

18 March 2016

Dear Councillor/Sir/Madam

You are invited to attend an **ORDINARY MEETING** of Ashfield Council, to be held in the Council Chambers, Level 6, Civic Centre, 260 Liverpool Road, Ashfield on **TUESDAY 22 MARCH 2016** at **6:30 PM**

**SEE ATTACHED AGENDA**

# ORDINARY MEETING - 22 MARCH 2016

## AGENDA

*Members of the public are advised that meetings of Council are audio recorded to assist with ensuring an accurate record of the meeting is provided for the formal minutes of the meeting. In terms of the Privacy and Personal Information Protection Act 1998 this may involve the recording of personal information provided at the meeting. The provision of any information that is recorded is voluntary, however if any person does not wish to be recorded they should not address or request to address the meeting.*

*By remaining in this meeting, you consent to the recording of the meeting.*

*You are not permitted to record this meeting with any recording device, unless you have the express authorisation of Ashfield Council.*

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**DRAFT MINUTES OF ORDINARY MEETING  
TUESDAY 8 MARCH 2016**

**DRAFT MINUTES OF THE ORDINARY MEETING OF ASHFIELD COUNCIL HELD ON  
LEVEL 6, CIVIC CENTRE, 260 LIVERPOOL ROAD, ASHFIELD ON TUESDAY 8  
MARCH 2016, COMMENCING AT 6:40 PM.**

**PRESENT**

Her Worship the Mayor, Councillor McKenna OAM in the Chair and Councillors Cassidy PSM, Drury, Lofts, Mansour, Passas, Raciti, A Raiola, M Raiola, Stott and Wangmann

|                    |   |
|--------------------|---|
| Ms V Chan          | General Manager                           |
| Ms N Kettle        | Director Corporate and Community Services |
| Mr P Sarin         | Director Planning and Environment         |
| Ms C Edwards-Davis | Director Works and Infrastructure         |
| Ms Popy Mourgelas  | Manager Corporate Governance              |
| Mr Quinton Kohler  | Acting Senior Governance Officer          |

**ACKNOWLEDGEMENT OF LOCAL ABORIGINAL COMMUNITY**

"Let us acknowledge that we are meeting on country for which the members and elders of the local Aboriginal community have been custodians for many centuries, and on which Aboriginal people have performed age old ceremonies. We acknowledge their living culture and unique role in the life of this region."

**APOLOGIES**

**RESOLVED:** Mansour/Wangmann

An apology for non attendance was received and accepted from Councillor Wang.

**CONDOLENCE AND SYMPATHY MOTIONS**

**MOMENT OF PRIVATE CONTEMPLATION**

The chairperson invited Councillors, staff, members of the press and gallery to stand and observe a moment of private contemplation.

**DISCLOSURES OF INTEREST**

Councillor Drury declared a Significant Pecuniary Interest in item CM 10.2 due to being a part owner of a property within the notification area. Councillor Drury will leave the chamber and not participate in this item.

Councillor Cassidy PSM declared a Significant Non-Pecuniary Interest in item NR8/2016 – Notice of Rescission – Ashfield Traffic Committee Minutes Item 005 – on the basis that he

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and his family have proprietary interest in the property nearby, Councillor Cassidy PSM will leave the chamber and not participate in this item.

**CONFIRMATION OF MINUTES**

**RESOLVED:** Cassidy PSM/Raciti

That the Minutes of the Ordinary Council Meeting held on Tuesday 23 February 2016 be confirmed subject to item NM10/2016 – Suspensions being amended as follows:

“That Councillor Cassidy PSM moved a motion to defer the matter for consideration to the next meeting of Council”.

A division was called and the voting was as follows:-

**For the Motion**

Councillors Wangmann, Cassidy PSM, A Raiola, M Raiola, Raciti and Passas.

**Against the Motion**

Councillors Stott, Mansour, Lofts, Drury and McKenna OAM.

**RESOLVED:** Mansour/Lofts

That the minutes of the Works and Services Committee Meeting held on 16 February 2016 be confirmed.

**RESOLVED:** Drury/Wangmann

That the minutes of the Aquatic Centre Redevelopment Steering Committee Meeting held on 16 February 2016 be confirmed and the recommendations contained in the Minutes be adopted.

**NOTICES OF MOTION**

**NOTICE OF RESCISSION - 425 LIVERPOOL ROAD ASHFIELD**

**NR9/2016**

**RESOLVED:** Cassidy PSM/Raciti

That the resolution with regard to CM10.1 – DA10.2014.012.2, 425 Liverpool Road Ashfield – passed at the Council meeting held on 23 February 2016, be rescinded.

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A division was called and the voting was as follows:-

For the Motion

Councillors Cassidy PSM, Mansour, A Raiola, M Raiola, Raciti and Passas.

Against the Motion

Councillors Stott, Wangmann, Lofts, Drury and McKenna OAM.

Motion to rescind was Carried

**NOTICE OF RESCISSION - ASHFIELD TRAFFIC COMMITTEE MINUTES**

**NR8/2016**

Councillor Cassidy PSM left the chambers at 7.08pm having previously declared a Significant, Non-Pecuniary interest in item 005 of this matter.

Members of the public addressed the meeting.

Craig Thornborough addressed Council at 7.11pm and concluded 7.14pm

Daniel Healey addressed Council at 7.17pm and concluded 7.22pm

Graeme Sewell addressed Council at 7.22pm and concluded 7.25pm

Mick Nock addressed Council at 7.25pm and concluded 7.28pm

Sarah Nicholson addressed Council at 7.28pm and concluded 7.31pm

Pavan Sharma addressed Council at 7.31pm and concluded 7.32pm

Adam Harb addressed Council at 7.32pm and concluded 7.38pm

Councillor Passas left the meeting at 7.50pm, returned 7.51pm

**Motion:** Passas/A Raiola

That resolution of CM10.6 – Ashfield Traffic Committee Minutes of meeting 5 February 2016 – items 005 and 009, passed at the Council meeting of 23 February 2016, be rescinded.

Items 005 and 009 were voted on separately.

**Item 005** – Traffic Calming in Waratah Street and Tillock Street, Haberfield

The Motion to rescind Item 005 was put and Carried.

**Motion:** Lofts/Stott

1/2 That the scheme proceed and that (a) road narrowing speed hump between 1 and 3 Waratah Streets, be further investigated with the view to:

- seeking alternatives such as a chicane;
- the location of the traffic calming device.

**DRAFT MINUTES OF ORDINARY MEETING  
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2/2 That this be considered as part of the technical review to be brought before the Traffic Committee

The Motion was Carried

Councillor Cassidy PSM returned to the chambers, the time being 8.02pm

**Item 009** – Part time No Stopping along east side of William Street for rear subdivide development of 85 Victoria Street, from opposite No.31 William Street to Clissold Street, Ashfield

The Motion to rescind was put and Lost.

**RECOMMITTAL**

**RESOLVED:** Cassidy PSM/Mansour

That Item NR9/2016 – Notice of Rescission: 425 Liverpool Road Ashfield, be recommitted as the motion to rescind was carried.

**NOTICE OF RESCISSION - 425 LIVERPOOL ROAD ASHFIELD**

**NR9/2016**

**RESOLVED:** Cassidy PSM/Mansour

That the application for Section 96 variation to the approved development application be approved and the Section 94 Contribution be varied accordingly.

A division was called and the voting was as follows:-

For the Motion

Councillors Cassidy PSM, Mansour, A Raiola, M Raiola, Raciti and Passas.

Against the Motion

Councillors Stott, Wangmann, Lofts, Drury and McKenna OAM.

[Note: A Notice of Rescission has been lodged in regard to NR9/2016 – 425 Liverpool Road Ashfield, and will be considered at the next meeting of Council.]

**DRAFT MINUTES OF ORDINARY MEETING  
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**STAFF REPORTS**

**DEVELOPMENT APPLICATION: 10.2015.240.1  
11A MOONBIE STREET SUMMER HILL**

**CM 10.1**

Councillor Passas left the meeting at 8.10pm, returned 8.19pm  
Councillor Raciti left the meeting at 8.11pm, returned 8.18pm  
Councillor Wangmann left the meeting at 8.28pm, returned 8.32pm

**Members of the public addressed the meeting.**

Tim Nice addressed Council at 8.09pm and concluded 8.12pm  
Sarah Quirk addressed Council at 8.12pm and concluded 8.16pm  
Houlia Cullet addressed Council at 8.16pm and concluded 8.18pm  
Kylie Hogan addressed Council at 8.18pm and concluded 8.20pm  
Mark Sabolch addressed Council at 8.20pm and concluded 8.24pm  
Paul Gallagher addressed Council at 8.25pm and concluded 8.27pm  
Gerard Turrisi addressed Council at 8.27pm and concluded 8.35pm

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**RESOLVED:** Lofts/Stott

- A. That the request pursuant to clause 4.6 of the Ashfield Local Environmental Plan 2013 regarding contravention of clauses 4.4 in respect of floor space ratio are not well founded and should not be supported.
- B. That Council as the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. 10.2015.240.1 for partial demolition of existing structures and alterations and additions to an existing building and change of use to 32 room boarding House accommodating 43 persons and continuation of the use of part of the building as a medical centre on Lot C, DP 310221, known as 11A Moonbie Street, Summer Hill, for the reasons detailed on pages 26 – 28 of the business paper and with the addition of the following reason.

The Plan of Management does not contain the following:

- Identifying how social support for occupants will be managed and what qualifications the in-house manager requires
- regular monitoring and reporting to the local community and council throughout the life of the boarding house including:
  - how often its performance is reported e.g. annually
  - providing outcomes i.e. focussed on performance indicators
  - how the complaints management system will be accessible to the community

That should the matter go to the Land and Environment Court, Council employ Senior Counsel to conduct the case.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Wangmann, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola, Raciti, Passas and McKenna OAM.

Against the Motion

Nil.

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**DEVELOPMENT APPLICATION: 10.2015.188.1**  
**76 ALT STREET, ASHFIELD**

**CM 10.2**

Councillor Drury left the chambers at 8.52pm having previously declared a Significant, Non-Pecuniary interest in this item.

Councillor A Raiola left the meeting at 8.54pm, returned 9.04pm

Councillor Lofts left the meeting at 8.57pm, returned 8.58pm

Members of the public addressed the meeting.

Anna Panagakos addressed Council at 8.52pm and concluded 8.56pm

Sarah Arthur addressed Council at 8.56pm and concluded 8.58pm

**RESOLVED:** Passas/Wangmann

That this Development Application be deferred in order for Council officers to give consideration to the residents' concerns such as parking, bulk, overshadowing, loss of light and overlooking issues.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Wangmann, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola, Raciti, Passas and McKenna OAM.

Against the Motion

Nil.

**DEVELOPMENT APPLICATION: 10.2015.255.1**  
**75 MILTON STREET ASHFIELD**

**CM 10.3**

Councillor Drury returned to the meeting 9.07pm

Councillor Passas left the meeting at 9.08pm

Councillor Wangmann left the meeting at 9.10pm

Councillor Raciti left the meeting at 9.10pm

Members of the public addressed the meeting.

George Angelopoulos addressed Council at 9.07pm and concluded 9.11pm

Philip Tullerico addressed Council at 9.11pm and concluded 9.14pm

**RESOLVED:** Drury/Mansour

That the matter be deferred in order for the proponent to address the deficiencies noted in the report.

**DRAFT MINUTES OF ORDINARY MEETING  
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A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola and McKenna OAM.

Against the Motion

Nil.

**DEVELOPMENT APPLICATION: 10.2013.114.3**  
**244, 252, 254, 256 & 260A LIVERPOOL ROAD, ASHFIELD**

**CM 10.4**

Councillor Wangmann returned to the meeting 9.20pm  
Councillors Raciti and Passas returned to the meeting 9.24pm

Members of the public addressed the meeting.

Sam Down addressed Council at 9.16pm and concluded 9.19pm.

**RESOLVED:** Drury/Mansour

That Development application no. 10.2013.114.1 for demolition of existing structures on 244-256 Liverpool Road and demolition of parts of existing Ashfield Mall shopping centre at 260A Liverpool Road, Ashfield; additional 6,783.9m<sup>2</sup> of retail gross floor area (as defined in Ashfield LEP 1985); the additional retail floor space includes new retail premises on the forecourt area and on the Liverpool Road frontage of 244-256 Liverpool Road, be modified in accordance with section 96(1a) of the Environmental Planning and Assessment Act 1979, as per conditions outlined on pages 329 – 333 of the business paper.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola, Raciti and McKenna OAM.

Against the Motion

Councillors Wangmann and Passas.

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**DEVELOPMENT APPLICATION: 10.2014.019.2  
260A LIVERPOOL ROAD ASHFIELD**

**CM 10.5**

**RESOLVED:** Drury/Mansour

That Development Application No. 10.2014.019.1 for construction of a new Mall entrance canopy structure, new canopy structure over the approved Pavilion and signage including a new illuminated pylon sign at the entrance to the forecourt of the Ashfield Mall shopping centre be modified in accordance with section 96(2) of the Environmental Planning and Assessment Act 1979, as per conditions outlined on pages 353 – 354 of the business paper.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola, Raciti and McKenna OAM.

Against the Motion

Councillors Wangmann and Passas.

**PUBLIC ART POLICY**

**CM 10.6**

**RESOLVED:** Drury/Lofts

That consideration of the draft Public Art Policy be deferred in order for Council officers to investigate ways to actively discourage graffiti; and to consider the inclusion of a clause regarding protection of existing public art.

That the matter be reported back to Council with the draft Policy.

**NATIONAL GENERAL ASSEMBLY OF LOCAL GOVERNMENT**

**CM 10.7**

**RESOLVED:** Lofts/Mansour

1/3 That Council note the report.

2/3 That Councillors Wangmann and McKenna OAM attend as delegates to the 2015 National General Assembly of Local Government in Canberra between 19-22 June 2016.

3/3 That any motions be submitted on behalf of Council before the deadline

**DRAFT MINUTES OF ORDINARY MEETING  
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**TENDER 15 / 55715- SPORTS FIELD IRRIGATION AT ASHFIELD COUNCIL  
CENTENARY, ASHFIELD, HAMMOND, ALGIE PARKS AND BEDE SPILLANE DOG  
PARK**

**CM 10.8**

**RESOLVED:** Drury/Lofts

- 1/2 That Council appoint Brooks Irrigation Pty Ltd as the Principal Contractor under Contract Number 15/55715 subject to satisfactory outcome of the financial assessment.
- 2/2 That the General Manager inform the unsuccessful tenderers of Council's resolution to decline to accept those tenders.

**Foreshadowed Motion:** Cassidy PSM/Passas

That the matter be deferred for advice from Office of Local Government that the matter complies with their guidelines, Council Decision Making During Merger Proposal Periods December 2015, in connection with proposed amalgamation of Councils.

The Substantive Motion was put to the Meeting.

A division was called and the voting was as follows:-

**For the Motion**

Councillors Stott, Wangmann, Mansour, Lofts, Drury and McKenna OAM.

**Against the Motion**

Councillors Cassidy PSM, A Raiola, M Raiola, Raciti and Passas.

**The Substantive Motion was Carried**

The Foreshadowed motion was not addressed.

**DRAFT MINUTES OF ORDINARY MEETING  
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**DESIGN AND CONSTRUCTION OF AMENITIES BUILDING AT CENTENARY PARK,  
CROYDON. CONTRACT NUMBER: 16/1830**

**CM 10.9**

Councillor Passas left the meeting at 9.49pm

**RESOLVED:** Drury/Mansour

- 1/2 That Council appoint J&CG Constructions as the Principal Contractor under the Contract Number 16/1830, subject to satisfactory outcome of the financial assessment.
- 2/2 That the General Manager inform the unsuccessful tenderers of Council's resolution to decline to accept their tenders.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Wangmann, Mansour, Lofts, Drury and McKenna OAM.

Against the Motion

Councillors Cassidy PSM, A Raiola, M Raiola and Raciti.

**MAYORAL MINUTES**

**DONATION TO ASSIST THE RECOVERY OF FIJI**

**MM7/2016**

**RESOLVED:** McKenna OAM

That Council supports the Australian Red Cross in the humanitarian support by donating \$5,000 to the recovery of Fiji.

**INTERNATIONAL WOMEN'S DAY**

**MM8/2016**

Councillor Passas returned to the meeting 9.52pm

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**RESOLVED:** McKenna OAM

- 1/3 That a letter of thanks be sent to Reverend Bridget Ocean and Ms Kelly Loveridge for their presentation to a very appreciative audience.
- 2/3 That a letter of thanks be sent to OZ Hair Ashfield Mall for their generous donation of lucky door prizes.
- 3/3 That a letter of thanks be sent to Brian Barrett, General Manager, Marrickville Council for inviting Ashfield staff to participate in the event.

**SUPPORT OF GENERATIONAL CHANGE TO END DOMESTIC AND FAMILY  
VIOLENCE**

**MM9/2016**

**RESOLVED:** McKenna OAM

That Council support this initiative and work with Leichhardt Council & Marrickville Council to develop the Memorandum of Understanding and an ongoing program.

A division was called and the voting was as follows:-

**For the Motion**

Councillors Stott, Wangmann, Cassidy PSM, Mansour, Lofts, Drury, A Raiola, M Raiola and McKenna OAM.

**Against the Motion**

Councillor Passas and Raciti

**PROCEEDINGS TERMINATED AT 9.59pm**

Chairperson of the meeting of Ordinary Meeting  
when the Minutes were confirmed

Chairperson

Date

**NOTICE OF RESCISSION BY**  
**COUNCILLORS CAROLINE STOTT, ALEX LOFTS AND MONICA WANGMANN**

**NOTICE OF RESCISSION - 425 LIVERPOOL ROAD ASHFIELD**

That Council rescind the previous resolution in relation to Item NR9/2016 – 425 Liverpool Road, Ashfield - passed at the Ordinary meeting of Council held on 08 March 2016, namely:

*That the application for Section 96 variation to the approved development application be approved and the Section 94 Contribution be varied accordingly*

If successful, we intend to move:

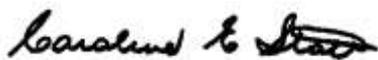
That the Section 96 Application for 425 Liverpool Road be refused.

**ATTACHMENTS**

There are no supporting documents for this report.

**We, the undersigned, move:**

**That resolution regarding Item NR9/2016 – 425 Liverpool Road considered at Council Meeting of 08 March 2016, be rescinded.**



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**Caroline Stott**



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**Monica Wangmann**



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**Alex Lofts**

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|                    |   |
|--------------------|---|
| <b>Subject</b>     | <b>DEVELOPMENT APPLICATION: 10.2016.029.1<br/>4/27 HERCULES STREET ASHFIELD</b> |
| <b>File Ref</b>    | DA 10.2016.029.1  |
| <b>Prepared by</b> | William Daskalopoulos - Development Assessment Officer                          |
| <b>Reasons</b>     | Matter referred to Council for determination                                    |
| <b>Objective</b>   | For Council to determine the application  |

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## Overview of Report

### 1.0 Description of Proposal

- Use of Unit 4 of existing premises as Chinese massage therapy centre.
- Fitout of the shop including 2 cubicles with curtain partitions and one massage table per cubicle.
- Operating hours from 10am to 7.30pm 7 days per week.

## Background

### 2.0 Summary Recommendation

- The proposed development is on the ground floor of a two storey commercial building with access only to Liverpool Road. The subject premises are currently used as a barber shop. The floor area of the shop is 20.7m<sup>2</sup> and the proposal involves the installation of two massage tables with curtain partitions.
- No internal or external objections have been received.
- The application was referred to Ashfield Police who has raised no objection subject to conditions.
- The development is recommended for conditional approval.

