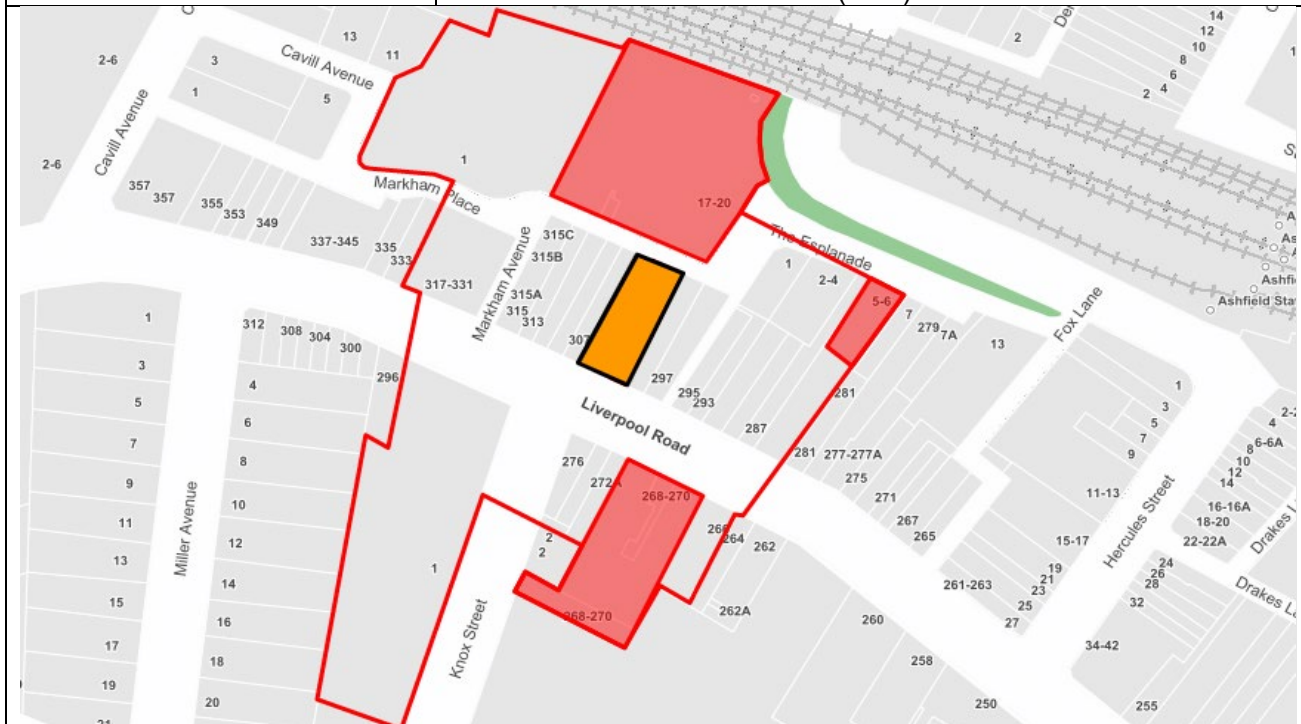




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/0776
Address	301-305 Liverpool Road ASHFIELD NSW 2131
Proposal	Construction of a mixed use development comprising of ground level commercial premises with a 67 room boarding house with managers residence over a single level of basement parking.
Date of Lodgement	26 August 2021
Applicant	Appwam Pty Ltd
Owner	Carlini Superannuation Pty Ltd & Appwam Pty Ltd
Number of Submissions	Initial: 7
Value of works	\$5,943,951.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Affordable Housing, Height, FSR, Design, Parking, Amenity Impacts
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Draft conditions in the event of approval by Panel
Attachment E	Architectural Excellence Panel (AEP) Minutes



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

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

1. Executive Summary

This report is an assessment of the application submitted to Council for the construction of a mixed use development comprising of ground level commercial premises with a 67 room boarding house and managers residence over a single level of basement parking at 301-305 Liverpool Road Ashfield.

The application was notified to surrounding properties and 7 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Non-compliance with Clause 4.3A – Exception to maximum height of buildings in Ashfield town centre development standard
- Non-compliance with Clause 4.4 – Floor Space Ratio development standard
- A lack of car parking and inadequacy of waste areas and management.
- Non-compliance with a number of boarding house standards and amenity provisions within State Environmental Planning Policy (Affordable Rental Housing) 2009 and State Environmental Planning Policy (Housing) 2021, including being inconsistent with the character of the area.
- Non-compliance with setback, public domain works and active street frontage requirements within Chapter D, Part 1 of the Inner West Comprehensive Development Control Plan 2016.
- Adverse impacts to a tree at a neighbouring property and a lack of investigation to allow its removal or protection.
- A portion of the development encroaches over Council land.

Overall, the non-compliances are considered unacceptable having regard to the heritage, streetscape, amenity and parking impacts associated with the proposal. Given the substantial variations from Council's controls and the substantiated concerns raised in public submissions, the development is not considered to be in the public interest. The application is unsupportable and in view of the circumstances, refusal of the application is recommended

2. Proposal

The application involves Council for the construction of a mixed use development comprising of ground level commercial premises with a 67 room boarding house and managers residence over a single level of basement parking.

The plans proposed the following:

Demolition works

- Demolition of all existing improvements and structures on the subject site.

Basement

- 10 car parking spaces.
- 16 bicycle parking spaces.
- 14 motorcycle parking spaces.
- Fire and other building services.

Ground Level

- 301sqm commercial/retail tenancy fronting Liverpool Road.
- 25sqm café (with 12sqm mezzanine above), residential lobby and other services fronting The Esplanade.
- Vehicle access and ramp to proposed basement from The Esplanade.
- A 3 metres setback from the rear property boundary at The Esplanade containing a small deck and plantings.

Level 1

- 8 boarding rooms, including 4 accessible rooms.
- 109sqm common area.
- 156sqm common open space area and landscaping.

Level 2

- 12 boarding rooms with associated foyers, stair and lift access.

Levels 3-8

- 8 boarding rooms with associated foyers, stair and lift access.

3. Site Description

The subject site is located on the northern side of Liverpool Road, between Markham Avenue and Chessell Lane. The site consists of three allotments and is generally rectangular in shape with a total area of 651.5sqm and is legally described Lot 142 on DP 738151, lot 43 on DP 711382 and Lot 3 on DP259081 being 301-305 Liverpool Road Ashfield.

The site has a frontage to Liverpool Road of 16.91 metres and a secondary frontage of approximate 16.34 metres to The Esplanade.

The site supports three two storey commercial buildings containing a commercial premises on the ground floor. The adjoining properties support two storey commercial buildings containing a commercial premises on the ground floor fronting Parramatta Road. The property to the rear of the site fronting The Esplanade is a multi-storey mixed use shop-top housing development.

The subject site is zoned B4 Mixed Use under ALEP 2013.



4. Background

4(a) Site history

No relevant history. Though it is noted that DA/2021/0651 seeking approval for construction of a mixed use development comprising of ground level commercial premises and a 77 room boarding house with managers residence over basement parking at 1 The Esplanade Ashfield is in close proximity of the subject site and is also being considered by the Panel.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
9 November 2021	<p>Council wrote to the application requesting additional information and amendments to address the following concerns:</p> <ul style="list-style-type: none"> • Non-compliance with height and FSR development standards and that the development is not eligible for the height bonus under Clause 4.3A of ALEP 2013 as the development is not affordable housing. • A lack of investigation into contamination at the site to address SEPP 55. • Non-compliance with rear building setbacks and a lack of public domain works and active street frontage to The Esplanade as required by IWCDCP 2016. • A lack of suitable waste storage and management procedures. • A significant shortfall of 34 car parking spaces. • Clarity surrounding solar access received to the common areas. • Unresolved impacts to a tree at 307 Liverpool Road. • Design and built form concerns raised by Council’s Architectural Excellence and Design Review Panel. • A portion of the upper levels of the building encroach onto Council land at the rear boundary.

25 November 2021	Council officer's meeting with the applicant, architect and consultant planner to discuss the issues raised.
30 November 2021	In accordance with Council's Development Advisory and Assessment Policy, 21 days was provided to submit additional information to address the issues raised. No information was submitted.
22 December 2021	The applicant submitted a Remediation Action Plan via the NSW Planning Portal. No further additional information was submitted.

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 (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Ashfield Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. IWCDCP 2016 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that "the site is, or can be made, suitable for the proposed use" prior to the granting of consent.

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

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, it is recommended that conditions are included in any consent granted in accordance with Clause 7 of *SEPP 55*.

5(a)(ii) *State Environmental Planning Policy (Affordable Rental Housing) 2009*

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) provides requirements for boarding house development and the relevant provisions are considered below.

It is noted that the subject application was lodged prior to the commencement of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) on 26 November 2021 and

due to the savings provisions, the ARHSEPP is the applicable instrument. However, the provisions of the Housing SEPP are considered under Part 5(c) of this report.

Division 3 – Boarding Houses

Clause	Standard	Proposed	Compliance
26 - Zone	The site is zoned R1, R2, R3, R4, B1, B2, B4	The site is zoned B4 Mixed Use	Yes
29 (1) - FSR	3.6:1 or 2345.4sqm	4.1:1 or 2659sqm	No – refer to discussion below
29 (2)(a) Height	23m (ALEP 2013)	29.9m	No – refer to discussion below
29 (2)(b) Landscaped Area	Consistent with streetscape	The site has a nil setback to the front boundary, and this does not provide for landscaping. This is consistent with the streetscape.	Yes
29(2)(c) Solar Access	Min 3 hours direct sunlight between 9am-3pm for at least one communal living room	Communal room located on upper level with northern aspect and would receive more than 3 hours of direct sunlight between 9am and 3pm.	Unclear – refer to discussion below
29 (2)(d) Private Open Space	At least one of the following is provided (not in the front setback): <ul style="list-style-type: none"> • 20sqm minimum dimension of 3 metres for use of lodgers • 8sqm minimum dimension of 2.5metres adjacent to mangers room for manager 	<ul style="list-style-type: none"> • 156 sqm of private open space is provided accessible from the common room on the upper level for the use of all lodgers. • 8sqm of private open space with minimum dimension of 2.45m is provided accessible from the caretaker's room on Level 1 	No – refer to discussion below
29 (2)(e) Parking	<ul style="list-style-type: none"> • 0.5 spaces per boarding room • 1 space for each on site boarding manager 	<ul style="list-style-type: none"> • 67 rooms and 1 boarding manager = 34.5 car parking spaces are required for the boarding house component • 8.45 car parking spaces are required for the commercial component • Total of 10 car parking spaces provide resulting in a shortfall of 33 spaces 	No – refer to discussion below
29 (2)(f) Accommodation Size	Excluding private kitchen and bathroom facilities each single lodger room is a minimum of 12sqm and 16sqm in any other case	All boarding rooms are proposed with a minimum area of 16sqm	Yes
30 (1)(a) Communal Room	If more than 5 rooms are proposed there is at least 1 common room	1 common room is provided on Level 1	Yes

30 (1)(b) Maximum room sizes	No boarding room will have a gross floor area of more than 25sqm excluding private kitchen or bathrooms	No boarding room including the caretaker room exceeds 25sqm	Yes
30 (1)(c) Maximum occupation	No more than 2 adult lodgers with occupy each room	A maximum of 2 adult lodgers is proposed to occupy each room	Yes
30 (1)(d) Adequate facilities	Adequate bathroom and kitchen facilities are available for use of each lodger	Each lodger has been provided with their own private kitchen and bathroom	Yes
30 (1)(e) Manager	If there are more than 20 lodgers an on site dwelling must be provided for a boarding house manager	The proposal provides for a maximum of 136 lodgers and a boarding house managers room is provided	Yes
30 (1)(f) Commercial Land	If the site is zones primarily for commercial purposes the ground floor cannot be used for residential uses	No residential use of the ground floor is proposed	Yes
30 (1)(h) Bicycle and Motorcycle parking	A minimum of 1 bicycle space and 1 motorcycle space is provided per 5 boarding rooms	16 bicycle and 15 motorcycle space are provided for the 67 rooms proposed	Yes

(i) Clause 29(1) – Floor Space Ratio

Clause 29(1) of the ARH SEPP reads as follows:

(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than—

- (a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*
- (b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or*
- (c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus—*
 - (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
 - (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.*

The maximum FSR applicable to the site is 3:1 under ALEP 2013. Residential flat buildings are permissible in the B4 zone and as such a FSR bonus is afforded under Clause 29(1). The sites permissible FSR under the ARHSEPP is therefore 3.6:1.

The application proposes a non-compliant FSR of 4.1:1 or 2659sqm which represents a variation of 13.3% or 313.6sqm. Clause 29 provides for standards that cannot be used to refuse consent related to density and scale. In this case the development exceeds the maximum FSR for development on the land under ALEP 2013 and Clause 29(1) does not create any impediment to refusing consent on the grounds of density and scale. The variation to the development standard is discussed in further detail under Section 5(a)(vi) of this report.

(ii) Clause 29(2)(a) – Height

Clause 29(2)(a) of the ARH SEPP reads as follows:

A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

- (a) building height if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land*

The maximum building height applicable to the site is 23m under ALEP 2013. While Clause 4.3A of ALEP 2013 enables a height bonus of 7m for developments which contain affordable housing, the application was not supported with documentation demonstrating that any portion of the proposed development constitutes affordable housing as defined by the ARHSEPP; and as such no height bonus is afforded under Clause 4.3A.

The application proposes a non-compliant building height of 29.9m which represents a variation of 30% or 6.9m. Clause 29 provides for standards that cannot be used to refuse consent related to density and scale. In this case the development exceeds the maximum building height for development on the land under ALEP 2013 and Clause 29(2)(a) does not create any impediment to refusing consent on the grounds of density and scale. The variation to the development standard is discussed in further detail under Section 5(a)(vi) of this report.

(iii) Clause 29(2)(c) – Solar Access

The information submitted with the application lacks detail to determine whether the development would receive adequate solar access. The application was accompanied with shadow diagrams for hourly intervals between 9am and 3pm on June 21 which do not identify the location of windows within the development.

The proposal provides a balcony and large windows which that serve the communal room on Level 1. However, while these windows are north facing, given the lack of solar access diagrams it is not possible to determine whether the development provides adequate solar access to the common room as envisaged by ARH SEPP.

Further matters regarding solar access and overshadowing are discussed in Part 5(c) of this report.

The application is recommended for refusal.

(iv) Clause 29(2)(d) – Private Open Space

The proposal would generally comply with the private open space provisions of the ARHSEPP. However, the minimum dimensions of the open space for the managers room is 2.45m, which is a minor shortfall from the 2.5m required. While this is a minor non-compliance, the balcony also encroaches over the property boundary and overhangs Council land. This encroachment is not suitable and the balcony would need to be redesigned, further reducing to open space available to the managers rooms.

As such, the application is recommended for refusal.

(v) Clause 29(2)(e) – Parking

The development requires the provision of 34.5 car parking spaces for the boarding house under Clause 29(2)(e) of ARHSEPP. An additional 8.45 car parking spaces are required for the commercial component of the development under Chapter A, Part 8 of IWCDP 2016; resulting in a total of 43 car parking spaces.

The development provides 10 car parking space accessible from The Esplanade. The car parking is allocated as follows:

- 4 car share spaces for the boarding house.
- 2 accessible spaces for the boarding house.
- 3 commercial spaces.
- 1 café space.

Given the above, the development results in a shortfall of 33 parking spaces. While the site is in an accessible area and serviced by public transport, a significant shortfall of parking on site cannot be supported due to the limited availability of on street parking in the surrounding area. Additionally, the development does not attempt to off-set the shortfall of car parking through the provision of increased motorcycle and bicycle parking for use by the lodgers, noting that the motorcycle and bicycle parking requirements are substantially increased by the recently gazetted Housing SEPP. It is noted that the application contents that the car share spaces can off-set the shortfall in onsite parking. However, the application does not include any information to demonstrate how the car share would operate, if it would be restricted to boarding house residents only or any data to suggest car share would be successful in off-set traffic and parking impacts that would otherwise result from the shortfall in parking proposed.

Given the above, the development does not provide the prescribed car parking required by the ARH SEPP or Chapter A, Part 8 of IWCDP 2016. The shortfall in car parking is likely to result in adverse traffic, parking and amenity impacts within the locality and the development does not include any other mitigation measures to adequately address the car parking shortfall. Other parking non-compliances are discussed in further detail under Section 5(d) of this report.

As such, the application is recommended for refusal.

(vi) Clause 30A – Character of the Local Area

Clause 30A of SEPP ARH states:

“A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.”

In considering the compatibility with the character of the area the applicable test is taken from the planning principal in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, discussed hereunder:

Are the proposal’s physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The main impact to surrounding development is considered to be the effect of bulk and dominance of the building upon The Esplanade. The proposed cantilever above the ground floor commercial component of the building and the nil front setback of the upper levels is unacceptable and presents adverse bulk to the public domain and The Esplanade which is further exacerbated by a breach to the Height and FSR development standards.

Additionally, IWCDP 2016 requires that new development provide a development setback from The Esplanade to allow for a pedestrian footpath and other public domain works, and that this area be dedicated to Council. The Esplanade is a major pedestrian thoroughfare and new development within the Ashfield Town Centre Precinct is required to provide public domain works and suitable building setback. The development fails to provide a setback of 3 metres or greater in order to accommodate a footpath and dedicated to Council.

Is the proposal's appearance in harmony with the buildings around it and the character of the street

The appearance of the building to The Esplanade would not be in harmony with surrounding buildings. The lack of an upper level setback would result in a prominent and highly visual upper level that imposes upon the public domain, pedestrian thoroughfare and the adjoining buildings. The proposed cantilever of the upper levels and lack of an adequate setback to the front boundary results in a visually dominant building to The Esplanade, which is inconsistent with surrounding development and is not in keeping with the desired future character of the Ashfield town centre or The Esplanade. The development's visual bulk as a result of the upper level can be directly linked to the non-compliant gross floor area of the proposal which further adds to the lack of harmony with its surroundings.

An overall assessment finds that the development is not considered to be compatible with desired future the character of the area and as a result the application is not supported.

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

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

5(a)(iv) 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.

Vehicle access to the site is provided from the rear of the site at The Esplanade and as such the development will not impact the efficient or operation of the classified road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

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

Clause 102 of the *SEPP Infrastructure 2007* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 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.

Liverpool Road has an annual average daily traffic volume of more than 20,000 vehicles. The applicant submitted a Noise Assessment Report with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP.

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

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

The application seeks the removal of vegetation from within the site and on Council land. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

The basement sprinkler pump room is within the Tree Protection and Structural Root Zone of 2 neighbouring fruiting trees No 307 Liverpool Road.

For the development to proceed the trees will each need to be given a basement set back of 4 metres from The Esplanade boundary OR the applicant should submit a Minor Works Permit, authorised by the trees' owners, to remove the trees and replace them at the completion of works, all at the applicant's expense.

Overall, the proposal is considered unacceptable with regard to the *Vegetation SEPP* and Chapter C, Part 4 of IWCDP 2016. The development would result in adverse impacts to a tree at the neighbouring property and would compromise the health and ongoing viability of the tree. The application has not been supported with any information seeking removal of the tree or any assessment or design solution to protect the tree. As such, the application is recommended for refusal.

