




	
DEVELOPMENT ASSESSMENT PANEL REPORT	
<b>Application No.</b>	DA/2025/0071
<b>Address</b>	250 Liverpool Road ASHFIELD
<b>Proposal</b>	Alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision.
<b>Date of Lodgement</b>	14 February 2025
<b>Applicant</b>	Sanjay Halasagi
<b>Owner</b>	Owners of Strata Plan 97461
<b>Number of Submissions</b>	Twenty Three (23)
<b>Cost of works</b>	\$243,000.00
<b>Reason for determination at Planning Panel</b>	Number of submissions
<b>Main Issues</b>	Owners Consent; Non-compliance with parking rates
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Applicants legal advice
	
<b>LOCALITY MAP</b>	
<b>Subject Site</b> 	<b>Objectors</b> 
<b>Notified Area</b> 	<b>Supporters</b> 
<b>Note:</b> All 23 submissions are from the subject site.	

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision at 250 Liverpool Road, Ashfield.

The application was notified to surrounding properties and 23 submissions were received in response to the notification. The submissions primarily raised concerns that the application requires owner's consent from the Owners Corporation of the Residential Strata Plan No 97460 for the proposed works.

Legal advice has been submitted with the application which outlines that owner's consent from the residential strata scheme is not required as the DA does not involve or affect the common property of the Residential Scheme. Rather, the proposal involves parts of the common property of the Retail Scheme which form part of the Shared Facilities. The Building Management Committee (BMC) manage the shared facilities, and their consent for the proposal has been submitted.

Notwithstanding the above, the key consideration that have arisen from the application include:

- Non-compliance with parking requirements – 2 space deficiency

The non-compliances are acceptable given the minor variation, and highly accessible location, and therefore the application is recommended for approval.

## 2. Proposal

The application seeks development consent for alterations and additions to an existing mixed-use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision

In particular the following works are proposed:

- Replace the existing retail kiosk with an enclosed retail premises (Retail Tenancy 3).
- Reconfigure the external walls of Retail Tenancy 2 to align with the enclosed Retail Tenancy 3.
- Construct an awning to Liverpool Road for Retail Tenancies 2 and 3 to match the building line over.
- Retain illuminated signage location for retail tenancy 2, and new signage location for retail tenancy 3 on the Liverpool Road facade.
- Alterations to the mechanical ventilation systems to the car park, storeroom and retail strata condensing units within the retail common property.

- Amend existing strata plan SP97461 (Retail Strata) to reflect the new tenancy boundaries.

The application seeks consent for the proposed tenancy 3 to be utilised as a future retail premises. The fit out and use of this premises would be subject to a separate development application under the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*, or can operate under provisions within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

### 3. Site Description

The subject site is located on the southern side of Liverpool Road, between Holden Street and Knox Street. The site consists of one (1) irregularly shaped allotment and forms part of the land currently utilised by the Ashfield Mall. The site is legally described as Lot 100 in DP 1222372, SP 97460 and SP 97461 better known as 250 Liverpool Road Ashfield.

The site supports several mixed-use buildings varying in height and scale. Uses currently existing within these buildings include, retail, commercial, business, office and residential. The adjoining properties support mixed use premises similar to that of the subject site.



Figure 1: Photo of subject site as viewed from Liverpool Road (Subject premises outlined in orange).

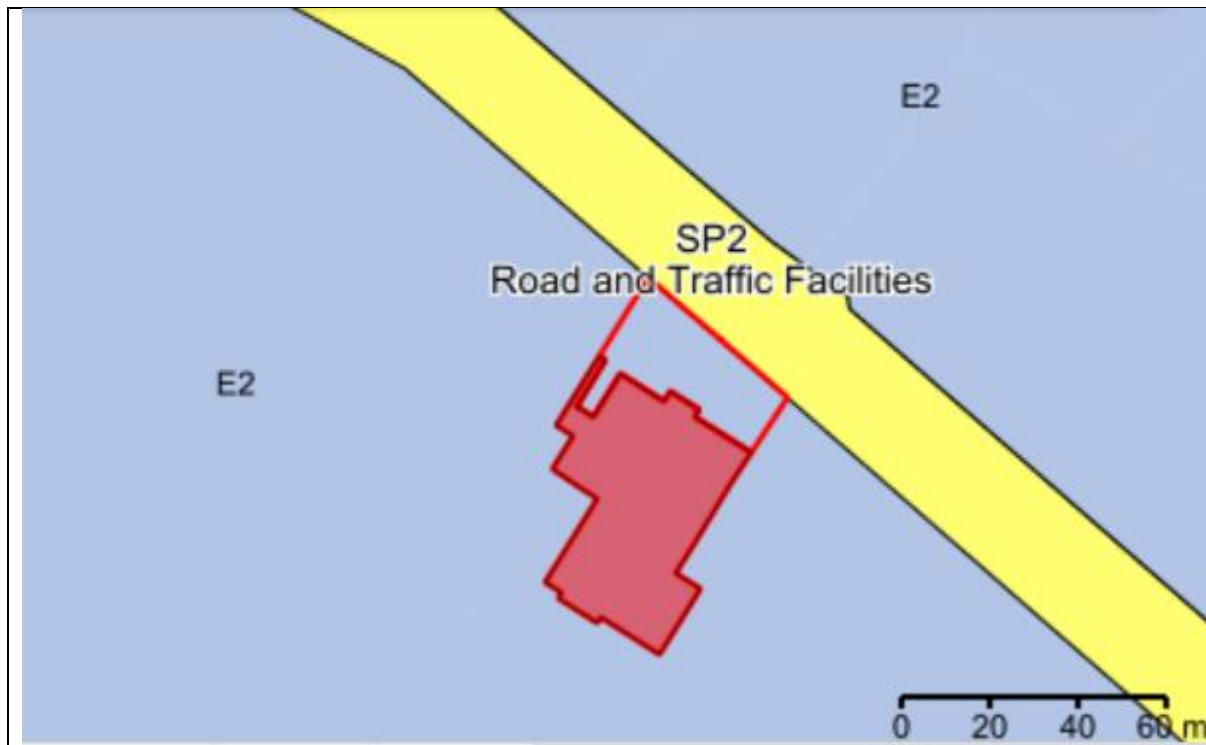


Figure 2: Zoning Map (subject site in red)

## 4. Background

### Site history

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

Application	Proposal	Decision
DA/2022/0898	On 12 July 2023, the Local Planning Panel refused alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision.	Refused - LPP
DA/2021/0777	On 23 November 2021 the Local Planning Panel refused Development Application No. DA/2021/0777 which sought consent for alterations and additions to existing commercial tenancies fronting Liverpool Road including creation of new commercial tenancy with the removal of an existing kiosk and enclosure of existing areas.	Refused - LPP
10.2013/114/1	On 25 September 2014 the Joint Regional Planning Panel approved Development Application No. 10.2013.114.1 which sought consent for alterations additions to Ashfield Mall including 6464sqm of retail area, 67	Approved – JRPP



	serviced apartments, 101 dwellings, 100 place childcare centre and car parking.	
10.2012.114.2	On 25 January 2016, a section 4.55(2) Modification was approved through Regional Planning Panel to modify the design of approved buildings C and D and various conditions of consent.	Approved – JRPP
10.2013.114.3	On 8 March 2016, a section 4.55(1A) Modification was approved to amend the façade design, roof design and profile of the pavilion structure towards Liverpool Road and rewording/clarification of certain conditions of consent.	Approved
10.2013.114.4	On 29 August 2016, a Section 4.55(1A) Modification was approved to reconfigure level 4 office/store, amend roof to core in Building D, add 2 windows to level 4 service area.	Approved
10.2013.114.5	On 25 August 2016, a Section 4.55(1A) Modification was approved.	Approved
10.2013.114.6	On 11 April 2017, a Section 4.55(1A) Modification was approved to modify the design on ground level and first level of Building D (identified as level 3 & Level 3.5 on the plans) include: Relocation of the island Kiosk to the north and reconfiguration of the two retail tenancies. Relocation of the alfresco dining area. Provision of a dedicated residential entry, clearly visible from Liverpool Road. Relocation of selected storage cages from Level 3.5 to Level 3.	Approved
10.2013.114.7	On 24 May 2018, a Section 4.55 Modification was approved through Sydney Eastern Planning Panel to modifications to retail, childcare, serviced apartments, car parking and variation to staging.	Approved
10.2013.114.8	On 16 August 2018, a Section 4.55 Modification was approved for recalculation to the additional retail gross floor area in accordance with the GFA definition contained in Ashfield LEP 2013 as opposed to the previous Ashfield LEP 1985.	Approved
10.2013.114.9	On 24 September 2018, a Section 4.55 Modification was approved for Mixed Use Development.	Approved
PDA/2021/0172	Pre-DA, Shop 2 and 3, 250 Liverpool Road, Ashfield Retail Plan of Subdivision	Advice Issued

### Application history

On 23 November 2021, the Local Planning Panel refused DA/2021/0777 for alterations and additions to existing commercial tenancies fronting Liverpool Road including creation of new commercial tenancy with the removal of an existing kiosk and enclosure of existing areas, for the following reasons:

- *The site of the proposed development is part of the existing forecourt of the Strata Plan and the Panel is not satisfied that, post construction, the existing services in that area will be able to be accessed for maintenance, repair and replacement as required;*
- *There is a lack of certainty of outcome;*
- *It is unclear that owner's consent has been lodged with this application;*
- *Alternative provisions for mechanical exhaust and air intake is lacking;*
- *There is a lack of detail on the proposed plans; and*
- *The applicant has not demonstrated how the carpark ventilation can be relocate.*

On 24 October 2022, DA/2022/0898 was lodged for alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision.

At its meeting of 9 May 2023, the Inner West Local Planning Panel considered a report (recommending approval) for the subject application and resolved to defer determination of the application, as follows:

*The Panel seeks the following information:*

1. *Identify and summarise the location of the Shared Facilities and easements that affect the retail strata. The location of the Shared Facilities and easements should also be cross-referenced/layered on the proposed architectural plans.*
2. *Identify the Shared Facilities and easements that will be affected by the proposal, including the exhaust louvres and services under the floor.*
3. *Establish whether the existing terms of or location of any easement that is in the retail common property, but will now be within the new retail lot, will need to be amended as a result of the proposal, for example, to ensure access is maintained to shared or residential services. It is noted that the advice from CJ Boyd, Solicitor for the Applicant dated 23 March 2023 indicated that the proposal "does not obstruct access to the site of these services", but it is unclear how this will be the case if the easement will now be within a shop within a retail lot.*
4. *Identify whether the works required in the proposal affect common property in the ownership of a lot other than the retail strata plan eg: works required to the external wall of the building for the relocated louvres.*
5. *Advise whether the extent of works to or changes to the Shared Facilities means that the consent of the owner, other than only the owner of the subject retail Strata lot and the Retail Owners Corporation, is needed for the DA.*

*This information is to be sought from the Applicant's Registered Survey and/or solicitor and shall be provided within two weeks. The response should then be reviewed by Council who may need to seek its own legal/surveying advice.*

*The Panel will consider the new information and Council's response and determine the application electronically.*

On 12 July 2023, a supplementary report (recommending refusal) was considered by the Local Planning Panel. DA/2022/0898 was subsequently refused for the following reason:

- *The application has not been lawfully made in accordance with section 23 (1) of the Environmental Planning and Assessment Regulation 2021, pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, as the application proposes works that relate to common property/services this require consent from the registered property owner/s of Residential Strata 97460 which has not been provided.*

See discussion in relation to owners consent under Section C of the report. It is noted that the applicant has provided additional information in relation to owners consent in support of the subject development application.

