




 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2021/0491			
Address	8/28 Gower Street SUMMER HILL NSW 2130			
Proposal	Enclosure of an existing balcony by the installation of windows			
Date of Lodgement	16 June 2021			
Applicant	Mr Warwick V Sinclair			
Owner	Owners of Strata Plan 89767			
Number of Submissions	N/A			
Value of works	\$22,000.00			
Reason for determination at Planning Panel	Exceeding the maximum allowed FSR by more than 10%			
Main Issues	Impacts on streetscape, bulk and scale, loss of amenity			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Plans of proposed development			
Attachment C	Conditions of consent (if approved)			
Attachment D	Statement of Heritage Significance			
				
LOCALITY MAP				
Subject Site		Objectors Nil		↑ N
Notified Area		Supporters Nil		

1. Executive Summary

This report is an assessment of the application submitted to Council to carry out the enclosure of a balcony to residential unit 8 of 28 Gower Street SUMMER HILL NSW 2130.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Impact on the streetscape
- Bulk and excessive floor space.
- Loss of amenity

The non-compliances are not acceptable and therefore the application is recommended for refusal.

2. Proposal

The current application seeks consent for alterations and additions to a residential unit in a 5 storey residential flat building.

The proposal seeks consent for the following works:

- Enclosure of a balcony by the installation of windows to unit 8 of Block A

3. Site Description

The subject site is located on the western side of Gower Street, between Liverpool Road and Sunning Place. The site consists of one allotment and is irregular shaped with a total area of 11,871sqm and is legally described as SP89767 - 28 Gower Street SUMMER HILL NSW

The site has a primary frontage to Gower Street of 77.345 metres and a secondary frontage of approximate 137.125 metres to Liverpool Road. The site is not affected by easements.

The site supports a multi storey residential flat building made up of brick walls and metal roof. The adjoining properties support smaller residential flat buildings and dwelling houses, constructed at a previous time to the subject development on the site. Located immediately to the east of the subject site at 35 Gower Street is a three storey boarding house building.

The subject site is listed as a heritage item (item 190) under the Ashfield Local Environmental Plan 2013 (*ALEP 2013*) although the subject building was approved in 2011.

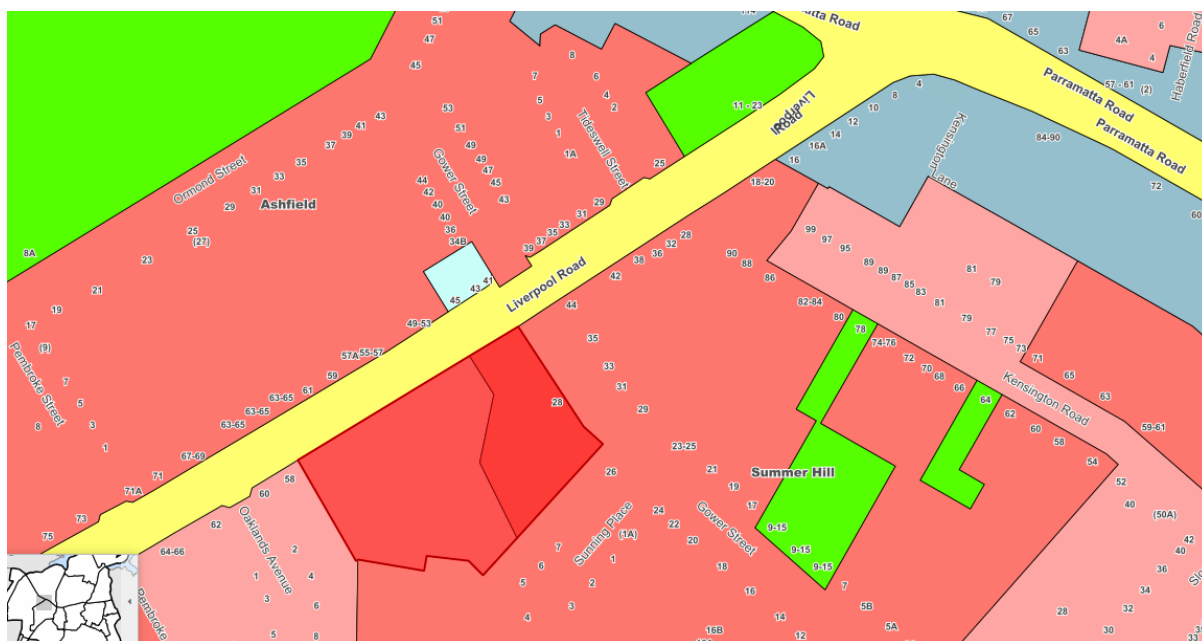


Figure 1 – Zoning Map, subject site identified by red box

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
DA 10.2011.066.1	78-unit residential development	Approved 19/10/2011

Surrounding properties

Not applicable

4(b) Application history

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

Date	Discussion / Letter / Additional Information
10/8/2021	Council Officers issued a request for additional information, addressing the following: Submission of a heritage impact statement as the property is a heritage item Submission of a Clause 4.6 exception to the maximum allowed floor space ratio
28/9/2021	Additional information in response to Council’s letter was submitted on the 13/8/2021.