### 3.0 Application Details

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| Applicant               | : | Mr K Wang                         |
| Owner                   | : | YYHJ Pty Limited                  |
| Value of work           | : | \$ 2,500                          |
| Lot/DP                  | : | UNT: 4 LOT: 2 PRT: LOT DP: 450205 |
| Date lodged             | : | 02/02/2016                        |
| Date of last amendment  | : | N/A                               |
| Building classification | : | 6                                 |
| Application Type        | : | Local                             |

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

Construction Certificate : No

#### 4.0 Site and Surrounding Development

The subject site is located on the western side of Hercules Street, bounded by Liverpool Road to the south and Brown Street to the North. The site area is approximately 227.8 square metres. An existing two storey commercial building is located on the site. Surrounding development comprises mainly two storey commercial buildings. Refer to **Attachment 2** for a locality map.

#### 5.0 Development History

There is no relevant history of previous building and development applications for the property.

### **Assessment**

#### 6.0 Zoning/Permissibility/Heritage

- The site is zoned B4 under the provisions of Ashfield LEP 2013.
- The property is not located in a Heritage Conservation Area.
- The property is a heritage item.
- The property is located within the vicinity of a heritage items at 262, 236-242 Liverpool Road, Ashfield

The proposed works are permissible with Council consent.

#### 7.0 Section 79C Assessment

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act.

#### 7.1 The provisions of any Environmental Planning Instrument

##### 7.1.1 Local Environmental Plans:

##### **Ashfield Local Environmental Plan 2013**

| <b>Ashfield Local Environmental Plan 2013 Summary Compliance Table</b> |                              |                             |   |                   |
|--|------------------------------|-----------------------------|---|-------------------|
| <b>Clause No.</b>  | <b>Clause</b>                | <b>Standard</b>             | <b>Proposed</b>                                       | <b>Compliance</b> |
| 2.2  | Zoning                       | Zone B4 Enterprise Corridor | Fit out of unit 4 for use for Chinese massage therapy | Yes               |
| 4.1  | Minimum subdivision lot size | N/A                         | No subdivision proposed                               | N/A               |
| 4.3  | Height of buildings          | 23m                         | No increase in building height                        | Yes               |

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

|            |  |   |  |     |
|------------|--|---|--|-----|
| 4.4        | Floor space ratio  | 3.0 :1  | No increase in FSR proposed.   | Yes |
| 5.10       | Heritage Conservation  | Not located in a Heritage Conservation Area but is a heritage item  |  |     |
| 5.10(4)    | Effect of proposed development on heritage significance      | The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or the area concerned. This sub-clause applies regardless of whether a heritage management document is prepared under sub-clause (5) or a heritage conservation management plan is submitted under sub-clause (6).  | The property is not in a heritage conservation area but is in the vicinity of heritage items at 236-242 and 262 Liverpool Road, Ashfield.  | Yes |
| 5.10(5)    | Heritage assessment  | The consent authority may, before granting consent to any development:<br><br>(a) On land on which heritage item is located, or<br>(b) On land that is within a heritage conservation area, or<br>(c) On land that is within the vicinity of land referred to in paragraph (a) or (b),<br>Require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned. | The property is not in a heritage conservation area but is a heritage item and is in the vicinity of heritage items at 236-242 and 262 Liverpool Road Ashfield. There is no work proposed on the shop front except for 2 new business identification signs. Given the minimal work to the exterior of the building it is considered that the proposal will have minimal impact on the heritage item. Council's heritage adviser has no objection to the proposal | Yes |
| 6.5(3)     | Development on land in Haberfield Heritage Conservation Area | Development consent must not be granted to development for the purposes of a dwelling house on land to which this clause applies unless the consent authority is satisfied that:  | N/A  | N/A |
| 6.5 (3)(a) |  | If the development involves an existing building:<br>(i) the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and<br>(ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and   | N/A  | N/A |
| 6.5(3)(b)  |  | The development will not involve excavation in excess of 3 metres   | N/A  | N/A |

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

|           |  |  |     |     |
|-----------|--|--|-----|-----|
|           |  | below ground level ( existing), and  |     |     |
| 6.5(3)(c) |  | The development will not involve the installation of dormer or gablet windows, and | N/A | N/A |
| 6.5(3)(d) |  | At least 50% of the site will be landscaped area.                                  | N/A | N/A |

It is considered that the proposal complies with the provisions of the Ashfield LEP 2013.

7.1.2 Regional Environmental Plans:

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have any adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

7.1.3 State Environmental Planning Policies:

**State Environmental Planning Policy No. 55 – Remediation of land**

Remediation of the site is not required prior to the carrying out of the proposed development.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

It is proposed to install a fascia signs on the awning, a picture on the glass shop front and replacing panels on the existing under awning sign at the front of the property. The signs will identify the proposed business carried out by the lessee of the premises.

The proposed signs are non flashing, will not distract motorist and are generally consistent with existing signage in the area. It is also considered that the proposed signs are consistent with the objectives in Clause 3(1)(a) and satisfies the assessment criteria in the policy.

7.2 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Not applicable.

7.3 The provisions of any Development Control Plan.

The proposal has been considered against the provisions of the Ashfield Interim Development Assessment Policy (AIDAP) 2013:

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

|     |  |   |
|-----|--|---|
| C1  | ACCESS AND MOBILITY  | Under clause 4.3 of this part access for people with disabilities is encouraged as opposed to required as the development in this case only involves minor internal work and no work to the actual shop front. The applicant will also be advised of responsibilities under the Disability Discrimination Act.              |
| C2  | ADVERTISEMENTS AND ADVERTISING STRUCTURES                                      | There are new business identification signs on the glass shop front to identify the subject business. The signs include a fascia signs on the awning, a picture on the glass shop front and replacing panels on the existing under awning sign. The signs are not flashing and are consistent with other signs in the area. |
| C3  | ASHFIELD TOWN CENTRE   | The proposed development does not involve any change to the shop front (except for the new business identification signs) and there are no roller doors proposed.   |
| C11 | PARKING  | Generally complies. No additional parking is required for the proposed use as it does not involve any increase in floor area of the building.   |
| C12 | PUBLIC NOTIFICATION IN THE PLANNING PROCESS AND ALL ASPECTS OF LAND MANAGEMENT | Complies. The application was notified in accordance with this part. See Section 7.7 of this report. No submissions were received.  |

It is considered the application complies with the parts as indicated and ultimately achieves the aims and objectives of the Ashfield Interim Development Assessment Policy.

7.4 Any matters prescribed by the regulations that apply to the land to which the development application relates.

These matters have been considered in the assessment of this application.

7.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.

The applicant has indicated that the proposal is for Chinese massage therapy. The layout of the floor area consists of two (2) cubicles with curtains for privacy to the treatment areas. The proposed fit out does not involve doors and as such it can be construed that the treatment cubicles are not suitable of being used for any other purpose other than for therapeutic massage. The applicant has provided a copy of massage certificates which issued by the Australian School of Remedial Therapies. In this respect a condition of consent will also be imposed requiring the display of these certificates (refer to **Attachment 5** for copies).

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

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The proposed hours of operation are from 10 am to 7.30 pm seven (7) days per week. It is also proposed that there will be one person working on the premises at any one time. Conditions will be imposed to limit the hours of operation and the number of persons working at the premises at any one time.

There is no parking on site for employees and customers. However, the subject site is in close proximity to public transport and within 200 metres of the Ashfield Railway Station. There is also a public car park nearby in Brown Street.

The application was referred to Ashfield Local Area Command for comments. The crime prevention officer did not raise any significant issues with the proposal and has recommended conditions that include the installation of CCTV. The recommended conditions are included in the attachment to the report.

In the past Council has taken a cautious approach to such uses to evaluate the impact on the locality therefore a 12 month trial period is recommended in order to evaluate the impact and operation of the use.

7.6 The suitability of the site for the development

There are no natural hazards or other site constraints that are likely to have a significant adverse impact upon the proposed development. The proposed development is considered suitable in the context of the locality.

7.7 Any submissions made in accordance with this Act or the regulations

The proposal was notified to all adjoining and nearby affected property owners, occupants and Councillors from 4 February 2016 until 19 February 2016.

7.7.1 Summary of submissions

No submissions were received.

7.8 The public interest

Matters of the public interest have been taken into consideration in the assessment of the application. The proposal is acceptable and warrants support.

8.0 Referrals

8.1 Internal

Heritage Adviser: No objection (See **Attachment 3**).

Health Surveyor: No objection subject to conditions.

8.2 External

NSW Police- Design for crime prevention:

**DEVELOPMENT APPLICATION: 10.2016.029.1**  
**4/27 HERCULES STREET ASHFIELD**

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The application was referred to Ashfield Police who recommended conditions including CCTV surveillance be provided. See **Attachment 5** for Police Report.

9.0 Building Code of Australia (BCA)

A Construction Certificate will be required to be applied for by condition of consent.

**Financial Implications**

Section 94A Contributions. As the value of building works is less than \$100,000 a section 94A contribution fee is not applicable.

**Other Staff Comments**

See Section 8.1 of this report.

**Public Consultation**

See Section 7.7 of this report.

**Conclusion**

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

No objections have been received to the application, however, in the past Council has taken a cautious approach to such uses and it is considered that the consent be limited to twelve months (trial period) to monitor the operation, prior to granting full consent. Therefore, the development is recommended for conditional approval on this basis.

**ATTACHMENTS**

|                     |                            |         |
|---------------------|----------------------------|---------|
| <b>Attachment 1</b> | Plans of Proposal          | 4 Pages |
| <b>Attachment 2</b> | Locality Map               | 1 Page  |
| <b>Attachment 3</b> | Heritage Advice            | 1 Page  |
| <b>Attachment 4</b> | Applicant's Qualifications | 2 Pages |
| <b>Attachment 5</b> | Police Report              | 2 Pages |
| <b>Attachment 6</b> | Conditions                 | 6 Pages |

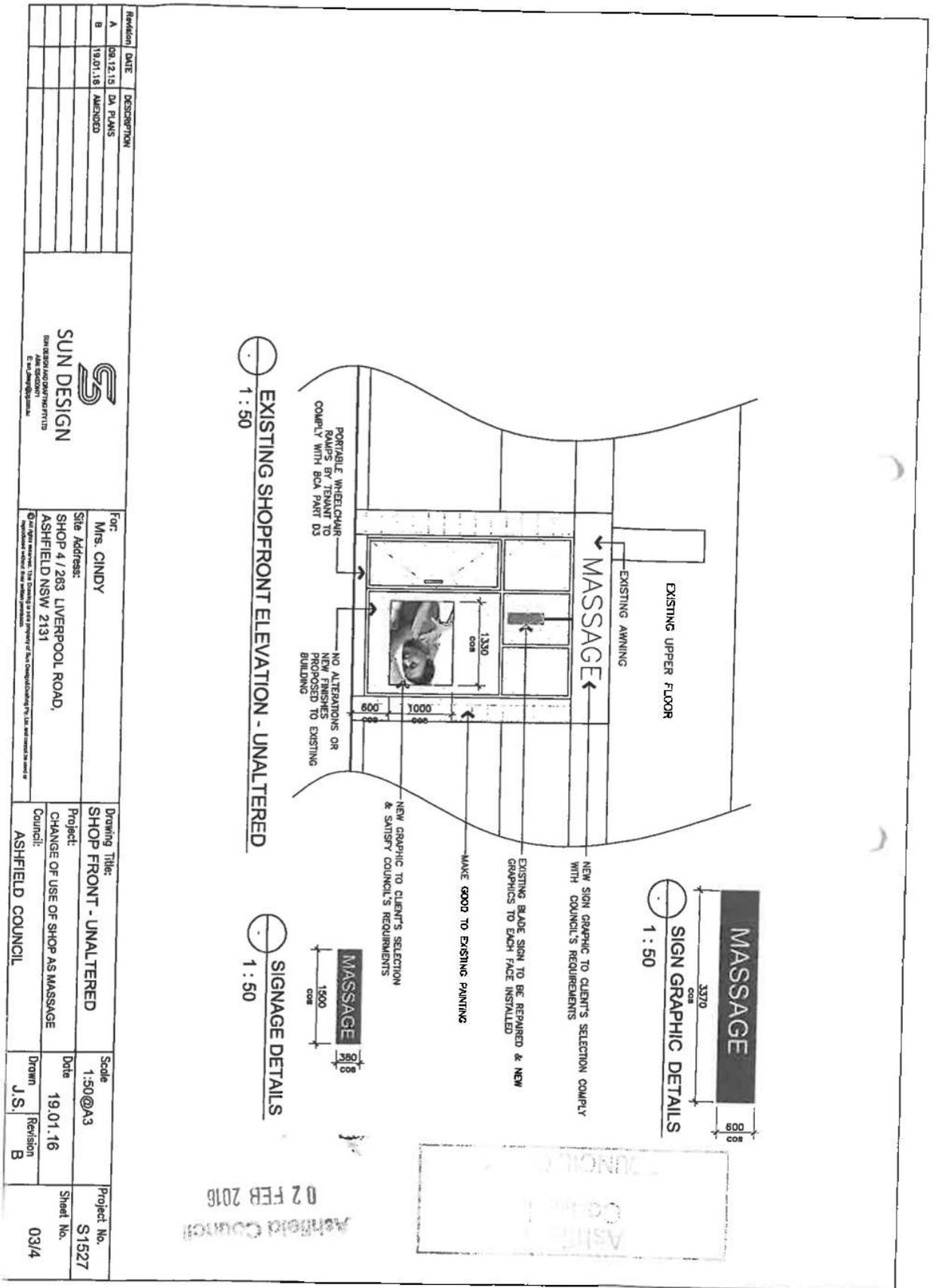
**DEVELOPMENT APPLICATION: 10.2016.029.1  
4/27 HERCULES STREET ASHFIELD**

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**RECOMMENDATION**

**That Council as the consent authority pursuant to Clause 80(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) approve Development Application No. 2016.29.1 for use of shop 4 ground floor fronting Liverpool Road as a Massage Centre including associated fit out and signage on UNT:4 Lot 2 PRT: Lot in DP: 450205 known as shop 4 /27 Hercules Street Ashfield subject to conditions.**

PHIL SARIN  
Director Planning and Environment



| Revision | DATE     | DESCRIPTION |
|----------|----------|-------------|
| A        | 09.12.15 | DA PLANS    |
| B        | 19.01.16 | AMENDED     |

|  |               |   |
|--|---------------|---|
| <p><b>SUN DESIGN</b><br/>SUN DESIGN AUSTRALIA PTY LTD<br/>E: info@sun-design.com.au</p>  | For:          | Mrs. CINDY  |
|  | Site Address: | SHOP 4 / 283 LIVERPOOL ROAD,<br>ASHFIELD NSW 2131 |
| <p><small>© 2015 Sun Design. This Drawing is the property of Sun Design Australia Pty Ltd. All other material used is reproduced under the media protection.</small></p> |               | Drawing Title:<br><b>SHOP FRONT - UNALTERED</b>   |
| Project:<br>CHANGE OF USE OF SHOP AS MESSAGE   |               | Scale:<br>1:50@A3                                 |
| Council:<br>ASHFIELD COUNCIL   |               | Date:<br>19.01.16                                 |
|  |               | Drawn:<br>J.S.                                    |
|  |               | Revision:<br>B                                    |
|  |               | Project No.<br>S1527                              |
|  |               | Sheet No.<br>03/4                                 |

| Item | DATE     | DESCRIPTION |
|------|----------|-------------|
| 1    | 11.12.15 | ON PLANS    |
|      |          |             |
|      |          |             |
|      |          |             |
|      |          |             |



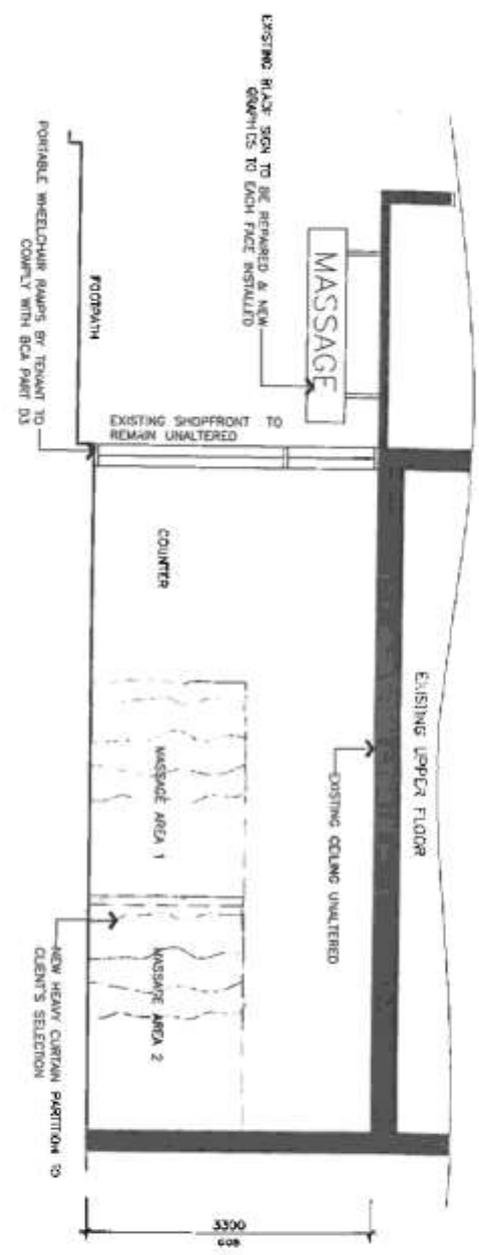
For:  
**Mrs. CINDY**  
Site Address:  
**SHOP 4 / 263 LIVERPOOL ROAD,  
ASHFIELD NSW 2131**

Drawing Title:  
**SECTION A-A**  
Project:  
**CHANGE OF USE OF SHOP AS MASSAGE  
COUNCIL**

Scale:  
**1:50@A3**  
Date:  
**09.12.15**

Project No.  
**S1527**  
Sheet No.  
**04/4**

**SECTION A-A**  
1 : 50



**ASHFIELD COUNCIL**  
**02 FEB 2016**  
Application Number  
**10.2016.24.1**

| Issue | DATE     | DESCRIPTION |
|-------|----------|-------------|
| A     | 11.12.15 | DA PLANS    |
|       |          |             |
|       |          |             |
|       |          |             |
|       |          |             |

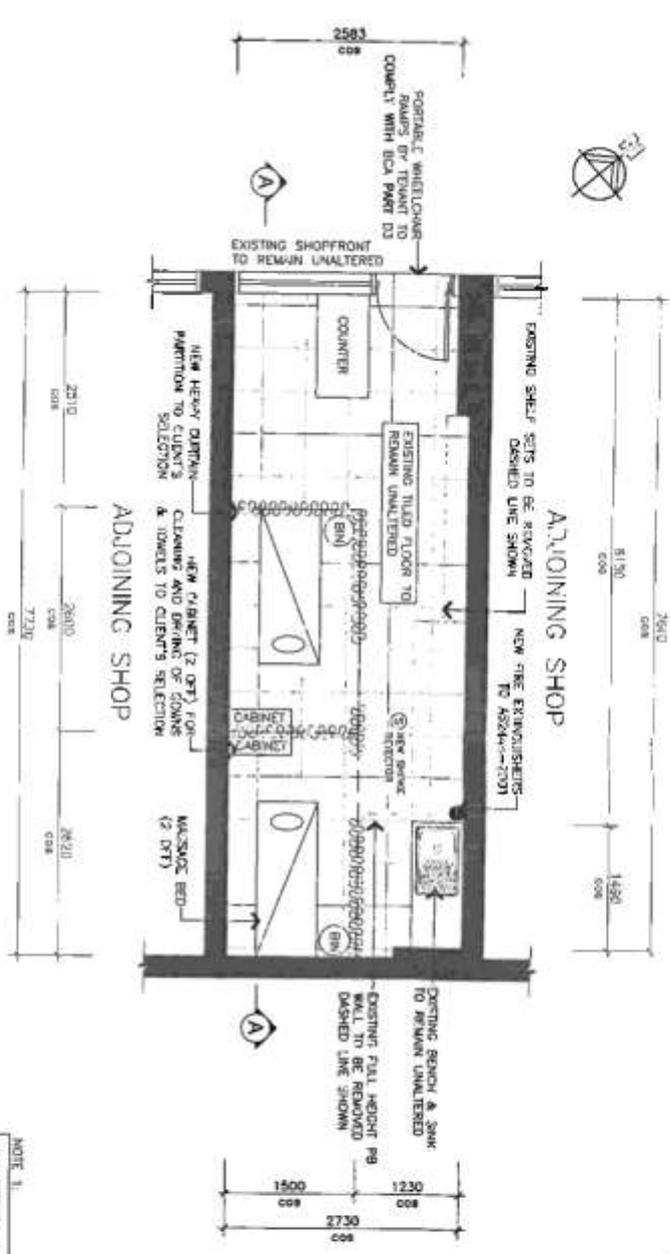


For: **MRS. CINDY**  
 Site Address: **SHOP 4 / 283 LIVERPOOL ROAD, ASHFIELD NSW 2131**