## **5. Assessment**

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *EP&A Act 1979*.

### **A. Environmental Planning Instruments**

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

#### **State Environmental Planning Policies (SEPPs)**

##### *SEPP (Resilience and Hazards) 2021*

##### Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

### SEPP (Industry and Employment) 2021

#### Chapter 3 Advertising and Signage

The following is an assessment of the development under the relevant controls contained in the *Industry and Employment* SEPP.

The proposal includes two signs on the Liverpool Road façade. The architectural plans are annotated 'EXISTING LED ILLUMINATED SIGNAGE TO BE RETAINED' for both tenancy 2 and 3.

It is noted that the existing signage which services tenancy 3 is not illuminated and will need to be located lower on the building below the new awning. Further, it appears that the existing signage to tenancy 2 is being altered as the top sign is proposed to be removed and restored back to glazing. A condition is recommended to update the annotations on the plans accordingly.

As such, the application seeks consent for the following signage:

Location	Sign Type	Lettering	Dimension
Northern elevation – tenancy 3	Top hamper sign	Business identification - TBC	500mm x 3900mm

The proposed development is consistent with objectives set out in Section 3(1)(a) and the assessment criteria specified in Schedule 5 as follows:

Criteria	Assessment
Character of the area	<ul style="list-style-type: none"> <li>The signage is compatible with the desired future character of the area.</li> </ul>
Special areas	<ul style="list-style-type: none"> <li>The signage does not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways or residential areas</li> </ul>
Views and vistas	<ul style="list-style-type: none"> <li>The signage does not obscure or compromise important views.</li> <li>The signage does not dominate the skyline.</li> </ul>
Streetscape, setting or landscape	<ul style="list-style-type: none"> <li>The scale proportion and form of the signage is appropriate to the streetscape and locality.</li> <li>The signage is of a simple design and will not contribute to visual clutter.</li> <li>The signage reduces and rationalises the existing signage at the site.</li> <li>The signage will not impact vegetation.</li> </ul>

Site and building	<ul style="list-style-type: none"> <li>The scale proportion and form of the signage is appropriate to the building on which the signage is to be located.</li> <li>The signage respects important features of the building.</li> </ul>
Associated devices and logos with advertisements and advertising structures	<ul style="list-style-type: none"> <li>All elements of the signage have been well integrated into the structure which displays the signage.</li> </ul>
Illumination	<ul style="list-style-type: none"> <li>The proposed illumination is acceptable and will not result in adverse amenity impacts or effect safety.</li> </ul>
Safety	<ul style="list-style-type: none"> <li>The signage will not reduce safe of any public road, pedestrians, bicyclists and will not obscure sightlines from public areas.</li> </ul>

As the sign is for business identification purposes Part 3.3 does not apply. The proposal is considered acceptable noting the aims and objectives of this chapter of the SEPP.

### SEPP (Transport and Infrastructure) 2021

Chapter 2 Infrastructure of the *Transport and Infrastructure SEPP*.

### Development with frontage to classified road

The site has a frontage to Liverpool Road, a classified road. The current proposal does not propose any new access to Liverpool Road and thus the proposal will not impact the efficacy and operation of Liverpool Road. The application is therefore, considered acceptable with regard to Section 2.119 of the *Transport and Infrastructure SEPP*.

## **Inner West Local Environmental Plan 2022**

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

### **Part 1 – Preliminary**

Section	Proposed	Complies
Section 1.2 Aims of Plan	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> <li>The proposal encourages walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,</li> <li>The proposal facilitates economic growth and employment opportunities within Inner West,</li> <li>The proposal creates a high quality urban place through the application of design excellence in all elements of the built environment and public domain,</li> <li>The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West,</li> </ul>	Yes

Section	Proposed	Complies
	<ul style="list-style-type: none"> <li>The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts</li> </ul>	

## Part 2 – Permitted or prohibited development

Section	Proposed	Complies
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> <li>The application proposes alterations and additions to a retail premises which is permissible with consent in the E2 zone.</li> <li>The proposal is consistent with the relevant objectives of the zone, as it: <ul style="list-style-type: none"> <li>Strengthens the role of the commercial centre as the centre of business, retail, community and cultural activity.</li> <li>Encourages investment in commercial development that generates employment opportunities and economic growth.</li> <li>Encourages development that has a high level of accessibility and amenity, particularly for pedestrians.</li> <li>Ensures that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</li> <li>Ensures that new development displays high architectural and urban design qualities and contributes to the desired future character of the Ashfield town centre.</li> </ul> </li> </ul>	Yes
Section 2.7 Demolition requires development consent	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> <li>Demolition works are proposed, which are permissible with consent; and</li> <li>Standard conditions are recommended to manage impacts which may arise during demolition.</li> </ul>	Yes, subject to conditions

## Part 4 – Principal development standards

Section	Proposed		Complies
Section 4.3 Height of buildings	Maximum	23m	Yes
	Proposed	5.4m	
Section 4.3B Maximum height for street frontages on certain land in Ashfield town centre	Maximum	12m	Yes
	Proposed	No change	
Section 4.4	Maximum	3:1 or 48,404sqm	Yes



Section	Proposed	Complies
Floor space ratio	Proposed 1.97:1 or 45,971sqm	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes

**Part 5 – Miscellaneous provisions**

Section	Proposed	Complies
Section 5.10 Heritage conservation	<p>The subject site is adjacent to a listed heritage item, namely Shops with offices above, including interiors (Item No. I268)</p> <p>The proposal achieves the objectives of this section as the development does not impact the significance of the adjacent heritage items and maintains view lines and its setting.</p> <p>Given the above the proposal preserves the environmental heritage of the Inner West.</p>	Yes

**Part 6 – Additional local provisions**

Section	Proposed	Complies
Section 6.2 Earthworks	<ul style="list-style-type: none"> <li>The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.</li> </ul>	Yes
Section 6.3 Stormwater Management	<ul style="list-style-type: none"> <li>Subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.</li> </ul>	Yes, subject to conditions

**B. Development Control Plans****Summary**

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

CIWDCP 2016	Complies
<b>Section 2 – General Guidelines</b>	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
4 - Solar Access and Overshadowing	Yes
6 - Safety by Design	Yes

7 - Access and Mobility	Yes
8 - Parking	No – see discussion
9 - Subdivision	Yes
10 - Signs and Advertising Structures	Yes
C – Sustainability	
3 – Waste and Recycling Design & Management Standards	Yes
D – Precinct Guidelines	
Ashfield Town Centre	Yes

### Comprehensive Inner West Development Control Plan 2016

The application was assessed against the following relevant parts of the Comprehensive Inner West Development Control Plan for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill 2016 (CIWDPC 2016).

#### Chapter A – Miscellaneous

Control	Assessment	Complies
Part 2 – Good Design	<ul style="list-style-type: none"> <li>The current application seeks to in-fill and alter a space which is currently underutilised and poorly contributes to the public domain. The development is well designed and appropriately considers context, scale, built form, density and resource, amenity, safety and security, social dimensions and aesthetics. The development will result in an improvement to the streetscape and overall character of the Ashfield Town Centre.</li> <li>It is noted that a material and finishes schedule has not been submitted with the application. The architectural plans provide perspective views which illustrate the material and finishes, however these are not expressly specified. A condition is recommended that the elevation plans are to be updated to include a material and finishes schedule consistent with the materials and finishes shown indicatively on the perspective views and the palette of the existing building.</li> </ul>	Yes, subject to conditions
Part 4 – Solar Access and Overshadowing	<ul style="list-style-type: none"> <li>The reconfiguration of the retail tenancies will not impact upon solar access received by adjoining and nearby properties. As such, the proposal will maintain existing levels of solar access to the surrounds.</li> </ul>	Yes
Part 6 – Safety By Design	<ul style="list-style-type: none"> <li>The proposal provides additional opportunities for passive surveillance to the neighbouring courtyard and removes existing areas which are uninviting and not being well used for outdoor seating as envisioned under the original development application.</li> <li>The proposal promotes territorial reinforcement by enclosing the retail tenancies, and improving the delineation between the public and private domain.</li> <li>As such, the development contributes to the creation of safe and active space, and will minimise the risk of personal or property crime and has been designed in</li> </ul>	Yes

Control	Assessment	Complies
	accordance with the principles of Crime Prevention Through Environmental Design (CPTED).	
Part 7 – Access and Mobility	<ul style="list-style-type: none"> <li>A BCA report has been submitted with the proposal that demonstrates that the proposal is capable of complying with BCA access requirements.</li> </ul>	Yes
Part 8 – Parking	<p>The CIWDCP 2016 outlines the following requirements for parking within commercial premises:</p> <p style="text-align: center;"><i>1 space per 40m<sup>2</sup> gross floor area.</i></p> <p>The current proposal provides an additional 71m<sup>2</sup> of retail floor space and as such results in a requirement for an additional 2 on-site vehicular parking spaces. The current application is for alterations and additions to an existing building and as such there is no opportunity on-site for the provision of additional parking.</p> <p>Given the sites highly accessible location, and that the proposal does not result in the creation of any new retail tenancies (just the enlargement of existing tenancies) the proposed variation of 2 on-site parking spaces is unlikely to create significant changes to the existing parking demands for the locality, as such the variation is considered acceptable</p>	Acceptable
Part 9 - Subdivision	<ul style="list-style-type: none"> <li>The proposed changes to the strata subdivision appropriately relates to the reconfigured separate occupancies.</li> <li>The proposed subdivision results in a sufficient area and dimensions and will not contribute to significant adverse amenity impacts on adjoining lots. Refer to the discussion below regarding impacts on common property.</li> </ul>	Yes
Part 10 – Signage	<ul style="list-style-type: none"> <li>The proposed top hamper business identification sign for tenancy 3 complies with the specific design requirements of this part.</li> <li>The proposed signage minimises adverse effects on the area, does not lead to visual clutter or dominate the building, is proportional to the size of the building, and is compatible with the character of the area.</li> </ul>	Yes
Part 15 – Stormwater Management	<ul style="list-style-type: none"> <li>Standard conditions are recommended to ensure the appropriate management of stormwater.</li> </ul>	Yes, subject to conditions

### Chapter C – Sustainability

Control	Assessment	Complies
Part 3 – Waste and Recycling Design & Management Standards	<ul style="list-style-type: none"> <li>Adequate waste storage areas and access to these areas have been maintained.</li> <li>Standard conditions are recommended to ensure the appropriate ongoing management of waste and during the construction phase.</li> </ul>	Yes, subject to conditions

## Chapter D – Precinct Guidelines

Control	Assessment	Complies
Part 1 – Ashfield Town Centre	<ul style="list-style-type: none"> <li>The proposal provides predominately glazed street frontage which promotes pedestrian activity and ensure adequate visibility of the street occurs.</li> <li>The awning provides a minimum ground level clearance of 3m. However, the architectural plans show the proposed awnings encroaching over the front property boundary onto Liverpool Road (a classified road) which is land managed by TfNSW. The applicant has agreed to a condition to ensure the awnings are setback to be wholly within the subject site.</li> <li>Adequate site servicing is maintained for the site.</li> <li>The reconfigured tenancies will maintain a minimum 3.3m ceiling height.</li> <li>The shopfront composition has been arranged in a way which complements the building style of the façade and enhances the streetscape.</li> </ul>	Yes, subject to condition

## C. Environmental Planning Regulations

The application has been assessed and the following provides a summary of the relevant sections of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)*.