This assessment based on the additional information submitted by the applicant on the 13/8/2021.

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 (Infrastructure) 2007*;
- *SEPP 65 – Design Quality of Residential Apartment Development*

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. CIWCDCP 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 was used as a hospital for many years and subsequently developed to 78 residential flats built approximately 10 years ago. There has not been any subsequent uses which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

(i) [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.

- It is considered that the efficiency and operation of the classified road will not be adversely affected by the development

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 20,000 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.

The proposed development is an alteration to an existing dwelling within a residential flat

building. It is considered that the existing dwelling will not be any further impacted by the road noise that currently exists. As a result, it is considered there will be no further impact of road noise or vibration.

(ii) SEPP 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 9 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. State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (2002 EPI 530) Schedule 1 Design quality principles:

Principle 1: Context and neighbourhood character. Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area’s existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

- Comment: There are balconies to all the residential units in the building facing Gower Street and enclosing one or more balconies will have a negative impact on the streetscape and of the character of the building. The proposed development will negatively affect the context and neighbourhood character. An adjacent boarding house development to the east at 35 Gower Street which was built several years ago that also has unenclosed balconies facing Gower Street.

Principle 2: Built form and scale. Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

- Comment: Although the proposed windows are clear aluminium windows that will match the existing windows in the building the enclosure of the balcony will have a negative impact on the streetscape and is inconsistent with the form and style of the residential flat building.

Principle 3: Density. Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

- Comment: The open balcony provides private open space directly off a living room. The subject residential unit contains two bedrooms and is located on level one of the five storey residential flat building (Block A) which is located on the corner of Liverpool Road and Gower Street Summer Hill. The owner's reasons for the enclosure of the balcony is due to noise pollution from motor vehicles and ambulances in particular. The balcony faces Gower Street and is setback 8.5m from the boundary of Liverpool Road. The development will increase the size of the living room by removing the private open space afforded by the balcony. There will be a reduction in the level of amenity for residents. The maximum allowed floor space ratio for the R3 and R2 zone is 0.7:1. The proposed FSR is 0.7715:1. A Clause 4.6 Exception to the FSR development standard has been submitted and as discussed in this report, as discussed in this report, the Clause 4.6 is not supported.

Principle 4: Sustainability. Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

- Comment: The owner reasons for the development is to block out traffic noise. The proposal will result in the length of the living room increased to 10m. Natural light and ventilation for the existing living room and bedrooms will be borrowed from the enclosed balcony which is not an acceptable method of ventilating a room under the Apartment Design Guide (ADG). See ADG compliance table below.

Principle 5: Landscape. Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

- Comment: Landscaping is provided on the site and will remain unchanged.

Principle 6: Amenity. Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

- Comment: There are 78 residential units in the building complex with many relying on balconies for private open space. Enclosing the balcony will remove the private open space off the living area and have a detrimental impact on the streetscape and amenity of the residential unit. Enclosure of the balcony will reduce natural ventilation

to bedrooms in the unit. See ADG compliance table below

Principle 7: Safety. Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

- Comment: The balcony is on the level 1 of the building (Block A) as such security is maintained. The balcony allows for passive surveillance of public and private spaces.

Principle 8: Housing diversity and social interaction. Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

- Comment: There are 78 units ranging from 1,2 and 3 bedrooms in the building complex many with balconies. The subject unit contains two bedrooms and there is no change proposed to the number of bedrooms. The current application is the first seeking approval to enclose a balcony in the building in Gower Street. See ADG compliance table below.

Principle 9: Aesthetics. Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

- Comment: The applicant states that new windows will match the existing. The building faces Gower Street with balconies facing the street offering the only private open space for the residents of those units. The proposed development will be detrimental to the visual appearance of the building given that it will remove a desirable element being the open balcony. The balcony add to the visual appeal of the building as such its removal is not supported. See ADG compliance table below.

Apartment Design Guide (ADG) In addition to the design quality principles, SEPP 65 requires the proposal to be assessed against the Apartment Design Guide (ADG). The ADG contains objectives, design criteria and design guidelines for residential apartment development.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as follows:

Design element	Design criteria	Proposed	Compliance
Ceiling height	Minimum Ceiling Height Habitable Rooms 2.7 metres	2.71m	Yes
Apartment layout requirements	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Daylight and air to the bedrooms and living area is to be borrowed from the enclosed balcony.	No
Habitable room depths	Habitable room depths are limited to a maximum of 2.5 x 2.71 (ceiling height) = 6.775sqm	10m proposed for combined living/dining room and kitchen	No
Room sizes	Living rooms or combined living/dining rooms have a minimum width of 4 metres for 2 and 3 bedroom apartments.	Existing 4.1m. No change	N/A
Private Open Space and Balconies	2 Bedroom apartments 10sqm minimum area 2.0m minimum width	Enclose balcony	No

As indicated above, the proposal will result in non-compliances with the ADG and this is not considered to satisfactory in terms of residential design.

