the first floor at No 27 Hercules Street, Ashfield) is provided with suitable seals that will prevent any smoke spreading from the cabinet enclosure into the building in accordance with the provisions of Clause D2.7(d) of the Building Code of Australia 2009.
8. Ensure that the entire building (including all the ground floor residences) at No 27 Hercules Street, Ashfield are provided with portable fire extinguishers in accordance with the provisions of DA No 2005.286 and also Clause E1.6 of the Building Code of Australia 2009.
9. Re swing the existing inwards opening door (in the path of travel to an exit) located on the first floor of No 27 Hercules Street, Ashfield, so that it swings in the direction of egress in accordance with the provisions of Condition No E21 of DA Approval No 2005.286 and Clause D2.20 of the Building Code of Australia 2009.
10. Ensure that the above mentioned door in the path of travel is also provided with a readily openable (without a key from the inside) single handed action lock to the door located within 900mm-1200mm from the floor surface in accordance with the provisions of Clause D2.21 of the Building Code of Australia 2009.
11. Replace the existing double leaf exit doors (also with non compliant locks) located on the ground floor to No 27 Hercules Street, Ashfield, and opening onto Liverpool Road with a exit door(s) that complies with the provisions of Clauses D1.6, D2.20 & D2.21 of the Building Code of Australia 2009.
12. At the completion of works, submit a final fire safety certificate to Council that states that each of the fire safety measures as specified in the fire safety schedule:
 - a) has been assessed by a properly qualified person; and
 - b) was found, when it was assessed, to be capable of performing to a standard no less than that required by the attached fire safety schedule.
13. Ensure that the final fire safety certificate as required above is displayed in the foyer entry area on the ground floor level to Hercules Street, Ashfield in accordance with the provisions of Reg 177 of the Environmental Planning and Assessment Regulation 2000.

MEASURES TO BE INCLUDED IN ACCOMPANYING FIRE SAFETY SCHEDULE

Measures Currently Implemented in building

Fire Safety Measure (FSM)	Design and/or Installation Standard	Maintenance Standard
Emergency Lighting	Clause E4.4 AS/NZ 2293, Part 1-1998	AS/NZ 2293, Part 2-1995
Exit Signs	Clause E4.4, AS/NZ 2293, Part 1-1998	AS/NZ 2293, Part 2-1995
Portable Fire Extinguisher	Clause E1.6	AS 1851, Part 1-1995

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Measures Required to be Implemented

Fire Safety Measure (FSM)	Design and/or Installation Standard	Maintenance Standard
Emergency Lighting	Clause E4.4 AS/NZ 2293, Part 1-1998	AS/NZ 2293, Part 2-1995
Exit Signs	Clause E4.4, AS/NZ 2293, Part 1-1998	AS/NZ 2293, Part 2-1995
Fire Doors	Part C3, AS 1905.1-1997	AS 1851, Part 7-1984
Lightweight Construction	Part A2 Clause C1.8 & AS 1530 Part 4-1990	To be physically inspected for damage
Portable Fire Extinguisher	Clause E1.6	AS 1851, Part 1-1995
Path of Travel and Secondary Exit located in Common wall between No 25 & 27 Hercules Street, Ashfield	Clause D1.4 & D1.6	LGA & To be physically inspected to ensure not to be removed or closed off.

YOU ARE STRONGLY ADVISED TO PROVIDE A COPY OF THIS ORDER TO ANY PERSONS INTENDING TO CARRY OUT ANY WORKS IN THIS REGARD


 Michael Kountourougianis
 Construction Assessment Team Leader

- CC: J.V Selection Holdings Pty Ltd
1 Church Street
BURWOOD NSW 2134
- CC: Mr Yan Zhang
2/27 Hercules Street
ASHFIELD NSW 2131
- CC: Mr V & Mrs L Macri
18 Elwood Crescent
BARDWELL PARK NSW 2207
- CC: Mr G Sama
Shop 4/263 Liverpool Road
ASHFIELD NSW 2131
- CC: Noel T king Pty Ltd
9 Budge Close
GLENMORE PARK NSW 2745
- CC: Mr L & Estate of late J Dinic
32 Brae Street
BRONTEE NSW 2024
- CC: Proeye 2020 Pty Limited
25 Hercules Street
ASHFIELD NSW 2131

Attachment D – Draft conditions in the circumstance the application is approved

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
-	BCA Report	16 May 2019	BCA Logic

As amended by the conditions of consent.

FEES

2. 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

3. 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.

4. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**5. 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**6. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

DURING DEMOLITION AND CONSTRUCTION**7. 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.

PRIOR TO OCCUPATION CERTIFICATE

8. 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.

PRIOR TO SUBDIVISION CERTIFICATE

9. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

10. Strata Subdivision Plan

Prior to the release of a Strata Subdivision Plan, the Certifying Authority must be provided with plans indicating that the strata subdivision of the development has been carried out in accordance with approved plans and demonstrating that:

- a. All toilets and stairs to Level 1 are to be included in common property; and
- b. The basement level and mezzanine level are to be used for non-habitable purposes.

11. Strata Subdivision Plan to Show Easements and Right of Ways

Prior to the release of a Strata Subdivision Plan, the Certifying Authority must be provided with evidence that all instruments under Section 88B of the *Conveyancing Act 1919* used to create easements or right-of-ways are shown.

12. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

ADVISORY NOTES**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.

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.

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.

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.

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
Department of Fair Trading	13 32 20 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
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au

NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro 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
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² 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.

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.

REASONS FOR REFUSAL

1. Inadequate information has been submitted with the application to determine the impacts upon the heritage item and as such the development is inconsistent with Clause 5.10(5) of *Ashfield Local Environmental Plan 2013* and Section 2, Chapter E1, Part 2 and 7 of the Comprehensive Inner West Development Control Plan 2016.
2. The information submitted with the application details no waste storage area is provided on site and will result in adverse amenity impacts on the surrounds and as such does not comply with Section 2, Chapter 3, Part 3 of the Comprehensive Inner West Development Control Plan 2016.
3. Inadequate information has been submitted with the application to demonstrate the proposed strata subdivision will have waste management facilities and be adequately upgraded and as such the development is inconsistent with Section 2, Chapter A, Part 9 of the Comprehensive Inner West Development Control Plan 2016.
4. The application has failed to adequately demonstrate that the site is suitable for the development in relation to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
5. The application as submitted has not provided adequate information in order to undertake a full and proper assessment of the application in accordance with the Environmental Planning & Assessment Act 1979.