Owners Consent

Section 23 of the *EP&A Regulation 2021* requires that owner's consent is provided to lodge a development application.

Owners consent from the retail strata scheme (Strata Plan No. 97461) and BMC (Deposited Plan No. 1241312), have been submitted with the application. Owners consent from the residential strata scheme (Strata Plan No. 97460) has not been provided.

Legal advice prepared by Bannermans Lawyers dated 4 December 2024 has been submitted with the application (refer to attachment C). The legal advice outlines that owners consent from the residential strata scheme is not required. Key paragraphs are reproduced below:

*22. Upon review of the registered strata plans for the Retail Scheme and Residential Scheme, the DA does not involve or affect the common property of the Residential Scheme.*

*23. Instead, the DA impacts on the Lots and the common property of the Retail Scheme. It must be noted that parts of the common property of the Retail Scheme form part of the Shared Facilities.*

In this regard the advice states:

*13. The BMC, according to the Strata Management Statement, has rights and obligations to manage, control, maintain, repair, and replace the Shared Facilities.*

The legal advice has been reviewed and it is considered that the correct owners consent has been given for this application.

## D. The Likely Impacts

- These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

## E. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a mixed residential and commercial and amongst similar uses to that proposed.

## F. Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 25 February 2025 to 11 March 2025.

A total of 23 submissions were received in response to the notification. Matters raised in the submissions received are discussed below:

Concern	Comment
Impact on residential strata scheme <ul style="list-style-type: none"> <li>• Impact on maintenance of common pipelines</li> <li>• Impact on lighting facilities</li> <li>• Impact on louvered ventilation system which services residential carpark</li> </ul>	See assessment under Section C of this report. In summary, these elements are considered 'shared facilities' and owners' consent has been provided by BCM.
Impact on the external wall, altering the external facade of the entire Ashfield Central building	See assessment under Section C of this report. In summary, the building façade is considered a 'shared facility' and owners' consent has been provided by BCM.
Consent required from residential owner's	See assessment under Section C of this report. In summary, there is no requirement for the consent of the Residential

corporation (SP97460).	Strata Scheme.
Increase residential water and electricity costs and likelihood of false alarms as a result of expanded retail GFA	Operational issues such as the distribution of utility costs within a strata scheme are governed by the Strata Schemes Management Act 2015 and fall under the jurisdiction of the owners corporation and NSW Fair Trading, and not a planning matter for consideration under this application.
Illegally constructed fence closing off common area	Matters relating to the use or modification of common property within a strata scheme are governed by the Strata Schemes Management Act 2015 and fall under the jurisdiction of the owners corporation and NSW Fair Trading, and not a planning matter for consideration under this application.

## G. 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.

This has been achieved in this instance.

## 6. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$7,742.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

## 7. Housing and Productivity Contributions

The carrying out of the development would result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. A contribution of \$2,249.29 would be required for the development under Part 7, Subdivision 4 Housing and Productivity Contributions of the *EP&A Act 1979*.

A housing and productivity contribution is required in addition to any Section 7.11 or 7.12 Contribution. A condition requiring that the housing and productivity contribution is to be paid is included in the recommendation.



## 8. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Development Engineer;
- Resource Recovery;
- Environmental Health; and
- Building Certification

## 9. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Inner West Comprehensive Development Control Plan 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

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

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

## 10. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2025/0071 for alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy and amendments to approved strata subdivision at 250 Liverpool Road ASHFIELD subject to the conditions listed in Attachment A below:

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### GENERAL CONDITIONS

Condition	
1.	<p><b>Separation of Commercial and Residential Waste and Recycling</b></p> <p>The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.</p> <p>Reason: Commercial/retail premises and residential properties pay separate charges for waste and recycling collection.</p>
2.	<p><b>Bin Storage</b></p> <p>All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
3.	<p><b>Boundary Alignment Levels</b></p> <p>Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary unless levels are otherwise approved by Council via a S138 approval.</p> <p>Reason: To allow for pedestrian and vehicular access.</p>
4.	<p><b>Stormwater Drainage System – Simple</b></p> <p>Stormwater runoff from proposed new or altered areas may be discharged to the existing site drainage system.</p> <p>Any existing component of the stormwater system that is to be retained, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.</p> <p>If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works, the drainage system must be upgraded to discharge by gravity to the kerb and gutter or to the Council public drainage system.</p> <p>Reason: To ensure adequate disposal of stormwater.</p>
5.	<p><b>Permits</b></p> <p>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:</p>

	<ul style="list-style-type: none"> <li>• 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;</li> <li>• A concrete pump across the roadway/footpath;</li> <li>• Mobile crane or any standing plant;</li> <li>• Skip Bins;</li> <li>• Scaffolding/Hoardings (fencing on public land);</li> <li>• Public domain works including vehicle crossing, kerb &amp; guttering, footpath, stormwater, etc.;</li> <li>• Awning or street veranda over the footpath;</li> <li>• Partial or full road closure; and</li> <li>• Installation or replacement of private stormwater drain, utility service or water supply.</li> </ul> <p>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.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
<b>6.</b>	<p><b>Insurances</b></p> <p>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.</p> <p>Reason: To ensure Council assets are protected.</p>
<b>7.</b>	<p><b>Health Premises Registration – Generic</b></p> <p>The premises are required to be registered with Council's Environment Health Team in accordance with the following legislation, as relevant:</p> <ol style="list-style-type: none"> <li>1. Food Shop - Food Act 2003;</li> </ol> <p>Reason: To ensure the premises operate in accordance with the relevant legislation.</p>
<b>8.</b>	<p><b>Food Premises Certification</b></p> <p>The food premises design, construction and operation is in accordance with the following:</p> <ol style="list-style-type: none"> <li>1. Food Act 2003;</li> <li>2. Food Regulation 2010;</li> <li>3. Australia and New Zealand Food Standards Code;</li> <li>4. Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises);</li> </ol>

	<p>5. Australian Standard AS 1668 Part 1 – 1998; and</p> <p>6. Australian Standard AS 1668 Part 2 – 2012.</p> <p>Reason: To ensure compliance with the relevant food premises code and Australian Standards.</p>																																								
9.	<p><b>Mechanical Ventilation System Certification</b></p> <p>The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:</p> <ol style="list-style-type: none"><li>1. Australian Standard AS 1668 Part 1 – 1998;</li><li>2. Australian Standard AS 1668 Part 2 – 2012;</li><li>3. Australian Standard 3666.1 – 2011;</li><li>4. Australian Standard 3666.2 – 2011; and</li><li>5. Australian Standard 3666.3 - 2011.</li></ol> <p>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.</p> <p>Reason: To ensure compliance with the relevant Australian Standards.</p>																																								
10.	<p><b>Documents related to the consent</b></p> <p>The development must be carried out in accordance with plans and documents listed below:</p> <table><tr><th>Plan, Revision and Issue No.</th><th>Plan Name</th><th>Date Issued/Received</th><th>Prepared by</th></tr><tr><td>SK1002 issue 2</td><td>Site Plan</td><td>12 August 2021</td><td>Cotteeparker</td></tr><tr><td>SK0201 issue 4</td><td>Liverpool Road Views</td><td>06 May 2022</td><td>Cotteeparker</td></tr><tr><td>SK0201 issue 5</td><td>Council Courtyard Views</td><td>06 May 2022</td><td>Cotteeparker</td></tr><tr><td>SK1200 issue 3</td><td>Existing floor plan - ground floor</td><td>12 August 2021</td><td>Cotteeparker</td></tr><tr><td>SK2001 issue 2</td><td>Floor plan - ground floor proposed</td><td>22 July 2022</td><td>Cotteeparker</td></tr><tr><td>SK2001 issue 2</td><td>Elevations</td><td>12 August 2022</td><td>Cotteeparker</td></tr><tr><td>SK3002 issue 4</td><td>Elevations</td><td>22 July 2022</td><td>Cotteeparker</td></tr><tr><td>SP DRAFT</td><td>location plan ground floor</td><td>21 January 2022</td><td>Jacek Idzikowski</td></tr><tr><td>SP DRAFT</td><td>location plan level P1</td><td>21 January 2022</td><td>Jacek Idzikowski</td></tr></table>	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by	SK1002 issue 2	Site Plan	12 August 2021	Cotteeparker	SK0201 issue 4	Liverpool Road Views	06 May 2022	Cotteeparker	SK0201 issue 5	Council Courtyard Views	06 May 2022	Cotteeparker	SK1200 issue 3	Existing floor plan - ground floor	12 August 2021	Cotteeparker	SK2001 issue 2	Floor plan - ground floor proposed	22 July 2022	Cotteeparker	SK2001 issue 2	Elevations	12 August 2022	Cotteeparker	SK3002 issue 4	Elevations	22 July 2022	Cotteeparker	SP DRAFT	location plan ground floor	21 January 2022	Jacek Idzikowski	SP DRAFT	location plan level P1	21 January 2022	Jacek Idzikowski
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	<p>As amended by the conditions of consent.</p> <p>Reason: To ensure development is carried out in accordance with the approved documents.</p>			
11.	<p><b>Works Outside the Property Boundary</b></p> <p>This development consent does not authorise works outside the property boundaries on adjoining lands.</p> <p>Reason: To ensure works are in accordance with the consent.</p>			
12.	<p><b>Storage of materials on public property</b></p> <p>The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.</p> <p>Reason: To protect pedestrian safety.</p>			
13.	<p><b>Other works</b></p> <p>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 <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Reason: To ensure compliance with legislative requirements.</p>			
14.	<p><b>National Construction Code (Building Code of Australia)</b></p> <p>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.</p> <p>Reason: To ensure compliance with legislative requirements.</p>			
15.	<p><b>Notification of commencement of works</b></p> <p>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:</p> <ol style="list-style-type: none"> <li>a. In the case of work for which a principal contractor is required to be appointed: <ol style="list-style-type: none"> <li>i. The name and licence number of the principal contractor; and</li> <li>ii. The name of the insurer by which the work is insured under Part 6 of that Act.</li> </ol> </li> <li>b. In the case of work to be done by an owner-builder: <ol style="list-style-type: none"> <li>i. The name of the owner-builder; and</li> <li>ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.</li> </ol> </li> </ol> <p>Reason: To ensure compliance with legislative requirements.</p>			