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

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 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 4.3A - Exception to maximum height of buildings in Ashfield town centre
- Clause 4.3B - Ashfield town centre – maximum height for street frontages for certain land
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 6.1 - Earthworks

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

Standard	Proposal	Non compliance	Complies
<p>Height of Building</p> <p>Clause 4.3 - Height of Building Maximum Permissible: 23m</p> <p>Clause 4.3(2A) applies to land in B4 and limits areas which may be counted towards FSR at a maximum height of 20m</p> <p>Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre Additional bonus: 7m</p>	<p>29.9m</p> <p>Gross floor area proposed above 20m height limit</p> <p>N/A – proposal does not meet requirements of this Clause and therefore, does not benefit from additional height</p>	<p>30% or 6.9m</p> <p>100% or 258.6sqm</p> <p>N/A</p>	<p>No – refer to discussion below</p> <p>No – refer to discussion below</p> <p>N/A – refer to discussion below</p>
<p>Clause 4.3B - Ashfield town centre maximum height for street frontages on certain land Maximum Permissible: 12m</p>	<p>12m at Liverpool Road</p>	<p>N/A</p>	<p>Yes</p>
<p>Floor Space Ratio</p> <p>Clause 4.4 - Floor Space Ratio (ALEP 2013) Maximum permissible: 3:1</p> <p>Clause 29(1)(c)(ii) – ARHSEPP Maximum permissible: 3.6:1</p>	<p>4.1:1 or 2659sqm</p> <p>4.1:1 or 2659sqm</p>	<p>36% or 704.5sqm</p> <p>13.3% or 313.6sqm</p>	<p>No – refer to discussion below</p> <p>No – refer to discussion below</p>

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

The site is zoned B4 Mixed Use under the *ALEP 2013*. The *ALEP 2013* defines the development as:

mixed use development means a building or place comprising 2 or more different land uses.

and,

boarding house means a building or place—

(a) that provides residents with a principal place of residence for at least 3 months, and
 (b) that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and

(c) that contains rooms, some or all of which may have private kitchen and bathroom facilities, and

- (d) used to provide affordable housing, and
(e) if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider, but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

The development is permitted with consent within the land use table.

- (ii) Clause 4.3 - Height of Building and Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre

Clause 4.3 of the ALEP 2013 prescribes a maximum building height of 23m. As noted in the table above, the application proposes a building height of 29.9m which results in a variation of 30% or 6.9m.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. A written request has not been submitted to Council in accordance with Clause 4.6(4)(a)(i) of ALEP 2013 to justify the proposed contravention of the development standard. Therefore, the development has failed to adequately demonstrate that the proposed variation to the development standard is acceptable in accordance with Clause 4.6 of ALEP 2013.

It is noted that the proposal relies on an additional height bonus of 7 metres provided by Clause 4.3A of ALEP 2013. However, the height bonus is only available if the development contains affordable housing. Council is not satisfied the development constitutes affordable housing, noting that a boarding house development does not automatically constitute affordable housing. Having regard to the definition of affordable housing under Clause 6 of the ARHSEPP, affordable housing must be demonstrated to be rented below the median rental for the area. The application was not supported with documentation demonstrating that any portion of the proposed development constitutes affordable housing as defined by the ARHSEPP; therefore, Clause 4.3A of ALEP 2013 is not applicable to the proposal.

Furthermore, in considering the additional building height under Clause 4.3A of ALEP 2013, Council has resolved that all affordable housing within the Ashfield Town Centre which relies on the height bonus must be managed by a community housing provider and the affordable housing must form part of the development indefinitely (i.e. is not limited to 10 years as is the case under the ARHSEPP in some circumstances). In this regard, the development was not supported with information demonstrating any portion of the site will be managed by a community housing provider nor that any portion of the development will be dedicated to affordable housing indefinitely.

It is also noted that Clause 4.3(2A) of ALEP 2013 applies to the development and requires the topmost 3 metres of any development within Zone B4 must not include areas of gross floor area (GFA). The proposal includes habitable areas which form part of the GFA of the building within 3m of the height limit. Given the maximum building height is 23m and the proposal does not benefit from a height bonus, the development proposes GFA beyond the 20m height limit set out by this Clause.

Overall, the application has failed to demonstrate the proposal constitutes affordable housing and it is considered that the development is not eligible for the additional building height afforded by Clause 4.3A of ALEP 2013. The design of the proposal has not provided an adequate response to the requirements of Clause 4.3 of the ALEP 2013 and does not provide a suitable built form in terms of bulk and scale, solar access, streetscape, pattern of development and compatibility with the character of the area.

Given the above, the application does not comply with the Height of Buildings development standard and a written request has not been submitted to Council in accordance with Clause 4.6(4)(a)(i) of ALEP 2013 to justify the proposed contravention of the development standard. As such, the proposed breach to the development standard cannot be considered or approved by Council.

The application is recommended for refusal.

(iii) Clause 4.4 - Floor Space Ratio

Clause 4.4 of the ALEP 2013 prescribes a maximum Floor Space Ratio (FSR) of 3:1. However, the development is eligible for an FSR bonus under Clause 29(1) of the ARHSEPP bringing the maximum FSR to 3.6:1 (an increase of 20%). As noted in the table above, the application proposes a FSR of 4.1:1 which results in a variation of 13.3% or 313.6sqm.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. A written request has been submitted to Council in relation to the proposed FSR breach in accordance with Clause 4.6(4)(a)(i) of ALEP 2013 to justify the proposed contravention of the development standard. This is considered below.

(iv) Clause 4.6 - Exceptions to Development Standards

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

- Clause 4.3 - Height of buildings
- Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre
- Clause 4.4 - Floor space ratio

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. A written request has not been submitted to Council in relation to Clause 4.3 and 4.3A relating to height of buildings in accordance with Clause 4.6(4)(a)(i) of ALEP 2013 to justify the proposed contravention of the development standard. Therefore, the development has failed to demonstrate that the proposed variation to the development standard is acceptable in accordance with Clause 4.6 of ALEP 2013.

However, a written request has been submitted to Council in relation to Clause 4.4 – Floor Space Ratio in accordance with Clause 4.6(4)(a)(i) of ALEP 2013 to justify the proposed contravention of the development standard.

The applicant seeks a variation to the floor space ratio development standard under Clause 4.6 of the *Ashfield Local Environmental Plan 2013* by 13.3% (313.6sqm).

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 the *Ashfield Local Environmental Plan 2013* below.

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

- *The SEPP ARH provides for a bonus floor area for affordable housing, equating to 20% where the local planning provisions allow for a FSR of 2.5:1 or higher. In this case the permitted FSR under ALEP 2013 is 3.0:1, allowing an additional 0.6:1 or in this case an additional 390.6m² GFA. The FSR allowable, including the bonus is 3.6:1.*
- *The ALEP 2013 allows a 7m height bonus for the provision of affordable housing, thereby increasing the allowable height for the subject site from 23m to 30m. This equates to some two storeys.*
- *The proposal has an FSR of 4.1:1, a variation of 0.5:1 above the ALEP 2013 + SEPP ARH bonus permissible FSR for the site. The combined floor area of Levels 7 & 8 is 520m². The variation is only 315.4m² or 13.5% variation. Therefore, in terms of the building height the variation is less than the allowable building envelope in a theoretical sense.*
- *Based on the above, the proposed FSR of 4.1:1 is not exceptional in terms of what is available for a site under the provisions of ALEP 2013 and SEPPARH. The additional GFA is to be used for boarding house purposes falling under the infill housing provisions of the Affordable Housing SEPP.*
- *The site dimensions create a development site that is capable and suitable for development of a building that has a lower building envelope facing Liverpool Road and greater bulk and scale fronting The Esplanade. The Esplanade tower forms a backdrop to the streetscape along Liverpool Road. This is similar to the existing development on the southern side of Liverpool Road in the vicinity of the subject site.*
- *Accepting that the site is appropriate for the proposed bulk and scale of development, the resultant urban design outcome is also acceptable for this site, given the site's locational and neighbourhood context. The additional GFA can be readily absorbed on the site and still provide a dual tower type form with central courtyard to allow for light penetration.*
- *The proposal does not result in undue adverse amenity impacts on existing development to the east or west of the site. The proposal has been designed to account for this site characteristic, including the building separation and internal courtyard between the two boarding house wings above ground level.*
- *The upper levels of the development that utilise the height bonus for affordable housing, are part of the boarding house and therefore is dedicated affordable housing GFA. The additional building height and additional floor area go hand in hand to achieve the intent of the height and SEPP ARH floor area bonus. Zero (Liverpool Road) and 3m (The Esplanade) setbacks are achieved to activate both frontages as required by the ADCP.*
- *The Inner West Council, through its residential strategy, seeks to increase affordable housing across the LGA and this proposal will provide three floor levels or some 24 additional boarding rooms (up to 48 occupants) – over and above the baseline development standards that would be available without the SEPPARH floor area bonus and the ALEP 2013 building height bonus. This housing outcome provides justification for the additional GFA at this location based on the councils identified need for increased housing supply that will, in time, bring down rental prices.*

The applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- While the proposal seeks approval for the boarding house, boarding houses are not by nature affordable housing. Clause 6(1) of the ARH SEPP defines affordable housing to be housing that (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney and pays no more than 30 per cent of that gross income in rent, or (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme. There is no evidence to suggest that the development would rent out boarding rooms at an affordable rate or any suggestions that the development would be operated in an affordable manner. As such, the argument that the additional FSR is attributed to affordable housing is unsubstantiated.
- In demonstrating the suitability of the proposed FSR, arguments rely heavily on the development's eligibility for additional height under Clause 4.3A of ALEP 2013 to justify the variation. However, the development does not constitute affordable housing and therefore is not eligible for a height bonus under Clause 4.3A of ALEP 2013. As such, the argument that the additional FSR proposed is appropriate given the additional height afforded to the development is unsubstantiated and not supported.
- The proposal does not provide a sufficient rear setback to The Esplanade as required by IWCDCP 2016 and results in an encroachment at the rear of the site and presents adverse bulk to The Esplanade and would be inconsistent with the desired future character of the area. Additionally, a development that does not include affordable housing would be inconsistent with the desired future character of the area given the relevant planning controls would not envisage or allow a development of the proposed height and overall scale. As such, the argument that the bulk and scale of the development is consistent with the area and generally complies with the DCP is unsubstantiated.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- The proposed FSR as a resultant of the excessive and unjustified height of the development would be inconsistent with the desired future character of the area and inconsistent with the established standards for development density and intensity of land use for a site that does not include affordable housing.
- The lack of a suitable rear building setback, resultant bulk to The Esplanade and the additional height and bulk of the building as a result of the height proposed would result in adverse impacts to the public domain at The Esplanade and does not protect the enjoyment of the public domain.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *Ashfield Local Environmental Plan 2013*. For the reasons outlined above, there are insufficient planning grounds to justify the departure from floor space ratio and it is recommended the Clause 4.6 exception be refused.

5(b) Draft Environmental Planning Instruments

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

- Draft State Environmental Planning Policy (Remediation of Land) 2018
- Draft Inner West Local Environmental Plan 2020
- *State Environmental Planning Policy (Housing) 2021* (draft at the time of lodgement of this application)

The following provides further discussion of the relevant issues:

5(b)(i) *Draft State Environmental Planning Policy (Remediation of Land) 2018*

As discussed earlier in this report in consideration of SEPP 55, the development is acceptable having regard to contamination and remediation. As such, the development would be consistent with the draft SEPP.

5(b)(ii) *Draft Inner West Local Environmental Plan 2020*

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

The Draft IWLPP 2020 contains substantially the same provisions relating to height of buildings and floor space ratio as ALEP 2013 and as such the proposal would remain inconsistent with the objectives of these provisions for the reasons discussed earlier in this report.

However, the Draft IWLEP 2020 also contains provisions for the inclusion of amended/new clauses which are applicable to the proposal as discussed below:

(i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following aims of Draft IWLEP 2020:

- to ensure development applies the principles of ecologically sustainable development,*
- to mitigate the impact of climate change and adapt to its impacts,*
- to protect, enhance and sustainably manage biodiversity, natural ecosystems, water resources, ecological processes and urban forest,*
- to ensure that the risk to the community in areas subject to urban and natural hazards is minimised,*
- to ensure that existing and future residents, visitors and workers have access to sustainable transport including walking and cycling, social and community infrastructure, services and public open space,*
- to retain, protect and increase industrial and employment land and enhance the function and vitality of centres,*
- to promote accessible and diverse housing types to support people at all stages of life, including the provision and retention of affordable housing,*
- to identify, protect and conserve environmental and cultural heritage and significant local character,*

- (i) *to achieve a high-quality urban form and open space in the public and private domain by ensuring new development exhibits architectural and urban design excellence,*
- (j) *to protect and enhance the amenity, vitality and viability of Inner West for existing and future residents, workers and visitors,*
- (k) *to protect and enhance significant views and vistas from the public domain and promote view sharing from and between private dwellings,*
- (l) *to prevent adverse social, economic and environmental impacts including cumulative impacts.*

The proposal is generally considered to be consistent with the above aims of Draft IWLPP 2020 with the exception of aims g), i) and j).

The development is not considered to provide affordable housing, contrary to aim g), for the following reasons:

- The development relies on building height and floor space ratio bonuses which are designed to encourage affordable housing and the development is not proposed to be affordable housing.

The development is not considered to promote a high standard of design, contrary to aim i), for the following reasons:

- The development present adverse bulk and scale to the locality and would be inconsistent with the desired future character of the area being significantly over the allowable building height and FSR controls.
- The development presents adverse bulk and scale to The Esplanade because of the non-compliant rear setback, large cantilever and nil boundary setback of the upper levels to The Esplanade, noting that some portions of the building also encroach over the rear property boundary.
- The proposal lacks an urban design strategy, has poor massing, does not provide a suitable active frontage to The Esplanade and presents large and visually uninteresting walls to the public domain as identified by Council's Architectural Excellence and Design Review Panel.

The development is not considered to protect and enhance the amenity for existing and future residents, workers and visitors, contrary to aim i), for the following reasons:

- The proposal lacks information on solar access received to the development and any overshadowing impacts to neighbouring properties.
- The proposal lacks car parking which has the potential to result in adverse traffic and parking impacts within the locality.
- The proposal does not include any required public domain works or infrastructure to The Esplanade which impacts the future amenity of the area.

The development does not demonstrate consistency with the provisions of Clause 1.2 of Draft IWLPP 2020 the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

(iii) Clause 2.3 – Land Use Table and Zone Objectives

The site is zoned B4 Mixed Use under the *ALEP 2013*. The *ALEP 2013* defines the development as a *boarding house* and *commercial premises*. The development remains permitted with consent within the land use table under the draft IWLEP 2020.

However, the draft B4 zone includes amended objectives which includes the following:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the renewal of specific areas by providing for a broad range of services and employment uses without adversely impacting on the role or viability of nearby centres.*
- *To facilitate a high standard of urban design and pedestrian amenity that creates open and lively facades, contributes to achieving a sense of place for the local community and caters for the needs of all ages and abilities.*

For the reasons discussed throughout this report in relation to consistent with the aims of the plans, building height and floor space ratio, the proposal is not considered to integrate with the desired future character of the area and lacks the required public domain works and active street frontage to The Esplanade which does not facilitate a high standard of design or pedestrian amenity. The development is not consistent with the objectives of the B4 zone within Draft IWLPP 2020, the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

5(b)(iii) State Environmental Planning Policy (Housing) 2021

On 26 November 2021, the Housing SEPP was gazetted and came into force, repealing the ARH SEPP. However, at the time this development application was lodged, the Housing SEPP was in draft form only and due to the saving provisions within Schedule 7(2), the ARH SEPP remains the applicable instrument.

However, in accordance with *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979* the Housing SEPP is a matter for consideration as it was in a draft form at the time of lodgement of this application. The matters within the Housing SEPP are considered to have significant weight given the immanency and certainty of their ministerial consideration and adoption, having been gazetted during the assessment of this application. The relevant provisions are considered below.

Division 2 – Boarding houses

Clause	Standard	Proposed	Compliance
26 - Zone	May be carried out on land where boarding house permitted	Boarding house permitted with consent in B4 zone.	Yes
24(2)(a) - FSR	3.75:1 or 2443.1sqm	4.1:1 or 2659sqm	No, discussed in detail under ARHSEPP
24(2)(e) Solar Access	Min 3 hours direct sunlight between 9am-3pm for at least one communal living area	The communal room receives 3 hours of direct sunlight between 9am and 3pm on 21 June	Unclear, discussed in detail under ARHSEPP

24(2)(f) Communal living area	For a boarding house containing 6 boarding rooms a total of at least 30sqm of communal living area, and minimum dimensions of 3m for each communal living area	Communal living area provided of 109sqm	Yes
24(2)(h) Communal open spaces	a total area of at least 20% of the site area, and each with minimum dimensions of 3m	20% of the site area is 130.3sqm. Common open space provided is 156sqm.	Yes
24(2)(i) Parking	0.2 spaces per boarding room in accessible areas	<ul style="list-style-type: none"> 68 rooms = 13.3 car parking spaces are required for the boarding house component 8.45 car parking spaces are required for the commercial component Total of 10 car parking spaces provide resulting in a shortfall of 12 spaces 	No, discussed in detail under ARHSEPP
25(1)(a) Maximum room sizes	No boarding room will have a gross floor area of more than 25sqm excluding private kitchen or bathrooms	No boarding room including the caretaker room exceeds 25sqm	Yes
25(1)(b) Maximum occupation	No more than 2 adult lodgers with occupy each room	A maximum of 2 adult lodgers occupy each room	Yes
25(1)(c) Adequate facilities	Adequate bathroom and kitchen facilities are available for use of each lodger	Each lodger has been provided with their own private kitchen and bathroom	Yes
25(1)(e) Business zoned land	If the site is zones primarily for business purposes the ground floor cannot be used for residential uses	No residential use of the ground floor is proposed	Yes
25(1)(f) Communal Room	If at least 6 rooms are proposed there is at least 1 common room	1 common room is provided	Yes
25(1)(h) Accommodation Size	Excluding private kitchen and bathroom facilities each single lodger room is a minimum of 12sqm and 16sqm in any other case	All rooms meet minimum size.	Yes
25(2)(a) Capability with local and/or desired future character	The design of the boarding house will be compatible with the desirable elements of the character of the local area, or for precincts undergoing transition, the desired future character of the precinct	Development is inconsistent with existing and desired character of the area and HCA.	No, discussed in detail under ARHSEPP
25(2)(c) Building separation	If the boarding house has at least 3 storeys the building will comply with the minimum building separation distances specified in the Apartment Design Guide	The proposal would comply with ADG building separation	Yes
25(2)(d) Motorcycle Parking	At least 1 motorcycle parking space will be provided for every 5 boarding room	15 motorcycle parking spaces are provided	Yes

25(2)(e) Bicycle parking	At least 1 bicycle parking space will be provided for each boarding room	Only 16 bicycle parking spaces are provided	No, see discussion below
26(1) Must be used for affordable housing in perpetuity	Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity, the boarding house will be used for affordable housing, and, the boarding house will be managed by a registered community housing provider.	The development is not proposed to be affordable housing.	No, see discussion below

A number of provisions within the ARH SEPP and the Housing SEPP are similar and therefore the development remains non-compliant with a number of provisions including FSR, solar access, car parking, and compatibility with local and/or desired future character. These non-compliances are considered unacceptable for the reasons discussed earlier in this report in consideration of ARH SEPP.