Drawing Title: **EXISTING & PROPOSED LAYOUT**  
 Project: **CHANGE OF USE OF SHOP AS MASSAGE**  
 Council: **ASHFIELD COUNCIL**

Scale: **1:50@A3**  
 Date: **08.12.15**  
 Drawn: **J.S.** Revision: **A**  
 Project No.: **S1527**  
 Sheet No.: **02/4**

**SHOP 4 - EXISTING & PROPOSED LAYOUT**  
 1:50



- NOTE 1:  
 -ALL FITTINGS IN SHOP AREA ARE FREE STANDING.  
 -SHOP CEILING TO REMAIN UNALTERED.  
 -ALL FABRICS TO HAVE CERTIFIED FIRE CERTIFICATE.
- NOTE 2:  
 1. ALL PROPOSED CONSTRUCTION WORKS TO COMPLY WITH BCA.  
 2. ALL PARTS OF THE SUBJECT TENANCY, FROM THE ENTRANCE DOOR WAY TO ALL AREAS OF THE NEW WORKS NEED TO BE ACCESSIBLE TO MEET THE REQUIREMENTS OF PART D3 OF NCCS - BCA AND AS 1428.  
 3. ALL PROPOSED WASTE AND RECYCLING MANAGEMENT DURING THE CONSTRUCTION SHALL BE TO COMPLY WITH COUNCIL GUIDELINE AND COMPLIANCE.  
 4. ALL EQUIPMENT TO COMPLY WITH SECTION E OF THE ADOCS - BCA.  
 5. ALL PROPOSED CONSTRUCTION WORKS TO COMPLY WITH THE REQUIREMENTS OF THE PUBLIC HEALTH REGULATION 2012.

ASHFIELD COUNCIL  
 02 FEB 2016  
 Application Number  
 10.2016.29.1

⊖ EXISTING INTERIOR PHOTOS



⊖ EXISTING SHOP FRONT PHOTOS



⊖ EXISTING INTERIOR PHOTOS



⊖ EXISTING SHOP FRONT PHOTOS



LIST OF ARCHITECTURAL DRAWINGS

| DRAWING No. | CONTENT                                  | NOTE |
|-------------|--|------|
| 01          | LOCATION & CONTEXT                       |      |
| 02          | EXISTING & PROPOSED LAYOUT               |      |
| 03          | EXISTING SHOPFRONT ELEVATION - UNALTERED |      |
| 04          | SECTION A-A                              |      |

⊖ SITE LOCALITY



⊖ SITE PLAN



SHOP 4/263 LIVERPOOL ROAD ASHFIELD

ASHFIELD COUNCIL

02 FEB 2016

Application Number

10.2016.29.1

For: Mrs. CINDY

Site Address: SHOP 4 / 263 LIVERPOOL ROAD, ASHFIELD NSW 2131

Drawing Title: LOCATION & CONTEXT DETAILS

Project: CHANGE OF USE OF SHOP AS MASSAGE

Council: ASHFIELD COUNCIL

Scale: NTS@A3

Date: 09.12.15

Drawn: J.S.

Revision: A

Project No. S1527

Sheet No. 01/4

Revision

DATE

DESCRIPTION

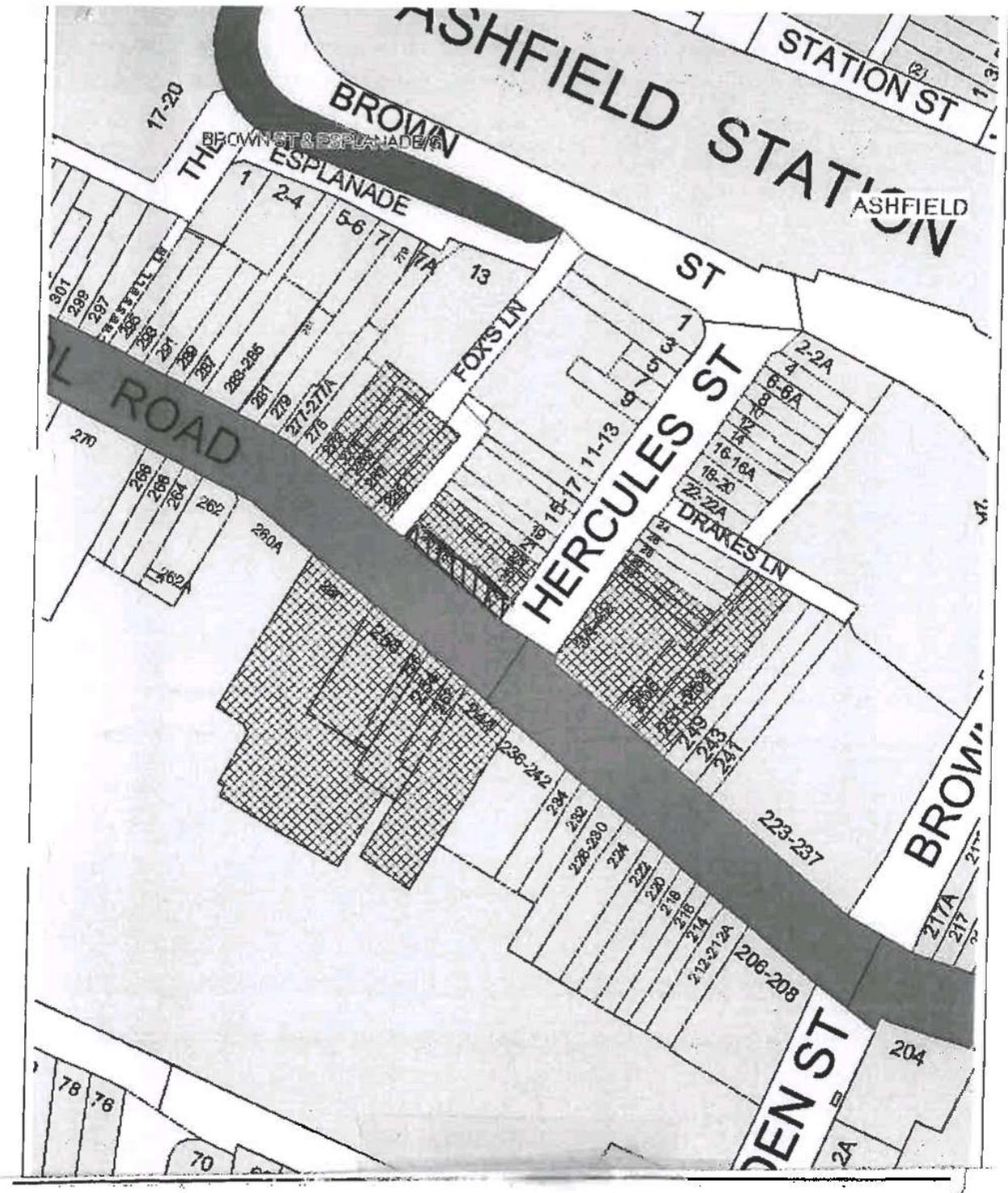
A 11.12.15 DA PLANS



**SUN DESIGN**

THE DESIGN STUDIO

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



Location Plan

Site 

Notification Area 

Objectors *NIL*



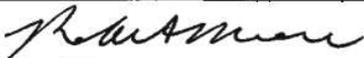


**DEVELOPMENT SERVICES  
HERITAGE ADVISOR'S REFERRAL COMMENTS**

|   |  |                                  |
|---|--|----------------------------------|
| <b>ADDRESS:</b>   | 4/27 Hercules Street ASHFIELD                | <b>File No:</b><br>17.2015.381.1 |
| <b>ADVISOR</b>  | Robert Moore                                 |                                  |
| <b>DATE</b>   | 11 January 2015                              |                                  |
| <b>STATUS</b>   | Heritage Item                                |                                  |
| <b>DESCRIPTION</b>  | Change of Use                                |                                  |
| <b>PREVIOUS COMMENTS</b>  | NA   |                                  |
| <input type="checkbox"/>  | HIS/CMP recommended for archiving in library |                                  |
| <small>Note: These comments relate to heritage issues only. They do not include a planning review. Planning comments will, however, be provided separately in relation to Pre-lodgement Applications or Provisional Development Applications.</small> |  |                                  |

The application has been reviewed in respect of heritage issues and has been assessed as follows:

|                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <b>Acceptable as lodged</b>  |
| <input type="checkbox"/>            | <b>Acceptable with the following Conditions of Consent Applied:</b>        |
| <input type="checkbox"/>            | <b>Acceptable with the following amendments to the application:</b>        |
| <input type="checkbox"/>            | Application to be returned to Heritage Advisor for review after amendments |
| <input type="checkbox"/>            | Planner may assess amendments  |
| <input type="checkbox"/>            | <b>Additional information is required as follows:</b>                      |
| <input type="checkbox"/>            | <b>Not acceptable</b>  |
| <b>Discussion:</b>                  |  |

  
Robert Moore

# Australian School of Remedial Therapies

A School of Chi-Chinese Health College Pty Ltd



National Accredited Training Provider: 51113

## Statement of Attainment

This is a statement that

# Kexin Wang

Who has been assessed as having completed the training in  
National Health Training Package: Provide First Aid Course

## Provide First Aid

HLTAID003

Date Issued: 29 November 2015

Date Expiry: 29 November 2018

Trainer: Andrew North

The qualification was delivered and assessed in English



Australian  
Qualifications  
Framework 

Master Zhang Hao

Director

Certificate ID 301145

The Statement of Attainment is recognised within the Australian Qualifications Framework and is issued under Australian Skills Quality Authority (ASQA).  
- Statement of Attainment is issued by a Registered Training Organisation when an individual has completed one or more units or competency from national, registered qualification(s)/course(s).

CHI-Chinese Healing College Pty Ltd.

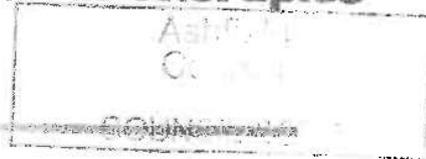
Campus: 18A Hargrave St, Strathfield NSW 2155

Phone: 02 97611196

WWW.ASQA.EDU.AU

180 20 659 341

# Australian School of Remedial Therapies



A Division of Chi-Chinese Healing College Pty Ltd.  
9172 9172 Accredited Training Provider: 91113  
Registered Training Organization (ASQA)  
ABN 79 059 317 289

**Campus:**  
18A Margaret St  
Strathfield NSW 2135 Australia  
Phone: 02 9639 1688  
Admin@asrt.edu.au

U 2 FEB 2016

## Transcript of Competencies Achieved

National Code: HLT40312  
Awarded: 16th December 2015  
Student ID: C1572

This is to certify that **Kexin Yang** has satisfactorily completed a course of study in accordance with Australia Qualification Framework educational requirements and is eligible to receive the following award:

### HLT40312 CERTIFICATE IV IN MASSAGE THERAPY PRACTICE

| National Code | Module Name  | Hours | Result    |
|---------------|--|-------|-----------|
| BSEW12273E    | Work effectively with others                                       | 10    | Competent |
| HLTA0401R     | Confirm physical health status                                     | 100   | Competent |
| HLTCOM404E    | Communicate effectively with clients                               | 30    | Competent |
| HLTCOM405D    | Administer a practice  | 20    | Competent |
| HLTCOM406C    | Make referrals to other health care professionals when appropriate | 10    | Competent |
| HLTCOM409D    | Use specific health terminology to communicate effectively         | 10    | Competent |
| HLTA0005      | Provide first aid  | 15    | Competent |
| HLTHRB01C     | Communicate and work effectively in health                         | 10    | Competent |
| HLTHRB01C     | Comply with infection control policies and procedures              | 10    | Competent |
| HLTWHS1104    | Contribute to WHS processes  | 10    | Competent |
| HLTRM401P     | Work within a massage framework                                    | 40    | Competent |
| HLTRM402C     | Provide massage treatment  | 50    | Competent |
| HLTRM407C     | Plan massage treatment   | 30    | Competent |
| HLTRM408C     | Apply massage assessment framework                                 | 40    | Competent |
| HLTRM409C     | Perform massage health assessment                                  | 40    | Competent |
|               | Campus supervised clinical practice                                | 80    | Competent |



*Signature of Master Zheng Han*

Master Zheng Han  
Director/ RTO Compliance Manager  
Australian School of Remedial Therapies





**Ashfield Local Area Command**  
14 Victoria Street,  
Ashfield NSW 2131  
Telephone 9797 4099  
Facsimile 9797 4011

3 March 2016  
William Daskalopoulos  
Development Assessment Officer  
Ashfield Council



**RE: Development Application No: 2016.29  
Chinese Therapeutic Massage Centre 4/27 Hercules Street Ashfield.**

Thank you for the opportunity to comment on DA2016.29 located at number 4/27 Hercules Street Ashfield.

I have reviewed the proposal based on the documents provided to me. I have conducted a Police Computer search on the applicant Mr. Kexin WANG with nil adverse. However, Ashfield Police would like to conduct a final risk assessment at the completion of the renovated centre to ensure all safety issues have been addressed. We are satisfied with this application and have no objections.

The conditions provided by Police are based on criminal statistics involving Massage Parlours. Therefore, should the Business Owner become resistant to Police recommendations, it is suggested that a meeting with Council, Business Owner and Police take place to discuss alternative ways to design-out-crime.

The principles of Crime Prevention Through Environmental Design (CPTED) need to be taken into consideration when reviewing the safety and security of the facility. Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients from intersecting in time and space. The following risks have been identified and rated for this development.

- Assaults – **Low Risk**
- Robbery – **Low Risk**
- Break & Enter – **Moderate Risk**
- Malicious damage – **Moderate Risk**
- Frauds (including ID fraud due to mail theft) – **Moderate Risk**

Predatory offenders often make cost-benefit assessments of potential victims and locations before committing crime. CPTED aims to create the reality (or perception) that the costs of committing crime are greater than the likely benefits. This is achieved by creating social and environmental conditions that:

- Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension)
- Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime)
- Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards), and
- Minimise excuse-making opportunities (removing conditions that encourage/facilitate rationalisation of inappropriate behaviour).

CPTED employs a number of key principles such as surveillance, access control, territorial reinforcement and space/activity management.

It is strongly suggested that the Business Owner consider implementing these points in an effort to improve the safety and security for employees and customers.

1. Install a multi camera digital surveillance system and back to base alarm system that operates 24 hours a day with images kept for 30 days for viewing by police as required
2. Cameras are to be registered with the NSW Police Force CCTV Register. [http://www.police.nsw.gov.au/cctv\\_register](http://www.police.nsw.gov.au/cctv_register)
3. Install security lighting in and around the development particularly over entry/exit points to create an even distribution of light with no glare.
4. Install effective signage to provide guidance visitors and warning of the security environment within.
5. Emergency exit signs must be clearly marked.
6. Letter boxes must be fitted with quality 'Radial Pin Locks' to prevent mail theft.
7. Limit posters on shopfront window to one only and must not cover the whole window, as this will affect the shops natural surveillance.
8. Door chimes, or entry door buzzers to be used to alert staff of customers entering.
9. Mirrors to be placed in hallway to allow staff to view waiting area from massage rooms.



**Disclaimer:**

In conclusion the New South Wales Police Force has a vital interest in ensuring the safety of the members of the community and the security of their property. By using the recommendations contained in this assessment, any person acknowledges that;

- It is not possible to make areas assessed by the NSWPF absolutely safe for members of the community or the security of their property.
- It is based upon information provided to the NSWPF at the time the assessment was undertaken.
- This assessment is a confidential document and is for the use by the organisation referred to on page one only.
- The contents of this assessment are not to be copied or circulated otherwise than for the purposes of the organisation referred to on page one.

The NSW Police Force hopes that by using the treatments recommended in this assessment, criminal activity will be reduced and the safety of members of the community and the security of their property increased. However it does not guarantee that all risks have been identified, or that the area assessed will be free from criminal activity if these treatments are followed.

Should you have any questions in relation to this report contact Constable Lisa Latu Crime Prevention Officer, Ashfield Local Area Command, Phone 02 9797 4099.

Attached to this response are Generic Treatment Options in Appendix A, according to the principles of Crime Prevention Through Environmental Design (CPTED) and are worth considering.

Yours in crime prevention,



Lisa Latu  
Senior Constable  
Crime Prevention Officer

## CONDITIONS

DA 2016.029.1  
4/27 Hercules Street ASHFIELD 2131

---

### Description of Work as it is to appear on the determination:

Fit out and use of shop unit 4 as a Chinese Massage Therapy Centre.

#### A General Conditions

##### (1) Approved plans stamped by Council

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers date stamped by Council and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

| No.     | Title                        | Prepared by | Amendment Date |
|---------|------------------------------|-------------|----------------|
| 01 /4 A | Location and context details | Sun Design  | 11/12/ 2016    |
| 02/4 A  | Existing and proposed layout | Sun Design  | 11/12/ 2016    |
| 03/ 4 A | Shopfront                    | Sun Design  | 11/12/2016     |
| 04/4A   | Section A-A                  | Sun Design  | 11/12/2016     |

##### (2) Time limited consent

This approval is for a period of 12 months commencing from the date of occupation of the premises. A further application to Council is required to continue the use beyond the 12 month period.

##### (3) Display of qualification

Each employee providing massage shall be appropriately qualified and hold a certificate from an approved educational establishment. The certificate shall be displayed in each therapy area.

##### (4) Shop Front

- (a) The owner/manager of the building shall ensure that the entire building facade shall be kept in a clean, tidy and well maintained condition free of signage/advertisement and utilities such as air-conditioning at all times.
- (b) Shop front glazing must be clear and untinted and must not contain any form of signage including advertisements, posters and the like with the exception of approved signage.
- (c) Security roller shutters must not be installed on the outside of the shop front. Any security grill to be located on the inside of the shop front must be an open grille and see through and not a solid metal type. Details are to be submitted to Council or the Certifying Authority prior to a Construction Certificate being issued.

##### (5) Removal of graffiti

The owner/manager of the site must be responsible for the removal of all graffiti from the building within 48 hours of its application.

**B**     **Design Changes**

nil

**C**     **Conditions that must be satisfied prior to issuing/releasing a Construction Certificate**

**(1)     Damage deposit/footpath, road, kerb and gutter**

A Damage Deposit of \$500 is to be submitted prior to the release of the Construction Certificate covering repair and/or replacement of adjoining footpath, road shoulder, road pavement, kerbing and guttering both outside the subject site and the surrounding area. This is to be paid to Council and may be refunded subject to satisfactory completion of construction or demolition.