16.	<p><b>Dial Before You Dig</b></p> <p>Contact "Dial Before You Dig" prior to commencing any building activity on the site.</p> <p>Reason: To protect assets and infrastructure.</p>
17.	<p><b>Signage lighting</b></p> <p>Signage lighting must comply with the following requirements:</p> <ol style="list-style-type: none"> <li>The operation of the LED sign must comply with the requirements in Transport Corridor Outdoor Advertising and Signage Guidelines 2017 (refer to Section 2.5.8, Table 3 and Section 3.3) and relevant Australian Standards.</li> <li>The proposed luminance levels shall be in accordance with the Transport Corridor Outdoor Advertising and Signage Guidelines 2017 and relevant Australian Standards. In addition, the images displayed on the sign must not contain/use: <ol style="list-style-type: none"> <li>Flashing or flickering lights or content;</li> <li>Animated displays, moving parts or simulated movement;</li> <li>Complex displays that hold a driver's attention beyond "glance appreciation"</li> <li>A method of illumination that distracts or dazzles;</li> </ol> </li> </ol> <p>Reason: To ensure public safety and the signage complies with relevant standards.</p>

## BUILDING WORK

### BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
18.	<p><b>Design Change</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:</p> <ol style="list-style-type: none"> <li>The annotation to the tenancy 3 signage is to be amended to say 'New LED illuminated business identification signage'.</li> <li>The annotation to the tenancy 2 signage is to be amended to say 'Amended business identification signage. Restore top row of glazing'</li> <li>The new awnings to tenancy 2 and 3 are to be setback to be wholly within the subject site.</li> <li>The elevation plans (dwg SK3001 and SK3002) are to be updated to include material and finishes schedule consistent with the illustrated materials and finishes shown on perspective views (dwg SK0201 and SK0201) and the palette of the existing building.</li> </ol> <p>Reason: To ensure that the design changes protect the amenity of the neighbourhood.</p>



19.	<p><b>Resource Recovery and Waste Management Plan - Demolition and Construction</b></p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a "Waste and Recycling Waste Management Plan - Demolition and Construction" in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>				
20.	<p><b>Bin Storage Area</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Waste and Recycling Management Plan.</p> <p>The submitted Waste and Recycling Management Plan must demonstrate that that the bin storage area will accommodate the number of bins required for all waste and recycling generated by a development of this type and scale.</p> <p>The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.</p> <p>The bin storage area is to meet the design requirements detailed in the Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected.</p>				
21.	<p><b>Security Deposit - Custom</b></p> <p>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.</p> <table border="1" data-bbox="435 1245 1198 1323"> <tr> <td>Security Deposit:</td><td>\$3,119.00</td></tr> <tr> <td>Inspection Fee:</td><td>\$389.90</td></tr> </table> <p>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.</p> <p>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.</p> <p>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</p>	Security Deposit:	\$3,119.00	Inspection Fee:	\$389.90
Security Deposit:	\$3,119.00				
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	<p>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.</p> <p>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.</p> <p>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.</p> <p>Reason: To ensure required security deposits are paid.</p>
<b>22.</b>	<p><b>Dilapidation Report – Pre-Development – Minor</b></p> <p>Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.</p> <p>Reason: To ensure Council assets are protected.</p>
<b>23.</b>	<p><b>Food Premises – Additional Sinks and Hand Wash Basins</b></p> <p>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.</p> <p>Reason: To ensure compliance with the food premises code and the relevant Australian Standards.</p>
<b>24.</b>	<p><b>Food Premises – Odour Emission Control</b></p> <p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>
<b>25.</b>	<p><b>Noise General – Acoustic Report</b></p> <p>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.</p> <p><i>Note: In special entertainment precincts, this condition applies to noise and vibration from plant equipment and machinery only.</i></p> <p>Reason: To protect the amenity of the neighbourhood.</p>

26.	<p><b>Food Premises Waste Storage Area</b></p> <p>Prior to the issue of a construction certificate, a detailed plan showing the design and location of the waste storage room must be submitted to the Principal Certifier. The designated waste and recyclable storage room must be in accordance with the following requirements:</p> <ul style="list-style-type: none"> <li>a. The area must be fully enclosed, suitably sized to contain all waste and recyclable material generated by the premises, adequately ventilated and constructed with a concrete floor and concrete or cement rendered walls;</li> <li>b. The floor must be graded and drain to sewer in accordance with Sydney Water requirements;</li> <li>c. A tap with a supply of warm running water shall be provided within the room.</li> </ul> <p>Reason: To ensure compliance with the relevant Australian Standard.</p>				
27.	<p><b>Structural Certificate for retained elements of the building</b></p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.</p> <p>Reason: To ensure the structural adequacy of the works.</p>				
28.	<p><b>Sydney Water – Tap In</b></p> <p>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.</p> <p>Note: Please refer to the web site <a href="http://www.sydneywater.com.au/tapin/index.htm">http://www.sydneywater.com.au/tapin/index.htm</a> for details on the process or telephone 13 20 92.</p> <p>Reason: To ensure relevant utility and service provides requirements are provided to the certifier.</p>				
29.	<p><b>Housing and Productivity Contribution</b></p> <p>a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition (b), is required to be made</p> <table border="1" data-bbox="491 1464 1112 1603"> <thead> <tr> <th data-bbox="491 1464 911 1532">Housing and productivity contribution</th><th data-bbox="911 1464 1112 1532">Amount</th></tr> </thead> <tbody> <tr> <td data-bbox="491 1532 911 1603">Housing and productivity contribution (base component)</td><td data-bbox="911 1532 1112 1603">\$2,249.29</td></tr> </tbody> </table>	Housing and productivity contribution	Amount	Housing and productivity contribution (base component)	\$2,249.29
Housing and productivity contribution	Amount				
Housing and productivity contribution (base component)	\$2,249.29				

	<p>b. The amount payable at the time of payment is the amount shown in condition (a) as the total housing and productivity contribution adjusted by multiplying it by:</p> <p style="text-align: center;"><b>Highest PPI number</b></p> <p style="text-align: center;"><b>Consent PPI number</b></p> <p>Where:</p> <p><i>highest PPI number</i> is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2<sup>nd</sup> last quarter before the quarter in which the payment is made, and</p> <p><i>consent PPI number</i> is the PPI number last used to adjust HPC rates when consent was granted, and</p> <p><i>June quarter 2023</i> and <i>PPI</i> have the meanings given in clause 22 (4) of the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.</p> <p>c. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:</p> <table border="1" data-bbox="496 992 1214 1541"> <thead> <tr> <th>Development</th><th>Time by which HPC must be paid</th></tr> </thead> <tbody> <tr> <td>Development consisting only of residential subdivision within the meaning of the HPC Order</td><td>Before the issue of the first subdivision certificate</td></tr> <tr> <td>High-density residential development within the meaning of the HPC Order for which no construction certificate is required</td><td>Before the issue of the first strata certificate</td></tr> <tr> <td>Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building</td><td>Before the issue of the first strata certificate</td></tr> <tr> <td>Manufactured home estate for which no construction certificate is required</td><td>Before the installation of the first manufactured home</td></tr> </tbody> </table> <p>In the Table, <i>HPC Order</i> means the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p>	Development	Time by which HPC must be paid	Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate	High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate	Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate	Manufactured home estate for which no construction certificate is required	Before the installation of the first manufactured home
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	<p>d. The HPC must be paid using the NSW planning portal (<a href="http://pp.planningportal.nsw.gov.au/">http://pp.planningportal.nsw.gov.au/</a>).</p> <p>e. If the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:</p> <ol style="list-style-type: none"> <li>the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,</li> <li>the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.</li> </ol> <p>If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition (b.) at the time of payment.</p> <p>f. Despite condition (a.), a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the <i>Environmental Planning and Assessment Act 1979</i> to the development, or the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i> exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.</p> <p>Reason: To ensure payment of the required development contribution.</p>												
30.	<p><b>Section 7.11 Contribution</b></p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p> <table border="1"> <thead> <tr> <th>Contribution Category</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Open Space &amp; Recreation</td><td>\$1,741.00</td></tr> <tr> <td>Transport</td><td>\$4,578.00</td></tr> <tr> <td>Drainage</td><td>\$1,199.00</td></tr> <tr> <td>Plan Administration</td><td>\$225.00</td></tr> <tr> <td>TOTAL</td><td>\$7,742.00</td></tr> </tbody> </table> <p>At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:</p> $C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$ <p>Where:</p> <p><math>C_{\text{payment}}</math> = is the contribution at time of payment</p> <p><math>C_{\text{consent}}</math> = is the contribution at the time of consent, as shown above</p>	Contribution Category	Amount	Open Space & Recreation	\$1,741.00	Transport	\$4,578.00	Drainage	\$1,199.00	Plan Administration	\$225.00	TOTAL	\$7,742.00
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TOTAL	\$7,742.00												

	<p>CPIconsent = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 140.9 for the July 2025 quarter.</p> <p>CPIpayment = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment</p> <p>Note: The contribution payable will not be less than the contribution specified in this condition.</p> <p>The monetary contributions must be paid to Council (i) <u>if the development is for subdivision – prior to the issue of the subdivision certificate</u>, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.</p> <p><u>It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.</u></p> <p>Council's Plan may be viewed at <a href="http://www.innerwest.nsw.gov.au">www.innerwest.nsw.gov.au</a> or during normal business hours at any of Council's customer service centres.</p> <p>Please contact any of Council's customer service centres at <a href="mailto:council@innerwest.nsw.gov.au">council@innerwest.nsw.gov.au</a> or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.</p> <p>Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to <a href="http://www.innerwest.nsw.gov.au/invoice">www.innerwest.nsw.gov.au/invoice</a>; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).</p> <p>The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.</p> <p>Reason: To ensure payment of the required development contribution.</p>
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### BEFORE BUILDING WORK COMMENCES

	Condition
<b>31.</b>	<p><b>Hoardings</b></p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>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</p>

	<p>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.</p> <p>Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>
<b>32.</b>	<p><b>Verification of Levels and Location</b></p> <p>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.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
<b>33.</b>	<p><b>Construction Fencing</b></p> <p>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.</p> <p>Reason: To protect the built environment from construction works.</p>

### DURING BUILDING WORK

	Condition
<b>34.</b>	<p><b>Construction Hours – Class 2-9</b></p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:</p> <p>7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm); 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and at no time on Sundays or public holidays.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to 8:00am to 12:00pm, Monday to Saturday; and 2:00pm to 5:00pm Monday to Friday.</p>

	<p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>
<b>35.</b>	<p><b>Survey Prior to Footings</b></p> <p>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.</p> <p>Reason: To ensure works are in accordance with the consent.</p>

### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
<b>36.</b>	<p><b>Public Domain Works</b></p> <p>If footpath is damaged during construction or for any alterations to Council assets, 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 <i>Roads Act 1993</i> including:</p> <ol style="list-style-type: none"> <li>1. Any damaged footpath across the frontage of the site must be reconstructed.</li> <li>2. Other works subject to the <i>Roads Act 1993</i> approval.</li> </ol> <p>All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
<b>37.</b>	<p><b>No Encroachments</b></p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council footpath resulting from the building works have been removed, including opening doors with the exception of any awnings or balconies approved by Council.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>
<b>38.</b>	<p><b>Noise – Acoustic Report</b></p> <p>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 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</p>



	<p>be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.</p> <p><i>Note: In special entertainment precincts, this condition applies to noise and vibration from plant equipment and machinery only.</i></p> <p>Reason: To ensure compliance with the relevant Australian Standard.</p>
<b>39.</b>	<p><b>Food Premises Grease Trap – Trade Waste Agreement</b></p> <p>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.</p> <p>Reason: To ensure works are in accordance with the relevant Sydney Water requirements, Australian Standard and National Construction Code (Building Code of Australia).</p>

### OCCUPATION AND ONGOING USE

	Condition
<b>40.</b>	<p><b>Noise General</b></p> <p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

### SUBDIVISION WORK

#### BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

	Condition
<b>41.</b>	<p><b>Strata Subdivision Plan</b></p> <p>Prior to the release of a Strata Subdivision Plan, the Certifying Authority must be provided with plans indicating that the strata subdivision of the development has been carried out in accordance with approved plans.</p> <p>Reason: To ensure works are in accordance with the consent and adequate on-site facilities are provided for the development.</p>

Attachment B – Plans of proposed development

ASHFIELD MALL TENANCIES

DEVELOPMENT APPLICATION  
ALTERATIONS & ADDITIONS

250 LIVERPOOL RD, ASHFIELD  
SP97460 & SP 97461

DRAWING SCHEDULE		
DRAWING NUMBER	DRAWING NAME	REVISION
0000 TITLE SHEETS		
0001	TITLE SHEET	02
0200 3D DRAWINGS & RENDERERS		
0201	LIVERPOOL ROAD VIEWS	04
0202	COUNCIL COURTYARD VIEWS	04
1000 SITE PLANS		
1001	LOCATION PLAN	02
1002	SITE PLAN	02
1200 EXISTING PLANS		
1200	EXISTING FLOOR PLAN - GROUND FLOOR	03
2000 FLOOR PLANS		
2001	FLOOR PLAN - GROUND FLOOR PROPOSED	01
3000 ELEVATIONS		
3001	ELEVATIONS	02
3002	ELEVATIONS	03



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DUNNIELLO NSW 1500

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02	ISSUED FINAL DRAFT FOR COMMENT	13/06/2024	TN	NT			
01	ISSUED FINAL DRAFT FOR COMMENT	04/03/2021	TN	NT			
ISSUE PURPOSE				DATE	D	C	A
SK							
				JOB NO	6486		
				DWG NO	SK0001		
				TITLE SHEET	02		



SUBJECT SITE  
250 LIVERPOOL RD  
ASHFIELD  
SP97460 & SP 97461

1 LOCATION PLAN

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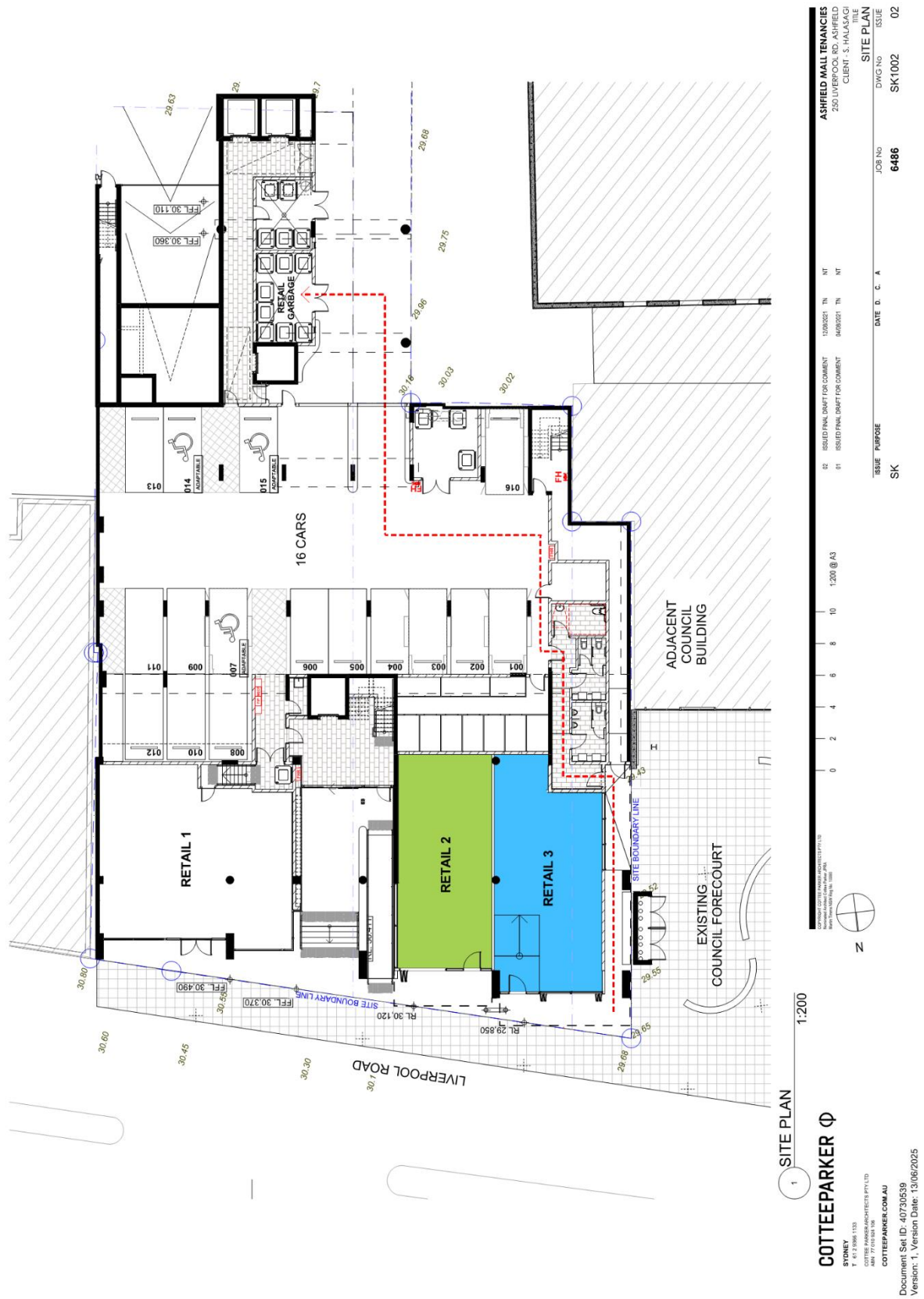
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SYDNEY NSW 2000  
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05	ISSUED FINAL DRAFT FOR COMMENT	10/06/2025	TN	NT	ASHFIELD MALL TENANCIES
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					CLIENT: S. HALASAGI
					TITLE
ISSUE	PURPOSE	DATE	D.	C.	A.
SK					LOCATION PLAN
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		ISSUE			02







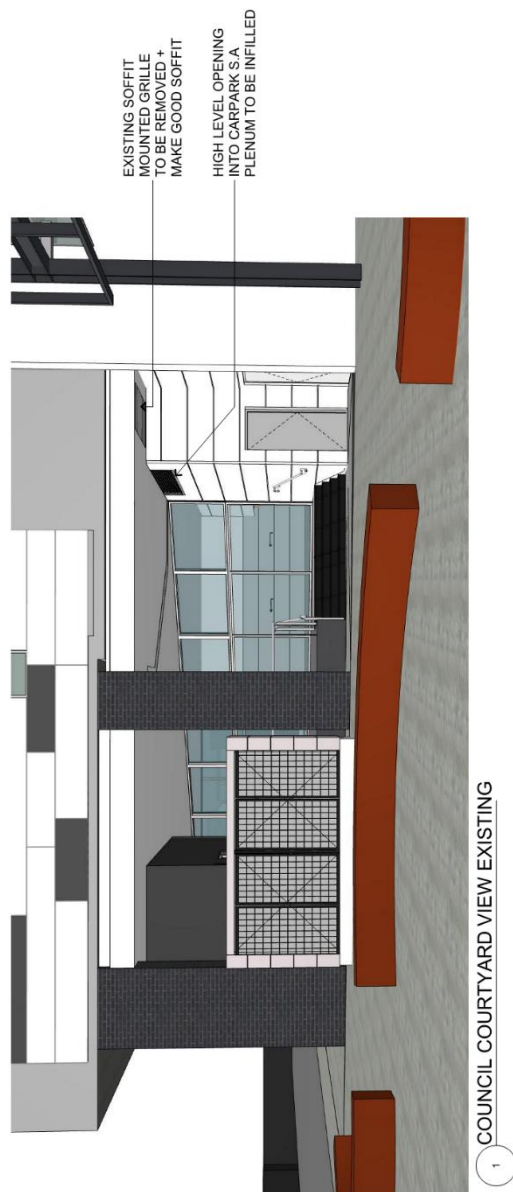
1 LIVERPOOL ROAD VIEW EXISTING



2 LIVERPOOL ROAD VIEW PROPOSED

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14	USED FOR INFORMATION	06/05/22	BN	NT	ASHFIELD MALL TENANCIES
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02	USED FINAL DRAFT FOR COMMENT	08/05/21	TN	NT	CLIENT: S. HALASAGI
03	USED FOR INFORMATION	05/05/22	LT	NT	TITLE
04	USED FOR INFORMATION	05/05/22	LT	NT	LIVERPOOL ROAD VIEWS
DATE D. C. A					ISSUE
SK	PURPOSE	JOB NO	DWG NO	ISSUE	
		6486	SK0201	04	



ISSUED FOR INFORMATION		ISSUE PURPOSE		DATE	D.	C.	A.	ISSUE
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01	ISSUED FOR INFORMATION	01	ISSUED FOR INFORMATION	03/05/2021	01	01	01	01