However, the proposal is inconsistent with additional measures within the Housing SEPP including a further shortfall in bicycle parking. The lack of bicycle parking combined with the proposed shortfall in car parking is likely to result in adverse impacts to the surrounding locality while removing the sustainable transport options from future residents.

In order to provide the amenity and services envisaged by the Housing SEPP the scale and form of the development would need to be substantially altered to achieve the FSR, solar access and parking required. The form of the development would also need to be altered to ensure compatibility with the local and desired future character of the area. Given the small lot size, this may require the repositioning of bulk, changes in building height and amendments to the size and number of rooms. As such, in considering the case law in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council [2003] NSWCA 289* it should be noted that the application is considered to undermine the intent of the instrument in a substantial way as the form of the development would be radically different to the proposed development.

Additionally, boarding houses under the Housing SEPP are required to be held as affordable housing in perpetuity and managed by a registered not for-profit community housing provider. The application is not proposed to be affordable housing as required by Clause 26(1). It is noted that this requirement would not alter the form and scale of the development. However, it would substantially alter the management and operation of the proposal and should the development not be affordable, the proposal would likely be considered a different form of development under the Housing SEPP, such as Co-Living.

5(c) Development Control Plans

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

IWCDCP2016	Compliance
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	No – see discussion
4 - Solar Access and Overshadowing	No – see discussion under ARHSEPP
5 - Landscaping	Yes
6 - Safety by Design	Yes
7 - Access and Mobility	Yes
8 - Parking	No – see discussion
14 - Contaminated Land	Yes – see SEPP 55
15 - Stormwater Management	Yes
B – Public Domain	
No – see discussion under Chapter D	
C – Sustainability	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	No – see discussion
4 – Tree Preservation and Management	No – see VEG SEPP
D – Precinct Guidelines	
1 – Ashfield Town Centre	No – see discussion
F – Development Category Guidelines	
6 – Boarding Houses and Student Accommodation	No – see ARHSEPP

The following provides discussion of the relevant issues:

(i) Good Design (Chapter A, Part 2)

The DCP provides performance criteria for good design to ensure developments are appropriate to their context and exhibit suitable scale and built form, density, efficiency, landscaping, amenity, safety and security and aesthetics.

The application was referred to Council's Architectural Excellence and Design Review Panel (AEDRP) who raised significant concerns with the design of the development including the following:

- The application lacks any urban design or contextual study to demonstrate the site is suitable within its context.
- The development does not establish or consider the potential for built forms on neighbouring sites.
- The significant rear cantilever to the upper levels at The Esplanade which is not a suitable built form and does not respond to or enhance the pedestrian-friendly character of The Esplanade and would be visually overbearing.
- The lack of information surrounding context and solar access means the development may not achieve suitable solar access to common areas and therefore the amenity of the boarding house is unacceptable.
- There is limited activation along The Esplanade and spatial planning needs reconsideration to locate waste and storage areas away from that frontage.
- The functional capacity of the café is questioned given it has no kitchen, no back-of-house or toilets and the space is already very limited in size.

- The overall configuration and access throughout the building is poor with the wester rooms being disconnected from the carpark and limited lifts throughout the building to provide access.
- The development encroaches over the rear property boundary.
- The safety of future residents is questioned given that the eastern building with a 10 storey height is above the BCA 'Effective height' requirement and a deemed to satisfy solution would require 2 points of fire egress (2 stairs cases, or possibly a 'scissor' stairs).
- The proposed voids or indentations on the outside of the buildings constrains light and air and are not of a size or dimension to provide suitable amenity or articulation.
- There are inconsistencies in the documentation with ducting and other service not shown on 3D imagery which would impact the overall appearance of the building.
- The design of the western building facade addressing Liverpool Road should relate to the existing character attributes and prevailing pattern of buildings in the streetscape, particularly in terms of the solid to void ratios.
- The side boundary walls would be highly visible from the public domain for some time and the appearance and treatment of these large solid walls should be refined.

Given the above, the development has not adequately responded to the performance criteria of good design within the DCP, particularly in terms of context, scale and built form, amenity, safety and aesthetics.

The application is recommended for refusal.

(ii) Parking (Chapter A, Part 8)

The development does not achieve the level of car parking required by the ARHSEPP as discussed earlier in this report.

Additionally, Table 3 within the DCP requires the provision of a suitably located and signposted courier parking space for commercial development over 200sqm GFA. The development does not provide a suitable location for loading/unloading within the site and the provision of a courier space on Liverpool Road would impact the operation of that classified road. Furthermore, a courier stopping at the rear of the site at The Esplanade would block traffic given the small size of the street and therefore relying on the street for deliveries is not suitable. The development has not addressed the issue of deliveries and given the context the lack of a dedicated area for loading/unloading would result in adverse traffic and amenity impacts to the locality.

The application is recommended for refusal.

(iii) Waste Design and Management (Chapter C, Part 3)

The development does not provide sufficient area for onsite waste collection as required by the DCP or provide sufficient detail regarding waste management. Given the size of the development on-site waste collection should be provided for ongoing waste management of the site and the development will need to be designed to accommodate Council. Additionally, the proposal to place approximately 18 bins to The Esplanade for collection twice a week is not viable and cannot be supported. Aside from the development not providing a curb in the public domain (discussed below) for bin collection street side, the placement of a high number of bins to the street presents amenity and safety concerns and a greater level of consideration needs to be given to ongoing waste management.

The application is recommended for refusal.

(iv) Ashfield Town Centre (Chapter D, Part 1)

Design Solution DS3.1 within the DCP requires that the development provide a development setback from The Esplanade to allow for a pedestrian footpath and other public domain works, and that this area be dedicated to Council. The DCP envisages The Esplanade as a major pedestrian thoroughfare and new development within the Precinct must respond to this. Currently, the development provides no public domain works to The Esplanade and does not provide a suitable building setback. The development would need to provide a setback of 3 metres or greater in order to accommodate a footpath and verge in accordance with Australian Standards and dedicate this portion of land to Council. The development setback is required for the full height of the building, and the currently proposed cantilever of the upper level over the ground floor at The Esplanade is not in keeping with the desired future character of the town centre or The Esplanade.

The development does not provide any public domain works to The Esplanade or a suitable setback as required by the DCP.

Design Solution DS4.2 requires the development to provide an active frontage and street presentation to The Esplanade. Active street frontage must be designed in accordance with Design Solution DS4.3 The development provides a small café to The Esplanade and which is less than 50% of the frontage and does not provide adequate street activation or presentation.

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:

- The development would result in a building that is significantly over the allowable height of buildings and floor space ration development standards which results in a building scale that is inconsistent with the character of the area and would result in adverse impact on the public domain, particularly to The Esplanade.
- The lack of a suitable setback to The Esplanade, lack of public domain works and inadequate active street frontage will result in adverse amenity impacts to The Esplanade and does not contribute to the improvement of the Ashfield Town Centre.
- The shortfall of car parking, lack of loading/unloading facilities, lack of waste management procedures and the proposal to place a large number of bins to the kerb for collection will result in adverse amenity impacts to the locality as a result of traffic, parking and access impacts.
- The lack of information surrounding solar access achieved by the development and poor internal access arrangements would result in adverse amenity impacts for future residents and/or occupants of the development.
- The lack of suitable urban design considerations and contextual information, along with the concerns raised by Council's AEDRP indicates the development would adversely impact the public domain and is not of a high quality design.

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 the Community Engagement Framework for a period of 14 days to surrounding properties. 7 submissions were received in response to the initial notification.

The following issues raised in submissions have been discussed in this report:

- Quality of Design and Built Form – see Sections 5(a)(ii), 5(b)(ii) & 5(c)
- Parking and Traffic – see Sections 5(a)(ii) & 5(c)
- Compliance with relevant State Environmental Planning Polices – see Section 5(a)
- Compliance with Height and FSR – see Section 5(a)
- Compatibility with existing and desired character of area – see Sections 5(a)(ii) & 5(b)(ii) & 5(c)
- Waste Management – see Section 5(c)

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: Visual privacy

Comment: Concern is raised that the proposal will result in adverse visual privacy impacts byway of overlooking to the property at 17-20 The Esplanade. The building separation proposed would be a minimum of 6 metres which would comply with the Apartment Design Guide and the requires of the Housing SEPP and is considered acceptable to maintain privacy. Notwithstanding, the setback of the upper level of the development from The Esplanade is unacceptable and further separation would be required which would increase visual privacy protection.

Issue: Noise

Comment: Concern is raised that the development would result in adverse acoustic and noise impacts to surrounding residents. The application was support with a Noise Assessment Report which demonstrates the development could comply with the required acoustic criteria. However, the application is not supported for other reasons.

Issue: Pressure on Infrastructure due to increased population

Comment: Concern is raised that the proposal will put undue pressure on infrastructure and public areas (such as open space and parks) due to the increase in residents attributed to the boarding house. While the scale of the proposal at current is unacceptable and the number of boarding rooms would need to be reduced, increase densities are permitted and anticipated within the Ashfield Town Centre and strategic infrastructure plans are completed with additional densities in mind and contributions on approved developments are collected to deliver and increase infrastructure as required.

Issue: Over supply of boarding houses

Comment: Concern is raised that there is an over supply of boarding houses in Ashfield and therefore further boarding houses should be not approved. Boarding houses are a permissible form of development in the B4 zone and as such would be permissible with consent. There are not planning requirements that limit the number of boarding houses or there proximity to each other within an area.

<u>Issue:</u>	Increased anti-social behaviour and crime
<u>Comment:</u>	Concern is raised that the proposal will result in increases anti-social behaviour and crime within the area. There is no evidence to suggest that an increase in crime or anti-social behaviour would be attributed to a boarding house of this nature.

5(h) The Public Interest

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

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

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

- Environmental Health
- Urban Design
- Architectural Excellence and Design Review Panel
- Traffic Services
- Building Certification
- Development Engineering
- Waste Management
- Urban Forest
- Community Services

6(b) External

The application was referred to the following external bodies however no response was received in a suitable timeframe.

- NSW Police – Crime Prevention

7. Section 7.11 Contributions/7.12 Levy

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

8. 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 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 not made a written request pursuant to Clause 4.3 and/or Clause 4.3A of the *Ashfield Local Environmental Plan*. Given the lack of a Clause 4.6 request in relation to the proposed breach to the Height of Buildings development standard, the Panel cannot consider or approve any variation.
- B. The applicant has made a written request pursuant to Clause 4.4 of the *Ashfield Local Environmental Plan*. 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 sufficient environmental grounds to support the variation. The proposed development would not be in the public interest because the exceedance is inconsistent with the objectives of the standard.
- C. 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/2021/0776 for Construction of a mixed use development comprising of ground level commercial premises with a 67 room boarding house with managers residence over a single level of basement parking. at 301-305 Liverpool Road Ashfield subject to the reasons for refusal listed in Attachment A.

Attachment A – Recommended reasons for refusal



1. The application has not provided a written justification under Clause 4.6 of the *Ashfield Local Environmental Plan 2013* in order for Council to consider the proposed breach to the Height of Buildings development standard under Clauses 4.3 or 4.3A of the *Ashfield Local Environmental Plan 2013*.
2. The proposed development is inconsistent with the following Clauses of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 29(1) - Floor Space Ratio, in that the proposal exceeds the maximum floor space ratio specified by the applicable environmental planning instrument (*Ashfield Local Environmental Plan 2013*)
 - b. Clause 29(2)(a) - Height, in that the proposal exceeds the maximum building height specified by the applicable environmental planning instrument (*Ashfield Local Environmental Plan 2013*)
 - c. Clause 29(2) - in that the proposal is unclear on the level of solar access achieved to the common room, insufficient private open space for the managers room is provided and there is a lack of car parking.
 - d. Clause 30A - Character of local area, in that the design of the boarding house is not compatible with the character of the local area.
3. The development is inconsistent with Clause 3, Aims of Policy of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and Chapter C, Part 4 of the *Inner West Comprehensive Development Control Plan (DCP) 2016* for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill in that the development will adversely impact a tree at the neighbouring property.
4. The proposed development is inconsistent with the following Clauses of *Ashfield Local Environmental Plan 2013*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 4.3 - Height of Buildings, in that the development exceeds the maximum building height applicable to the site.
 - b. Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre, in that the development does not constitute affordable housing as defined by Clause 6 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* and therefore is not eligible for additional height afforded under the Clause and the development includes habitable floor area within the top-most 3 metres of the building.
 - c. Clause 4.4 - Floor Space Ratio, in that the development exceeds that maximum floor space ratio applicable to the site.
 - d. Clause 4.6 - Exceptions to Development Standards, in that the requirements of the standard have not been found to be unreasonable or unnecessary and would be inconsistent with the objectives of the floor space ratio development standard.

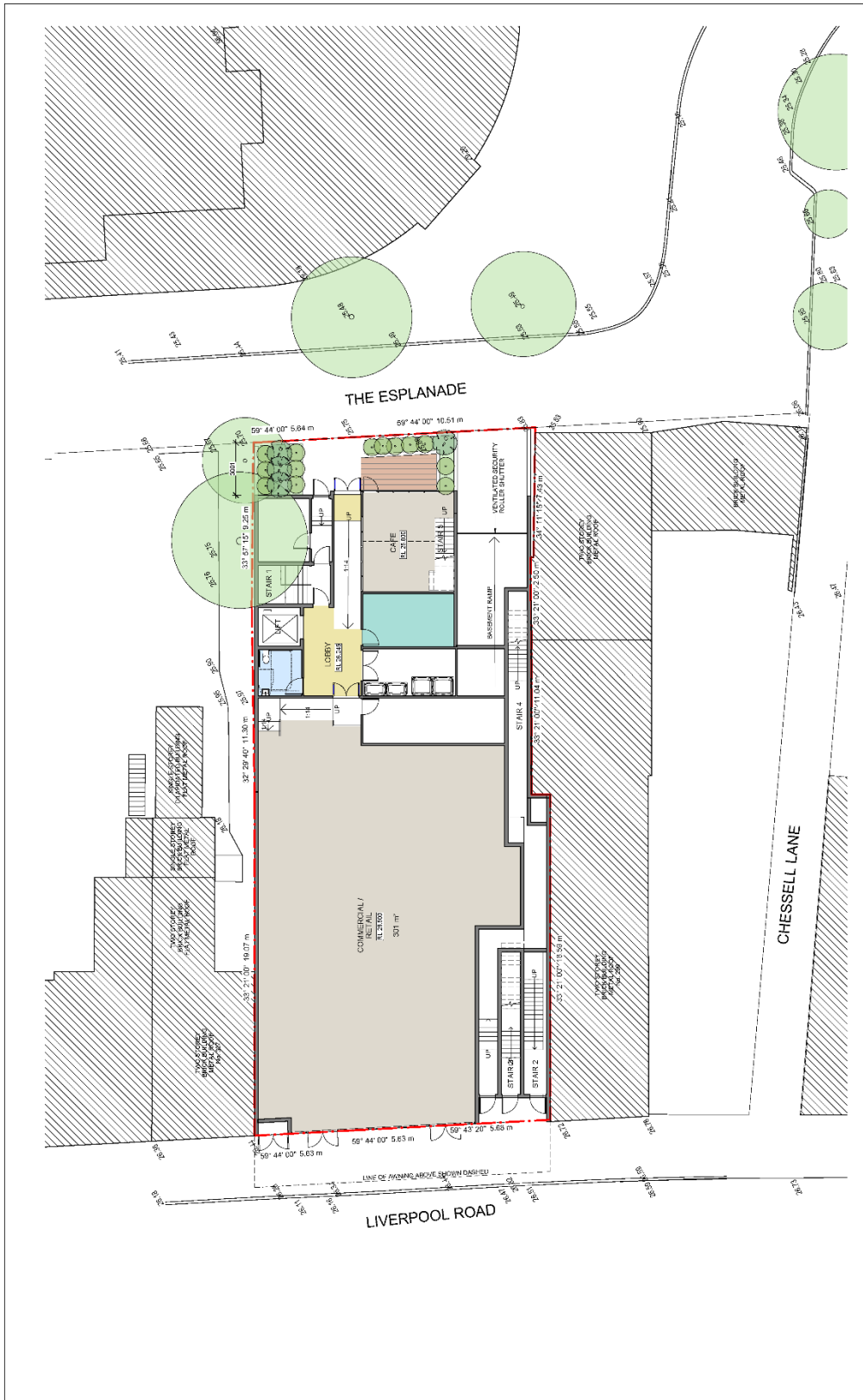
5. The proposed development is inconsistent with the following Clauses of draft *Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 - Aims of the Plan, in that the proposal does not provide affordable housing, does not protect residential amenity or promote a high standard of design
 - b. Clause 2.3 - Land Use Table and Zone Objectives, in that the development does not display a design quality that integrates with the desired future character and is inconsistent with the objectives of the B4 Mixed Use zone.
 - c. Clause 4.3 - Height of Buildings, in that the development exceeds the maximum building height applicable to the site.
 - d. Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre, in that the development does not constitute affordable housing as defined by Clause 6 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* and therefore is not eligible for additional height afforded under the Clause and the development includes habitable floor area within the top-most 3 metres of the building.
 - e. Clause 4.4 - Floor Space Ratio, in that the development exceeds that maximum floor space ratio applicable to the site.
 - f. Clause 4.6 - Exceptions to Development Standards, in that the requirements of the standard have not been found to be unreasonable or unnecessary and would be inconsistent with the objectives of the floor space ratio development standard.
6. The proposed development is inconsistent with the following Clauses of *State Environmental Planning Policy (Housing) 2021*, pursuant to Section 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 24 - Non-discretionary development standards, in that the development exceeds the allowable floor space ratio, is unclear on the level of solar access achieved and there is a shortfall of car parking.
 - b. Clause 25 - Standards for boarding houses, in that the development is not compatible with the local and desired future character and there is a shortfall of bicycle parking.
 - c. Clause 26 - Must be used for affordable housing in perpetuity, in that the boarding house is not proposed to be affordable housing.
7. The proposed development does not comply with the following Parts of the Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Chapter A, Part 2 - Good Design, in that the development overall is inconsistent with the performance criteria for good design.

- b. Chapter A, Part 8 - Parking, in that the development has a shortfall of carparking and does not provide a suitable courier (loading/unloading) area which would result in adverse traffic, parking and amenity impacts.
 - c. Chapter C, Part 3 - Waste Design and Management, in that the application lacks information surrounding waste management, does not provide a suitable bin area and the presentation of bins to The Esplanade would result in access and amenity impacts to the public domain.
 - d. Chapter D, Part 1 - Ashfield Town Centre, in that the development does not include an adequate setback from The Esplanade, does not include adequate public domain works to The Esplanade and does not provide a suitable active street frontage to The Esplanade.
8. 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* in that the following has not been provided with the application:
 - a. Diagrams demonstrating the level of solar access achieved to the common room and common open space of the boarding rooms.
 - b. An urban design analysis, concept massing of adjoining properties and generally contextual information to enable an assessment of the overall design and consistency with the Good Design Performance Criteria of the DCP.
9. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
10. Having regard to submissions received and the adverse environmental impacts of the proposal, the application as proposed is not in the public interest, pursuant to Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*.