This Damage Deposit covers unforeseen damage to the above property by construction vehicles, skip bins, construction methods etc. Note: Should repair works or maintenance be required on Council land, a Road Opening Permit must be obtained before those works take place.

Bank Guarantees are accepted in lieu of any Council security deposit/bond subject to the following:

It must be an original with no end date and issued in favour of Council, details of the proponent's address shall be included.

A charge equal to the value multiplied by the current "overdue rates interest charge" be levied, per month or part thereof, with a minimum charge of three months is to be paid upon lodgement.

Any remaining charge is to be calculated at the prevailing "overdue rates interest rate" for each month or part thereof beyond the original three months that the Bank Guarantee was held, and paid prior to its release.

Any costs incurred in the acceptance, administration or release of such Bank Guarantees be on-charged to the entity claiming the release of such Bank Guarantee, and that these amounts be paid prior to its release.

At the time of lodgement, Council will seek verification of the Bank Guarantee. Please provide contact details for the branch (phone number and officer) to assist with verification of the bona fides of the Bank Guarantee.

Until all items above are completed, no documents or usage sought from Council by the party lodging the Bank Guarantee can be issued. Please allow a minimum of 2 business days for this process.

**(2)     Footpath/laneway – photographs to be submitted**

Prior to the release of the Construction Certificate, the applicant shall lodge with Council photographs of the roadway, footpath and/or laneway at the property indicating the state of the relevant pavements. At the completion of construction, again at the expense of the applicant, a new set of photographs is to be taken to determine the extent, if any, of any damage which has occurred to the relevant pavements. If any damage has occurred, the applicant shall meet the full cost to repair or reconstruct these damaged areas to Council's relevant standard.

**D**     **Conditions that must be complied with before work commences**

**(1)     Sydney Water approval**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre 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. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site: [www.sydneywater.com.au](http://www.sydneywater.com.au), see Your Business then Building & Developing then Building & Renovating or telephone Sydney Water 13 20 92.

**E Conditions that must be complied with during construction or demolition**

**(1) Road opening permit – Council controlled lands**

A road opening permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's Engineering Services for details.

This road opening permit covers the direct costs involved in the repair/replacement of works where the public or Council controlled lands are specifically damaged/saw cut etc for the construction of services, stormwater pipes, kerb works, bitumen works, footpath works etc. It is *separate* from a Damage Deposit as listed elsewhere in these Conditions of Consent.

**(2) Building materials and equipment - storage/placement on footpath/roadway - Council approval**

All building materials and equipment shall be stored wholly within the property boundaries and shall not be placed on the footpath, grass verge or roadway without prior written approval of Council.

Bulk refuse bins shall not be placed on the grass verge, footpath or roadway without Council permission. Application forms and details of applicable fees are available from Council's One Stop Shop telephone 9716 1800.

**(3) Matching materials - repairs to fabric**

Matching materials are to be used in repairing the fabric of external surfaces.

**(4) Demolition/excavation/construction – hours of work**

Demolition, excavation and construction work, including loading and unloading of materials and machinery, shall be restricted to between the hours of 7.00 am to 6.00 pm, Monday to Friday and from 7:00 am to 1 pm on Saturday. Work is prohibited on Sundays, and on public holidays.

**(5) Soap/towel dispenser**

A liquid soap dispenser and paper towel dispenser shall be provided above or adjacent to the wash hand basin.

**(5) Wash basin**

The wash hand basin shall be provided with an adequate supply of hot and cold water through an approved mixing device.

**(6) Air conditioning units:**

Air conditioning units are not permitted on the shopfront, or above the awning. The prior written approval of Council is required prior to the installation of any air conditioning units.

**F Conditions that must be complied with prior to installation of services**

nil

**G**     **Conditions that must be complied with before the building is occupied**

**(1) Trade waste/disposal**

Arrangements for the proper storage and disposal of any trade waste to be made prior to the occupation of the premises.

**(2) Approval to use/occupy building**

The building or any part thereof must not be used or occupied until an Occupation Certificate has been issued for the class 2-9 buildings, or a completion inspection, has been satisfactorily carried out for class 1&10 structures.

**(3) Registration of premises**

The premises is to be registered with Council prior to commencement of business

Council will inspect the premises at least 1 time per year for which a fee will be charged.

**(4) Surveillance**

Install a multi camera digital surveillance system and back to base alarm system that operates 24 hours a day with images kept for 30 days for viewing by police as required

Cameras are to be registered with the NSW Police Force CCTV Register.  
[http://www.police.nsw.gov.au/cctv\\_register](http://www.police.nsw.gov.au/cctv_register)

**(5) Security lighting**

Install security lighting in and around the development particularly over entry/exit points to create an even distribution of light with no glare.

**(6.) Directional signs**

Install effective signage to provide guidance visitors and warning of the security environment within.

**(7.) Emergency exit sign**

An emergency exit sign must be clearly displayed.

**(8.) Letter boxes**

Letter boxes must be fitted with quality 'Radial Pin Locks' to prevent mail theft.

**(9.) Posters on shop front**

The poster and signage on shopfront window shall not occupy an area exceeding 30% of the glazed area of the shopfront

**10. Door chimes**

Door chimes, or entry door buzzers to be used to alert staff of customers entering.

**11. Mirrors**

Mirrors to be placed in hallway to allow staff to view waiting area from massage rooms.

**H**     **Conditions that are ongoing requirements of development consents**

**(1) Retain amenity**

The use is to be conducted at all times without interference to the amenity of the area.

**(2) Hours of operation**

The hours of operation are limited to the following:

|                  |                |
|------------------|----------------|
| Monday to Friday | 10am to 7.30pm |
| Saturday         | 10am to 7.30pm |
| Sunday           | 10am to 7.30pm |

**(3) Maximum number of employees**

The maximum number of employees on the premises is not to one(1) at any time.

**(4) Sexual services prohibited**

At no time shall any sexual activities or any activities defined as 'prostitution' under the Summary Offences Act 1988 take place on the site and the premises shall not be used as a Brothel.

**(5) Skin penetration procedure prohibited**

No skin penetration procedure ( as defined by section 51(3) of the Public Health Act , 1991) shall be undertaken at any time as part of the consent.

**(6) Cleaning and hygiene**

A cleaning area should be provided for cleaning of the dirty / used equipment

An additional hand wash basin is to be a provided that has a supply of clean, warm, potable water.

An additional sink that has a supply of clean, warm water for cleaning equipment.

Liquid soap (or an alcohol based hand cleaner) to available at all hand wash basins

Disposable gloves, clean linen and gowns or aprons that are appropriate for the skin procedures carried out at the premises are to be available at all times

A waste disposal bin is to be provided on the site

Adequate lighting must be supplied to the massage therapy areas

The premises is to be kept in a clean and hygienic condition at all times

**(7) Approved use**

The approval is for Chinese massage only.

**(8) Curtains to cubicles to be maintained.**

The curtains shall be maintained and the cubicles shall not be partitioned with any solid walls without the prior written approval of Council.

**I Advisory Notes**

(1) Dial 1100 before you dig for the location of underground services.

**(2) Compliance with the Disability Discrimination Act - liability**

This decision does not ensure compliance with the Disability Discrimination Act. The owner, lessee, operator and/or manager of the premises is advised that under the *Disability Discrimination Act 1992*, it is illegal to discriminate against a person with a disability by means of restricting access to or within the building. If access is restricted the owner, lessee, operator and/or manager of the premises may be liable for prosecution and/or a successful appeal to the Human Rights and Equal Opportunities Commission. You should therefore investigate your liability under that Act. Australian Standard 1428 - Design for Access and

Mobility, Parts 2, 3 and 4 may assist in determining compliance with the *Disability Discrimination Act 1992*.

|                    |  |
|--------------------|--|
| <b>Subject</b>     | <b>DEVELOPMENT APPLICATION: 10.2016.030.1<br/>27 BOOMERANG STREET HABERFIELD</b> |
| <b>File Ref</b>    | DA 10.2016.030.1   |
| <b>Prepared by</b> | Daisy Younan - Development Assessment Officer                                    |
| <b>Reasons</b>     | Matter referred to Council for determination via a councillor request            |
| <b>Objective</b>   | For Council to determine the application   |

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## **Overview of Report**

### 1.0 Description of Proposal

Pursuant to Clause 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's consent for alterations and two storey rear addition to an existing semi-detached dwelling and the use of unauthorised attic area, created within the existing roof space, for habitable purposes.

### 2.0 Summary Assessment and Recommendation

The proposed development produces a site coverage that is similar in pattern and size to the site coverage established by the original development of the area and as such complies with the "Pattern of Development" controls of Section 2.0 of Part C7 – of Ashfield Interim Development Assessment Policy 2013 (AIDAP 2013). The roof form complies with the "Roof Forms" controls of Section 2.0 of Part C7 as it reflects the size, mass, shape and pitch of the neighbouring original roofs.

The proposed development involves the demolition of the existing garage, however, remains in compliance with the car parking controls by allowing for off street car parking for one vehicle.

The proposed development complies with the height, floor space ratio (FSR) and landscaped area controls of Ashfield Local Environmental Plan 2013 (LEP 2013).

The following compliance table demonstrates the proposal's performance against Council's controls of Ashfield LEP 2013 and the relevant parts of AIDAP 2013.

**DEVELOPMENT APPLICATION: 10.2016.030.1**  
**27 BOOMERANG STREET HABERFIELD**

Table 1

| <b>Minimum Landscaping</b><br><b>Clause 6.5(3)(d) of Ashfield LEP 2013</b> |                              |  |                 |
|--|------------------------------|--|-----------------|
| <b>Required</b>  | <b>Existing</b>              | <b>Proposed</b>                              | <b>Complies</b> |
| 259.7m <sup>2</sup> (50% of total site area)                               | Does not warrant calculation | 259.7m <sup>2</sup> (50% of total site area) | Yes             |

| <b>Maximum Floor Space Ratio</b><br><b>Clause 4.4(2) of Ashfield LEP 2013</b> |                              |                                |                 |
|---|------------------------------|--------------------------------|-----------------|
| <b>Permitted m<sup>2</sup>/ ratio control</b>                                 | <b>Existing</b>              | <b>proposed</b>                | <b>Complies</b> |
| Total of 259.7m <sup>2</sup> (0.5:1)  | Does not warrant calculation | 0.483:1 (250.9m <sup>2</sup> ) | Yes             |
| Gross floor area above the existing ground floor level                        | 41.86m <sup>2</sup>          | 41.86m <sup>2</sup>            | Yes             |

| <b>Maximum Gross floor area above the existing ground floor level</b><br><b>Clause 6.5(3)(a)(i) of Ashfield LEP 2013</b> |                     |                     |                 |
|--|---------------------|---------------------|-----------------|
| <b>Permitted m<sup>2</sup>/ ratio control</b>  | <b>Existing</b>     | <b>proposed</b>     | <b>Complies</b> |
| Gross floor area of the existing roof space  | 41.86m <sup>2</sup> | 41.86m <sup>2</sup> | Yes             |

| <b>Height</b><br><b>Clause 4.3(2) of Ashfield LEP 2013</b> |                    |                 |
|--|--------------------|-----------------|
| <b>Max allowed</b>   | <b>Proposed</b>    | <b>Complies</b> |
| 7m   | Approximately 6.8m | Yes             |

The development is recommended for conditional approval.

### **Background**

#### **3.0 Application Details**

Applicant : Mr S P Simmonds  
 Owner : Mr S P Simmonds & Mrs J V Strumpf  
 Value of work : \$150,000  
 Lot/DP : LOT: 2 DP: 211673  
 Date lodged : 02/02/2016  
 Date of last amendment : 17 February 2016  
 Building classification : 1A  
 Application Type : Local  
 Construction Certificate : No  
 Section 94A Levy : Yes

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**27 BOOMERANG STREET HABERFIELD**

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#### 4.0 Site and Surrounding Development

The subject site is located on the eastern side of Boomerang Street, bounded by Learmouth Street to the north and Waratah Street to the south. The site area is approximately 512.2 square metres. An existing single storey dwelling house with an attic floor level is located on the site. Surrounding development comprises residential establishments.

#### 5.0 Development History

Previous building and development applications submitted to Council for the subject site include:

**Table 2**

| NO.         | DATE       | PROPOSAL                              | DECISION |
|-------------|------------|---------------------------------------|----------|
| 5.1999.87   | 26/06/1988 | Alts and adds to an existing dwelling | Approved |
| 6.1998.299  | 08/09/1988 | Construction of a fence               | Approved |
| 6.1993.230  |            | Alts and adds to an existing dwelling |          |
| 5.1993.134  | 06/07/1993 | Alts and adds to an existing dwelling | Approved |
| 6.1984.111  | 13/04/1984 | Addition to existing garage           | Approved |
| 6.1968.6899 | 02/09/1968 | Alts and adds to an existing dwelling | Approved |

No conditions have been imposed on previous development consents/permits to restrict a development such as the proposed development.

### **Assessment**

#### 6.0 Zoning/Permissibility/Heritage

- The site is zoned R2 Low Density Residential under the provisions of Ashfield LEP 2013.
- The property is located within the Haberfield Conservation Area.
- The property is not a heritage item.
- The property is not located within the vicinity of a heritage item or a heritage conservation area.

The proposed works are permissible with Council consent.

#### 7.0 Section 79C Assessment

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act.

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27 BOOMERANG STREET HABERFIELD**

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7.1 The provisions of any Environmental Planning Instrument

7.1.1 Local Environmental Plans

**Ashfield Local Environmental Plan 2013**

**Clause 2.3(2) - Permissibility**

Clause 2.3(2) requires the consent authority to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

**Officer's comments**

The proposed use is permissible with consent and achieves the objectives of the zone providing for the housing needs of the community within a low density residential environment.

**Clause 5.10 - Heritage**

Clause 5.10 (4) requires the consent authority, before granting consent under this clause in respect of a heritage item or a heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or the area concerned. This sub-clause applies regardless of whether a heritage management document is prepared under sub-clause (5) or a heritage conservation management plan is submitted under sub-clause (6).

Further, Clause 5.10(5)(b) allows the consent authority, before granting consent to any development on land in a heritage conservation area, to require a heritage management document that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage conservation area concerned.

**Officer's comments**

A heritage management document has been submitted as part of the submission made for the proposed development. This has been reviewed by Council's heritage adviser and no issues have been raised to the carrying out of the proposed development subject to conditions of consent.

**Clause 4.3(2) Height**

Clause 4.3(2) requires the height of a building on any land not to exceed the maximum height shown for the land on the Height of Buildings Map (7m).

**Officer's comments**

The proposed development achieves compliance with the height controls of Clause 4.3(2), further comments are provided in table 1.

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**Clause 4.4(2) - Floor Space Ratio (FSR)**

Clause 4.4(2) requires the maximum floor space ratio for a building on any land not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. In this instance, the maximum allowed is 0.5:1.

**Officer's comments**

The proposed development achieves compliance with the FSR requirements of Clause 4.4(2) as provided in Table 1 under Clause No. 2.0 of this report.

**Clause 6.5 – Gross floor area below ground floor level, dormer or gablet windows and landscaped area**

- *Clause 6.5(1) states the objective of this clause as being to maintain the single storey appearance of dwellings in the Haberfield Heritage Conservation Area.*
- *Clause 6.5(2) confirms that Clause 6.5 applies to land identified as “C42” on the Heritage Map being land within the Haberfield heritage conservation area.*
- *Clause 6.5(3) restricts the granting of a development consent to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *if the development involves an existing building:*
    - (i) *the gross floor area above the existing ground floor level will not exceed the gross floor area of the existing roof space, and*
    - (ii) *the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor, and*
  - (b) *the development will not involve excavation in excess of 3 metres below ground level (existing), and*
  - (c) *the development will not involve the installation of dormer or gablet windows, and*
  - (d) *at least 50% of the site will be landscaped area*

**Officer's comments**

**1. Gross floor area above and below ground floor level**

The subject site is located in the Haberfield heritage conservation area identified as area “C42” on the Heritage Map and as such clause 6.5 of Ashfield LEP 2013 applies to the proposed development.

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The proposed development does not involve the creation of gross floor area below the existing ground floor level and as such Clause 6.5(3)(a)(ii) does not apply to the proposed development.

However, the proposed development is made to formalise and existing unauthorised attic area above ground floor level. The proposed gross floor area **created above the existing ground floor level** does not exceed the gross floor area of the roof space and as such complies with the controls of Clause 6.5(3)(a)(i).

**2. Excavation**

The proposed development does not involve excavation in excess of 3 metres below existing ground level.

**3. Dormer or gablet windows**

The proposed development does not involve the installation of dormer or gablet windows.

**4. Landscaped area**

The proposed development achieves compliance with the landscaped area controls of Clause 6.5(3)(d), further comments are provided in table 1.

7.1.2 Regional Environmental Plans

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have any adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

7.1.3 State Environmental Planning Policies

**State Environmental Planning Policy No. 55 – Remediation of land**

Remediation of the site is not required prior to the carrying out of the proposed development.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2000**

A Basix certificate in accordance with Clause No. 3(1)(a) of the SEPP (BASIX) 2004 has been submitted as part of this application.

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7.2 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Not applicable.

7.3 The provisions of Ashfield Interim Development Assessment Policy 2013.

The proposal has been considered against the provisions of the Ashfield Interim Development Assessment Policy 2013:

**Table 3**

|            |   |   |
|------------|---|---|
| <b>C7</b>  | <b>HABERFIELD HERITAGE CONSERVATION AREA</b>  | <p>The proposed development, given the site coverage, the size of the rear addition, the generous size of the front and rear gardens, is considered to be similar to the traditional pattern of development established by the original development of the suburb.</p> <p>The proposed rear addition, having employed a similar roof form to that of the existing semi-detached dwelling and being lower than its principal ridge, does not conceal, dominate or compete with the original shape, height, proportion or scale of the existing dwelling and as such complies with the “Pattern of Development” controls of Section 2.0 of Part C7 – of AIDAP 2013.</p> <p>It respects the heritage significance of the property by keeping the original qualities and fabric of the dwelling which contribute to its heritage significance and the identity of the Ashfield local government area.</p> |
| <b>C11</b> | <b>PARKING</b>  | <p>The proposed development involves the demolition of the existing garage, however, remains in compliance with the car parking controls by allowing off street car parking for one vehicle.</p>  |
| <b>C12</b> | <b>PUBLIC NOTIFICATION IN THE PLANNING PROCESS AND ALL ASPECTS OF LAND MANAGEMENT</b> | <p>See Clause No. 7.7</p>   |
| <b>C15</b> | <b>HOUSES &amp; DUAL OCCUPANCIES</b>  | <p><b><i>Solar access to adjoining properties</i></b></p> <p>The shadow cast by the proposed rear addition in the morning and midday will fall towards the adjoining semi-detached dwelling located at 25 Boomerang Street largely on the roof of the existing building and the afternoon shadows fall on the rear yard of the subject site only causing minimal impact on the rear yard.</p>   |

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|  |  |  |
|--|--|--|
|  |  | <p>The morning and midday shadows cast by the proposed rear addition will only fall on small section of the rear yard of the above mentioned adjoining property allowing at least 35m<sup>2</sup> of the rear yard to receive sunlight for at least three hours on 21 June between 9am and 3pm. As per the applicant's written submission, the north facing window at the rear of that adjoining property is a laundry window - i.e. not a living area.</p> <p><b><i>Building bulk, height and landscaping</i></b></p> <p>Refer to Clause No 2.0 of this report for comments on the proposal's performance against Council's FSR, landscaping area and height controls.</p> <p><b><i>Privacy</i></b></p> <p>The proposed development will not result in adverse impacts on the adjoining neighbours' privacy. The new skylights are positioned at above eye level.</p> |
|--|--|--|

It is considered the proposed development, as conditioned, achieves the aims and objectives of the Ashfield Interim Development Assessment Policy 2013.