5(a)(i) Ashfield Local Environment Plan 2013 (ALEP 2013)

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2013 (ALEP 2013)*:

- 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 4.4 - 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

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

The site is zoned both R2 Low Density Residential and R3 Medium Density Residential under *ALEP 2013*. This proposed development is located in the area of the site zoned R3. The development is an alteration to an existing residential flat building. *ALEP 2013* defines a residential flat building as:

Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Residential flat buildings are innominate in the R3 Land Use Table, as a result are permitted with consent, by virtue of not been specified in the land use tables.

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

Standard	Proposal	non compliance	Complies
Height of Building Maximum permissible: 8.5m and 12.5m	No Change	N/A	N/A
Floor Space Ratio Maximum permissible: 0.7:1=8,309.7sqm	0.7715:1 =9158.17sqm	10.2%(848.47sqm)	No. A Clause 4.6 Exception has been submitted and is discussed below.

Clause 4.6 – Exceptions to Development Standards

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

- Clause 4.4 – Floor space ratio

The applicant seeks a variation to the FSR development standard under Clause 4.4 of the *ALEP 2013* by 10.2% (848.47sqm).

The floor space ratio was assessed from information submitted with the development application for the development of 78 residential units in 2011 and the additional floor area of the enclosed balcony added.

Clause 4.6 allows Council 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 and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of *ALEP 2013*.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of *ALEP 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- Excessive noise from motor vehicles and aircraft
- The objectives of the development standard are achieved.
- The underlying object of the standard is not relevant as the floor area of the balcony exists and no additional floor area is created
- The proposal causes minimal impact
- The floor space ratio has already been increased from 0.7:1 to 0.77:1 hence the development standard has been abandoned by council
- The purpose of the balcony enclosure to suppress noise would be defeated if compliance was required

- No impact on the heritage Item
- Achieves the zone objective
- The proposal achieves a quieter living environment
- No amenity impacts
- Minimal visual impact
- Consistent with development controls
- No environmental impact

The applicant's written rationale does not adequately demonstrate why compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and why there are sufficient environmental planning grounds to justify contravening the development standard. The submission states there is no additional floor area as the balcony exists. The enclosing of the balcony adds to the gross floor area and creates a habitable room.

Zone Objectives

It is considered the development is consistent with the zone objectives of the R3 Medium Density Residential Zone, in accordance with Clause 4.6(4)(a)(ii) of the *ALEP 2013*, which read:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Floor Space Ratio Objectives

It is considered the development is inconsistent with the objectives of the Clause 4.4 – Floor Space Ratio, *ALEP 2013*, in accordance with Clause 4.6(4)(a)(ii) of the *ALEP 2013*, which read:

- *to establish standards for development density and intensity of land use,*
- *to provide consistency in the bulk and scale of new development with existing development,*
- *to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- *to protect the use or enjoyment of adjoining properties and the public domain,*
- *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 is considered to be inconsistent with the development standard as the density and bulk is inconsistent with the existing character of development in the area. There is more than minimal adverse environmental impacts to the streetscape and character of the building and area through the enclosure of the balcony, adversely affecting the public domain.

Whilst the concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel, the Clause 4.6 Exception is not supported.

The proposal thereby does not accord with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *ALEP 2013*. For the reasons outlined above, there are insufficient planning grounds to justify the departure from the FSR development standard and it is considered the Clause 4.6 Exception is not supported.

Clause 5.10 – Heritage Conservation

The current proposal has been reviewed by Councils Heritage Advisor against the provision of Clause 5.10 of the *ALEP 2013* and the proposal is work on a 10 year old building and has no adverse impact on the heritage buildings on the site.

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 amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered unacceptable 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 Comprehensive Inner West Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.
Chapter F Part 5 Residential flat buildings

CIWDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	No
15 - Stormwater Management	No change
E1 – Heritage items and Conservation Areas (excluding Haberfield)	Compliance
1 – General Controls	Yes
2 – Heritage Items	Yes
F – Development Category Guidelines	
Part 5 Residential flat buildings Performance criteria	
PC1 Character <ul style="list-style-type: none"> • understands and appropriately responds to the defining characteristics of the site, its streetscape, community, and neighbourhood locality • has an architectural style that is suitable for the site and has a high standard of architectural composition 	No. The proposed development is not supported by a streetscape assessment. The enclosure of the balcony is not an architectural style that is

<ul style="list-style-type: none"> improves the streetscape and achieves a “green” garden setting for residential flat buildings 	<p>suitable for the site as it has a negative impact on the streetscape character</p>
<p>PC2 Streetscape Development establishes a streetscape that:</p> <ul style="list-style-type: none"> respects existing character, in particular defining built form elements, setbacks and building spacing, heritage and vegetation is well designed and responds to individual site characteristics activates the street softens the visual impact of buildings when viewed from the public domain 	<p>No. Given that the existing building has open balconies on each level facing Gower Street the proposal to enclose a balcony is out of character with the existing facade and will have a negative visual impact when viewed from the public domain</p>
<p>PC4 FSR</p> <ul style="list-style-type: none"> FSR is appropriate to its context and does not result in overbearing, significant adverse amenity impacts or out of character development 	<p>No. The proposal will add to the Floor Space Ratio which exceeds the maximum allowed and results in an out of character development</p>
<p>PC6 Building design and siting:</p> <ul style="list-style-type: none"> ensures building setbacks and building height are appropriate for a site and the streetscape 	<p>No. The proposed development will result in a new front wall of the building being closer to Gower Street creating a bulkier design</p>

The following provides discussion of the relevant issues:

Part 5 Chapter F of CIWDPC provides that for residential flat buildings the building style and form must be sympathetic with streetscape and the FSR must be appropriate to the context.