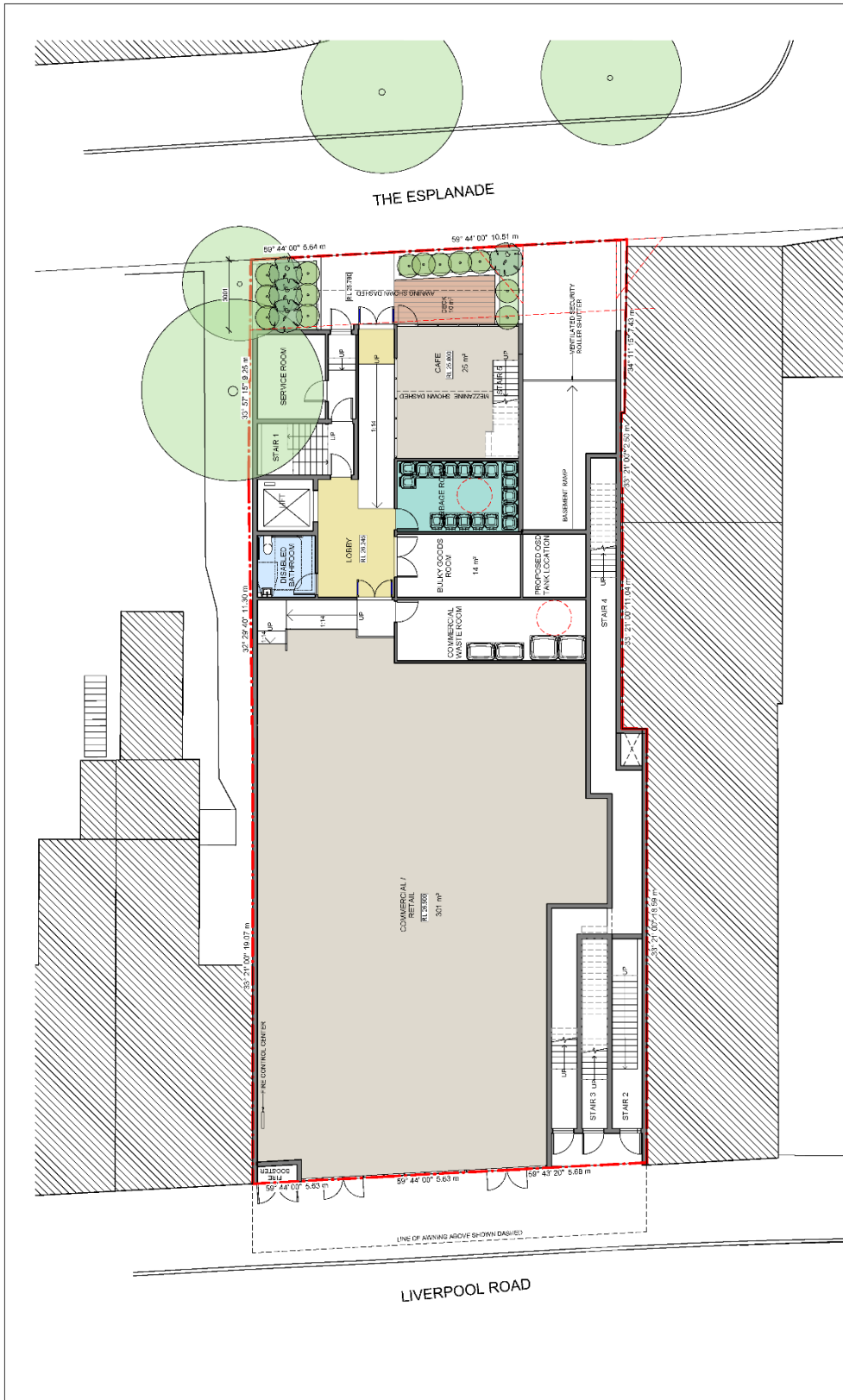
Attachment B – Plans of proposed development

Sheet List		Sheet Name	Sheet Number
		COVER PAGE	A101
		SURVEY PLAN	A102
		BASIX	A103
		SITE PLAN	A104
		BASEMENT FLOOR PLAN	A105
		GROUND FLOOR PLAN	A106
		MEZZANINE	A107
		LEVEL 1 FLOOR PLAN	A108
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		CPTED BASEMENT	A126
		CPTED GROUND FLOOR	A127
		MATERIALS + FINISHES	A128
		NOTIFICATION PLAN	A129
		3D PERSPECTIVES	A130

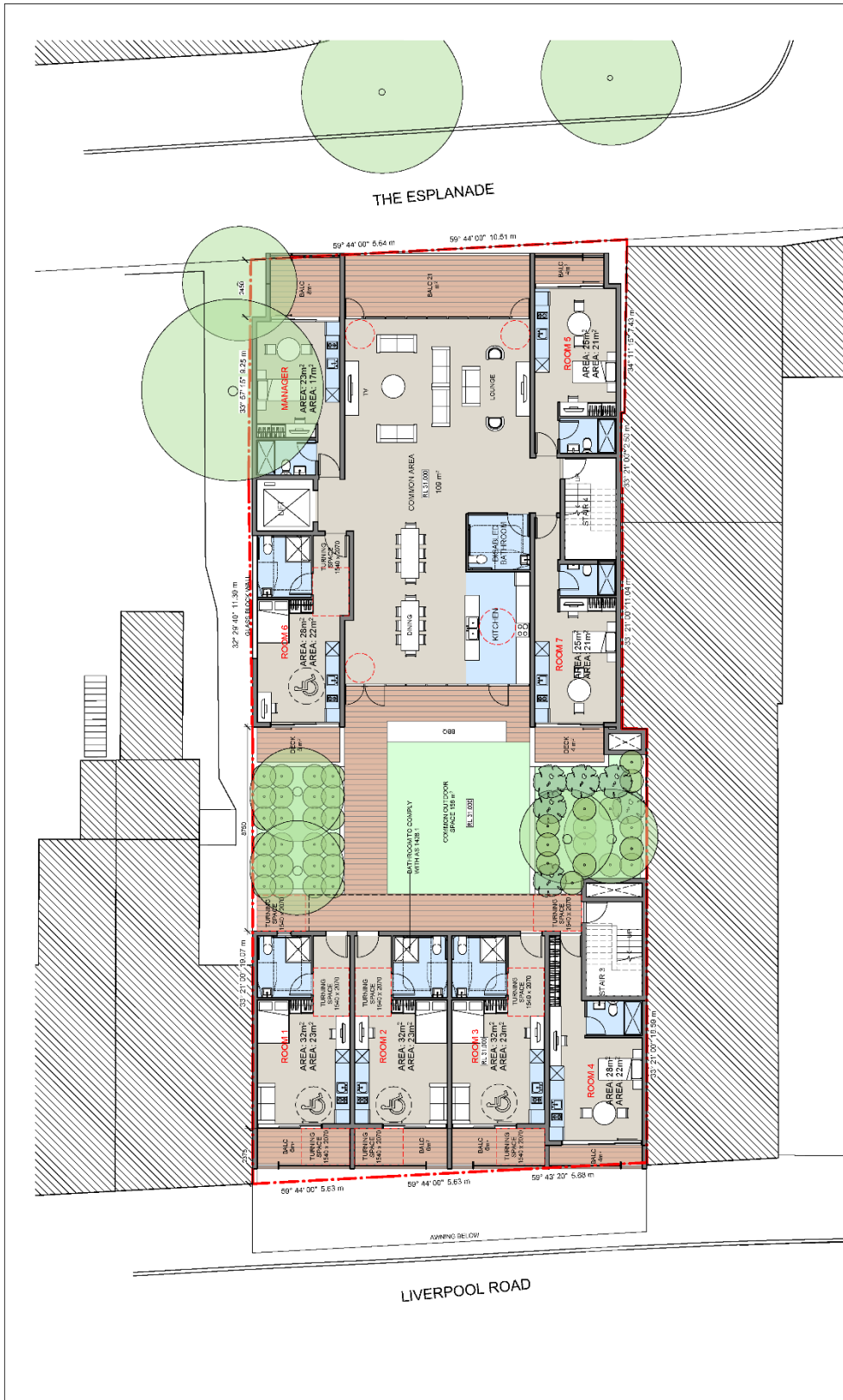
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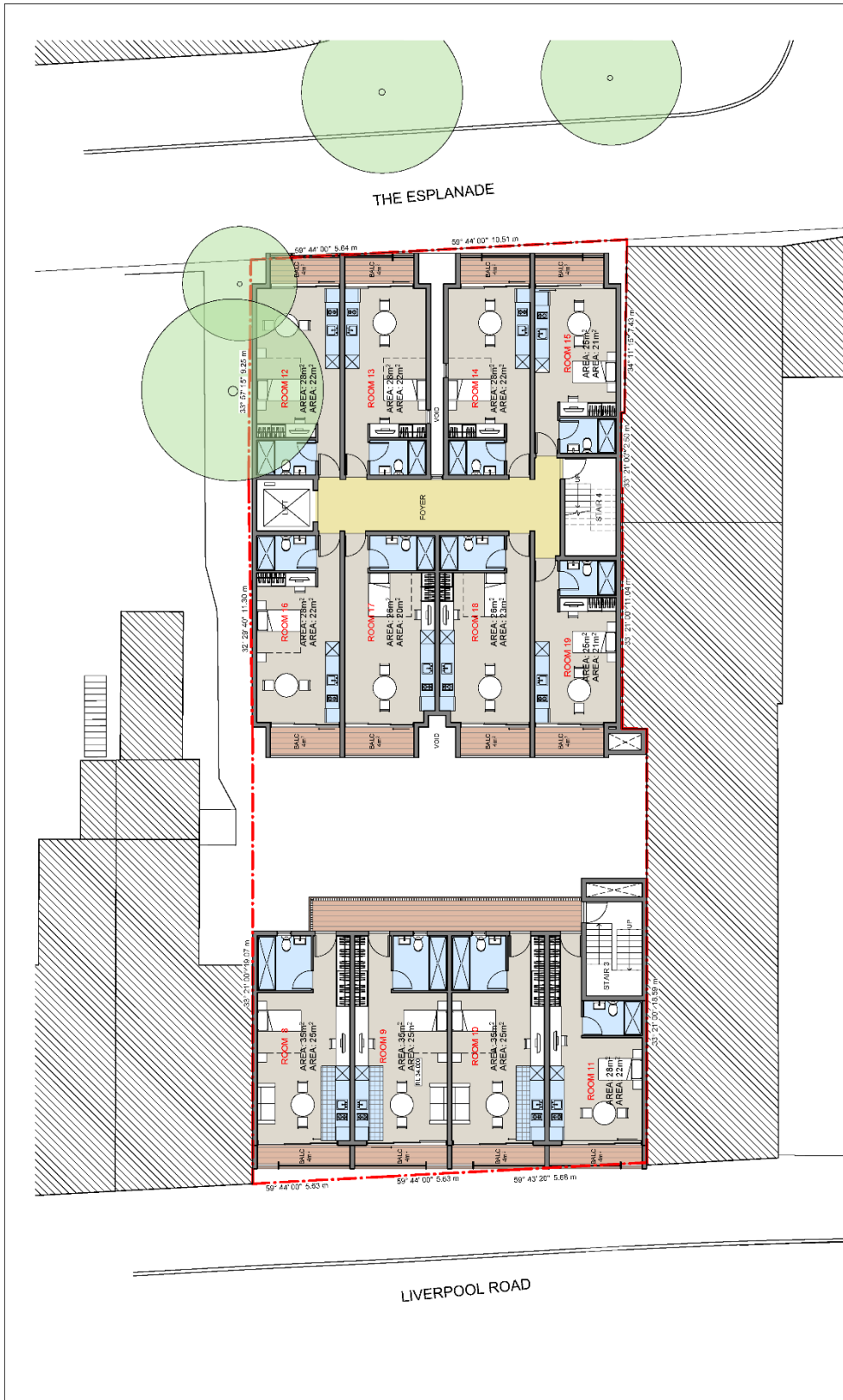
<p>habitation Design + Interiors</p> <p>Member of Architects</p> <p>15/16-17/18 Kingsway, Parramatta, NSW 2150 Tel: (02) 9639 9200 www.habitation.com.au</p>		<p>REVISION</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>AUTHOR</th> <th>ISSUED BY</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td>DEVELOPMENT APPLICATION</td> <td>TUK</td> <td>JF</td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	AUTHOR	ISSUED BY	1		DEVELOPMENT APPLICATION	TUK	JF	<p>SCALE @ A1 1:100</p> <p>SCALE @ A3 1:200</p> <p>DATE 09/08/21</p> <p>DRAWN BY H.K</p> <p>CHECKED BY J.P</p> <p>SHEET NUMBER 21/184</p> <p>PROJECT NUMBER A104</p>
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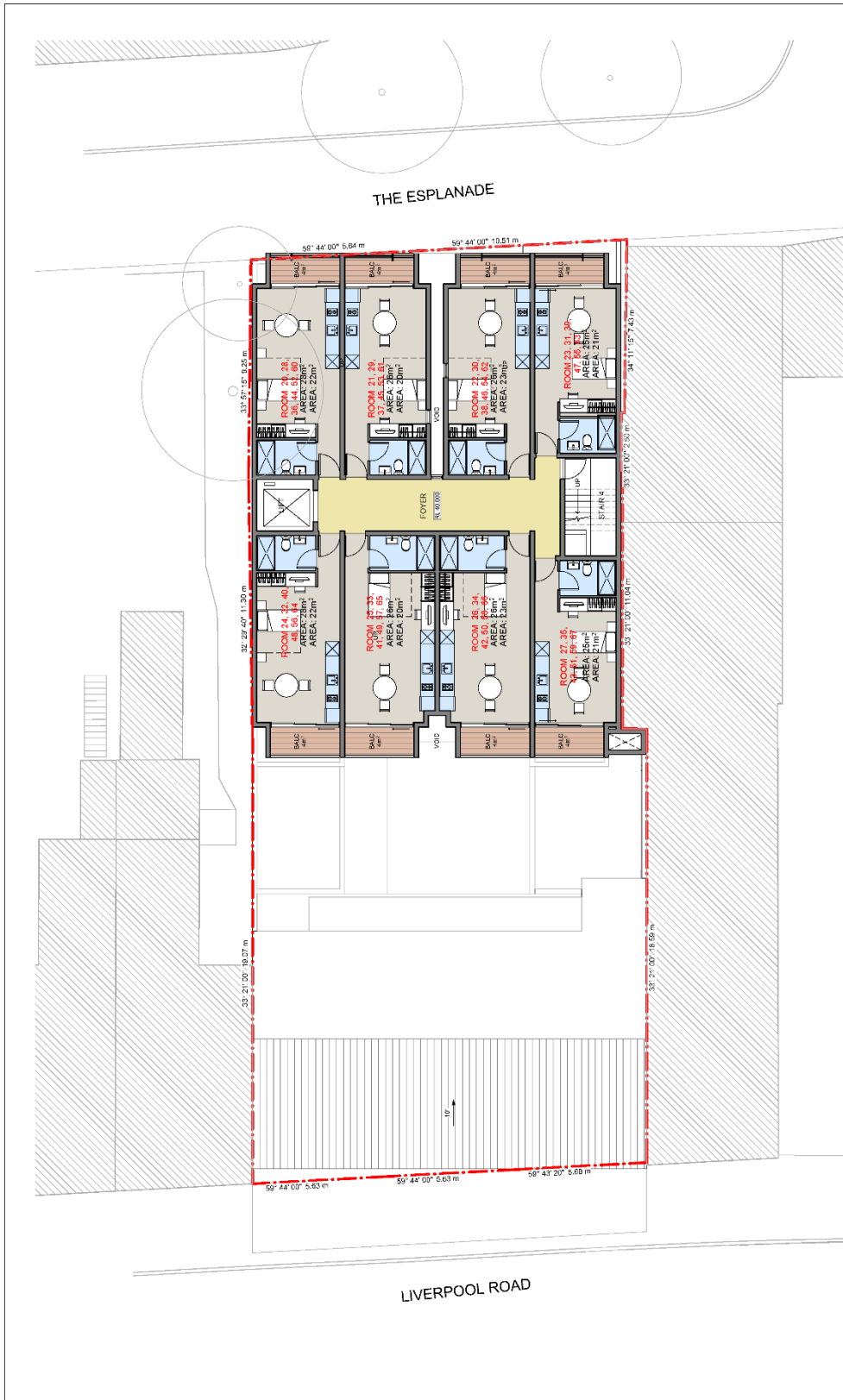
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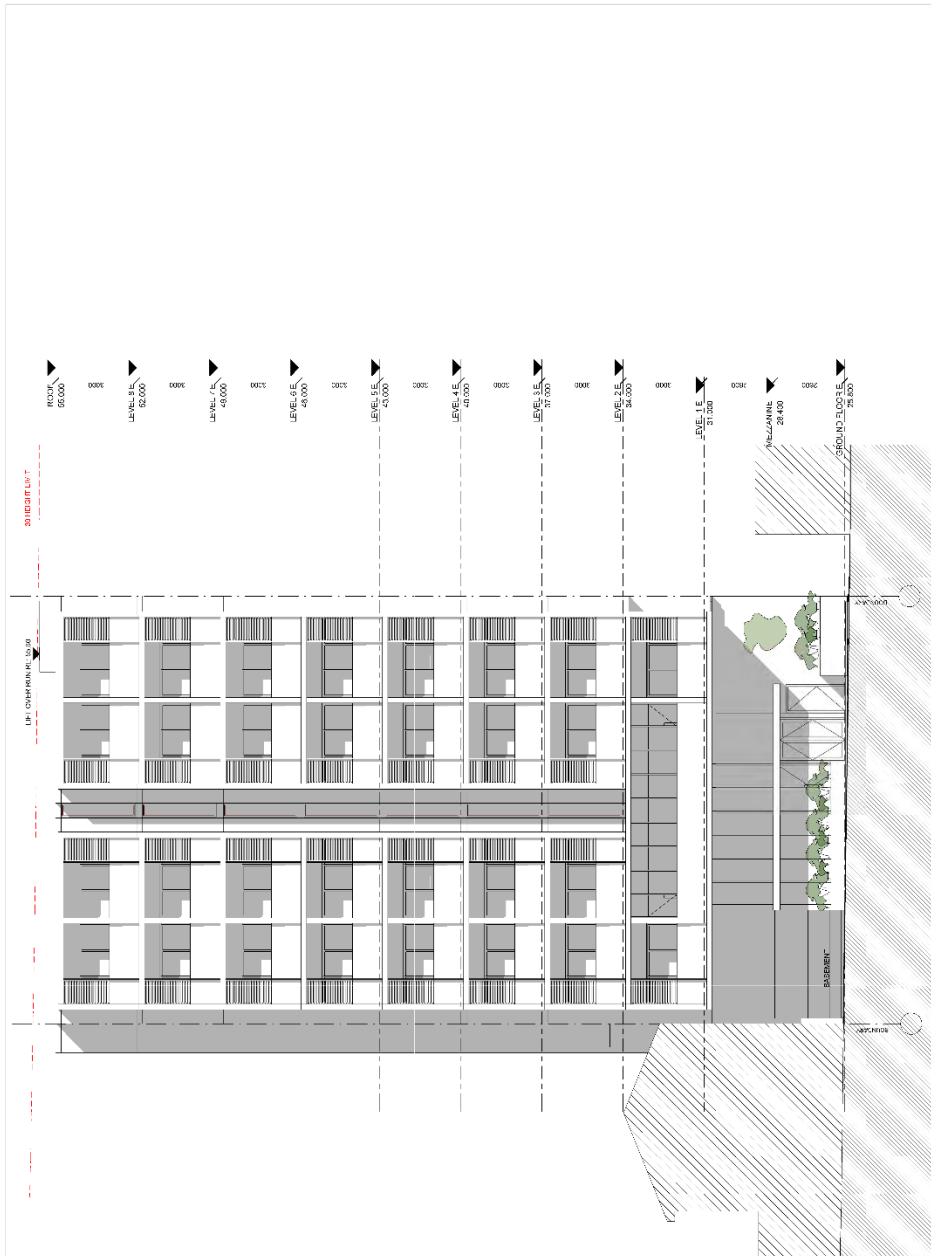
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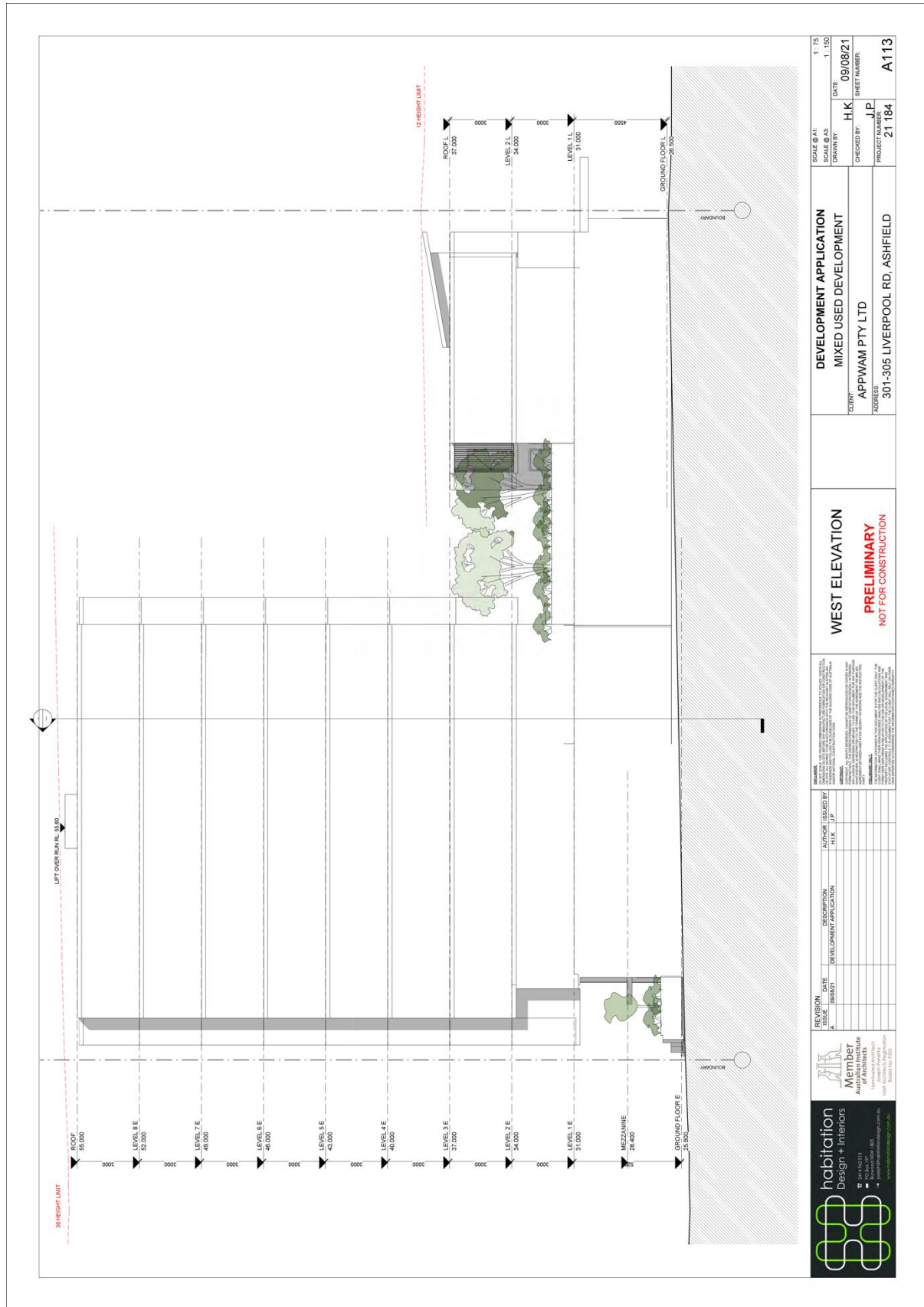
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<p>DEVELOPMENT APPLICATION MIXED USED DEVELOPMENT</p>				<p>CLIENT: APPWAM PTY LTD</p> <p>ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD</p>																									
<p>NORTH ELEVATION</p> <p>PRELIMINARY NOT FOR CONSTRUCTION</p>				<p>NOTES: 1. THIS DRAWING IS A PRELIMINARY NORTH ELEVATION AND IS NOT TO BE USED FOR CONSTRUCTION. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 3. REFER TO THE ARCHITECTURAL PLAN FOR THE EXACT LOCATION OF THE BUILDING. 4. REFER TO THE LANDSCAPE ARCHITECTURE PLAN FOR THE EXACT LOCATION OF THE LANDSCAPING. 5. REFER TO THE STRUCTURAL DRAWINGS FOR THE EXACT LOCATION OF THE STRUCTURE. 6. REFER TO THE MECHANICAL, ELECTRICAL AND PLUMBING (MEP) DRAWINGS FOR THE EXACT LOCATION OF THE MEP SERVICES. 7. REFER TO THE CIVIL ENGINEERING DRAWINGS FOR THE EXACT LOCATION OF THE CIVIL SERVICES. 8. REFER TO THE ENVIRONMENTAL IMPACT STATEMENT (EIS) FOR THE EXACT LOCATION OF THE ENVIRONMENTAL SERVICES. 9. REFER TO THE SOCIAL AND ECONOMIC IMPACT STATEMENT (SEIS) FOR THE EXACT LOCATION OF THE SOCIAL AND ECONOMIC SERVICES. 10. REFER TO THE CULTURAL IMPACT STATEMENT (CIS) FOR THE EXACT LOCATION OF THE CULTURAL SERVICES. 11. REFER TO THE HISTORIC ARCHITECTURE STATEMENT (HAS) FOR THE EXACT LOCATION OF THE HISTORIC ARCHITECTURE SERVICES. 12. REFER TO THE ARCHITECTURAL DESIGN STATEMENT (ADS) FOR THE EXACT LOCATION OF THE ARCHITECTURAL DESIGN SERVICES. 13. REFER TO THE ARCHITECTURAL DESIGN STATEMENT (ADS) FOR THE EXACT LOCATION OF THE ARCHITECTURAL DESIGN SERVICES. 14. REFER TO THE ARCHITECTURAL DESIGN STATEMENT (ADS) FOR THE EXACT LOCATION OF THE ARCHITECTURAL DESIGN SERVICES. 15. REFER TO THE ARCHITECTURAL DESIGN STATEMENT (ADS) FOR THE EXACT LOCATION OF THE ARCHITECTURAL DESIGN SERVICES.</p>																									