ASHPIELD MALL TENANCIES

250 LIVERPOOL RD, ASHPIELD

CLIENT - S. HALASZSKI

COUNCIL COURTYARD VIEWS

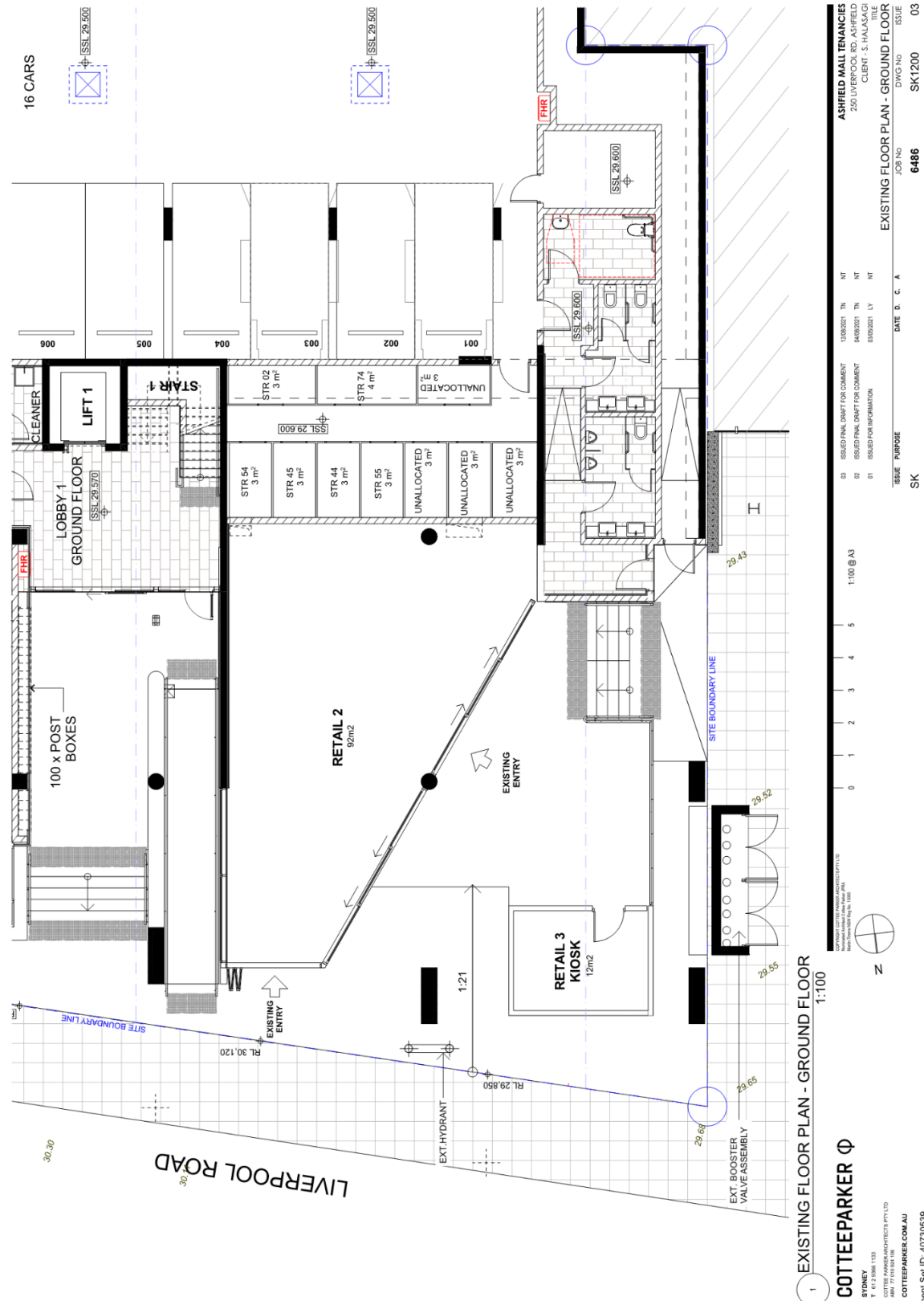
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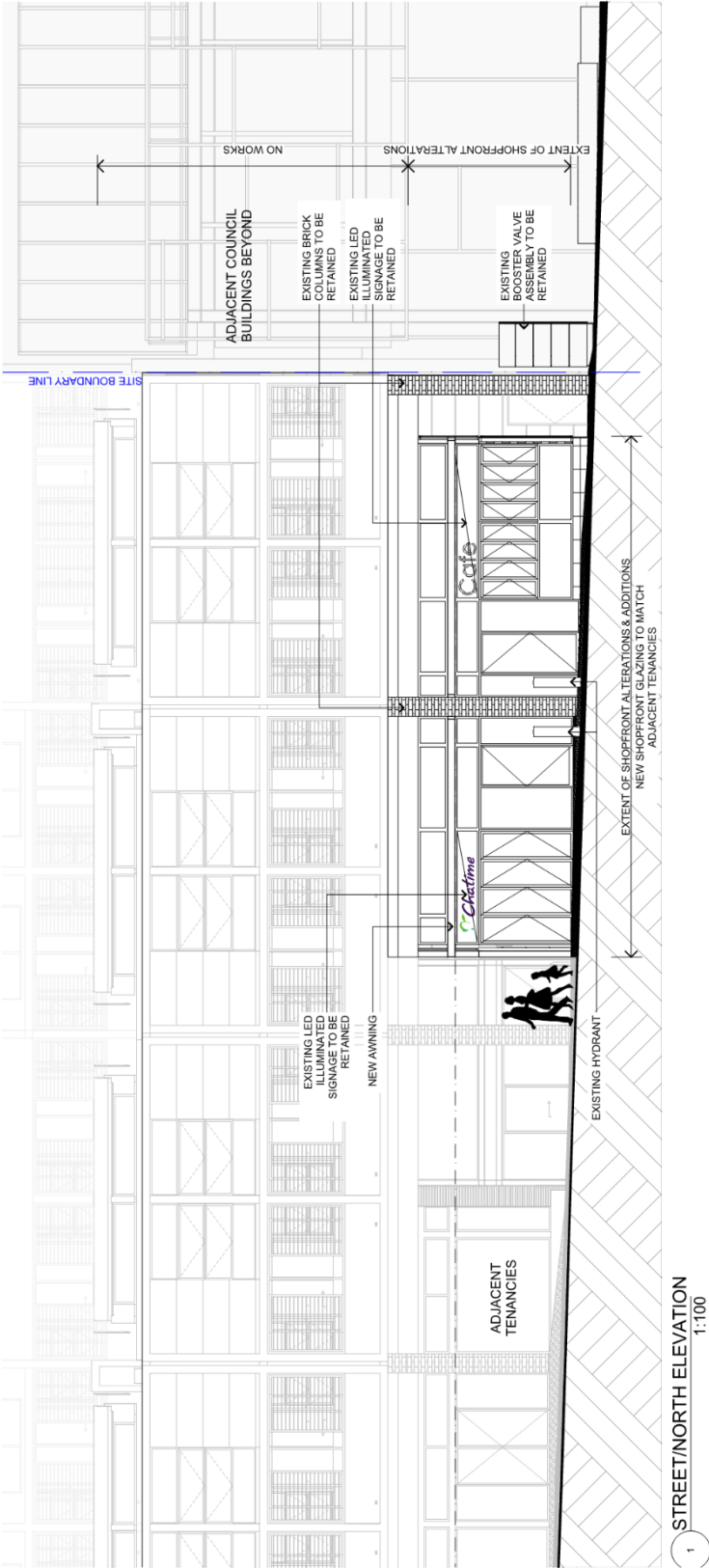
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DATE D C A

ISSUE PURPOSE  
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JOB NO  
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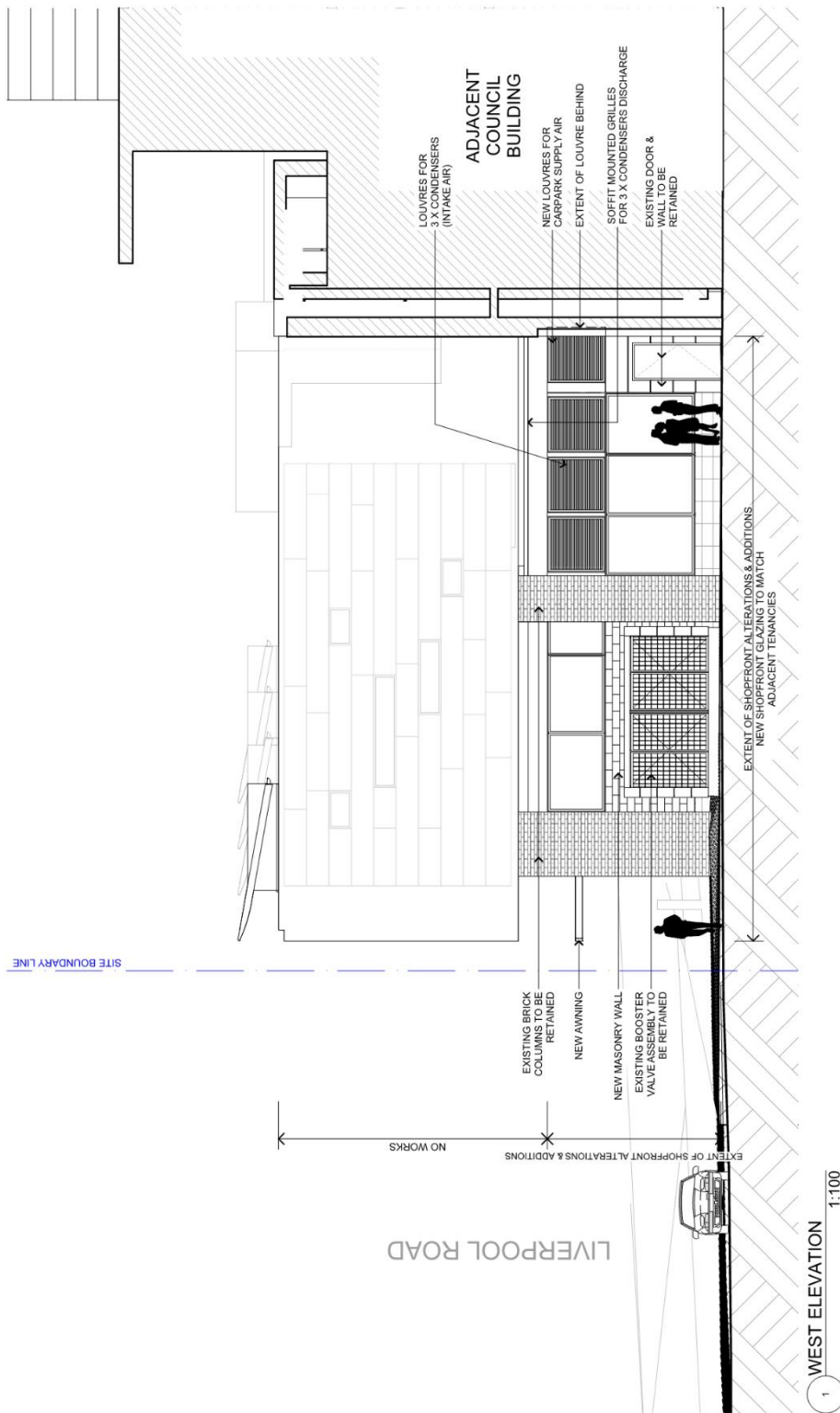
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ISSUE  
02

ASHFIELD MALL TENANCIES  
250 LIVERPOOL RD, ASHFIELD  
CLIENT: S. HALASAGHI

TITLE  
ELEVATIONS

PAGE 438



ASHFIELD MALL TENANCIES			
250 LIVERPOOL RD, ASHFIELD			
CLIENT: S. HALASAGI			
TITLE			
ELEVATIONS			
DATE	D	C	A
20/07/2025	NS	NT	NT
JOB NO	6486		
DWG NO	SK3002		
ISSUE	04		