7.4 Any matters prescribed by the regulations that apply to the land to which the development application relates.

Fire safety matters have been considered in the assessment of this application, the proposal is recommended for approval incorporating relevant conditions of consent.

7.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts upon the locality.

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7.6 The suitability of the site for the development

These matters have been considered as part of the assessment of the development application. There are no natural hazards or other site constraints that are likely to have a significant adverse impact upon the proposed development. The proposed development is considered suitable in the context of the locality.

7.7 Any submissions made in accordance with this Act or the regulations

The proposal was notified to all adjoining and nearby affected property owners and occupants, the Haberfield Association and Councillors from 08 February 2016 until 24 February 2016.

7.7.1 Summary of submissions

One submission was received during the notification of the development application. See **Attachment 4** and **Table 4**:

**Table 4**

| Submission   | Notification         |
|--|----------------------|
| Sarina Spina<br>Owner of no 23 and 25 Boomerang St Haberfield. | 08/02/16 to 24/02/16 |

The matters raised in the submission are detailed below in italics, followed by a response from the assessing officer:

- *while my concern about the party wall taking lateral and vertical support is addressed in his letter I believe the new wall that Mr Simmonds wants to construct should be completely independent and also recessed by 1.5meters off the common boundary.*
- *excessive "bulk and scale" of the proposed development.*
- *Overshadowing and complete loss of sun to our rear garden.*
- *Loss of views across to north Sydney as viewed from my property at Number 23 Boomerang Street. The view loss is from my kitchen and living areas of my home*
- *Due to the gross bulk and scale of the proposed built form, it will not be sympathetic to the street elevation and it will overbear and impact the outlook and character of the other period homes in the street.*

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- *In summary: This development adversely affects the amenities of sun, views privacy and bulk and scale. These concerns way greatly on the merits of this development.*

**Officer's comments**

- No issues have been raised to the setback of the proposed rear addition from the common boundary located between the subject site and the objector's property by Council's building surveyor as it is a continuation of the existing semi-detached building's party wall. Similarly, no issues would be raised to an extension of the objector's semi-detached building if such proposal is made to Council in future.
- The proposed development complies with the maximum permitted Floor Space Ratio, landscaped area and height controls which are designed to control the bulk and scale of developments in the area. No issues are raised regarding the proposed bulk and scale by Council's heritage adviser. As such, the proposed bulk and scale, which are considerably less than the bulk and scale of the objector's two storey property located at 23 Boomerang Street, are considered acceptable in this instance.
- The proposed development complies with the solar access requirements of Part C15 of AIDAP 2013. Further comments are provided in table 3 above. Some minor overshadowing of the rear yard of 25 Boomerang Street will occur, however, the rear yard of this property will receive adequate solar access. As mentioned previously, the only north facing window which will be impacted by overshadowing from the new addition is not a living area window.
- View sharing planning principles were laid out by Senior Commissioner Roseth SC in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. The Planning Principle established a four-step process for considering the impact of a development on views.
  1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.
  2. A consideration of how views are obtained and what part of the property the views are obtained from.
  3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible minor, moderate, severe or devastating.
  4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

Senior Commissioner Dr John Roseth in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 has indicated that *"the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In*

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*addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”*

The objector has indicated that the view to north, which will be lost, is gained from the kitchen and living areas of the property located at 23 Boomerang Street, a two storey detached dwelling, two properties to the south of the subject site. It was not indicated whether these view are gained from standing or sitting positions or whether they are gained from front, rear or across the side boundaries. Given the east-west orientation of dwellings along this section of Boomerang Street it is presumed that the view must be from side facing upper level windows which overlook the rear yards of the adjacent and subject property.

As this appears to be a ‘side view’ it is, based on the above LEC principles, more difficult to preserve. In addition, rear additions to semi-detached dwellings, by nature of the size and shape of the allotments, will involve building forms which protrude further into the depth of the allotments. Consequently, this also makes it more difficult for side views from adjacent and nearby properties to be preserved. The proposed roof of the rear addition is the equivalent in height and form to a typical single storey dwelling in Haberfield. Therefore, its scale and bulk is considered acceptable and compliant with the required standards. To preserve the current side views would require the applicant to build a lean-to style rear addition with a skillion roof form and therefore forego the use of attic roof space which is supported in the planning controls for Haberfield.

- Council’s heritage adviser is supportive of the proposal in terms of its scale and bulk and overall built form.
- There are no adverse privacy impacts given the above eye level height of the proposed skylights.

#### 7.8 The public interest

The proposal, subject to conditions, satisfies adjoining neighbours’ amenity with respect of solar access and privacy. It will have no significant adverse impact on the streetscape or the locality and as such is not considered to be contrary to the public interest.

#### 8.0 Referrals

##### 8.1 Internal

#### ***Heritage Adviser***

The development has been reviewed by Council’s heritage adviser and no issues were raised to the carrying out of the proposed development subject to conditions of consent. See **Attachment 3** for his report.

**DEVELOPMENT APPLICATION: 10.2016.030.1  
27 BOOMERANG STREET HABERFIELD**

---

***Building***

Council's building surveyor raised no issues. Conditions of consent are included in the report's recommendation.

***Engineering***

Council's hydraulic engineer raised no issues. Conditions of consent are included in the report's recommendation.

9.0 Other Relevant Matters

Council's stormwater map does not indicate that the subject property is burdened by any Council or Sydney Water stormwater pipes.

10.0 Building Code of Australia (BCA)

A Construction Certificate will be required to be applied for by condition of consent.

**Financial Implications**

The proposed development will attract contribution levies under S94A of the Environmental Planning and Assessment Act 1979, relevant condition has been included in the recommendation of this report requiring the payment of a contribution amount of \$750.

**Other Staff Comments**

See Section 8.1 of this report.

**Public Consultation**

See Section 7.7 of this report.

**Conclusion**

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

The proposal is acceptable and is therefore recommended for conditional approval.

**ATTACHMENTS**

|                     |                   |          |
|---------------------|-------------------|----------|
| <b>Attachment 1</b> | Plans of Proposal | 11 Pages |
| <b>Attachment 2</b> | Locality Map      | 1 Page   |
| <b>Attachment 3</b> | Heritage Advice   | 1 Page   |
| <b>Attachment 4</b> | Submission        | 2 Pages  |
| <b>Attachment 5</b> | Conditions        | 11 Pages |

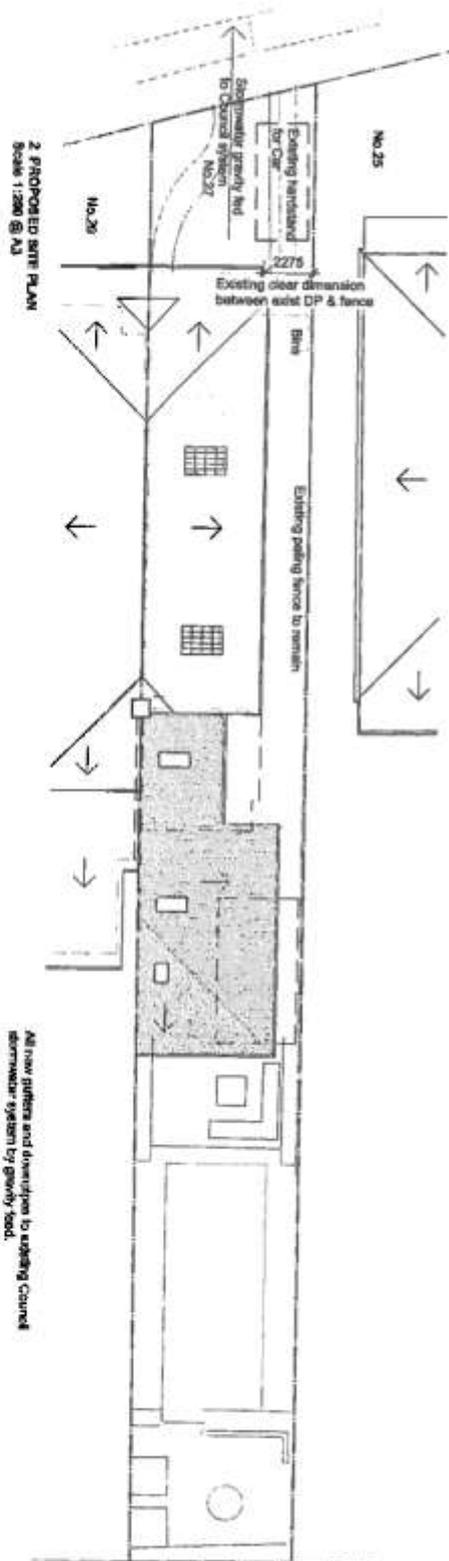
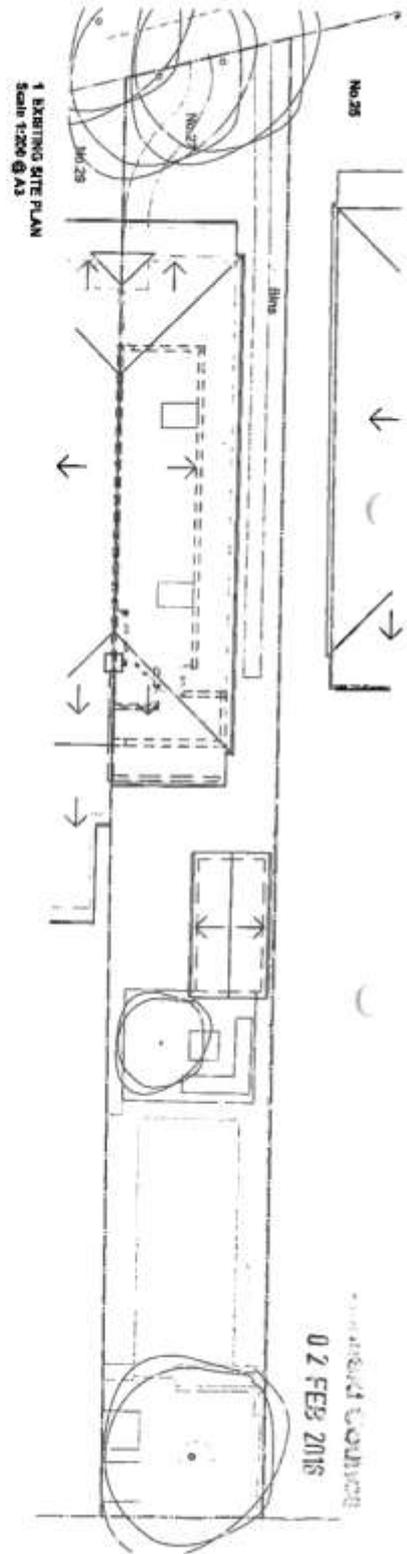
**DEVELOPMENT APPLICATION: 10.2016.030.1  
27 BOOMERANG STREET HABERFIELD**

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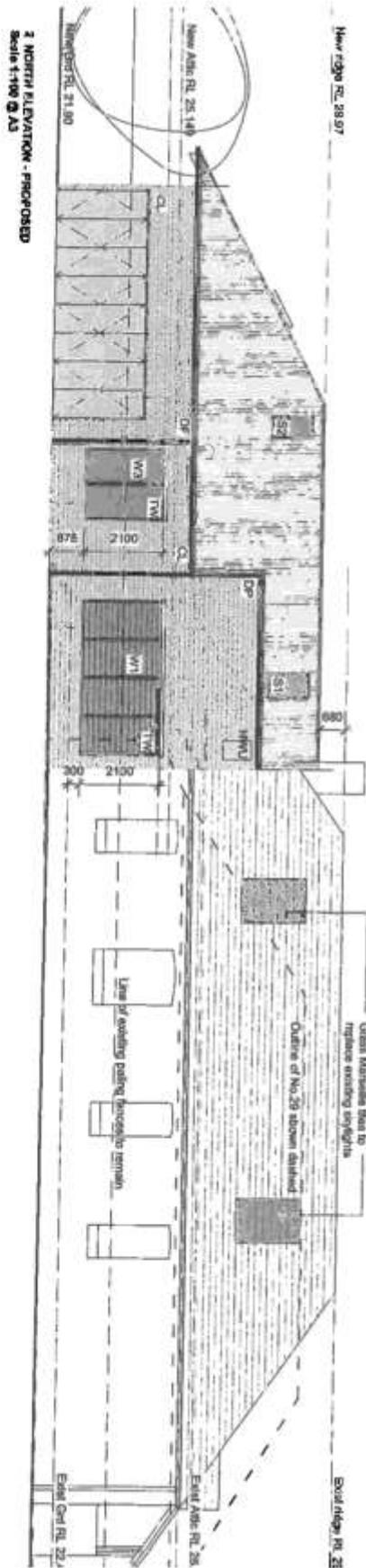
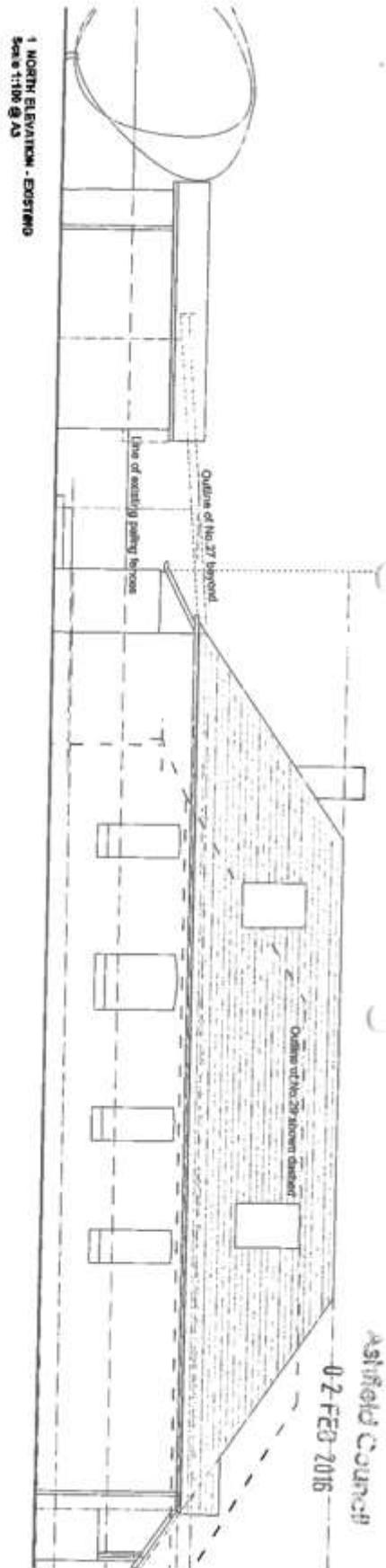
**RECOMMENDATION**

**That Council as the consent authority pursuant to Clause 80(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) approve Development Application No. 10.2016.30 for alterations and two storey rear addition to an existing dwelling and the use of unauthorised attic area, created within the existing roof space, for habitable purposes on Lot 2 in DP: 211673, known as 27 Boomerang Street HABERFIELD, subject to conditions.**

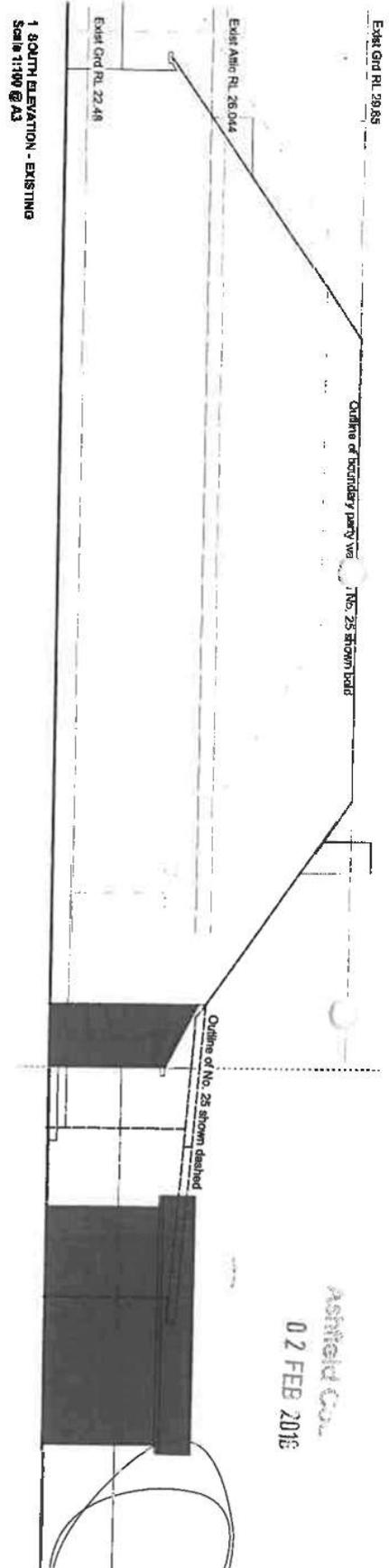
PHIL SARIN  
Director Planning and Environment



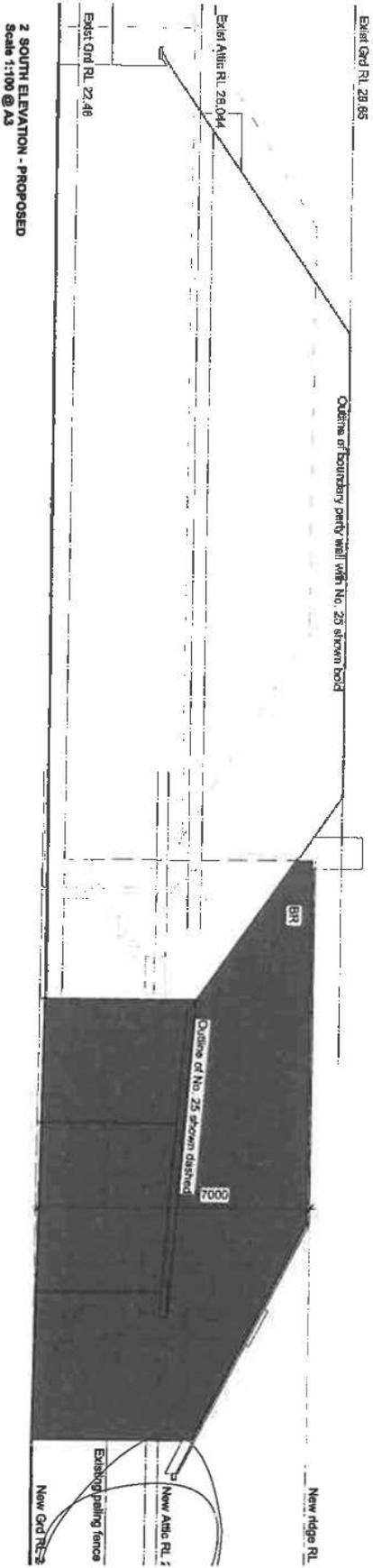
| AMENDMENTS              | DATE     | DESCRIPTION  |
|-------------------------|----------|--|
| DEVELOPMENT APPLICATION | JAN 2015 | <p>PO Box 81<br/>Macedonia NSW 4425<br/>Tel: 0431 603260<br/>Email: mel@scholarmandesign.com</p> <p>NSW registration: 6583<br/>ABN: 41 615 968 877</p>   |
|                         |          | <p>Existing walls<br/>New masonry walls<br/>New timber walls<br/>To be demolished</p> <p>CR Coloured roof<br/>BR Brickwork<br/>CL Cladding - vinyl finish<br/>P Pavement</p> <p>TW Timber window and doors<br/>HMU Hot water gas hot water heater<br/>TF Timber floor<br/>X Existing<br/>T T1p floor<br/>DP Downpipe</p> |
|                         |          | <p>PROJECT: Lot 2 DP 211673<br/>27 Booming Street<br/>Hahndorf NSW</p> <p>FOR: Steve Simmons &amp; Justine Strong</p>  |
|                         |          | <p>DRAWING SITE PLANS<br/>DATE: 20.01.18<br/>DRAWN: C.C.<br/>DRAWING NO.</p>   |