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WEST ELEVATION

PRELIMINARY
NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT:
APPWAM PTY LTD
ADDRESS:
301-305 LIVERPOOL RD, ASHFIELD

SCALE @ A1: 1:75
SCALE @ A3: 1:150

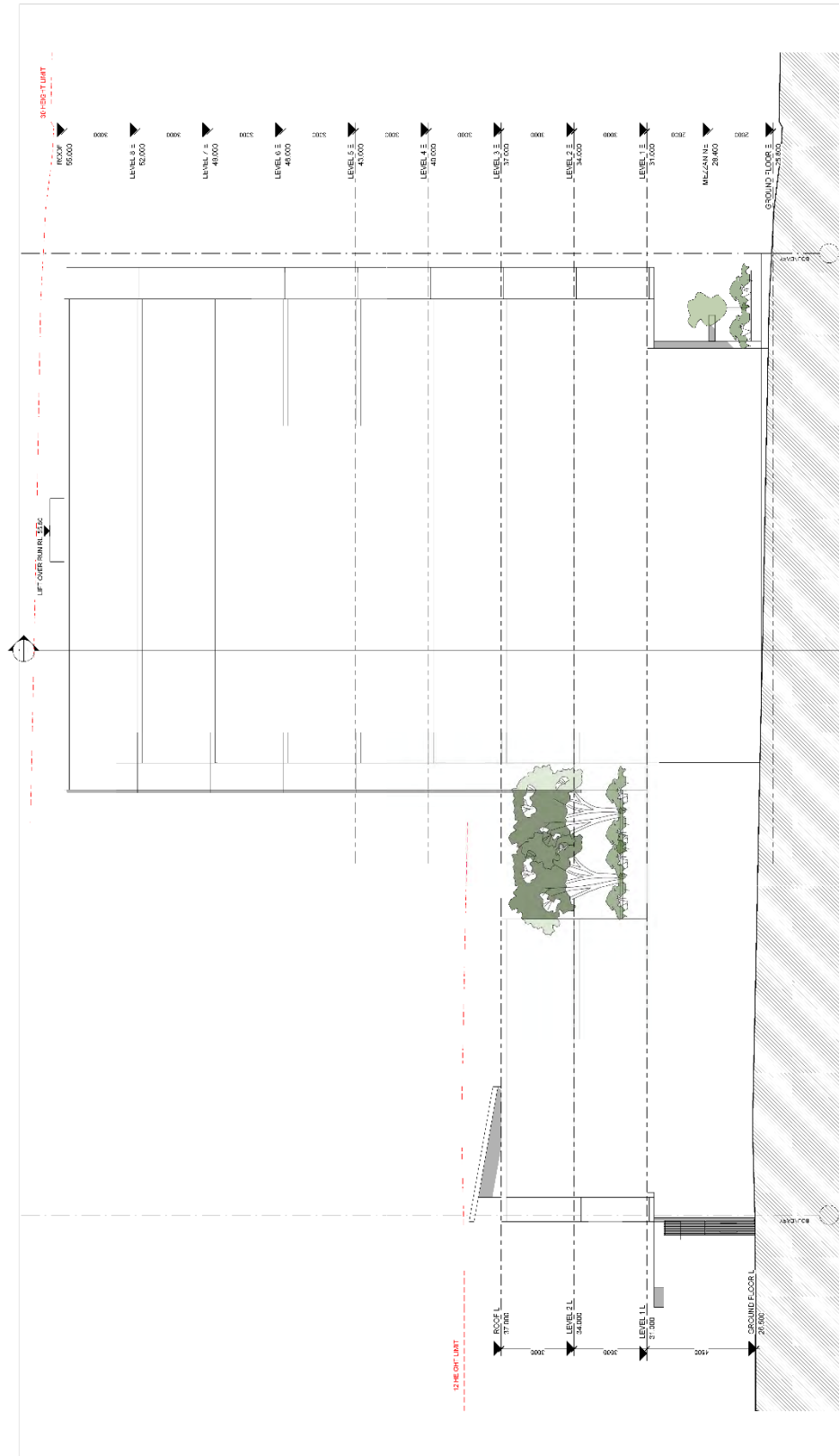
DRAWN BY: HK
DATE: 09/08/21

CHECKED BY: JP
SHEET NUMBER: 21/184

PROJECT NUMBER: A113

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	09/08/21	DEVELOPMENT APPLICATION	HK	JP

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				REVISION NO. DATE 1 10/08/21		DESCRIPTION DEVELOPMENT APPLICATION		APPROVAL APPROVED BY: HK DATE: 10/08/21		SCALE SCALE: 1:100 DRAWING NO: 09/08/21	
PROJECT NO: 301-305 LIVERPOOL RD, ASHFIELD		CLIENT: APPWAM PTY LTD		PROJECT NAME: 21/184		SHEET NO: 1/P		SHEET NO: 1/P		SHEET NO: 1/P	
EAST ELEVATION PRELIMINARY NOT FOR CONSTRUCTION		DEVELOPMENT APPLICATION MIXED USED DEVELOPMENT		PROJECT NO: 301-305 LIVERPOOL RD, ASHFIELD		CLIENT: APPWAM PTY LTD		PROJECT NAME: 21/184		SHEET NO: 1/P	



1 SHADOW DIAGRAM JUNE 21 9AM
1:200

LEGEND:
 EXISTING SHADOW
 PROPOSED SHADOW
 EXISTING AND PROPOSED SHADOW OVERLAP
 DEMOLISHED STRUCTURE

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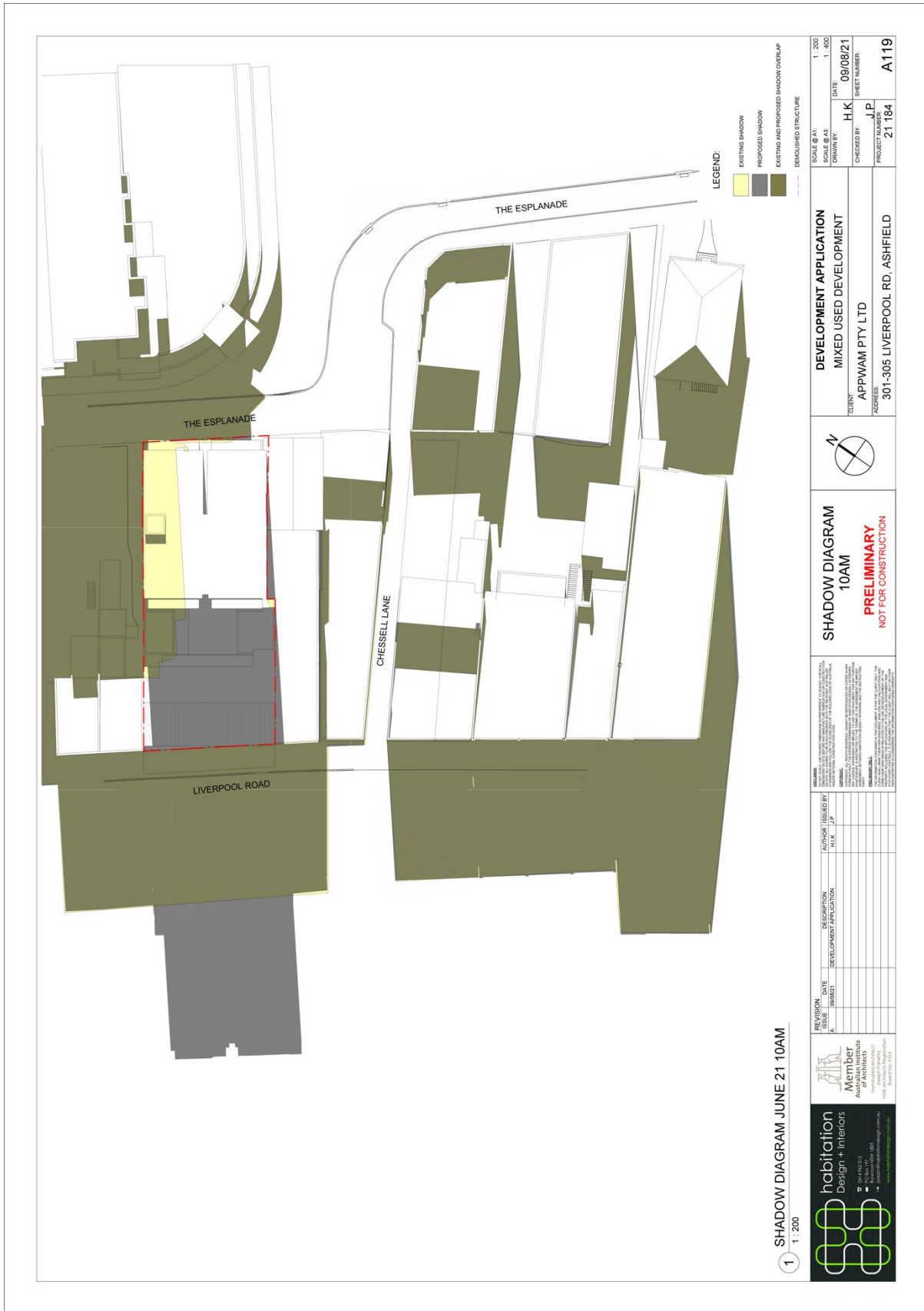
REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	09/08/21	DEVELOPMENT APPLICATION	H.K.	J.P.