The proposed enclosure of the balcony is not sympathetic with the streetscape or the established character of development in the street. The FSR is excessive and results in an out of character development.

It is considered the application does not comply with the parts as indicated and ultimately does not achieves the aims and objectives of the Comprehensive Inner West Development Control Plan 2016.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

Streetscape and established character

As discussed above, the proposal is considered to have a detrimental impact on the existing streetscape. The proposal is not in-keeping with the desired future character and has failed to meet the controls and objectives of the *ALEP 2013* and *CIWDCP 2016*. The proposal is therefore recommended for refusal.

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

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

5(g) Any submissions

The application was notified in accordance with Council's Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

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 and is recommended for refusal.

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.11/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal is inconsistent 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 would result in significant impacts on the amenity of the adjoining premises/properties and the streetscape 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

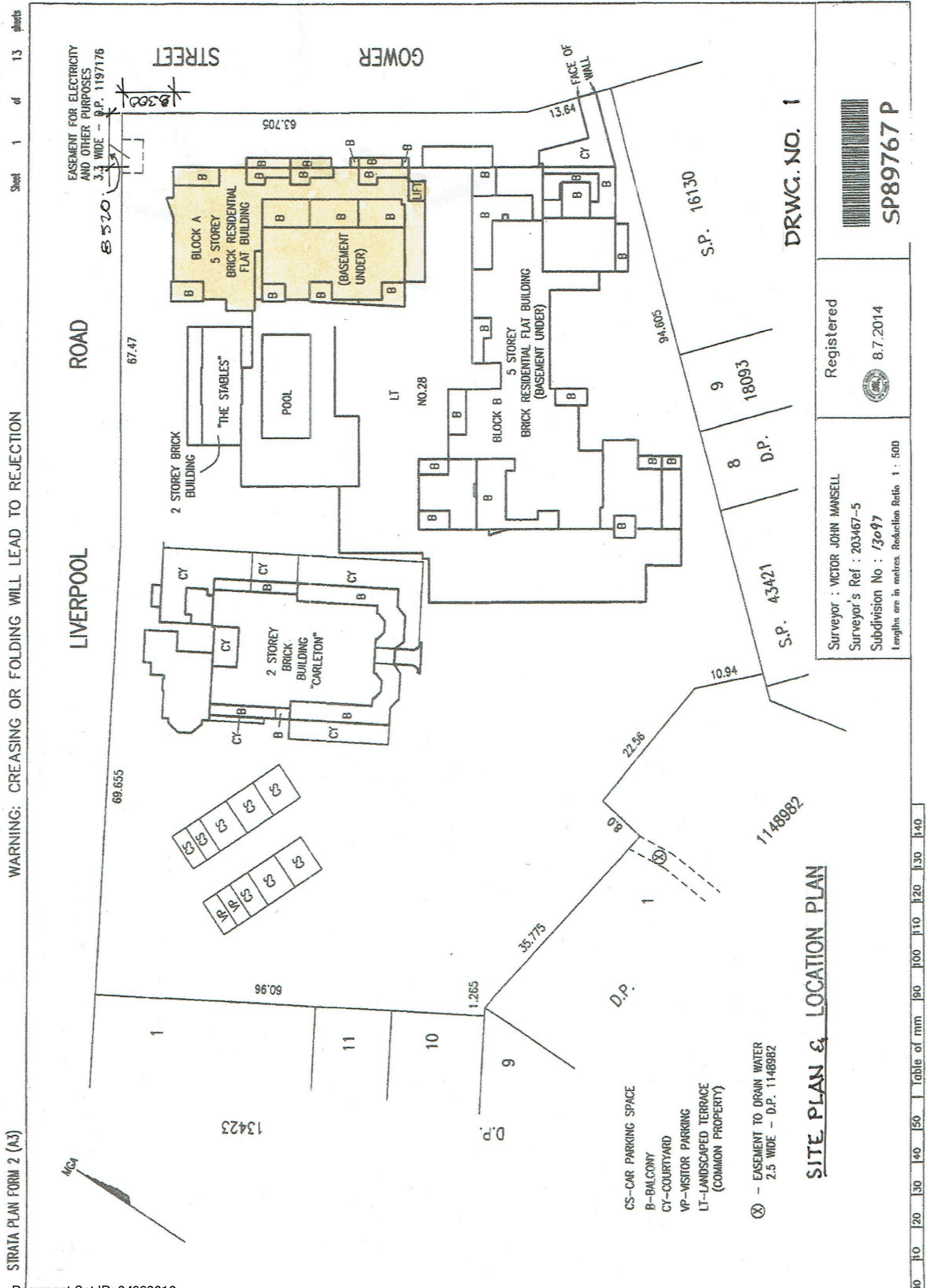
- A. The applicant has made a written request pursuant to Clause 4.6 of the *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are insufficient environmental grounds to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standard 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*, refuse Development Application No. DA/2021/0491 for to carry out enclosure of a balcony to unit 8 of Block A at 28 Gower Street SUMMER HILL NSW 2130 for the reasons outlined in attachment A.