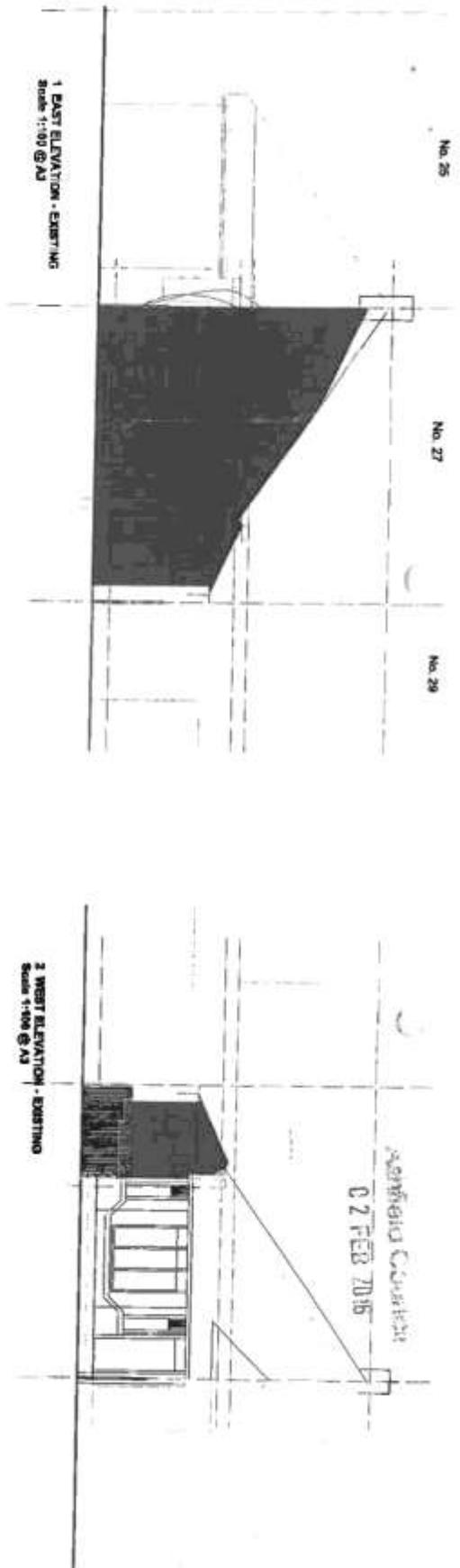
| DEVELOPMENT APPLICATION   | DATE     | Preparation description & architect/consultant | Existing walls  | Timber window and doors  | PROJECT  | SCALE      | DRAWING DATE   |
|---|----------|--|---|--|--|------------|--|
| P.O. Box 81<br>Alexandra NSW 1496<br>Tel: 0431 603350<br>Email: mel@chastainmendoza.com<br>NSW registration: 65883<br>MEM: 41 615 968 877 | JAN 2016 |  | <input type="checkbox"/> Existing walls<br><input type="checkbox"/> New masonry walls<br><input type="checkbox"/> New timber walls<br><input type="checkbox"/> To be demolished<br><input type="checkbox"/> CR (colourbond roof)<br><input type="checkbox"/> BR (bitumast)<br><input type="checkbox"/> CI (cedar) - joint finish<br><input type="checkbox"/> P (paving) | <input type="checkbox"/> HW (timber window and doors)<br><input type="checkbox"/> TF (timber floor)<br><input type="checkbox"/> X (existing)<br><input type="checkbox"/> T (timber)<br><input type="checkbox"/> DP (decks) | PROJECT: Jul 2015 21/16/13<br>27 Alexander Road<br>Fildesdale NSW<br>Steve Dinnons &<br>Jeanna Strumpf | 1:100 @ A3 | DRAWING NORTH ELEVATION<br>NAME:<br>DATE: 20/1/16<br>DRAWN: C/C<br>DRAWING DATE: 1/3 |



Ashtfield Co.  
02 FEB 2016



| AMENDMENTS              | DATE     | DESCRIPTION  | PROJECT  | SCALE      | DRAWING   |
|-------------------------|----------|--|--|------------|---|
| DEVELOPMENT APPLICATION | JAN 2018 | <p>chessman design &amp; architecture<br/>P O Box 81<br/>Alexandria NSW 1435<br/>Tel: 0431 883359<br/>Email: mail@chessmandesign.com<br/>NSW registration: 65833<br/>ABN: 41 615 968 877</p> <p> <input type="checkbox"/> Existing walls<br/> <input checked="" type="checkbox"/> New masonry walls<br/> <input checked="" type="checkbox"/> New timber walls<br/> <input checked="" type="checkbox"/> To be demolished<br/> <input checked="" type="checkbox"/> CR Colorbond roof<br/> <input checked="" type="checkbox"/> BR Brickwork<br/> <input checked="" type="checkbox"/> CL Cladding - paint finish<br/> <input checked="" type="checkbox"/> P Parking                 </p> <p>                     TW Timber window and doors<br/>                     HVU Instant gas hot water heater<br/>                     TX Timber floor<br/>                     X Existing<br/>                     T Timber<br/>                     DP Downpipe                 </p> | <p>27 Boonering Street<br/>Hawthorn NSW</p> <p>FOR: Steve Simmons &amp; Joanna Strumpf</p> | 1:100 @ A3 | <p>DRAWING SOUTH ELEVATIONS</p> <p>DATE 20/01/18</p> <p>DRAWN C.C</p> <p>DRAWING NO. DA07</p> |



| REVISIONS | DATE     | DESCRIPTION             |
|-----------|----------|-------------------------|
| 1         | JAN 2018 | Development Application |

|   |  |   |  |   |
|---|--|---|--|---|
| P O Box 81<br>Alexandria NSW 1495<br>Tel: 0431 863359<br>Email: matt@chessmanndesign.com<br>NSW registration: 65863<br>ABRN: 41 615 968 877 | Chessman Design & Architecture<br>Matt<br>New masonry walls<br>New timber walls<br>To be demolished<br>CR Coloured roof<br>BR Brickwork<br>CL Cladding - paint finish<br>P Parking | TMI Timber window and doors<br>MMU Masonry gas hot water heater<br>TF Timber floor<br>X Existing<br>T Timber<br>DP Downpipe | PROJECT: Lot 2 DP 214873<br>27 Bowring Street<br>Haberfield NSW<br>FOR: Steve Simmons & Joanne Strumpf | DRAWING EAST & WEST ELEVATION<br>NAME<br>DATE 20.01.18<br>DRAWN C.C.<br>DRAWING NO. DA0 |
|---|--|---|--|---|

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| SCALE<br>1:100 @ A3 |  |
|---------------------|--|

|                           |          |  |
|---------------------------|----------|--|
| ISSUE / AMENDMENTS        | DATE     | DESCRIPTION  |
| A DEVELOPMENT APPLICATION | JUN 2016 | Final design & architecture<br>P.O. Box 81<br>Parramatta NSW 1435<br>Tel: (0431) 063359<br>Email: mal@christenedesign.com<br>NSW registration: 6583<br>ABN: 41 615 968 877 |

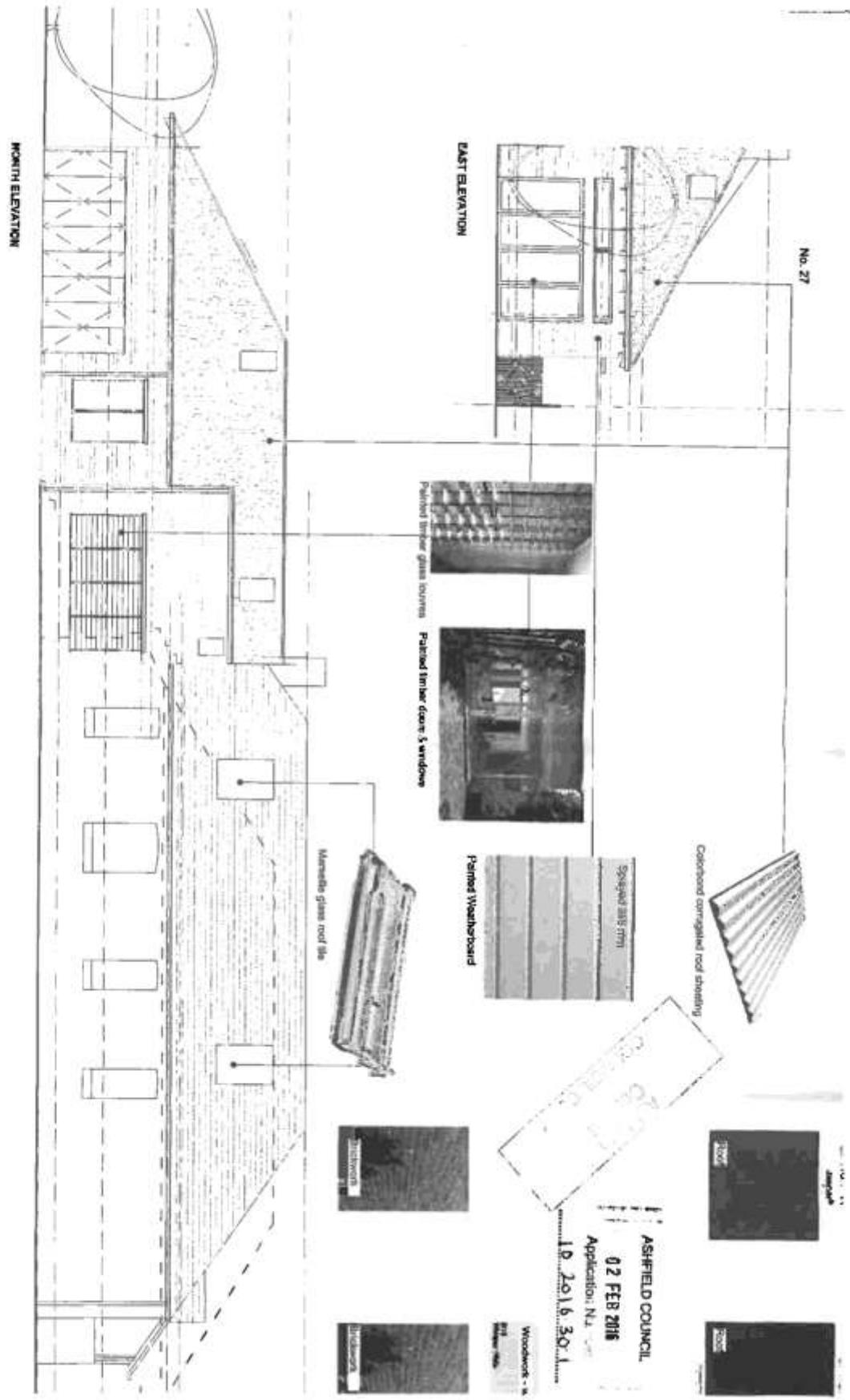
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|--|---|
| <input type="checkbox"/> Existing walls<br><input type="checkbox"/> New masonry walls<br><input type="checkbox"/> New timber walls<br><input type="checkbox"/> To be demolished<br><input type="checkbox"/> CR Colourbond roof<br><input type="checkbox"/> FR Fibrework<br><input type="checkbox"/> CL Casting plain slab<br><input type="checkbox"/> P Paving | The Timber window and doors<br>TWU Timber or gas hot water heater<br>TF Timber floor<br>X Existing<br>T Timber<br>DP Downpipe |
|--|---|

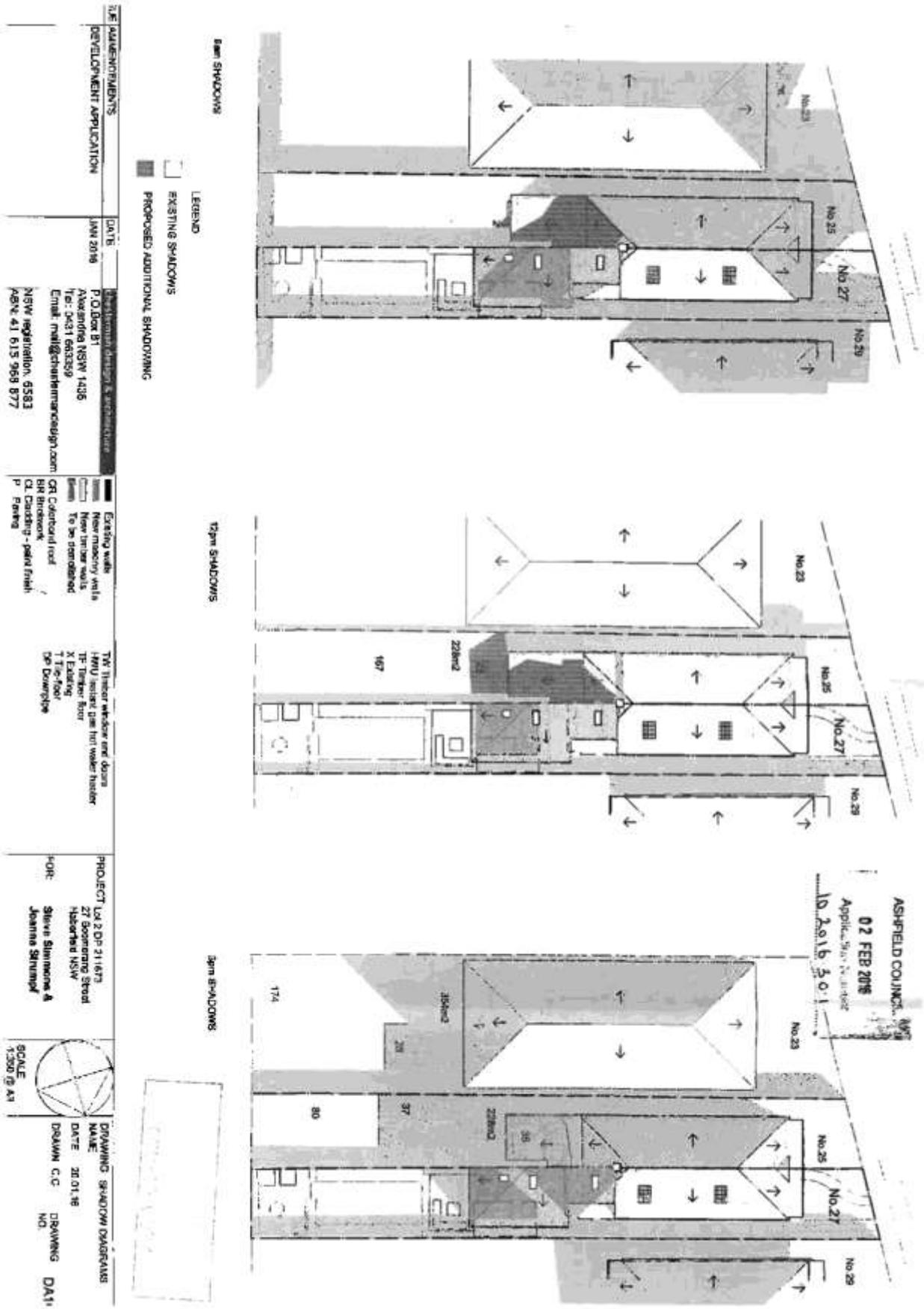
  

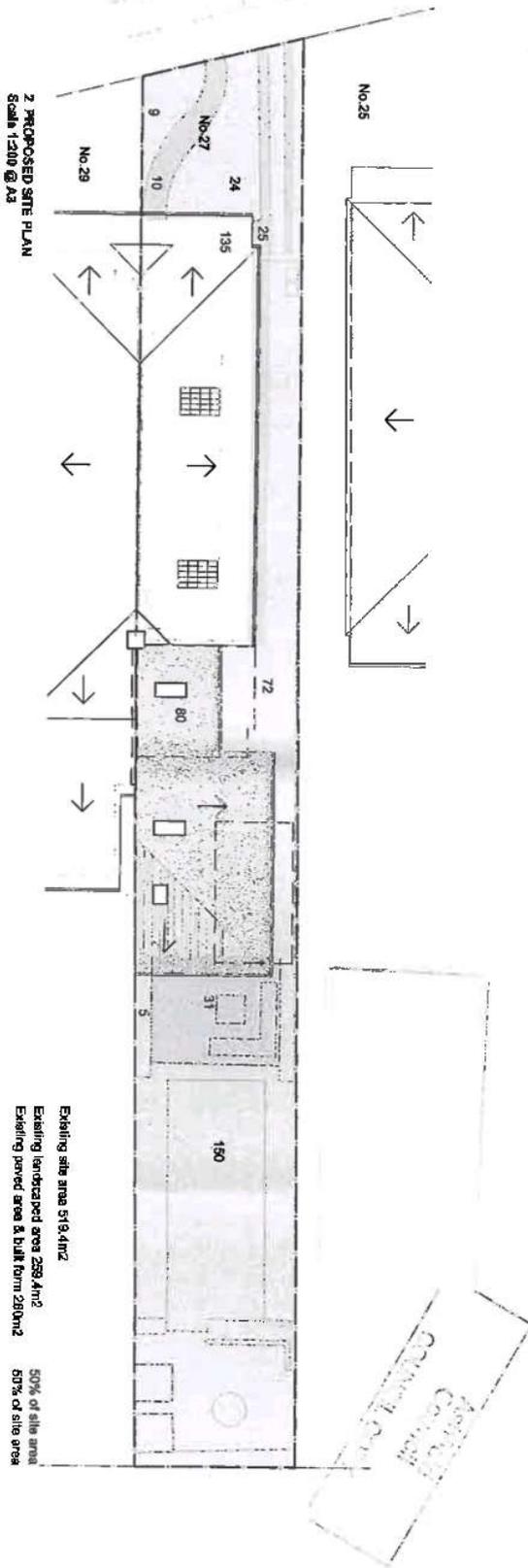
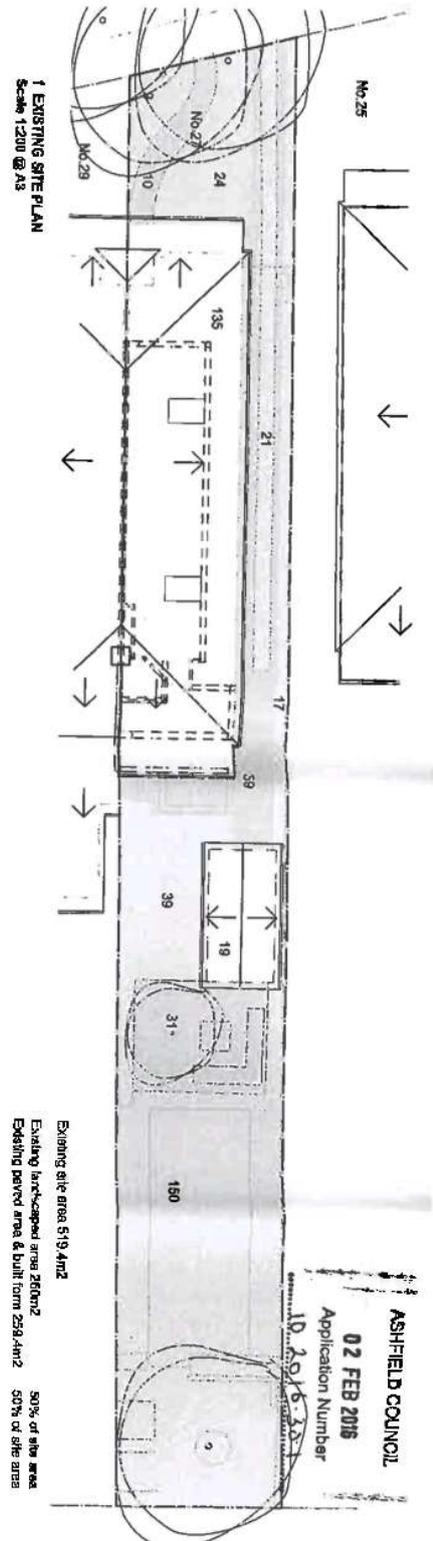
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| JOANNA STRAUPE   | JOANNA STRAUPE   |