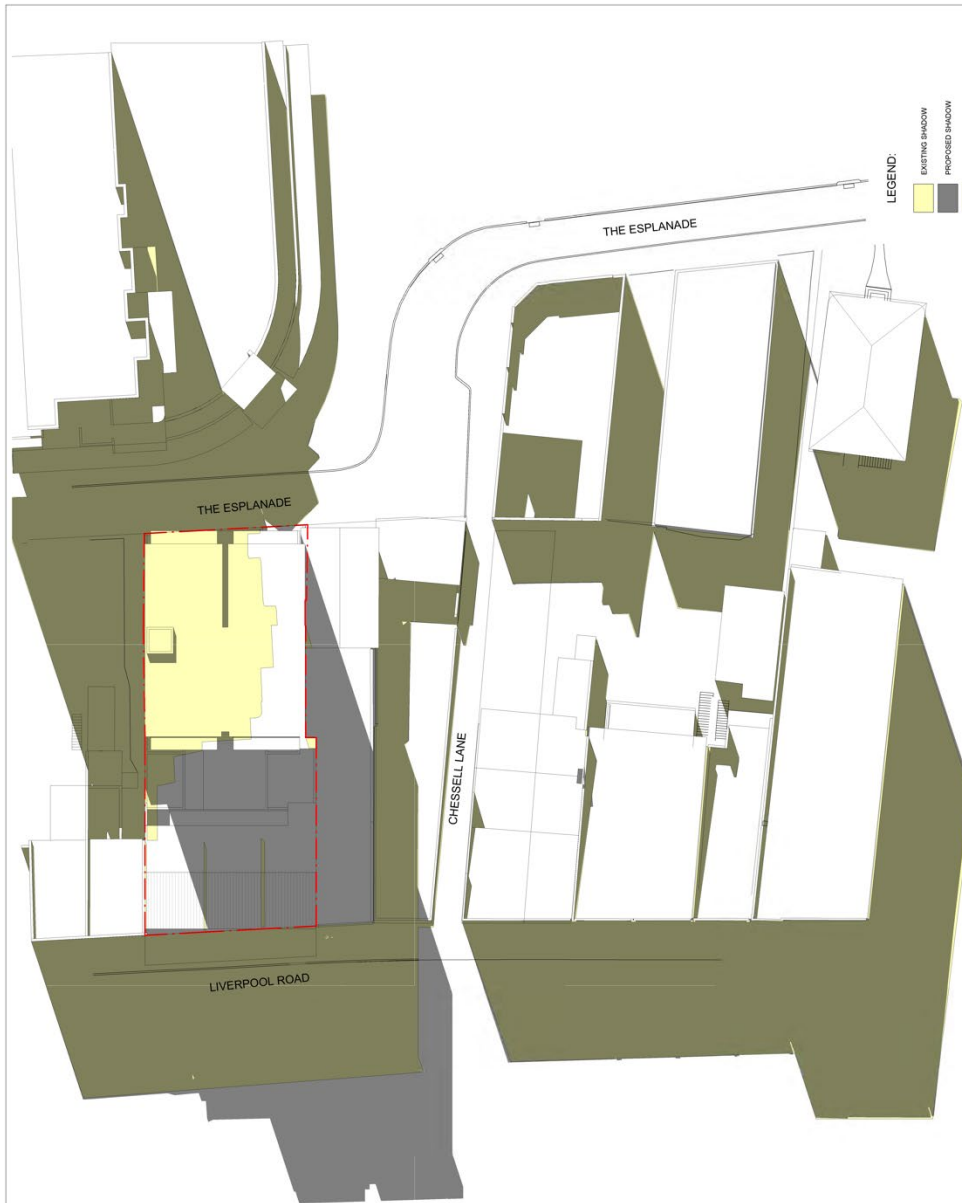
SHADOW DIAGRAM 9AM
PRELIMINARY
NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD

SCALE @ A1: 1:200
SCALE @ A3: 1:400
DRAWN BY: H.K.
DATE: 09/08/21
CHECKED BY: J.P.
PROJECT NUMBER: 21184
SHEET NUMBER: A118





LEGEND:

- EXISTING SHADOW
- PROPOSED SHADOW
- EXISTING AND PROPOSED SHADOW OVERLAP
- DEMOLISHED STRUCTURE

1 SHADOW DIAGRAM JUNE 21 11AM
1:200

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SHADOW DIAGRAM
11AM
PRELIMINARY
NOT FOR CONSTRUCTION

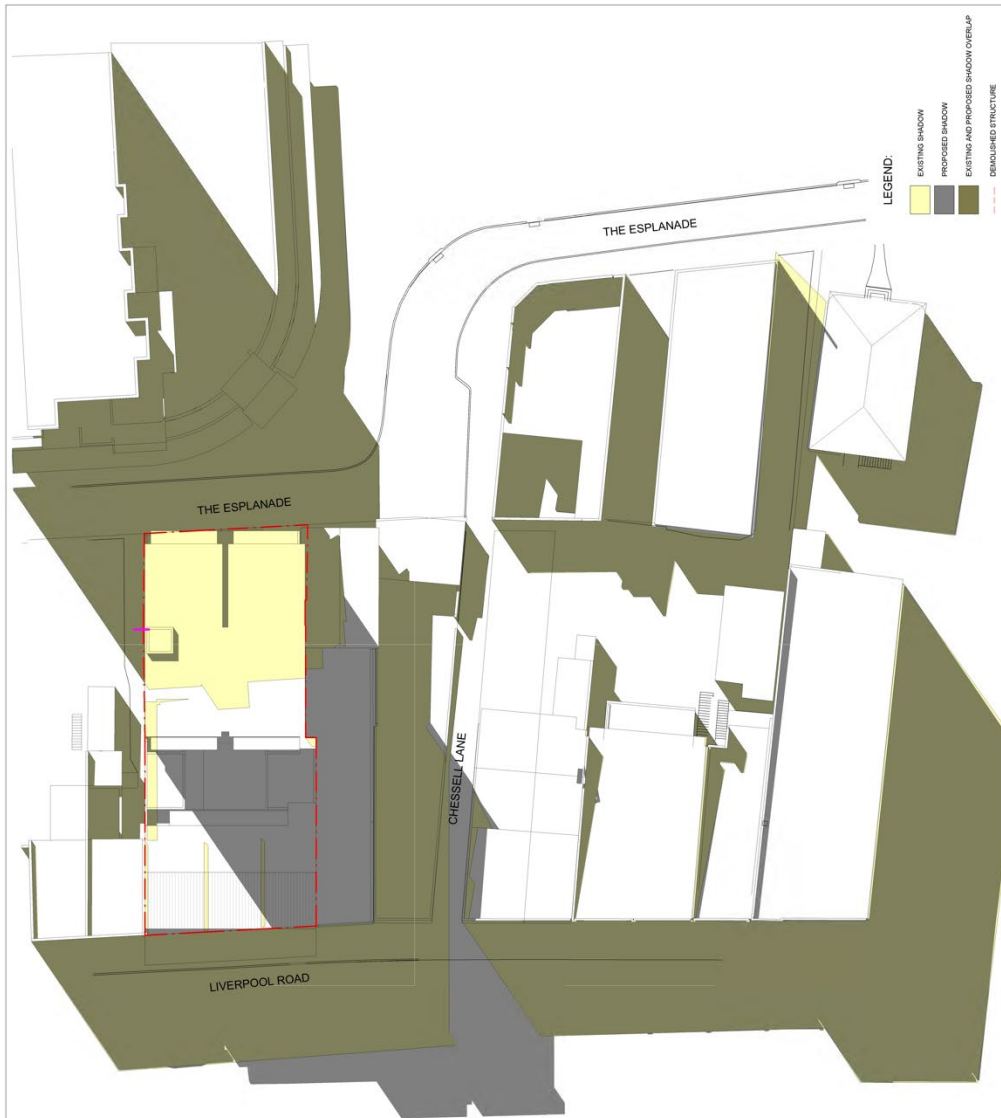
DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD

SCALE @ A1: 1:200
SCALE @ A3: 1:400
DRAWN BY: HK
DATE: 09/08/21
CHECKED BY: JP
SHEET NUMBER: A120
PROJECT NUMBER: 21184

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	09/08/21	DEVELOPMENT APPLICATION	HK	JP

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1 SHADOW DIAGRAM JUNE 21 12PM
1:200

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1 SHADOW DIAGRAM JUNE 21 1PM
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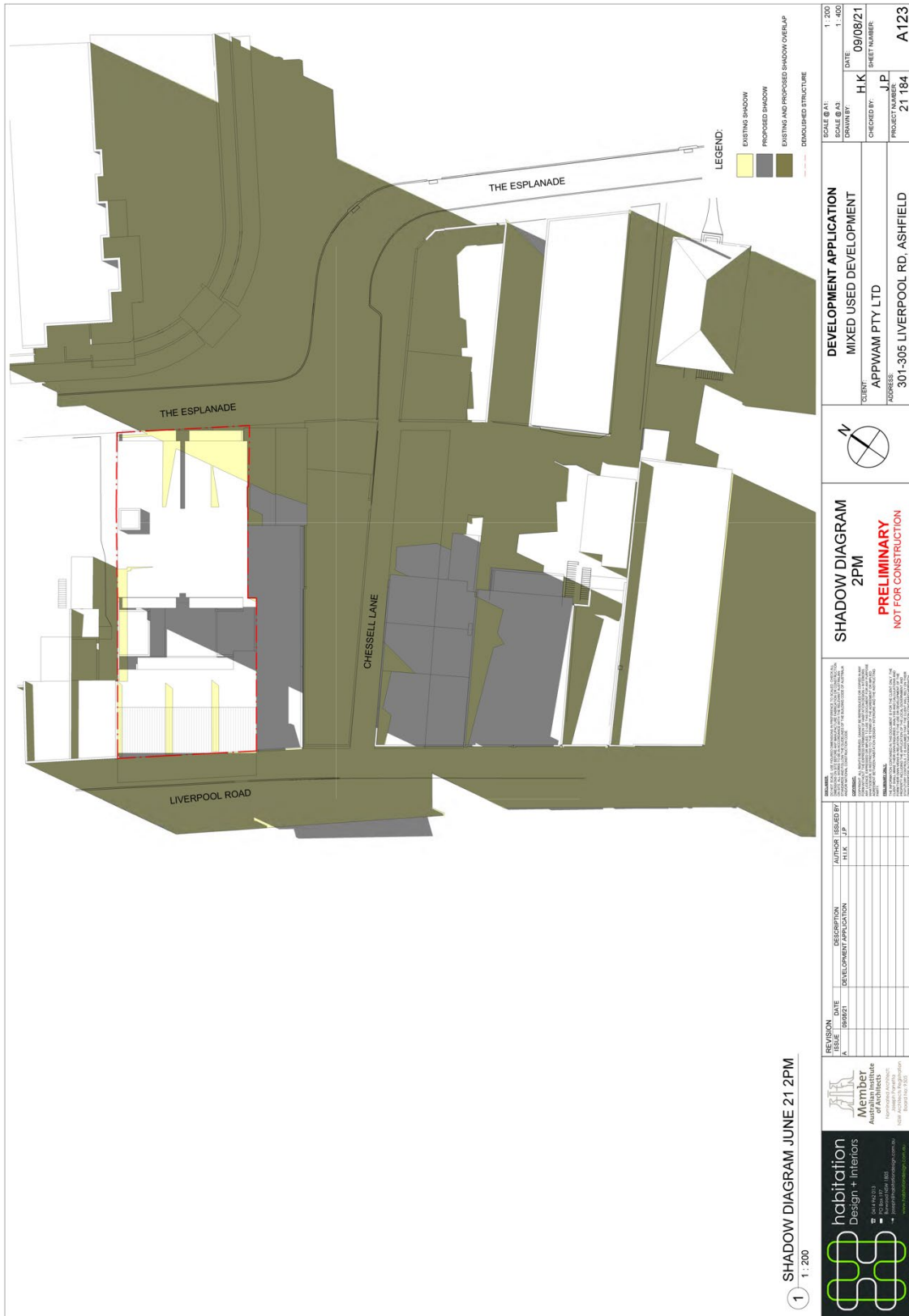
DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD

SCALE @ A1: 1 : 200
SCALE @ A3: 1 : 400
DATE: 09/08/21
DRAWN BY: HK
CHECKED BY: JP
PROJECT NUMBER: 21184
SHEET NUMBER: A122

REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	09/08/21	DEVELOPMENT APPLICATION	HK	JP

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SCALE @ A1	1: 200
SCALE @ A3	1: 400
DRAWN BY	HK
DATE	09/08/21
CHECKED BY	JP
SHEET NUMBER	21 184
PROJECT NUMBER	A123

DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD



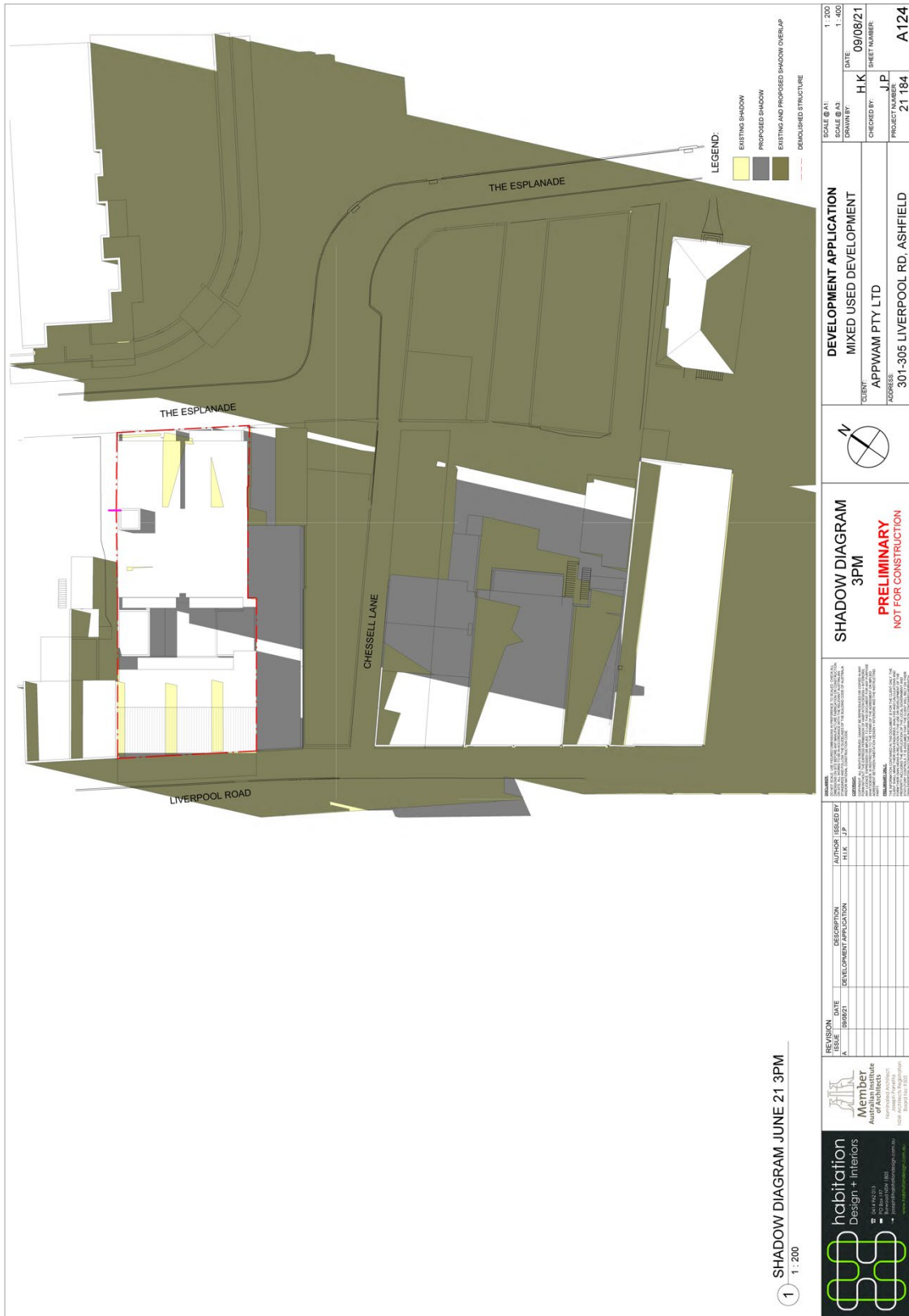
SHADOW DIAGRAM
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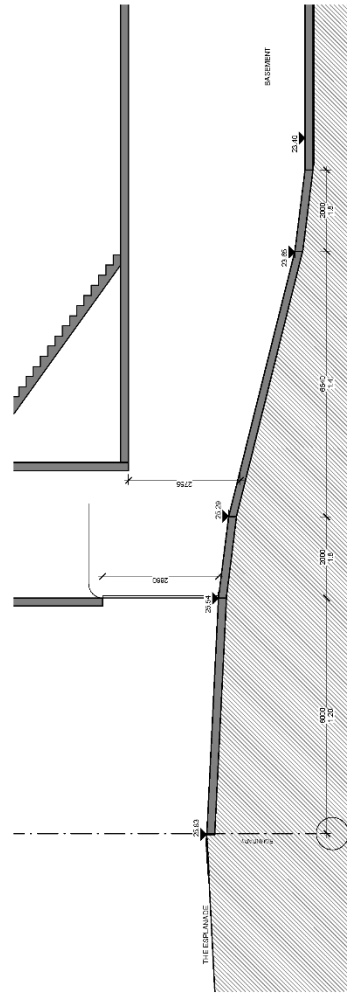
REVISION	DATE	DESCRIPTION	AUTHOR	ISSUED BY
A	09/08/21	DEVELOPMENT APPLICATION	HK	JP

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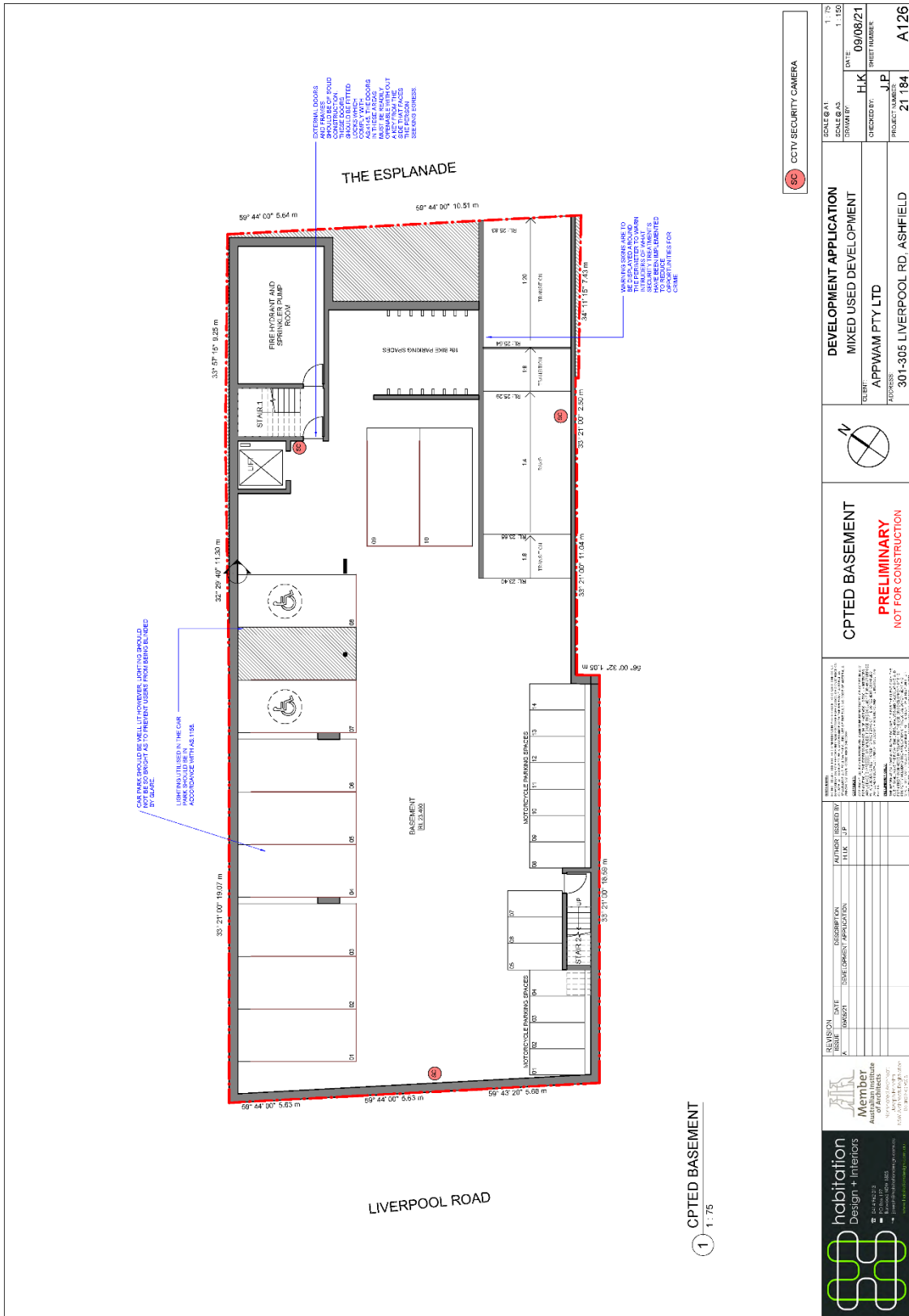


1 SHADOW DIAGRAM JUNE 21 3PM
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1 SECTION RAMP
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 <p>habitation Design + Interiors</p> <p>15/15-17/15-17 Riverside Drive Newport NSW 1505 www.habitationdesign.com.au</p>	 <p>Member of Architects</p> <p>15/15-17/15-17 Riverside Drive Newport NSW 1505</p>	REVISION ISSUE DATE PROJECT DESCRIPTION AUTHOR ISSUED BY 1 09/08/21 301-305 LIVERPOOL RD, ASHFIELD TUK JP	SCALE @ A1 1:50 SCALE @ A3 1:100 DRAWN BY H.K. DATE 09/08/21 CHECKED BY J.P. SHEET NUMBER 21/184 PRODUCT NUMBER A125
		DEVELOPMENT APPLICATION MIXED USED DEVELOPMENT CLIENT: APPWAM PTY LTD ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD	DRIVEWAY DETAIL PRELIMINARY NOT FOR CONSTRUCTION