Attachment A – Reasons for refusal

1. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development (2002 EPI 530) Schedule 1 –
 - a. Principle 1: Context and neighbourhood character: The proposal is not consistent with the character of the building and the established streetscape.
 - b. Principle 2: Built form and scale: The proposal creates excessive bulk to the building.
 - c. Principle 6: Amenity: The proposal does not contribute to positive living environments and resident well being including the amenity as natural light and ventilation to the bedrooms and living room is proposed to be borrowed from the enclosed balcony.
 - d. Principle 9: Aesthetics: The proposal does not respond to the existing local context, particularly desirable elements such as open balconies of the streetscape.
 - e. SEPP No. 65 adopts the Apartment Design Guide (ADG). The proposal does not comply with objective 4D-1 of ADG as natural light and ventilation to the bedrooms and living room will be borrowed from the enclosed balcony.
2. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the aims of Clause 1.2(2)(a) of Ashfield Local Environmental Plan 2013. The proposed enclosure of the balcony would have a detrimental impact on the built environment and as such is contrary to promote the orderly and economic development of Ashfield in a manner that is consistent with the need to protect the environment.
3. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 4.4(2) of Ashfield Local Environmental Plan 2013 as the proposed floor space ratio is in excess of the maximum allowed floor space ratio of 0.7:1.
4. The proposal does not comply with Clause 4.6 **(4) of Ashfield Local Environmental Plan 2013** as:
 - (i) the applicant's written request has not adequately addressed the matters required to be demonstrated by subclause (3) namely that the development standard is not unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard.

- (ii) the proposed development will not be in the public interest because it is inconsistent with the objectives of the particular standard in which the development is proposed to be carried out.
5. In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Comprehensive Inner West Development Control Plan 2016 Chapter F Part 5 Performance criteria (PC) 1 and 2 as the character of the building and the streetscape will be adversely affected. It does not comply with PC4 as the proposed FSR is not appropriate to its context.
 6. In accordance with Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development would have adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality.
 7. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that the proposal would not be in the public interest.

Attachment B – Plans of proposed development



STRATA PLAN FORM 2 (A3) Sheet 1 of 13 sheets

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Sheet 5 of 13 sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

rFORM 2 (A3)



B-BALCONY
CP-COMMON PROPERTY

AREAS ARE APPROXIMATE AND INCLUDE
AREA OF BALCONIES.
BALCONIES RESTRICTED TO A HEIGHT
OF 2.5 ABOVE THE UPPER-TILED FLOOR
SURFACE LEVEL OF EACH BALCONY,
EXCEPT WHERE COVERED WITHIN THIS LIMIT.