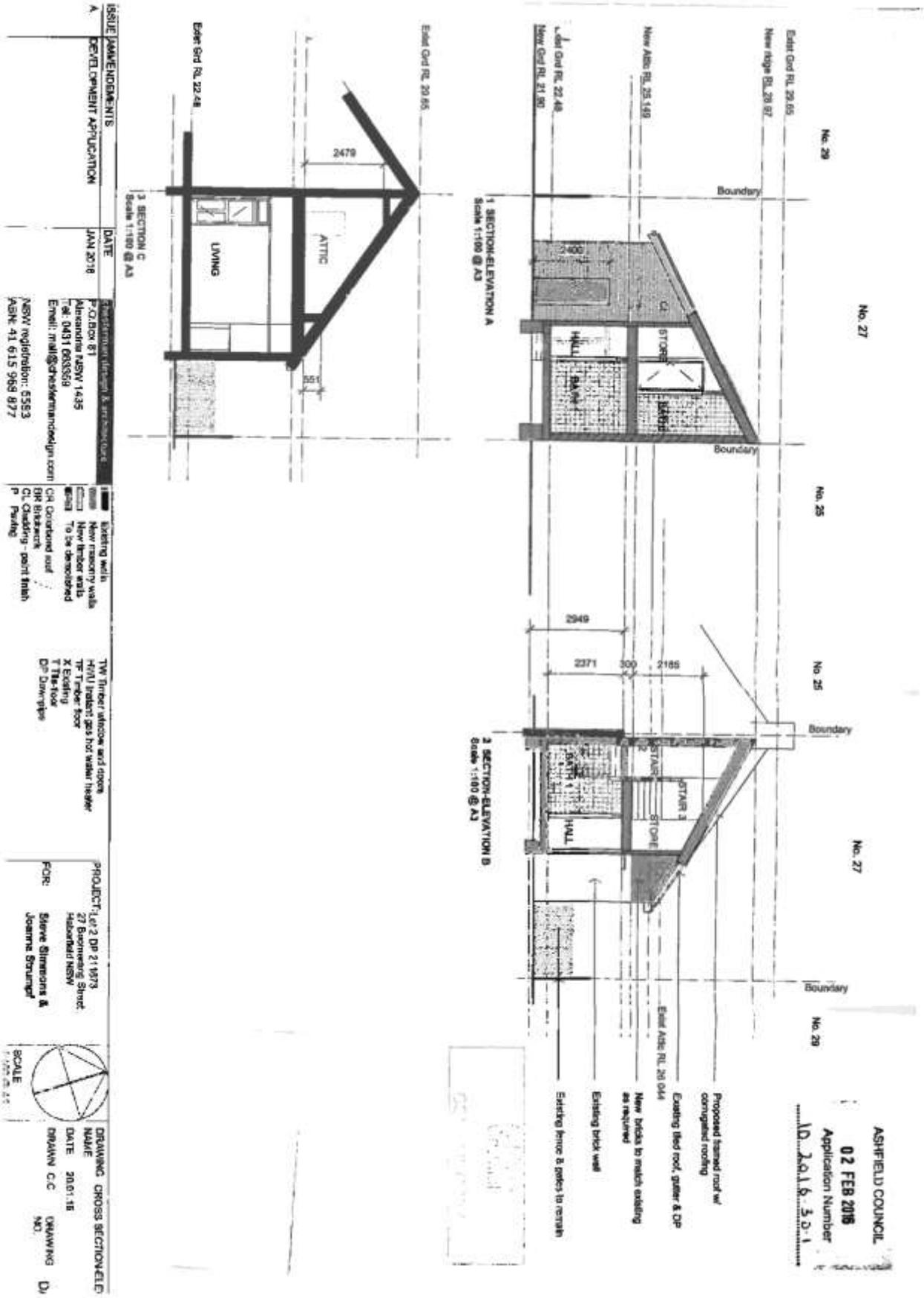
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|                     | DRAWN C.C.            |
|                     | DRAWING NO. D         |

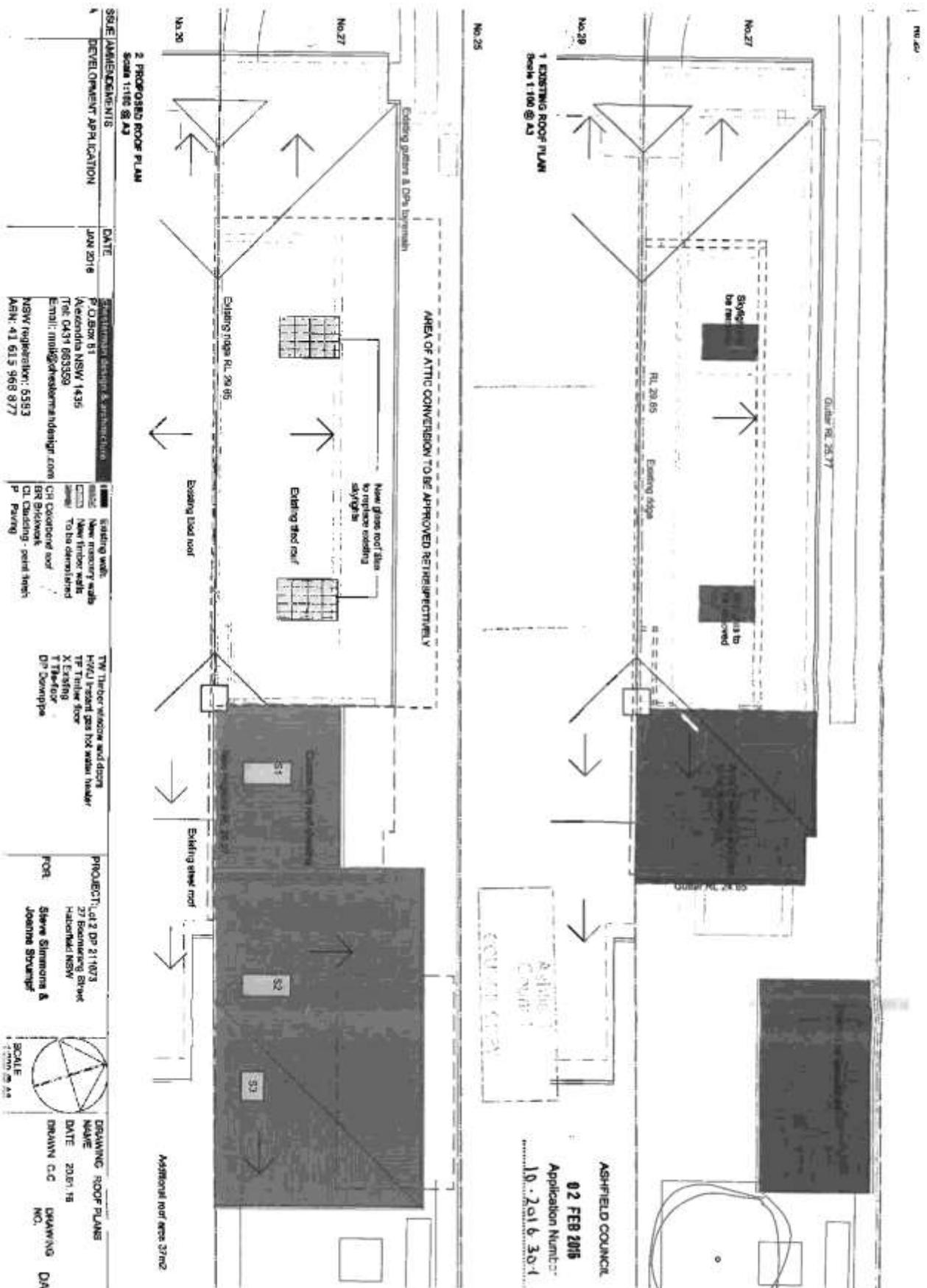


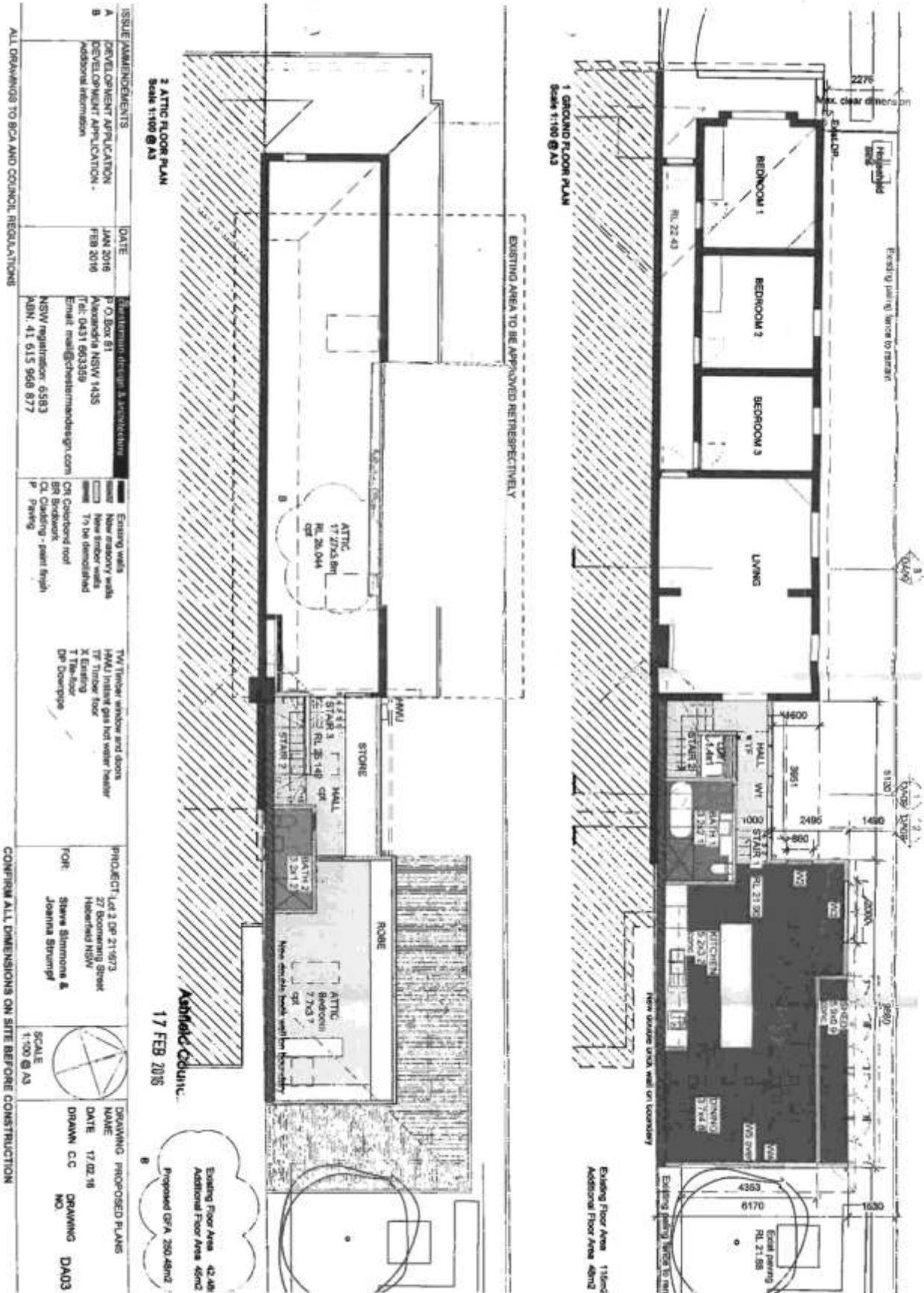




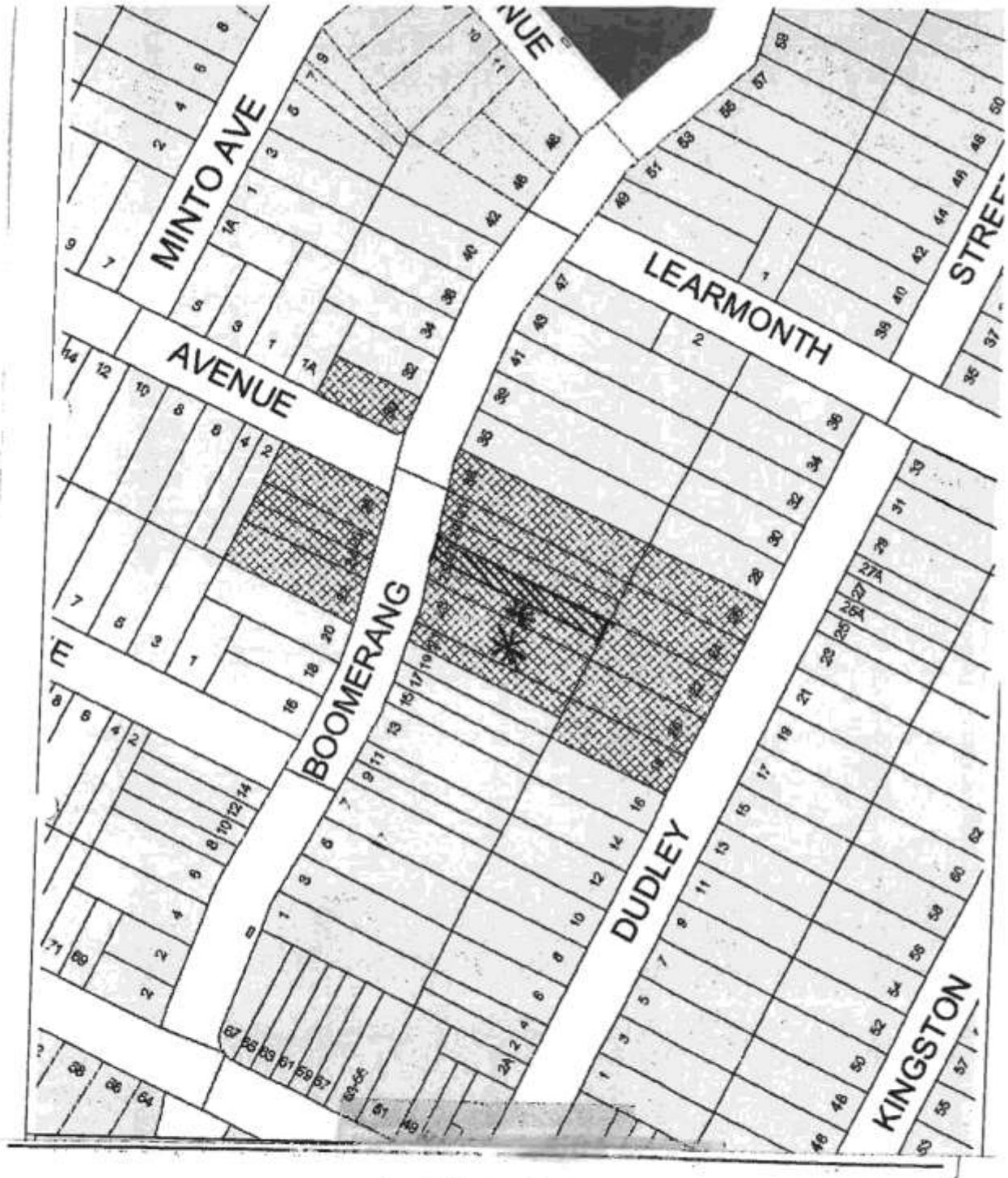
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| DEVELOPMENT APPLICATION            | JAN 2016   | Charterman design & architecture<br>P O Box 81<br>Alexandria NSW 1436<br>Tel: 0431 663399<br>Email: info@chartermandesign.com<br>NSW registration: 65883<br>ABN: 41 615 968 877  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
|                                    |  | <table border="0"> <tr> <td>Existing walls</td> <td>TM Timber window and doors</td> </tr> <tr> <td>New masonry walls</td> <td>HW Timber floor</td> </tr> <tr> <td>New timber walls</td> <td>TF Timber floor</td> </tr> <tr> <td>To be demolished</td> <td>X Existing</td> </tr> <tr> <td>CR Colourbond roof</td> <td>T The floor</td> </tr> <tr> <td>BR Brickwork</td> <td>DF Driveway</td> </tr> <tr> <td>CL Cladding - paint finish</td> <td></td> </tr> <tr> <td>P Paving</td> <td></td> </tr> </table> | Existing walls                     | TM Timber window and doors                                       | New masonry walls | HW Timber floor | New timber walls | TF Timber floor | To be demolished | X Existing | CR Colourbond roof | T The floor | BR Brickwork | DF Driveway | CL Cladding - paint finish |  | P Paving |  |
| Existing walls                     | TM Timber window and doors                                       |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| New masonry walls                  | HW Timber floor  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| New timber walls                   | TF Timber floor  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| To be demolished                   | X Existing   |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| CR Colourbond roof                 | T The floor  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| BR Brickwork                       | DF Driveway  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| CL Cladding - paint finish         |  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| P Paving                           |  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
|                                    |  | <table border="0"> <tr> <td>FOR: Steve Simons &amp; Joanna Strumpf</td> <td>PROJECT: L1/2 DP 211873<br/>22 Bordenang Street<br/>Haberfield NSW</td> </tr> </table>   | FOR: Steve Simons & Joanna Strumpf | PROJECT: L1/2 DP 211873<br>22 Bordenang Street<br>Haberfield NSW |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| FOR: Steve Simons & Joanna Strumpf | PROJECT: L1/2 DP 211873<br>22 Bordenang Street<br>Haberfield NSW |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
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| SCALE 1:200 @ A3                   | DRAWING SITE AREA CALCULATIONS                                   |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| DATE 20.01.16                      | NAME   |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| DRAWN C.C                          | DATE   |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |
| DRAWING NO. DA11                   |  |  |                                    |  |                   |                 |                  |                 |                  |            |                    |             |              |             |                            |  |          |  |











Location Plan

Site 

Notification Area 

Objectors 





**DEVELOPMENT SERVICES  
HERITAGE ADVISOR'S REFERRAL COMMENTS**

|   |  |                                  |
|---|--|----------------------------------|
| <b>ADDRESS:</b>   | 27 Boomerang Street HABERFIELD               | <b>File No:</b><br>17.2015.271.1 |
| <b>ADVISOR</b>  | Robert Moore                                 |                                  |
| <b>DATE</b>   | 21.9.2015                                    |                                  |
| <b>STATUS</b>   | Heritage Conservation Area                   |                                  |
| <b>DESCRIPTION</b>  | Alterations and additions to dwelling house  |                                  |
| <b>PREVIOUS COMMENTS</b>  |  |                                  |
| <input type="checkbox"/>  | HIS/CMP recommended for archiving in library |                                  |
| <p>Note: These comments relate to heritage issues only. They do not include a planning review. Planning comments will, however, be provided separately in relation to Pre-lodgement Applications or Provisional Development Applications.</p> |  |                                  |

The application has been reviewed in respect of heritage issues and has been assessed as follows:

|   |  |
|---|--|
| <input type="checkbox"/>  | <b>Acceptable as lodged</b>  |
| <input type="checkbox"/>  | <b>Acceptable with the following Conditions of Consent Applied:</b>  |
| <input checked="" type="checkbox"/>   | <b>Acceptable with the following amendments to the application:</b> <ul style="list-style-type: none"> <li>• A revision of the nominated colorbond roof colours from dark grey to a selection of either dull red eg manor red, slate brown eg jasper or light grey eg woodland grey</li> <li>• A revision of the proposed paint colours (away from pale grey).</li> </ul> <input checked="" type="checkbox"/> <b>Application to be returned to Heritage Advisor for review after amendments</b><br><input type="checkbox"/> <b>Planner may assess amendments</b> |
| <b>Discussion:</b>  |  |
| <p>This proposal has been the subject of dialogue with Council and is supported as an unusual solution to the requirements conditioned by the house and family occupation of what is a small dwelling. It is proposed to replace existing skylights in the side plane of the main roof with glass Marseilles tiles which are a traditional solution of allowing daylight entry with minimal disturbance of the roof cladding. Formal approval of the attic area will be a matter of planning discussion rather than heritage.</p> |  |

*Robert Moore*

To: Ashfield Council  
Planning and assessment Att: Daisy Younan  
22nd February 2016

**LETTER OF OBJECTION**

RE: Notification of Development APPLICATION  
27 BOOMERANG ST HABERFIELD  
APPLICATION NO: 10.2016.030

We write about our real concern over the proposed development at 27 Boomerang Street Haberfield. I am the owner of the Semi-detached dwelling at number 25 Boomerang Street Haberfield. There are a number of issues of concern that will be raised in my letter of objection.