1 CPTED BASEMENT
1:75

SCALE @ A1 SCALE @ A3 DRAWN BY DATE	1:75
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DESIGNED BY	H.K.
PROJECT NUMBER	21184
SHEET NUMBER	A126

DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
ADDRESS: 301-305 LIVERPOOL RD, ASHFIELD

CPTED BASEMENT
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Architects

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15/05/2017

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15/05/2017
15/05/2017

1

AREA: MAIN WALLS
FINISH: CONCRETE TO BE PAINTED
DETAIL: DULUX "BLEACHES QUARTER"

2

AREA: BRICK WALLS
FINISH: FACE BRICK
DETAIL: AUSTRAL "GOVERNER"

3

AREA: WINDOW/DOORS
FRAME: PERGOLA, AWNING, BALUSTRADE
FINISH: POWDERCOATED ALUMINIUM "ORBOND"
"MONUMENT"

4

AREA: SCREENING
FINISH: POWDER COATED ALUMINIUM

5

AREA: BALCONIES
FINISH: CONCRETE
DETAIL: OFF FORM FINISH

6

AREA: BALCONIES
FINISH: GLASS
DETAIL: CLEAR GLASS BALUSTRADE WITH POWDERCOATED ALUMINIUM FRAME

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A		DEVELOPMENT APPLICATION	TJK	JF

MATERIALS + FINISHES
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DEVELOPMENT APPLICATION
MIXED USED DEVELOPMENT

CLIENT: APPWAM PTY LTD
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SCALE @ A1
SCALE @ A3
DRAWN BY: HK
DATE: 09/08/21
SHEET NUMBER: 12
CHECKED BY: J.P.
PROJECT NUMBER: 21 184
SHEET NUMBER: A128





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3D PERSPECTIVES

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DEVELOPMENT APPLICATION
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CLIENT: APPWAM PTY LTD
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SCALE @ A1
SCALE @ A3
DRAWN BY: HK
DATE: 09/08/21
CHECKED BY: J.P.
PROJECT NUMBER: 21 184
SHEET NUMBER: A130

Attachment C- Clause 4.6 Exception to Development Standards





**CLAUSE 4.6 REQUEST FOR VARIATION TO
CLAUSE 4.4 (2) (FLOOR SPACE RATIO) OF ASHFIELD
LOCAL ENVIRONMENTAL PLAN 2013 (ALEP)**

***301-305 Liverpool Road,
Ashfield***

August 2021

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Clause 4.6 - Request for Variation
ALEP 2013 – Clause 4.4 Floor Space Ratio
301-305 Liverpool Road, Ashfield



1.0 Introduction

- This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Ashfield Local Environmental Plan 2013 (ALEP 2013), the relevant clause being **Clause 4.4(2)** (Floor Space Ratio) (FSR).
- The relevant baseline maximum FSR for the site is **3.0:1** which is increased to **3.6:1** under the State Environmental Planning Policy (Affordable Rental Housing) 2009.
- The relevant Floor Space Ratio control is a *development standard* for the purposes of the *EP & A Act 1979*.
- This request to vary the FSR development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") as well as other relevant case law. With regard to environmental planning grounds and character the Courts recent decision in *Big Property Pty Ltd v Randwick City Council [2021]* also provides justification for this written clause 4.6 variation request.
- The objective of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those identified as the plans prepared by Habitation Design + Interiors Architecture.

2.0 Development Standard to be Varied – Floor Space Ratio

The relevant *development standard* to be varied is the **3.0:1** FSR control under Clause 4.4(2) with the added **0.6:1** under the SEPPARH. By default the SEPPARH enables a slightly greater FSR of up to 20% of the maximum FSR (i.e. **3:1**) given that the base FSR is greater than **2.5:1**. Clause 4.4 of ALEP relevantly provides:

4.4 Floor space ratio

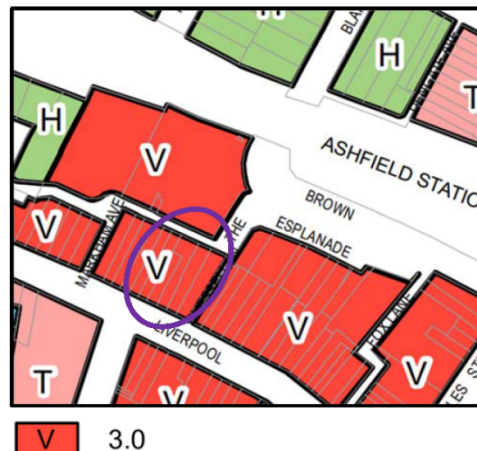
(1) *The objectives of this clause are as follows—*

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

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The relevant FSR map is identified below:

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 ALEP 2013 – Clause 4.4 Floor Space Ratio
 301-305 Liverpool Road, Ashfield



The subject site is mapped “V” – 03.0:1 (max).

3.0 Nature of Variation Sought

The requested variation is as follows:

The proposal has a permitted FSR as follows:

ALEP FSR = 0.7:1; SEPP (ARH) bonus FSR = 20% or 0.6:1
 Total permitted FSR is therefore 3.6:1.

The site area is 651m².
 Total permissible GFA is 2,343.6m².

The proposal has a gross floor area of 2,659m².
 Proposed FSR is 4.1:1

This is an exceedance of 0.5:1, which equates to 315.4m² or 13.5% variation.

4.0 Floor Space Ratio – Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

- “provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*
- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*

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- (k) the carrying out of earthworks,
(l) the effects of development on patterns of wind, sunlight, daylight or shadows,
(m) the provision of services, facilities and amenities demanded by development,
(n) the emission of pollution and means for its prevention or control or mitigation, and
(o) such other matters as may be prescribed.”

The 3.0:1 maximum floor space ratio standard is a *development standard* as defined under the EP&A Act 1979.

5.0 Clause 4.6 of Ashfield Local Environmental Plan 2013

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

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

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (4) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (5) *that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the ALEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (6) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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Sections below of this written request address the matters required under cl4.6(4)(a) of the ALEP 2013 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (7) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Sections below of this written request addresses the matters required under cl4.6(5) of the ALEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

6.0 Relevant Decisions

Initial Action v Woollahra

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in ALEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Big Property v Randwick

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council [2021]* (herein 'Big Property'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021]* (herein 'HPG').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

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The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced *SJD*, and went on to hold that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the

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Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

7.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary"

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis)*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives. The first consideration relates to overall scale of a building given that both height and FSR determines the scale of a building to another building or natural feature.

In this case the site is part of the Ashfield Town Centre precinct and its locational context of the site is relative to existing development on the northern side of The Esplanade, allowable height limits on the site and in the immediate area and the visual fit of the development in this context. It is noted that Ashfield LEP allows an additional 7m height bonus for the provision of affordable housing. The take-up of this height bonus translates

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into additional building levels and therefore additional FSR. It is not possible to achieve one without the other and satisfy the intention of the height bonus. The height bonus arises from the provision of affordable housing in the form of boarding house accommodation.

The bulk and scale of the development respects both the Liverpool Road streetscape and The Esplanade. The visual 'fit' is acceptable and appropriate for this site, which can be translated in an acceptable FSR variation in this case. The Esplanade at present serves as a service type road but this will dramatically change under the LEP and DCP strategic planning imperatives applicable to this area.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case includes both built form and amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the FSR control requires the development to achieve a high-quality built form and provide reasonable amenity impacts as a result of the building bulk and scale. The following justification relates to both the built form, locational context and amenity.

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

The proposal seeks to vary the FSR development standard due to the site-specific circumstances of this case. These circumstances are established by the ALEP 2013 height bonus for development that provides affordable housing. To achieve the intent of the height bonus the floor area of the development must increase proportionately. So while the proposal is compliant with the ALEP 2013 height control - when the affordable housing bonus is applied - the floor space ratio of the development is bolstered and exceeds the ALEP FSR control. The height bonus and floor area increase go hand in hand, thus creating the proposed variation to the FSR control in this case. The site characteristics are such that the site has the capacity to support the additional GFA given its overall shape size and orientation. There are no specific limiting site features that the site unsuitable for the additional FSR. The proposed FSR enables the adjoining sites to be redeveloped in the future and achieve the 3m Esplanade setback as well as a central open courtyard.

Clause 4.6 permits the applicant to seek a variation to the established standards. In this case the proposal establishes that the FSR standard pertaining to this site is unreasonable in this case. Further, due to the arguments presented in this written variation, the proposal has an acceptable 'fit' for the site. This objective is adequately achieved given the circumstances of this case.

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

The submitted plans demonstrate that the proposed development has an acceptable 'fit' for the site. The site is suitable for the height and density of development proposed. It provides an appropriate level of bulk and scale to both Liverpool Road and The Esplanade without undue impacts on surrounding properties. The development complies with the height limits for both the Liverpool Road frontage and The Esplanade (with affordable housing 7m bonus). Given the planning intervention of the height and FSR control over recent times there is no expectation in the ATC that future development will be the same as the existing built form. Evolution of the existing streetscape is a specific consequence of the current planning controls. This objective is achieved.

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

The site is not a heritage item, is not located within a conservation area and is not proximity to any heritage items. This objective is not relevant to the site.

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(d) to protect the use or enjoyment of adjoining properties and the public domain.

The development assessment contained within the main body of the Statement of Environmental Effects establishes that the use and enjoyment of adjoining properties will benefit due to the following reasons:

- Replacement of existing non-descript commercial landuses with a mixed - use, compliant land use that optimises the site for commercial and residential purposes;
- Activation of both Liverpool Road and The Esplanade will benefit the subject site and all properties along The Esplanade by providing improved surveillance of the public domain and connectivity;
- Siting of the development on the land to minimise potential amenity impacts on adjoining residents, are far as possible given the orientation of the site, the development potential of adjoining sites and the likely future siting of development on neighbouring land.

This objective is addressed by the development.

(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.

As stated previously the locational context of the site lends itself to acceptance of a variation to the density of new development, The visual 'fit' with development to the north, south and surrounding sites is established by the development plans submitted with the DA. The visual 'fit' of the proposed development is based on known development and likely future development over time. The proposed development is considered appropriate and suitable for the site. As shown in Big Property v Randwick Council the future character is very much informed by the relevant controls which in this case includes affordable housing density bonus and height bonus under the ALEP. The site is located in an area where there will be a transformation and therefore any additional GFA dedicated as affordable housing is capable of providing the necessary environmental planning grounds to support a variation. The objective is achieved.

8.0 4.6(3)(b) – Sufficient Environmental Planning Grounds

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to floor space ratio and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter (i.e. FSR). Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned B4 Mixed Use. We do note that affordable housing is identified as a matter that satisfies environmental planning grounds (see Big Property v Randwick).

The additional FSR for the proposed building is outlined in Section 3 above. Specifically, the FSR proposed is a function of the additional floor area attributable to the height bonus for the provision of affordable housing together with the FSR bonus under SEPPARH.

The environmental planning grounds justification for the FSR variation is provided as follows:

- The SEPP ARH provides for a bonus floor area for affordable housing, equating to 20% where the local planning provisions allow for a FSR of 2.5:1 or higher. In this case the permitted FSR under ALEP 2013 is 3.0:1, allowing an additional 0.6:1 or in this case an additional 390.6m² GFA. The FSR allowable, including the bonus is 3.6:1.

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- The ALEP 2013 allows a 7m height bonus for the provision of affordable housing, thereby increasing the allowable height for the subject site from 23m to 30m. This equates to some two storeys.
- The proposal has an FSR of 4.1:1, a variation of 0.5:1 above the ALEP 2013 + SEPP ARH bonus permissible FSR for the site. The combined floor area of Levels 7 & 8 is 520m². The variation is only **315.4m²** or **13.5%** variation. Therefore, in terms of the building height the variation is less than the allowable building envelope in a theoretical sense.
- Based on the above, the proposed FSR of 4.1:1 is not exceptional in terms of what is available for a site under the provisions of ALEP 2013 and SEPPARH. The additional GFA is to be used for boarding house purposes falling under the infill housing provisions of the Affordable Housing SEPP.
- The site dimensions create a development site that is capable and suitable for development of a building that has a lower building envelope facing Liverpool Road and greater bulk and scale fronting The Esplanade. The Esplanade tower forms a backdrop to the streetscape along Liverpool Road. This is similar to the existing development on the southern side of Liverpool Road in the vicinity of the subject site.
- Accepting that the site is appropriate for the proposed bulk and scale of development, the resultant urban design outcome is also acceptable for this site, given the site's locational and neighbourhood context. The additional GFA can be readily absorbed on the site and still provide a dual tower type form with central courtyard to allow for light penetration.
- The proposal does not result in undue adverse amenity impacts on existing development to the east or west of the site. The proposal has been designed to account for this site characteristic, including the building separation and internal courtyard between the two boarding house wings above ground level.
- The upper levels of the development that utilise the height bonus for affordable housing, are part of the boarding house and therefore is dedicated affordable housing GFA. The additional building height and additional floor area go hand in hand to achieve the intent of the height and SEPP ARH floor area bonus. Zero (Liverpool Road) and 3m (The Esplanade) setbacks are achieved to activate both frontages as required by the ADCP.
- The Inner West Council, through its residential strategy, seeks to increase affordable housing across the LGA and this proposal will provide three floor levels or some 24 additional boarding rooms (up to 48 occupants) – over and above the baseline development standards that would be available without the SEPPARH floor area bonus and the ALEP 2013 building height bonus. This housing outcome provides justification for the additional GFA at this location based on the councils identified need for increased housing supply that will, in time, bring down rental prices.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to FSR. Clause 1.3 of the EP and A Act 1979 relevantly provides:

Clause 4.6 - Request for Variation
ALEP 2013 – Clause 4.4 Floor Space Ratio
301-305 Liverpool Road, Ashfield



“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,***
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),***
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,***
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)***

A development that complies with the landuse zoning of the site (B4 Mixed Use) satisfies the objectives of under S1.3 EP&A Act 1979.

The plans by Habitation Design & Interiors Architecture, and specifically the FSR variations satisfy the objectives in bold given that:

- The development replaces a non-descript, tired commercial development with a permissible mixed use commercial and residential development, in line with Council’s strategic planning and the ALEP 2013;
- The development allows for the timely and economic development of the land as there is currently a high level of redevelopment occurring in the Ashfield Town Centre;
- The development of sixty-seven (67) boarding house rooms for affordable housing in this location is a positive social outcome for a variety of residents as the development will accommodate up to 2 persons per room, including accessible rooms not currently available in this development typology in the immediate area;
- The development offers better and proper management of the States land resources by providing a more efficient use of private land on a site that is locational well positioned to take advantage of proximity to high quality public transport, jobs, services and local and regional leisure, recreation and cultural activities.
- The additional FSR of 0.5:1 (over and above the 3.6:1 FSR permissible under the ALEP and SEPP) provides two additional floor levels and 16 boarding rooms which will be more affordable than larger residential units in the immediate area.
- The urban design outcomes of the development, incorporating compliant height and additional GFA (FSR), is considered to be an acceptable built form outcome for the site given the nature of existing multi-storey development in the immediate vicinity of the site and the neighbour context. Contextually the building has an appropriate fit and will activate both street edges whilst allowing for the reasonable redevelopment of the neighbouring properties in a similar manner (i.e central core).

Clause 4.6 - Request for Variation
ALEP 2013 – Clause 4.4 Floor Space Ratio
301-305 Liverpool Road, Ashfield



- The design and layout of the site reflects opportunities to optimise exposure to daylight, sunlight and natural ventilation while activating both street frontages for enhanced security and safety.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts:

- There are no significant impacts on the adjoining properties with regard to view loss, overshadowing or privacy. Any privacy issues can be addressed via conditions.
- The site orientation enables a design solution to be achieved for neighbours' sites.

In summary, the FSR variation is considered to be in the public interest given its ability to not cause undue impacts but also because of its ability to provide the site-specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case. The proposal achieves a positive affordable housing outcome in line with the height controls anticipated for a site providing affordable housing solutions.

Clause 4.6(4)(a)(ii). The proposed Development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the FSR standard, to reasonably satisfy the stated objectives of the zone.

Zone B4 Mixed Use

1 Objectives of zone

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

The following provides a review of the zone objectives:

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

The proposal is a change of landuse from the existing commercial occupation of the land to a compliant and compatible mixed use development, including the provision of affordable housing boarding rooms. The objective is achieved.

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

The proposal is a mixed use development comprising retail premises, café and boarding house. This integrated development optimises the use of the land in line with the objectives

Clause 4.6 - Request for Variation
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of the B4 zone. The site is well located in terms of public transport and will encourage walking and cycling by its design and layout, including the proposal number and allocation of parking spaces at basement level of the development. The objective is achieved.

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

The development achieves this objective as the development combines retail activity at ground level with residential accommodation that can house employees and those utilising local services within proximity to the Ashfield Town Centre. The activation of the two street frontages will add to the vitality of the area with increased passive surveillance from the residential accommodation on the site and the communal areas fronting The Esplanade. The proposal provides increased safety/security to the local area. This objective is achieved.

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

The development site comprises the amalgamation of more than one site. The redevelopment of the combined land, including the departure from the FSR control, is a more orderly and efficient use of the land through consolidation. This objective is achieved.

9.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the ALEP.

The Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

Clause 4.6 - Request for Variation
ALEP 2013 – Clause 4.4 Floor Space Ratio
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The proposed development contravenes the Floor Space Ratio development standard under cl4.4 of ALEP 2013 and the FSR control under cl4.4 of the ALEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to **cl4.4 of the ALEP 2013** and is consistent with the relevant objectives of the **B4 Mixed Use** zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposal will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the Liverpool Road or The Esplanade streetscapes.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including:

- Replacement of a non-descript landuse with one that is compliant with the local landuse planning for the site;
- Activation of both streets to the benefit of local residents;
- Additional floor levels that provide specifically for additional affordable housing supply in a highly accessible area in terms of jobs, services and public transport.

A handwritten signature in black ink, appearing to read 'A Martin'.

Andrew Martin *MPIA*
Planning Consultant

Attachment D – Draft conditions in the event of approval by Panel

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
A104 Issue A	Site Plan	09.08.2021	Habitation Design + Interiors
A105 Issue A	Basement Plan	09.08.2021	Habitation Design + Interiors
A106 Issue A	Ground Floor Plan	09.08.2021	Habitation Design + Interiors
A107 Issue A	Mezzanine Plan	09.08.2021	Habitation Design + Interiors
A108 Issue A	Level 1 Floor Plan	09.08.2021	Habitation Design + Interiors
A109 Issue A	Level 2 Floor Plan	09.08.2021	Habitation Design + Interiors
A110 Issue A	Levels 3-8 Floor Plan	09.08.2021	Habitation Design + Interiors
A111 Issue A	Roof Plan	09.08.2021	Habitation Design + Interiors
A112 Issue A	Elevations	09.08.2021	Habitation Design + Interiors
A113 Issue A	Elevations	09.08.2021	Habitation Design + Interiors
A114 Issue A	Elevations	09.08.2021	Habitation Design + Interiors
A115 Issue A	Elevations	09.08.2021	Habitation Design + Interiors
A116 Issue A	Sections	09.08.2021	Habitation Design + Interiors
A125 Issue A	Ramp Section	09.08.2021	Habitation Design + Interiors

A128 Issue A	Schedule of Finishes	09.08.2021	Habitation Design + Interiors
Sheet 1 of 2 & 2 of 2 Issue A	Landscape Plans	29.07.2021	Paul Scrivener Landscape
1228579M	BASIX Certificate	06.08.2021	EPS
Version V1	Acoustic Report	13.08.2021	Koikas Acoustics P/L
Revision 0	Remediation Action Plan	30.10.2021	Soilsrock Engineering P/L

As amended by the conditions of consent.