LEVEL 2

BLOCK A DRWG. NO. 2

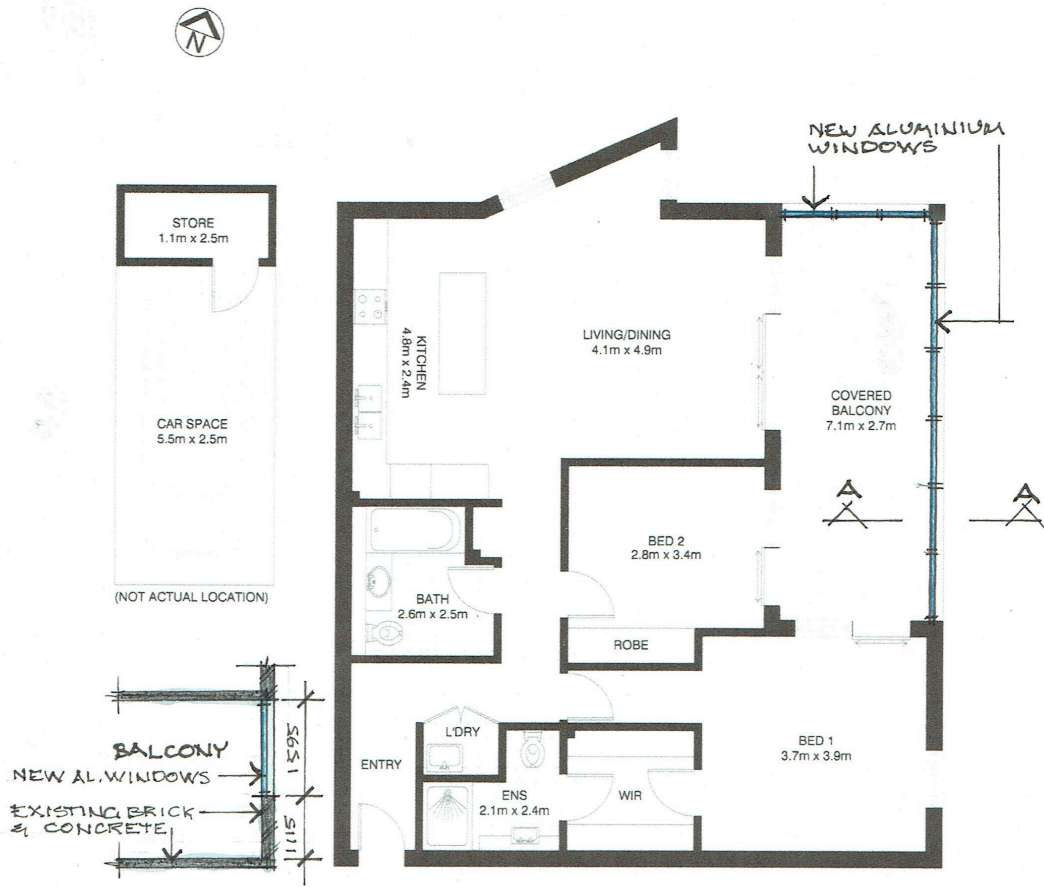
LEVEL 1

BLOCK A

Surveyor : VICTOR JOHN MANSELL
Surveyor's Ref : 203467-5
Subdivision No : 13097
Lengths are in metres. Reduction Ratio 1 : 200

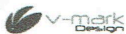
Registered
8.7.2014
SP89767





SECTION A-A FLOOR PLAN 1:100

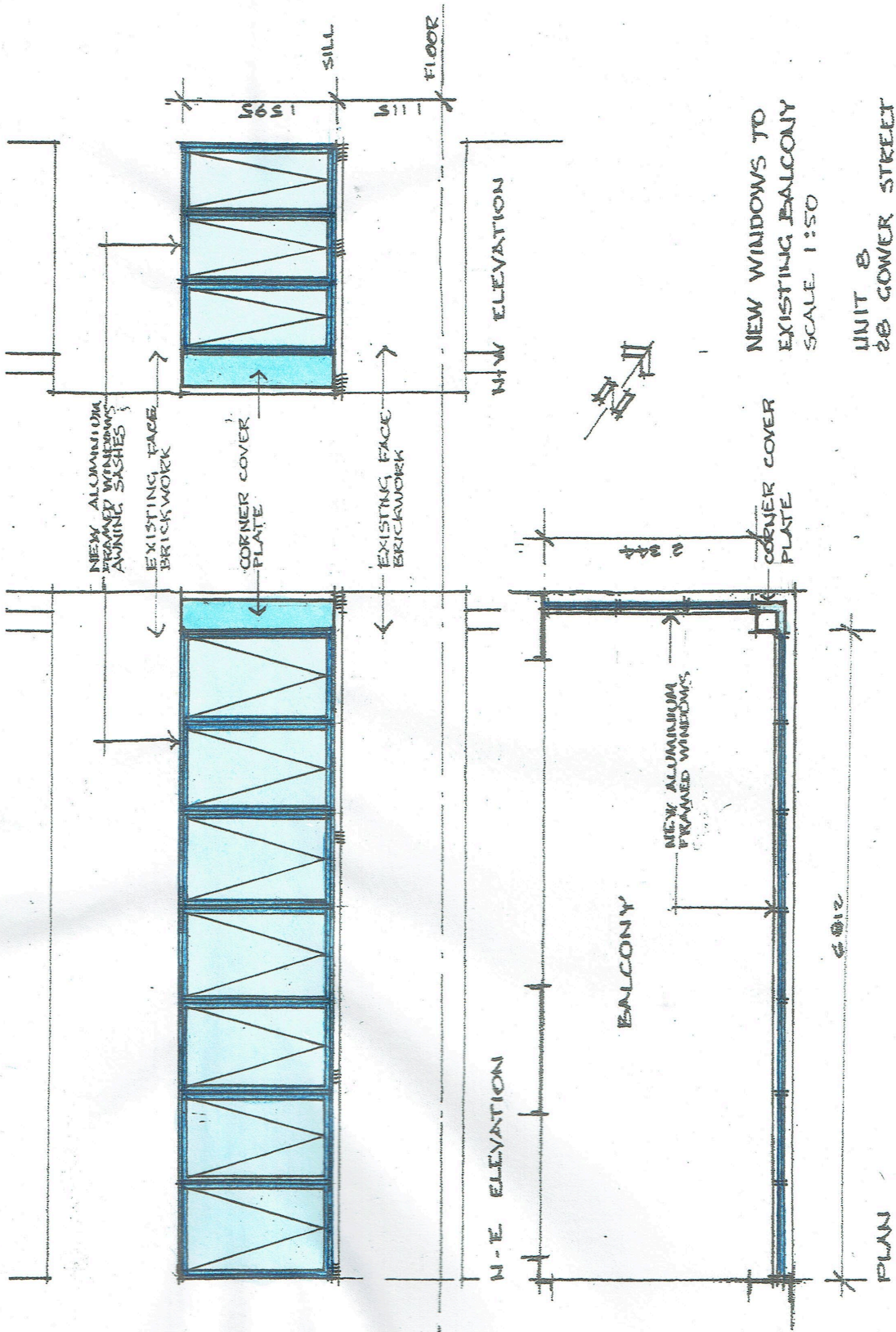
SUMMER HILL
 8/28 GOWER STREET
 *INTERNAL FLOOR AREA APPROX 111m²
 INCLUDING COVERED BALCONY



*PLANS SHOWN ONLY INDICATIVE OF LAYOUT. DIMENSIONS ARE APPROXIMATE.
 Floor plan supplied by V-Mark Design Pty Ltd. This floor plan is provided for indicative purposes only.
 Measurements are approximate and not to scale. The vendor, agency and supplier will accept no liability for its accuracy. Interested parties are advised to make their own independent enquiries.