ISSUE	PURPOSE	DATE	D	C	A
SK		20/07/2025	NS	NT	NT

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PLAN FORM 1 (A3) Sheet 1 of 4 sheet(s)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

**SITE PLAN OVERALL**

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

NOTES:

- B ~ BALCONY
- CP ~ COMMON PROPERTY
- P ~ PLANTER
- T ~ TERRACE

× EASEMENT FOR SUPPORT AND SHELTER (WHOLE LOTS) (DP 1241312)

× EASEMENT FOR SERVICES (WHOLE LOTS) (DP 1241312) - ITEM 2

ON SECTION 88B

<p><b>SURVEYOR</b></p> <p>Name: JACEK IDZIKOWSKI</p> <p>Date of Survey: DRAFT</p> <p>Surveyor's Reference: 22632 057SP</p>	<p><b>STRATA PLAN OF SUBDIVISION OF LOT 2, LOT 3 AND COMMON PROPERTY IN SP 97461</b></p>	<p><b>Registered</b></p> <p>LGA: INNER WEST</p> <p>Locality: ASHFIELD</p> <p>Reduction Ratio 1: 300</p> <p>Lengths are in metres.</p>
<p><b>SP DRAFT</b></p> <p>DA ISSUE: 21-01-2022</p>		

Document: 5641B-4674669  
Version: 1, Version Date: 13/06/2025

PLAN FORM 1 (A3) Sheet 2 of 4 sheet(s)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

**LOCATION PLAN**  
**GROUND FLOOR**

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

The plan shows three lots: Lot 1 (DP 215739), Lot 2 (DP 734466), and Lot 3 (DP 1241312). Lot 1 contains 'APARTMENTS' and 'SHOPS'. Lot 2 contains a 'SHOP'. Lot 3 contains a 'SHOP'. Common property (CP) is shown between the lots. Surrounding features include 'LIVERPOOL ROAD' and 'LIVERPOOL POOL'. Dimensions are provided for various boundaries and easements.

SP 97460

**NOTES:**

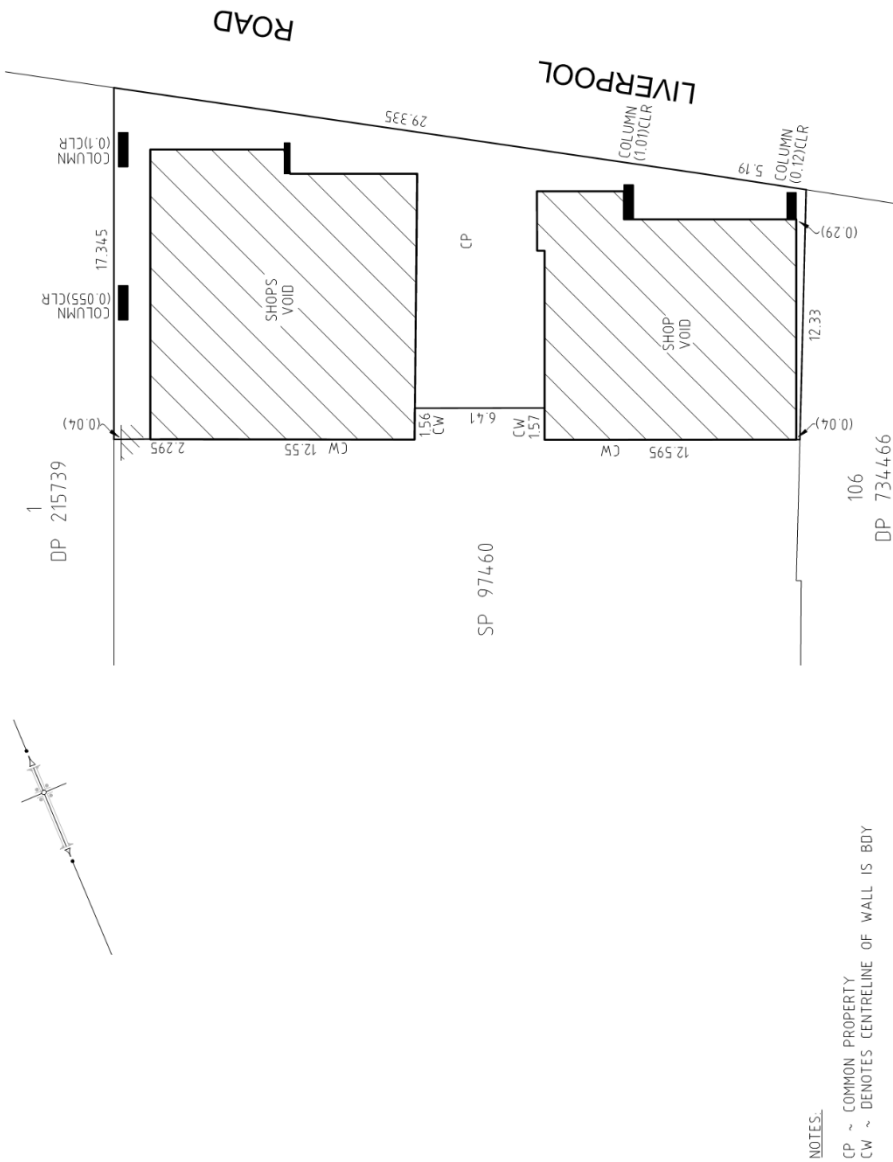
- CP ~ COMMON PROPERTY
- CW ~ DENOTES CENTRELINE OF WALL IS BODY
- THE LOT BOUNDARY OF THE FORECOURT FOR LOTS 1, 2 & 3 IS COINCIDENTAL WITH THE PARCEL BOUNDARY
- (W) EASEMENT FOR ACCESS VARIABLE WIDTH LIMITED IN STRATUM (DP 1241312)
- (V) EASEMENT FOR FIRE EGRESS VARIABLE WIDTH LIMITED IN STRATUM (DP 1241312)
- (R) RESTRICTION ON USE VARIABLE WIDTH LIMITED IN STRATUM (DP 1241312)
- (X) EASEMENT FOR LETTERBOXES AND INTERCOM VARIABLE WIDTH LIMITED IN STRATUM (DP 1241312)

<b>SURVEYOR</b> Name: JACEK IDZIKOWSKI Date of Survey: DRAFT Surveyor's Reference: 22632 057SP	<b>STRATA PLAN OF SUBDIVISION OF LOT 2, LOT 3 AND COMMON PROPERTY IN SP 97461</b>	Registered	<b>SP DRAFT</b> DA ISSUE : 21-01-2022
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Document ID: 4673959  
Version: 1, Version Date: 13/06/2025

LOCATION PLAN  
LEVEL P1

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



NOTES:

CP ~ COMMON PROPERTY  
CW ~ DENOTES CENTRELINE OF WALL IS BDY

THERE IS NO HARDSTAND SURFACE AT THIS LEVEL

SURVEYOR

Name: JACEK IDZIKOWSKI

ate of Survey: DRAFT

Surveyor's Reference: 22632 057SP

Document Set ID: 40730539  
Version: 1, Version Date: 13/06/2025

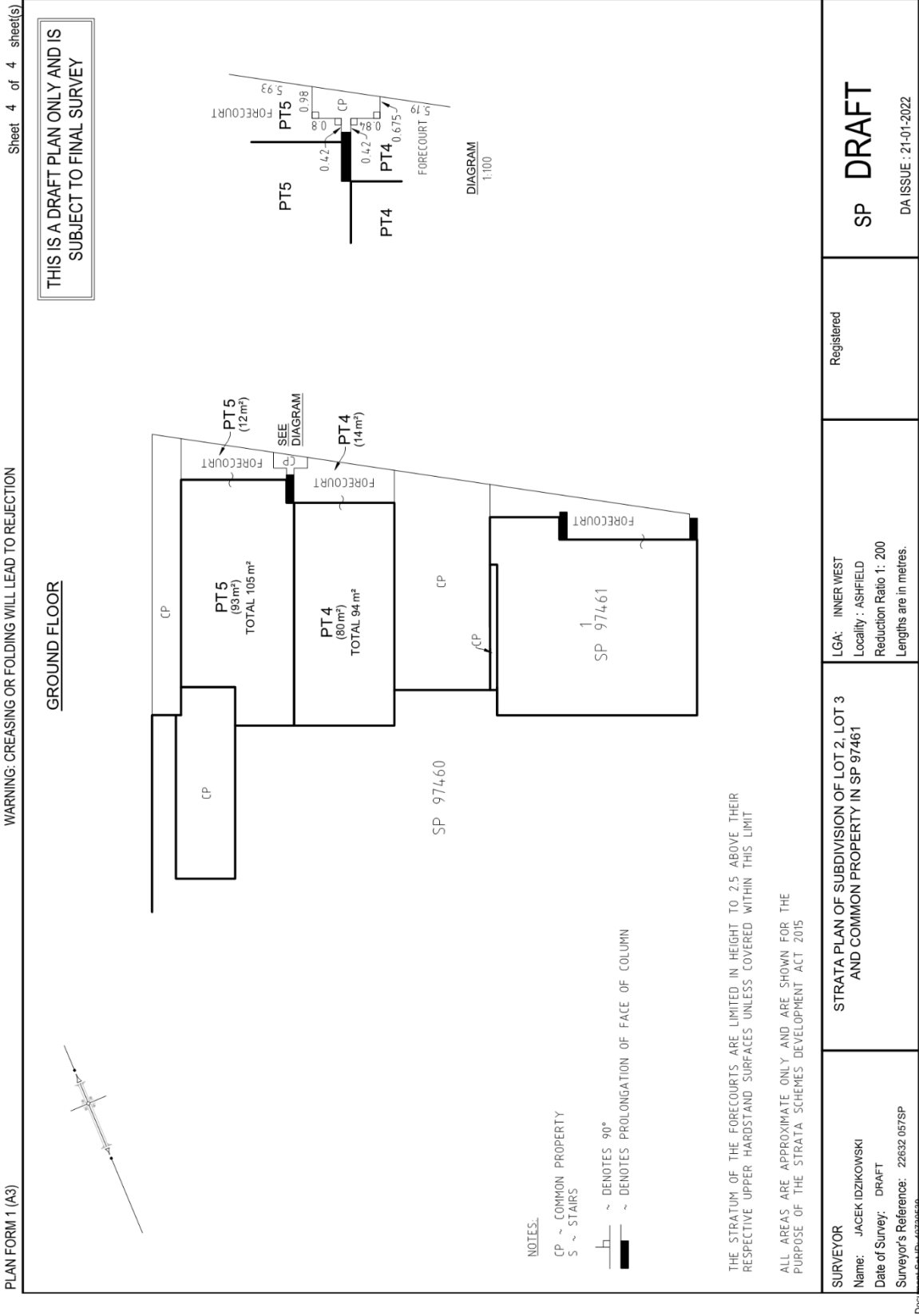
Registered

LGA: INNER WEST  
Locality : ASHFIELD  
Reduction Ratio 1: 200  
Lengths are in metres.