FEES

2. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$170,217.65 indexed in accordance with Ashfield Development Contributions Plan ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 2 March 2022.

***NB** Contribution rates under Ashfield Development Contributions Plan are indexed quarterly (for the method of indexation refer to Section 2.6 of the Plan).

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

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

Community Infrastructure Type:	Contribution \$
Local Roads	19,128.17
Local Public Transport Facilities	57,089
Local Public Car Parking	0.00
Local Open Space and Recreation	0.00
Local Community Facilities	48,385.70
Plan Preparation and Administration	45,614.70
TOTAL	170,217.65

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

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

Payment methods:

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

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

3. 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.

4. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the

works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$8,432.00
Inspection Fee:	\$241.50

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

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

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

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

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

5. Security Deposit - Custom

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

Security Deposit:	\$30,000
Inspection Fee:	\$241.50

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

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

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

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

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

GENERAL CONDITIONS

6. Noise – Consultant's Recommendations

The recommendations contained in the acoustic report prepared by Koikas Acoustics Pty Ltd, reference: 4841R20210629as301-305LiverpoolRdAshfield_DA dated 13 August 2021 must be implemented.

7. Hazardous Materials Survey

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

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

8. Boarding House

The development must provide and maintain:

- a. A minimum of 4 Accessible boarding rooms; and
- b. All rooms within the boarding house must be connected to a centralised electricity, water and gas (if installed) service.

9. 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.

10. Erosion and Sediment Control

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

11. Standard Street Tree Protection

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

12. Verification of Levels and Location

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

13. Works Outside the Property Boundary

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

14. Boundary Alignment Levels

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

15. Awnings without Lighting

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

16. Awnings with Lighting

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

17. Dry-weather Flows

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

18. Rock Anchors

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

PRIOR TO ANY DEMOLITION**19. Dilapidation Report**

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

20. Advising Neighbours Prior to Excavation

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

21. 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.

22. Hoardings

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

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

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

23. Construction Traffic Management Plan – Detailed

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

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

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);

- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

PRIOR TO CONSTRUCTION CERTIFICATE**24. Food Premises – Additional Sinks and Hand Wash Basins**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended scale plans confirming the position of all sinks and hand wash basins within the food premises in accordance with Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

25. Food Premises – Odour Emission Control

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that emission control equipment has been provided in the mechanical exhaust system that effectively minimises the emission of odours, vapours and oils.

26. Noise General – Acoustic Report

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

27. Shared Accommodation / Boarding House – Plan Of Management

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Plan of Management demonstrating compliance with operation and maintenance standards set out in the *Local Government (General) Regulation 2005*.

28. Enclosure of Fire Hydrant

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

29. Party Walls

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

30. 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

31. Fibre-ready Facilities

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

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

32. Consolidation of Lots

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

33. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

34. Future Food Use - Mechanical Ventilation Provision

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of

Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

35. Stormwater Drainage System – Major Developments

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

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing Nos. ST01 to ST05 prepared by Danmor Consulting Engineers and dated 11 August 2021, as amended to comply with the following;
- b. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank by gravity directly to Council's kerb inlet pit via the OSD/OSR tanks;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- e. The Drainage Plan must detail the proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions;
- g. Pipe drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows;
- h. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks;
- i. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- j. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:

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

Pollutant	Baseline Pollution (kg/ha/yr)	Annual Load	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500		90% reduction of average annual load

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

- s. A water balance model must be submitted to accompany the water re-use proposal;
- t. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets; and
- u. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.

36. Structural and Geotechnical Report

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

- a. If required, the basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;

- d. All components of the basement, including footings, must be located entirely within the property boundary;
- e. No adverse impact on surrounding properties including Council's footpath and road;
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

37. Public Domain Works – Prior to Construction Certificate

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

- a. The public domain along all frontages of the site (Liverpool Road and The Esplanade) inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc that are required, must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
 - b. Developmental setback and grass verge area is required to satisfy DCP2016, Chapter D, Part 1-Ashfield Town Centre with active street frontage. The developer must provide a clear public access footpath (within the setback) along the street frontage considered of a min 3.2m wide (2.4m with min 0.8m passing zones). This area is deemed as a High Pedestrian Area (HPA) in the Ashfield Town Centre and should comply to relevant Austroads (Guide to Road Design Part 6A) and AS 1428.1. Any parts of the setback under private ownership would need to be distinguished;
 - c. The construction of heavy duty vehicular crossing and removal of all redundant vehicular crossings to the site;
 - d. New concrete footpath and kerb and gutter along the frontages of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer;
 - e. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.
 - f. Installation of a stormwater outlet to the kerb and gutter.
- All works must be completed prior to the issue of an Occupation Certificate.

38. Parking Facilities – Major (including basement)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities, Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities, Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities, Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities, Off-street parking for people with disabilities and the following specific requirements:

- a. The driveway must rise within the property above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. This is to ensure the basement car park is protected from the street flooding during rare flood events;
- b. Parking should apply to SEPP requirements for the boarding house component and DCP with commercial/retail. A space is required for each residing manager or employee;
- c. Service and commercial/retail parking shall be kept separate and apart from the residential carparking;
- d. The proposed development seeks to eliminate all SEPP parking numbers with 4 car share spots that is not acceptable. Car stackers and multiple basement car park levels should be provided to increase the number of parking spaces;
- e. Sight- line triangles for pedestrian safety are required at the exits of the driveway to the footpath in accordance to AS 2890.1 Section 3.2.4. The triangle areas shall be kept clear of obstruction to visibility and no trees are to be planted in these areas. The right-side wall of the development at the exit is to be set back min 2.5 metres from the back end of the footpath to allow the adjoining building to provide pedestrian sight view (to its left- hand side) once this building in turn is re-developed; and
- f. Any landscaping works near the driveway way crossing should not obstruct the sight lines.

DURING DEMOLITION AND CONSTRUCTION**39. Contamination – New Evidence**

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

40. Imported Fill Materials

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

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

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

41. 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.

42. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE

43. Noise – Acoustic Report

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

44. Noise From Road, Rail & Aircraft – Compliance

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

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of Koikas Acoustics Pty Ltd, reference: 4841R20210629as301-305LiverpoolRdAshfield_DA dated 13 August 2021.

45. Contamination – Disposal of Soil

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

46. Contamination – Validation (No Site Audit Statement Required)

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

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

47. Food Premises Grease Trap – Trade Waste Agreement

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification confirming that the grease trap has been installed to the premises in accordance with Australian Standard AS 3500 and the National Plumbing and Drainage Code. A copy of the Sydney Water Trade Waste Agreement must also accompany the certification.

48. Public Domain Works

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

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

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

49. No Encroachments

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

50. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

51. Undergrounding Power – Major development

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

52. Parking Signoff – Major Development

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

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

53. Public Domain - Major Developments

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

54. Dilapidation Report – Post-Development

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

55. Stormwater Drainage and Road Works – Certification

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

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

56. Works as Executed – Site Stormwater Drainage System

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

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement devices and pumps installed in accordance with the approved design and relevant Australian Standards have been

submitted to Council. The works-as-executed plans must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

57. Operation and Management Plan

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

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

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

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

- a. Restrictions on the Use of Land related to on Site Stormwater Detention System and stormwater quality improvement devices;
- b. Positive Covenant related to on-site stormwater detention and/or retention system; and
- c. Positive Covenant related to stormwater quality improvement devices.

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

59. Basement/Retaining Wall Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction (if applicable) such that pump-out of subsurface flows is not required.

ON-GOING**60. Noise General**

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

61. Commercial Waste/Recycling Collection

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

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

62. Documentation of Businesses Waste Services

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

63. Commercial and Re-usable Item Storage

All commercial bins and re-usable items such as milk crates must be stored on site.

64. Boarding House

The use of the premises as a boarding house must comply at all times with the following:

- a. The use must comply at all times with the approved Plan of Management and as amended by the conditions in this Determination;
- b. A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
- c. A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
- d. The Plan of Management must not to be amended without the prior consent of Council and must be made available to Council officers and the Police upon request;
- e. All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months;

- f. The premises must be used exclusively as a boarding house containing a maximum total of 67 lodger's rooms and 1 on-site manager's rooms with not more than 134 adult lodgers and 2 adult on-site managers residing in the premises at any one time;
- g. Not more than 2 lodgers must occupy each boarding room;
- h. The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
- i. All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
- j. Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.

65. Operation and Management Plan

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

66. Vehicles Leaving the Site

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

67. Loading/unloading on site

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

ADVISORY NOTES

Health Premises Registration – Generic

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a. *Food Shop - Food Act 2003*;
- b. *Boarding House / Shared Accommodation - Boarding Houses Act 2012 and the Local Government (General) Regulation 2005.*

Food Premises Certification

The food premises design, construction and operation is in accordance with the following:

- a. *Food Act 2003*;
- b. *Food Regulation 2010*;
- c. Australia and New Zealand Food Standards Code;
- d. Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises);
- e. Australian Standard AS 1668 Part 1 – 1998; and
- f. Australian Standard AS 1668 Part 2 – 2012.

Food Premises Waste Storage Area

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

Mechanical Ventilation System Certification

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

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

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

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.

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.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Permits from Council under Other Acts

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;

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

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

Noise

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

Amenity Impacts General

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

Fire Safety Certificate

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

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

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

Boarding House – Registration with Fair Trading

Boarding houses with two or more residents who have additional needs or five or more residents who do not have additional needs are required to register with the Department of Fair Trading.

Construction of Vehicular Crossing

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

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
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 - Environmental Solutions	SITA 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.

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.

Rock Anchors

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

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

Electrical Substations

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

Permits

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;

- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

Easement and Covenant Process

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

- a. Work-As-Executed Plans

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

- b. Engineer's Certificate

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

- c. The soundness of the storage structure;
- d. The capacity of the detention storage;
- e. The emergency overflow system being in place;
- f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- g. The freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- h. Basement car park pumps are class one zone two; and
- i. OSR pumps and SQIDS have been installed and commissioned.

c. Restriction-As-To-User

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

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

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

d. A Maintenance Schedule.

Insurances

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

Attachment E – Architectural Excellence Panel (AEP) Minutes



Architectural Excellence & Design Review Panel

Meeting Minutes & Recommendations

Site Address:	301-305 Liverpool Road Ashfield
Proposal:	A 10 storey mixed use development with 67 boarding room over a basement carpark
Application No.:	DA/2021/0776
Meeting Date:	21 September 2021
Previous Meeting Date:	None
Panel Members:	Russell Olsson (external member); Matthew Pullinger (external member); Niall Macken (internal member); and Vishal Lakhia (internal member) – Chair
Apologies:	-
Council staff:	Andrew Newman
Guests:	-
Declarations of Interest:	None
Applicant or applicant's representatives to address the panel:	Joseph Panetta – Architect for the project; and Andrew Martin – Urban Planner.

Background:

1. The Architectural Excellence & Design Review Panel reviewed the architectural drawings and 3D views, and discussed the proposal with the applicant through an online conference.
2. The Panel notes that the applicant is seeking floor space ratio and height bonuses offered to affordable housing proposals within the Ashfield Town Centre through the current Inner West LEP and DCP provisions. The Panel understands that Council's assessment team will review and identify whether such bonuses apply to privately-managed commercial boarding houses, such as the proposal.
3. The Panel notes that the applicant, architect and urban planner for the subject site – 301-305 Liverpool Road Ashfield — have also lodged a development application for a similar 10 storey boarding house proposal at 1 The Esplanade Ashfield (DA/2021/0651). Both proposals are in close proximity to each other and present similar urban challenges. The AEDRP has reviewed both development applications at the 21 September 2021 meeting.

Discussion & Recommendations:

1. **Urban Design Strategy:**

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- a. The Panel notes the proposal is largely documented and presented in isolation from its context. The Panel encourages the applicant to further elaborate on the overarching urban design rationale and justification for the proposed site planning, massing, setbacks and separation distances. Associated analysis is required to be established through an urban design and contextual study.
- b. The proposal should establish an appropriate built form relationship with the potential future development on the adjoining properties to the east (No. 297 and 299 Liverpool Road) and to the west (No. 307 to 315 Liverpool Road) of the subject site. An urban design and contextual analysis should include testing of future development scenarios for these neighbouring properties, to ensure that future development will not be compromised in terms of solar access, residential amenity, visual impact and privacy.
- c. The Panel expressed concern with the current building massing of the eastern building, as the upper levels (Level 1 to 8) cantilever over the 2 storey building base, which is recessed from The Esplanade street alignment. The Panel considers this not to be a suitable built form response for the subject site, given the pedestrian-friendly scale and character of The Esplanade, as the projected upper levels will create an overbearing visual impact on The Esplanade.
- d. The Panel recommends the exploration of alternative massing strategies to better resolve the relationship between the lower levels of the building (and the 3m DCP setback control at street level) and the remainder of the proposed building form. The Panel is keen to mitigate against the cantilevered form described above, and better resolve to form and articulation of the proposed tower element. Cues for an appropriate built form response should draw on a comprehensive urban and contextual analysis, including recent approvals in the vicinity.
- e. The urban design study and contextual analysis should include views from the angle of sun at mid-winter, to confirm consistency with the 3 hour direct solar access requirements (SEPP Affordable Rental Housing 2009) to the common room and the central communal open space. The Panel recommends the applicant incorporate overshadowing impacts of the existing surrounding buildings into this analysis.
- f. It appears there is an inconsistency with the 'True North' marked on the architectural drawings in comparison to the registered surveyor's drawing. In addition to Recommendation 1.e, revised architectural drawings should be provided with accurately marked 'True North' for a further review of direct solar access to both common room and the communal open space.

2. Ground Floor Configuration:

- a. The Panel recommends the extent of ground floor activation along The Esplanade should be maximised and further refinement considered in terms of spatial planning of the 'service room' and waste storage areas.
- b. The Panel recommends the residential lobby offer a stronger presence within The Esplanade, and requires a more generous address, given the number of lodgers (67 rooms and 134 lodgers) within the residential component.
- c. The Panel queried the amenity of the ground floor café as it lacks a kitchen, a back-office area and toilets.

3. Building Configuration:

- a. The Panel expressed concern that a proposal with 8 residential floors, 2 commercial floors and 1 basement level (total 11 levels) is served by only 1 lift. The residential component of the proposal has 134 lodgers within 67 rooms, and should be provided with a minimum of 2 lifts in order to establish some level of redundancy in the level of service. There is a compelling need for a minimum 2 lifts for the residential component to accommodate a scenario where one of the lift could be out-of-order or is being used by service providers (E.g. removalists or for deliveries). The Panel also recommends that a separate lift should

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be provided for the non-residential component, given its scale and more public use, with a non-commercial gross floor area of 328m².

- b. The Panel notes that in its current configuration, the boarding rooms within the western building addressing Liverpool Road are disconnected from the basement carpark.
- c. The accessible rooms No. 1, 2 and 3 proposed within the western building lack any lift provision or barrier-free connection from Liverpool Road, since they rely on Stair 3 for access.
- d. The proposed 6m separation between the 2 buildings is minimal. In any reconfiguration of the residential tower and base addressing The Esplanade, the building separation should not be reduced further and the depth of the Liverpool Road building may need to be re-considered.
- e. The residential balconies to The Esplanade and Liverpool Road should align with the property boundary if built close to the property boundary and should not overhang the property boundary.
- f. The Panel notes that the eastern building with a 10 storey height is above the BCA 'Effective height' requirement and a deemed to satisfy solution would require 2 points of fire egress (2 stairs cases, or possibly a 'scissor' stairs), considering safety of future residents.
- g. The Panel questioned the provision of the narrow 'void' or building indentation on typical residential levels of the eastern building, in terms of its functionality and buildability. The width-to-depth ratio for the building indentation appears to be highly constrained to achieve effective air circulation or day light. The Panel considers this indentation should be eliminated and the floor area be added to the typical floor plan.
- h. The applicant is encouraged to consider inclusion of ceiling fans to all boarding rooms, as a low energy alternative or supplement to the use of mechanical A/C systems. The Panel considers that the floor-to-ceiling and floor-to-floor heights should be increased to a minimum 2.7m and 3.1m, to allow provision of ceiling fans.

4. Architectural Expression:

- a. The Panel notes an inconsistency within the architectural documentation as the vertical duct along the southern end of the eastern building is not documented in the 3D views. The applicant should ensure building services elements such as ducts or risers are well-planned and thoughtfully integrated within the building layouts and concealed from the public domain.
- b. Revised architectural drawings should also provide internal courtyard-facing elevations and internal 3D views of both buildings.
- c. The applicant should provide a streetscape analysis identifying the predominant character and built form pattern of the adjoining traditional buildings along Liverpool Road. The design of the western building facade addressing Liverpool Road should relate to the existing character attributes and prevailing pattern of buildings in the streetscape, particularly in terms of the solid to void ratios. The architectural expression of the balconies should be carefully considered to mitigate noise and pollution issues from the busy Liverpool Road interface.
- d. The Panel notes that the side walls of the 10 storey eastern building will be highly visible from the surrounding public domain until the adjoining sites are redeveloped. The Panel recommends further resolution and refinement of this side boundary wall in terms of design treatment, composition and material selection. The proposal should ensure any side boundary walls are capable of being built, cleaned and maintained from within the subject site, without relying on access from the adjoining properties.
- e. The Panel notes the predominant use of rendered and painted surfaces within the proposal, and encourages use of integral and self-finished materials such as brick. Rendered and painted surfaces should be avoided considering the longevity and associated long-term costs.
- f. Revised architectural drawings should confirm location of AC condenser units and other mechanical equipment. The Panel considers these should not be located within balconies

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(unless thoughtfully designed to be enclosed and screened from view) or anywhere visually apparent from the surrounding public domain.

- g. Revised architectural drawings should include details of the design intent for key façade types in form of 1:50 or 1:20 sections indicating primary façade types, balustrade fixings, balcony edges, balcony soffits, junctions, rainwater drainage, downpipes and similar details.

Conclusion
<p>With consideration given to the recommendations made in this report regarding the overarching urban design and architectural aspects, the Architectural Excellence & Design Review Panel would like a second opportunity to review this proposal again as part of this DA stage.</p> <p>At a second review, the Panel would consider whether the proposal is acceptable in terms of its site planning, massing, setbacks, separation distances, architectural expression and built form relationship with the potential future buildings within the vicinity.</p> <p>The Panel encourages that the applicant should present the proposal at the subject site 301-305 Liverpool Road Ashfield and their similar proposal at 1 The Esplanade Ashfield (DA/2021/0651) together as part of a comprehensive 2D and 3D urban design study and context analysis.</p>