DRWG. NO. 3

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NEW WINDOWS TO
EXISTING BALCONY
SCALE 1:50

UNIT B
28 GOWER STREET
SUMMER HILL NSW
DRWG. NO. 4

Document Set ID: 34993016
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Attachment C- Conditions of consent (if 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
DRWG No.1	Sirte Plan and Location Plan	8.7.2014	Victor John Mansell
DRWG No.2	Block A	8.7.2014	Victor John Mansell
DRWG No.3	Section A-A, Floor Plan	15/6/2021	V Mark design
DRWG No.4	Plan and Elevations	15/6/2021	not stated

As amended by the conditions of consent.

PRIOR TO CONSTRUCTION CERTIFICATE

2. 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

During Construction

3 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.
- b. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- c. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- d. 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

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.

ADVISORY NOTES

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.

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.

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

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.

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.

Attachment D – Statement of Heritage Significance

Heritage Impact Statement

The heritage building has been described as follows:-

“A gargantuan Victorian Mansion built of brick with stucco, hipped roof of slate and tall stucco chimneys with tall terra cotta pots. Despite many unsympathetic modifications, numerous notable features still remain.

The house features two two storey faceted window bays which flank the main entry on the ground floor on either side. Originally the house featured a majestic two storey wrap-around verandah. Of what little remains of the verandahs and balconies on either side of the house feature decorative cast iron columns with pedestalls, cast iron fretwork frieze, brackets and balustrading. The house also features decorative bracketed eaves. A room at the back of the house near the Liverpool Road frontage features a faceted and parapetted window bay with double-hung windows. The mansion stands on a very large block of land several acres in extent, prominently positioned on the corner of Liverpool road and Gower street. It's interesting to note that the mansion was built with it's frontage facing away from Liverpool Road - a more uncommon design choice at the time.

As it stands today, 'Carleton' still serves as an excellent representation of a first-class mansion built to the designs of a prominent Sydney architect and the high desirability of the surrounding suburbs of Ashfield and Summer Hill by Sydney's affluent during the late 1800's and early 1900's, owing to the large allotments of land and proximity to the railway line. The mansion is also a rare survivor, as almost all of the large, grand homes that once populated the surrounding streets have since been long demolished. It's arguable that it's use for many decades as a hospital more than likely saved this historic building from demolition, as it's large grounds and location would have made it a prime target for subdivision and re-development.”

Although now compromised with numerous unsympathetic changes that occurred during it's use as a hospital, the bulk of the mansion has survived and many attractive features still exist and could be restored. The developers who have purchased the property aim to replicate and restore it's once most prominent feature - it's two storey wrap-around verandah.”

In conclusion the heritage building will not be adversely impacted by the enclosure of the balcony.

Attachment E - Clause 4.6 Exception to the Development Standard

CLAUSE 4.6 EXCEPTION TO ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013 DEVELOPMENT STANDARD

**FOR BUILDING A, UNIT 8, 28 GOWER STREET, SUMMER HILL NSW 2130.
ENCLOSURE OF EXISTING BALCONY WITH WINDOWS.**

CLAUSE 4.4 FLOOR SPACE RATIO

1. Introduction

The balcony is located on the south corner of the Liverpool Rd., Gower St. intersection and is on Level 1 of building A, one level above ground level. It is set back 8.3m from Liverpool Rd. and 8.5m from Gower St.

The intersection is controlled by traffic lights.

Whilst the siting is most appropriate for solar control, it is unfortunately exposed to extreme noises inclusive of but not limited to: -

- Ambulances from the new 'superstation' at Parramatta Rd. Haberfield frequently use Liverpool Rd. as one of their main exit routes. Sirens are used as the vehicles approach the Gower St. intersection and the pitch is regularly elevated to 'alarm' level to ensure their safe passage.
- Sirens of police and fire vehicles are also frequently used at the intersection
- Heavy vehicles including numerous B-doubles, semi-trailers, buses etc.
- Speeding, noisy cars motor cycles etc.
- Vehicles accelerating up-hill after being stopped at the traffic lights.
- Departing aircraft from Sydney airport, a regular flight path for which is directly overhead.

An open balcony in such a location could be considered a 'design fault'.

An enclosure would have involved extra cost and the need to apply for an exception to the FSR both of which a developer may, for reason of cost, time etc., decide to leave for a future application.

The brick balustrade does however indicate that consideration may have been given to the future enclosure as the design makes the installation of windows a relatively simple task requiring no changes to the existing building.