STRATA PLAN OF SUBDIVISION OF LOT 2, LOT 3  
AND COMMON PROPERTY IN SP 97461

SP DRAFT

DA ISSUE : 21-01-2022



## Attachment C – Applicant's Legal Advice



4 December 2024

Our ref: DB:TH:Halasagi:20319

Kaitlin Zieme  
Inner West Council  
PO Box 14  
Petersham NSW 2049

Principal: David Bannerman  
dbannerman@bannermans.com.au

Contact: Tara Haas  
thaas@bannermans.com.au

BY EMAIL ONLY: [kaitlin.zieme@innerwest.nsw.gov.au](mailto:kaitlin.zieme@innerwest.nsw.gov.au); [council@innerwest.nsw.gov.au](mailto:council@innerwest.nsw.gov.au)

Attachments	
<b>Please find attached:</b>	<ul style="list-style-type: none"> <li>(a) Notice of Determination from Inner West Council dated 12 July 2023;</li> <li>(b) Common property certificate of title for Strata Plan No. 97461;</li> <li>(c) Common property certificate of title for Strata Plan No. 97460;</li> <li>(d) Registered Strata Plan for Strata Plan No. 97461;</li> <li>(e) Registered Strata Plan for Strata Plan No. 97460;</li> <li>(f) Ashfield Central and the Strata Management Statement;</li> <li>(g) Notice of general meeting of The Owners – Strata Plan No. 97461 dated 8 September 2021;</li> <li>(h) Minutes of general meeting of The Owners – Strata Plan No. 97461 dated 8 September 2021;</li> <li>(i) Notice of general meeting of The Owners – Strata Plan No. 97461 dated 18 February 2022;</li> <li>(j) Minutes of general meeting of The Owners – Strata Plan No. 97461 dated 18 February 2022;</li> <li>(k) Notice of general meeting of The Owners – Deposited Plan No. 1241312 dated 19 September 2024;</li> <li>(l) Minutes of general meeting of The Owners – Deposited Plan No. 1241312 dated 19 September 2024;</li> <li>(m) Title Search for Lot 2 in Strata Plan No. 97461; and</li> <li>(n) Title Search for Lot 3 in Strata Plan No. 97461.</li> </ul>



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Version: 1, Version Date: 13/06/2025

Liability limited by a scheme approved under professional standards legislation

Halasagi  
4 December 2024

Dear Kaitlin,

**SP97461 | NOTICE OF DETERMINATION (REFUSAL) | DEVELOPMENT APPLICATION  
NO. DA/2022/0898 | INNER WEST COUNCIL | BUILDING B, 250 LIVERPOOL ROAD,  
ASHFIELD NSW 2131 | #20319**

1. I refer to the notice of determination from the Inner West Council (the "**Council**"), dated 12 July 2023, which is enclosed with this letter.
2. I confirm that I have been engaged by Shankar Halasagi and Rekha Halasagi (my "**Clients**"), the owners of lots 2 and 3 (the "**Lots**") in Strata Plan No. 97461. I am instructed to write to you as follows:
3. I provide the following by way of background to this matter based on the information provided to me.

**BACKGROUND**

4. The Owners – Strata Plan No. 97461 manages the Retail common property located at Building B, 250 Liverpool Road, Ashfield NSW 2131.
5. The Owners – Strata Plan No. 97460 manages the Residential common property located at 250 Liverpool Road, Ashfield NSW 2131.
6. Strata Plan No. 97461 is a retail scheme (the "**Retail Scheme**") and Strata Plan No. 97460 is a residential scheme (the "**Residential Scheme**").
7. The Retail Scheme was registered on 7 June 2018 and the Residential Scheme was registered on 6 June 2018.
8. The Retail Scheme consists of 3 lots and the Residential Scheme consists of 106 lots. A copy of the common property certificate of titles are enclosed with this letter.
9. The Retail Scheme is located on the ground floor and the Residential Scheme is located on level 2 to 12 of Deposited Plan No. 1241312. A copy of the registered strata plans are enclosed with this letter.
10. The Retail Scheme, Residential Scheme, and Ashfield Shopping Centre are three distinct components and form part of The Owners – Deposited Plan No. 1241312, a Building Management Committee (the "**BMC**").
11. The BMC regulates the management and operation of the integrated building, including the shared facilities (the "**Shared Facilities**"), using a set of rules referred to as the Strata Management Statement. A copy of the Strata Management Statement is enclosed with this letter.

2 of 6



Halasagi  
4 December 2024

12. The Shared Facilities are a number of facilities and services within the building which are used by two or more "Members" or located on the land of a "Member", including the common property of the "Member" but used by another "Member".

13. The BMC, according to the Strata Management Statement, has rights and obligations to manage, control, maintain, repair, and replace the Shared Facilities.

14. On 24 October 2024, my Clients lodged Development Application No. DA/2022/0898 (the "DA") with the Council for consideration. The proposed development consists of:

*"Alterations and additions to an existing mixed use building to facilitate an expanded ground floor tenancy. Amendments to approved strata subdivision (the "Proposed Development")."*

15. On 12 July 2023, the DA was determined by the Local Planning Panel and consent was refused. The Council has concerns with respect to the consent required for the Proposed Development.

16. The reason for the refusal is extracted below:

*"The application has not been lawfully made in accordance with section 23 (1) of the Environmental Planning and Assessment Regulation 2021, pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, as the application proposes works that relate to common property/services this require consent from the registered property owner/s of Residential Strata 97460 which has not been provided."*

17. On 8 September 2021, the Retail Scheme, The Owners – Strata Plan No. 97461 consented to the lodgement of the DA. Please see Motion 11 of the meeting notice and minutes enclosed with this letter. For ease of reference, Motion 11 is extracted below:

**"MOTION 11.  
Confirm DA Approval**

*"That the owners corporation approve for the attached plans that have been presented by Lot 2 and 3 to be issued for approval to Council. It is to be noted that no approvals of acquiring the land or doing any works have been approved by the owners corporation at this stage. The strata agent is to be directed to issue what is required for the DA application to be submitted including the use of the common seal of the owners corporation."*

18. On 18 February 2022, the Retail Scheme, The Owners – Strata Plan No. 97461 approved, by special resolution, the subdivision of lots 2 and 3 and the common property in the Retail Scheme into new lots 4 and 5, including the acquisition of common property limited to stairs of 1 sqm. Please see Motion 2 of the meeting notice and minutes enclosed with this letter. For ease of reference, Motion 2 is extracted below:

**"MOTION 2.  
Confirm Subdivision of Lots**

3 of 6

Halasagi  
4 December 2024

*That the owners corporation RESOLVES by special resolution approve the Strata subdivision of lots 2,3 and the common property in SP97461 into new lots 4 and 5 as set out in the notice of the General Meeting.*

*Acquisition of common property is limited to the stairs and the landing, currently on the rear of the current lots 2 and 3.*

*Owners corporation, the transferor, and transferee have agreed on a Price of \$50,000 + GST, towards the acquisition of common property.*

*Schedule of unit of entitlement to be Lot 1 = 50, Lot 2 (New Lot 4) = 25% and Lot 3 (New Lot 5) = 25%."*

19. On 19 September 2024, the BMC consented to the lodgement of the DA. Please see Motion 2 of the meeting notice and minutes enclosed with this letter. For ease of reference, Motion 2 is extracted below:

**"MOTION 2.**

**Confirm Motion Submitted by Sanjay Halasagi of Lots 2-3 in SP97461**

*The Building Management Committee – DP No. 1241312, RESOLVES by Majority Resolution, to provide consent to the lodgment of the development application made by the owner of lots 2 and 3 in Strata Scheme 97461 tabled at this meeting, and authorises the managing agent or any two members of the Committee to affix the common seal on behalf of each constituent member of the Building Management Committee in accordance with clause 13.2 of the Strata Management Statement and do all things reasonably necessary to provide the Building Management Committee's consent to the application."*

**LEGISLATION**

20. According to clause 49 ("Persons who can make development applications") of the *Environmental Planning & Assessment Regulation 2000* (NSW) (the "**EPA Regulation**"), my Clients are entitled to lodge a DA with the Council in relation to the Lots as the owners of the affected land. For ease of reference, clause 49 of the EPA Regulation is extracted below:

*"(1) A development application may be made—*

*(a) by the owner of the land to which the development application relates, or*

*(b) by any other person, with the consent of the owner of that land."*

21. Pursuant to the enclosed title searches, my Client's Lots are located within and form part of the Retail Scheme.

22. Upon review of the registered strata plans for the Retail Scheme and Residential Scheme, the DA does not involve or affect the common property of the Residential Scheme.

Halasagi  
4 December 2024

23. Instead, the DA impacts on the Lots and the common property of the Retail Scheme. It must be noted that parts of the common property of the Retail Scheme form part of the Shared Facilities.
24. Additionally, The Owners – Deposited Plan No. 1241312 and The Owners – Strata Plan No. 97461 are responsible for the overall control and management of the common property of the Retail Scheme and Shared Facilities.
25. However, The Owners – Strata Plan No. 97460 is not responsible for the overall control and management of the common property of the Retail Scheme.
26. Further, I note that the DA does not involve or affect the common property of the Residential Scheme. As such, my Clients do not require consent from the Residential Scheme.
27. The case of *Owners – Strata Plan No. 50411 & Ors -v- Cameron North Sydney Investments* [2003] NSWCA 5 considered whether an owners corporation's consent is required for a development application lodged by a lot owner. In this case, it was held that for a development application relating to works 'wholly within' the boundaries of a lot and not affecting common property, such application does not require the consent of an owners corporation. Please see paragraph 163 of the decision extracted below:
- "163 On the true construction of the Environmental Planning and Assessment Act 1979 s 78A and the Environmental Planning Assessment Regulation 2000 clause 49, the owner of a lot in a registered strata plan who applies to a consent authority for consent to carry out development wholly within the boundaries of that lot is not obliged to obtain and evidence the consent of the body corporate to the lodging of that application."*
28. The case of *Owners – Strata Plan No. 37762 -v- Dinh Phuong Dung Pham* [2006] NSWSC 1287 also considered whether an owners corporation's consent is required for a development application lodged by a lot owner. Please see paragraph 44 of the decision extracted below:
- "44 Works on the common property are not works on the property of the defendant. In relation to works on common property, there would continue to be a right of objection reposed in other property owners affected by any proposed works, but there is also a need both for the consent of the Owners' Corporation (being the owner of the common property) to the development application being lodged and also, over and above development consent granted by the Council, a need for an exclusive use by-law or a licence from the Owners' Corporation which would allow common property to be used exclusively by one unit holder."*
29. The above cases confirm that if no common property of the Residential Scheme is affected by the DA, then there is no requirement for the consent of the Residential Scheme.
30. Therefore, based on the foregoing, your suggestion that the DA requires the consent from the Residential Scheme is incorrect. If you disagree with this proposition, please respond to this letter by outlining why by reference to legislation and cases.

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Halasagi  
4 December 2024

**NEXT STEPS**

31. In light of the above, my Clients kindly request that the Council reconsider the DA in order to carry out the Proposed Development.

Yours faithfully  
**BANNERMANS**



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