2. Zone, Lot 8 SP89767

Ashfield Local Environmental Plan 2013

R2 Low Density Residential

1. Objectives of zone

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Zone R3 Medium Density Residential**1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Draft Inner West Local Environmental Plan 2020

Council currently has three principal LEPs that apply to development within the area. The draft Inner West Local Environmental Plan 2020 (draft Inner West LEP 2020) will consolidate these LEPs into one document. Having a unified LEP for planning and development in the Inner West will:

- Simplify the planning process
- Provide consistency by aligning land uses and controls
- Provide a framework for a more comprehensive LEP and Development Control Plan (DCP) to be developed in the near future

The exhibition period for the draft Inner West LEP 2020 has now closed. The draft has been approved by Council and was submitted to the State Government (Department of Planning, Industry and Environment (DPIE)) for finalisation at the end of June 2020. The draft is currently with DPIE for finalisation.

Zone R2 Low Density Residential**1 Objectives of zone**

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

Zone R3 Medium Density Residential**1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide housing that is compatible with the desired future character of the locality.
- To ensure that lots are of adequate size and shape to facilitate the appropriate balance between built form and high-quality landscape outcomes.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

2 of 6

3. Development Standard

The development Standard to which this variation applies is: -

Clause 4.4 Floor space ratio.

4. Objectives of the Development Standard

(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.

5. Numeric Value of the Development Standard.

(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](#).

Floor Space Ratio Map Sheet FSR_001

Maximum Floor Space Ratio (n:1)

H Sites n = 0.7

6. Proposed Numeric Values in relation to the Development Standard LEP 2013.

Gross floor Area is defined in the Standard as: -

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, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

3 of 6

Enclosure of the balcony will therefore invoke clause (i) and cause that floor area to be included in the Gross Floor Area.

Additional Gross Floor Area	17.91 m ²
Maximum Floor Space Ratio	0.7:1
Current Floor Space Ratio	0.77:1
Proposed Floor Space Ratio	0.7715:1
Percentage variation	0.195%

There are no changes to the Landscaped Area or the Height of Building.

7. Reasons the Development Standard is unnecessary or unreasonable in the circumstances of this case.

- (1) The objectives of the Development Standard are achieved notwithstanding non-compliance with the standard as there are no changes to the density and intensity of land use.
Also, refer to answer in 8.
- (2) The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary as the balcony floor already exists and no additional floor construction is required. The proposal will not alter the bulk or scale of the existing building. There is negligible impact on the heritage item on the site.
Also refer to the 'Heritage Impact Statement'.
- (3) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unnecessary as the quality of life for the residents will continue to be severely impacted due to the prevailing noise sources.
- (4) The Floor Space ratio has already been increased from 0.7:1 to 0.77, hence the Development Standard has been virtually abandoned by the council's actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- (5) The underlying object or purpose of the balcony enclosure, being the suppression of noise, would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- (6) The proposal causes minimal impact on the visual relationship with the existing character of areas not included in the change.

8. Environmental Planning Grounds.**(1) Public Interest.**

The proposal notwithstanding the non-compliance with the FSR of the development standard, achieves the objectives of the development standards and the zone. Additionally, the proposal will provide a quieter and thus improved living environment for the residents therefore increasing quality residential supply in an area that is well serviced. The existing development has a high level of amenity, makes efficient use of the site and provides a variety of design elements on all elevations all of which indicate that the proposal is in the public interest.

(2) Better Planning Outcome.

The proposed variation to the FSR development standard allows for a better planning outcome as it will provide a much quieter living environment for the residents without adversely impacting any of the other development standards.

(3) Amenity Impacts and the Streetscape.

The non-compliance with FSR development standard does not result in any adverse impacts on the amenity of nearby properties in terms of overshadowing, privacy or loss of views.

The installation of windows to the existing openings will have minimal impact on the streetscape.

(4) Visual Impact.

The installation of windows will have minimal impact on the building design as they are consistent in type and proportion with other windows on the facades which already include a variety of materials and geometric patterns.

(5) Nature of the Use.

The proposal is primarily for improving the quality of life for the residents by significantly reducing noise impact.

(6) Consistent with Objectives.

The proposal is consistent with the objectives of the FSR development standard as well as the zone objectives.

(7) Consistent with Development Controls.

The proposal involves variation to the existing FSR and generally complies with planning controls.

(8) Landscaping and Urban design.

There is no change to, nor adverse landscaping and urban design impact resulting from the FSR variation.

(9) Environmental Impact.

There is no adverse environmental impact resulting from the FSR variation.

9. **Conclusion.**

While the installation of the windows would further increase the Floor Space Ratio contained in Clause 4.4 of the Ashfield LEP 2013, it never the less satisfies the stated objectives of the development standard and the planning and zoning objectives of the district.

An objective of the Draft Inner West LEP 2020 for Zones R2 and R3 is 'To enhance and protect the amenity of existing and future residents and the neighbourhood.' Enclosure of a balcony that is exposed to a noise source clearly satisfies that objective.

The design and installation of the windows blends seamlessly with the existing building design such that the proposal will neutralise the impact that may arise from the additional FSR.

Compliance with the development standard is therefore unnecessary and unreasonable in this case and refusal of the Development Application as a result of the non-compliance with the Floor Space Ratio is not warranted.