Firstly I have received a letter from Mr Steven Simmonds (the applicant & Owner of number 27) in which I have attached a copy for your information. His letter is in response to my letter to him in which a copy is also attached. In his letter he wishes for me to give consent to access my property for the construction of their wall within their property boundary. Without this access granted "will mean that the chosen materials will not be appealing, or aesthetically pleasing when viewed from No 25 Boomerang St".

I object to having to be forced to accept an outcome that does not suit our concerns, especially when told in writing that the materials will in fact be unappealing. The point I wish to make on this issue is that while my concern about the party wall taking lateral and vertical support is addressed in his letter I believe the new wall that Mr Simmonds wants to construct should be completely independent and also recessed by 1.5 meters off the common boundary. This is to allow that wall to be constructed without access to my property and proper aesthetically pleasing materials to be used in its construct. These materials would be similar to those already existing as part of the dwelling and in council heritage guidelines. This also would give softness and relief to the overall development.

The second objection to this current DA is the excessive "bulk and scale" of the proposed development. It stands some 7 meters high and 15 meters in length. This will present as a vast blank wall that will dwarf the dwelling at number 25 (the attached semi) its bulk will look out of character with the rest of the built environment, Not to mention the overshadowing and complete loss of sun to our rear garden. This wall will also obliterate any and all views across to north Sydney as viewed from my property at Number 23 Boomerang

Street. The view loss is from my kitchen and living areas of my home and this would be completely unacceptable. It seems that there needs to be more thought put into the design of this part of the proposed development.

The third objection to this proposed development is that due to the gross bulk and scale of the proposed built form, it will not be sympathetic to the street elevation and it will overbear and impact the outlook and character of the other period homes in the street.

In summary: This development adversely affects the amenities of sun, views privacy and bulk and scale. These concerns way greatly on the merits of this development.

I ask for council to consider my objections and take into account all of these issues as I feel it will grossly affect my amenities and the character of the street will be compromised in terms of mass and scale.

Thank you in anticipation.

Should you need further clarification of my issues raised in this letter, please feel free to call my authorised contact, Rick D'Amico 0412215418.

Kind regards

Sarina Spina

Owner of no 23 Boomerang St Haberfield.

**CONDITIONS**

**DA 2016.30.1**

27 Boomerang Street HABERFIELD 2045

---

**Description of Work as it is to appear on the determination:**

alterations and two storey rear addition to an existing dwelling and the use of unauthorised attic area, created within the existing roof space, for habitable purposes.

**A General Conditions**

**(1) Approved plans stamped by Council**

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers:

DA 01 - Site/Roof Plan - date stamped by Council 02 February 2016;  
DA 03 – Proposed Plans - date stamped by Council 17 February 2016;  
DA 04 - Roof Plans - date stamped by Council 02 February 2016;  
DA 05 - Site Plans - date stamped by Council 02 February 2016;  
DA 06 – North Elevations - date stamped by Council 02 February 2016;  
DA 07 – South Elevations - date stamped by Council 17 February 2016;  
DA 08 – East and West Elevations - date stamped by Council 02 February 2016;  
DA 09 – Cross Sections-Elevation - date stamped by Council 02 February 2016;  
DA 11 – Site area Calculations - date stamped by Council 02 February 2016;

prepared by and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

**(2) Compliance with BCA**

All works are to comply with the relevant Building Codes of Australia and/or Australian Standard requirements.

**(3) Encroachments**

This approval is not to be construed as approving any encroachment on any adjoining private or public property including Council's own land. All works, including but not limited to, foundations, eaves and gutters, are to be carried out entirely within the subject site.

**(4) Landscaped area**

- Landscape area as approved be maintained at all times
- Soft and hard landscape area be constructed in accordance with the approved plans prior to release of any occupation certificate.

**(5) Power poles**

No power poles are to be installed on site without prior written approval from Council.

**(6) Payment of any Additional Fees**

If the estimated cost of works for the construction certificate application exceeds the estimate supplied with the development application, an additional fee, any contributions and bonds

based on the revised estimate must be paid to Council prior to release of the Construction Certificate.

**(7) Building Certificate**

An application for a 149D Building Certificate is required to be submitted to Council within three months from the date hereon and a approval obtained prior to any further works being undertaken/ or issue of a Construction Certificate in order for the Council to consider whether the unauthorised attic conversion is to be retained. Supporting documentation (for the unauthorised work) must be submitted to accompany the Building Certificate application in order for a proper assessment to be undertaken and in order to verify compliance with the BCA 2014 as follows:-

- i) Submit a set of plans clearly identifying the unauthorised works as built including all dimensions and existing building setbacks.
- ii) Submission of registered surveyors identification report, that identifies the structure, its offset of the boundaries and the premises in question.
- iii) Submit a certificate of structural adequacy from a practicing structural engineer verifying that the existing dwelling is structurally capable of the superimposed loads, and that the removal of the internal roof collar ties, and existing party wall is not affected by the unauthorised works carried out.

**(8) Structural support - Party Wall**

The proposed rear addition is not to rely on the party wall for any lateral or vertical structural support. A certificate from a practising Structural Engineer to this effect shall be submitted to the Principal Certifying Authority with the application for a construction certificate.

**B Design Changes**

nil

**C Conditions that must be satisfied prior to issuing/releasing a Construction Certificate**

**(1) Damage deposit/footpath, road, kerb and gutter**

A Damage Deposit of **\$3,200** is to be submitted prior to the release of the Construction Certificate covering repair and/or replacement of adjoining footpath, road shoulder, road pavement, kerbing and guttering both outside the subject site and the surrounding area. This is to be paid to Council and may be refunded subject to satisfactory completion of construction or demolition.

This Damage Deposit covers unforeseen damage to the above property by construction vehicles, skip bins, construction methods etc. Note: Should repair works or maintenance be required on Council land, a Road Opening Permit must be obtained before those works take place.

**Bank Guarantees** are accepted in lieu of any Council security deposit/bond subject to the following:

- It must be an original with no end date and issued in favour of Council, details of the proponent's address shall be included.

- A charge equal to the value multiplied by the current "overdue rates interest charge" be levied, per month or part thereof, with a minimum charge of three months is to be paid upon lodgement.
- Any remaining charge is to be calculated at the prevailing "overdue rates interest rate" for each month or part thereof beyond the original three months that the Bank Guarantee was held, and paid prior to its release.
- Any costs incurred in the acceptance, administration or release of such Bank Guarantees be on-charged to the entity claiming the release of such Bank Guarantee, and that these amounts be paid prior to its release.

At the time of lodgement, Council will seek verification of the Bank Guarantee. Please provide contact details for the branch (phone number and officer) to assist with verification of the bona fides of the Bank Guarantee.

**(2) Footpath/laneway – photographs to be submitted**

Prior to the release of the Construction Certificate, the applicant shall lodge with Council photographs of the roadway, footpath and/or laneway at the property indicating the state of the relevant pavements. At the completion of construction, again at the expense of the applicant, a new set of photographs is to be taken to determine the extent, if any, of any damage which has occurred to the relevant pavements. If any damage has occurred, the applicant shall meet the full cost to repair or reconstruct these damaged areas to Council's relevant standard.

**(3) Erosion & sedimentation control-management plan**

Prior to issue of a construction certificate the applicant shall prepare an erosion and sedimentation control plan in accordance with Part 4 of the guidelines titled "*Pollution Control Manual for Urban Stormwater*", as recommended by the Environmental Protection Authority.

Any stormwater runoff collected from the site must be treated in accordance with the Guidelines, before discharge off the site to comply with the *Protection of the Environment Operations Act 1997* or other subsequent Acts.

Where sedimentation control basins are provided discharge shall be to the requirements of the Environmental Protection Authority.

Applicants are further advised to refer to the following publications for additional information:

- (a) "*Sedimentation and Erosion Control*" - Department of Conservation and Land Management.
- (b) "*Soil and Water Management for Urban Development*" - Department of Housing.

The plan must be submitted with the application for a construction certificate.

**(4) Home Building Act 1989 Insurance**

Compliance with Part 6 of *Home Building Act 1989* is required. A copy of either the Builders Home Warranty Insurance OR a copy of the Owner-Builder Permit shall be submitted to Council.

**(5) Long service levy**

Compliance with Section 109F of the Environmental Planning and Assessment Act 1979 – payment of the long service levy under Section 34 of the Building and Construction Industry Long Service Payments Acts 1986 – is required. All building of \$25,000.00 and over are subject to the payment of a Long Service Levy fee. A copy of the receipt for the payment of the Long Service Levy shall be provided to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate. Payments can be made at Long Service Payments Corporation offices or most Councils.

**(6) Section 94A Contributions**

Pursuant to Section 94A of the Environmental Planning and Assessment Act 1979 and Ashfield Council's Section 94A Development Contribution Plan 2009, a contribution of \$887.22 shall be paid to Ashfield Council prior to the release of the Construction Certificate. Copies of receipts confirming the contribution has been paid are to be provided to the Principal Certifying Authority.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of Ashfield Council's Section 94A Development Contribution Plan 2009.

**D Conditions that must be complied with before work commences**

**(1) Notice of Commencement – Notification of Works**

Work must not commence until the Principal Certifying Authority or the person having the benefit of the development consent has given Notification in Writing to Council no later than two days before the building work commences.

**(2) Requirement for a Construction Certificate**

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* the erection of a building and/or construction works must not commence until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
  - (i) Council; or
  - (ii) an accredited certifier; and
- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

The documentation required under this condition shall show that the proposal complies with all development consent conditions and the *Building Code of Australia*.

Note: If the principal certifying authority is the Council, the appointment will be subject to the payment of a fee for the service to cover the cost of undertaking building work and / or civil engineering inspections.

**WARNING:** Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning &*

*Assessment Act 1979.* It is a criminal offence that attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

**(3) Inspections required by Principal Certifying Authority**

Inspections shall be carried out at different stages of construction by Council or an accredited certifier. If Council is selected as the Principal Certifying Authority (PCA) the inspection fees must be paid for in advance which will be calculated at the rate applicable at the time of payment.

**(4) Building location - check survey certificate**

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the: -

- (i) location of the building with respect to the boundaries of the site;
- (ii) level of the floor in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
- (iii) site coverage of the buildings on the site.

**(5) Site fencing/security**

The site must be appropriately secured and fenced to the satisfaction of Council during demolition, excavation and construction work to ensure there are no unacceptable impacts on the amenity of adjoining properties. Permits for hoardings and or scaffolding on Council land must be obtained and clearly displayed on site.

**(6) Support for neighbouring buildings and notice to adjoining owners**

- (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
  - (a) must preserve and protect the building from damage, and
  - (b) if necessary, must underpin and support the building in an approved manner, and
  - (c) must 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.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Notes:

- (i) Details of underpinning works, prepared and certified by a practicing structural engineer shall be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works.

(ii) allotment of land includes a public road and any other public place.

**(7) Sydney Water approval**

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details- see Building and Developing then Quick Check and
- Guidelines for Building Over/Adjacent to Sydney Water Assets- see Building and Developing then Building and renovating

or telephone 13 20 92

**(8) Structural Engineering Details**

Structural engineer's details prepared and certified by a practising structural engineer for all reinforced concrete and structural members is to be submitted to the Principal Certifying Authority for approval.

**E Conditions that must be complied with during construction or demolition**

**(1) Road opening permit – Council controlled lands**

A road opening permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's Engineering Services for details.

This road opening permit covers the direct costs involved in the repair/replacement of works where the public or Council controlled lands are specifically damaged/saw cut etc for the construction of services, stormwater pipes, kerb works, bitumen works, footpath works etc. It is *separate* from a Damage Deposit as listed elsewhere in these Conditions of Consent.

**(2) Building materials and equipment - storage/placement on footpath/roadway - Council approval**

All building materials and equipment shall be stored wholly within the property boundaries and shall not be placed on the footpath, grass verge or roadway without prior written approval of Council.

Bulk refuse bins shall not be placed on the grass verge, footpath or roadway without Council permission. Application forms and details of applicable fees are available from Council's One Stop Shop telephone 9716 1800.

**(3) Roof guttering and drainage system/disposal of stormwater**

The roof shall be provided with a complete guttering and drainage system. Roofwater shall be disposed of by approved drainage lines discharging into the street gutter.

**(4) Guttering Requirements - BCA**

The roof shall be provided with a guttering system in accordance with the provisions of Part 3.5.2 "Gutters and Downpipes" of the BCA and AS/NZS3500.5 – 2000.

We advise that the Dept of Planning has advised in circular BS 08-001 that the use of high-front guttering has been associated with water penetration into the building and non compliance with the standard.

On completion of the works, a qualified plumber shall furnish the Principal Certifying Authority a certificate certifying that the guttering system complies with Part 3.5.2 of the BCA and AS/NZS3500.5 – 2000.

**(5) Signs to be erected on building and demolition sites**

- (1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - (a) stating that unauthorised entry to the work site is prohibited; and
  - (b) showing the name and address of the contractor for the building work and the person in charge of the work site and a telephone number at which the person may be contacted outside working hours; and
  - (c) showing the name, address and telephone number of the Principal Certifying Authority appointed for the building works.
- (2) Any-sign shall be maintained and not removed until work has been finished.

**(6) Demolition/excavation/construction - hours of work**

Demolition, excavation and construction work, including loading and unloading of materials and machinery, shall be restricted to between the hours of 7.00 am to 6.00 pm, Monday to Friday and from 7:00 am to 1.00 pm on Saturday. Work is prohibited on Sundays, and on public holidays.

**(7) Demolition requirements/standards**

Demolition is to be carried out in accordance with the following:

- The property is to be secured to prohibit unauthorised entry.
- Any demolition on the site is to be conducted in strict accordance with, but not limited to, sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the AS 2601 - 1991, demolition of structures, and any requirements of the Workcover Authority. The following measures must be undertaken for hazardous dust control:
- All precautions are to be exercised in the handling, removal and disposal of all asbestos materials. Licensed contractors and the disposal of asbestos is to be carried out in accordance with the requirements of the Work Cover Authority.
- Hazardous dust must not be allowed to escape from the site or contaminate the immediate environment. The use of fine mesh dust proof screens, wet-lead safe work practices, or other measures is required.
- All contractors and employees directly involved in the removal of hazardous dusts and substances shall wear protective equipment conforming to AS 1716 Respiratory Protective Devices and shall adopt work practices in accordance with WorkSafe Requirements (in particular the WorkSafe standard for the *Control of Inorganic Lead At Work* (NOHSC: 1012, 1994) and AS 2641, 1998).

- Any existing accumulations of dust (eg; ceiling voids and wall cavities must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter and disposed of appropriately.
- All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Unclean water from the suppressant spray is not to be allowed to enter the street gutter and stormwater systems.
- Demolition is not to be performed during high winds that may cause dust to spread beyond the site boundaries without adequate containment.
- All lead contaminated material, if any, is to be disposed of in accordance with the NSW Environment Protection Authorities requirements.
- Construction and demolition waste, particularly timber, bricks and tiles, concrete and other materials need not be disposed of- they can be recycled and resold if segregated properly from any hazardous waste contamination.

**(8) Termite treatment**

Treatment for the protection of the building from subterranean termites shall be carried out in accordance with AS 3660.1:2000 'Protection of Buildings from Subterranean Termites'.

On completion of the installation of the barrier the Principal Certifying Authority shall be furnished with a certificate from the person responsible, stating that the barrier complies with AS 3660.1.

A durable notice shall be permanently fixed to the building in a prominent location, such as the meter box or the like indicating:

- the method of protection;
- the date of installation;
- where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- the need to maintain and inspect the system on a regular basis.

Due to the present limited effective life of soil chemical treatments, Council does not permit hand spraying as a stand alone method of termite protection. It is recommended that any soil chemical treatment should embrace a reticulation system.

**(9) Attic Requirements – BCA**

The unauthorised attic area shall only be used for storage, and not for habitable purposes as the existing ceiling heights, light and ventilation do not comply with the provisions of the Building Code of Australia.

**(10) Waterproofing materials/installation – BCA/Australian Standards**

Approved products that are impervious to water shall only be used as a substrate or as a lining and as a finish to floors and walls of wet areas (i.e. bathroom/shower room, WC compartment and laundry). Floors and cubicles shall be properly graded and drained to approved outlets.

The wet areas in the building shall be impervious to water as required by Part 3.8.1 of the Building Code of Australia (BCA). The junction between the floor and wall and the construction of the bath shower recess, basin, sink or the like shall be in accordance with the BCA & AS 3740:2004 'Waterproofing of wet areas within residential buildings'.

On completion of the waterproofing of the wet areas, the Principal Certifying Authority shall be furnished with a certificate from the person responsible. This is to state that the materials are suitable for the situation and that the application and/or installation has been carried out in accordance with the manufacturer's instructions, the BCA and AS 3740.

**(11) Safety Glazing - BCA**

Safety glazing complying with B1 of the Building Code of Australia (BCA) is to be used in every glazed door or panel that is capable of being mistaken for a doorway or unimpeded path of travel. The glazing must comply with AS 1288:2006 'Glass in Buildings – Selection and Installation'.

Framed panels or doors enclosing or partially enclosing a shower or bath shall be glazed with "A" or "B" grade safety glazing material in accordance with AS 1288 and Part 3.6.4 of the BCA.

**(12) Fire Detection/Alarm System installation and certification**

Smoke alarms must be installed in dwellings in accordance with Clause 3.7.2.3 of the Building Code of Australia (BCA) and AS 3786 on or near the ceiling in -

- (a) any storey containing bedrooms -
  - between each area containing bedrooms and the remainder of the dwelling, including any hallway associated with the bedrooms
- (b) any storey not containing bedrooms.

Smoke alarms must be connected to the consumer mains power and have a stand-by power supply.

The licensed Electrical Contractor shall on completion of the installation of the smoke alarm system, submit to the Principal Certifying Authority a certificate certifying compliance with AS 3000 and AS 3786:1993.

**(13) BASIX Requirements**

The new works shall be constructed in accordance with, and comply with the undertakings given on the BASIX (Building Sustainability Index) Certificate A225072\_02 as obtained on 22 January 2016 from the Department of Infrastructure, Planning and Natural Resources. For more information visit [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).

**(14) Materials and colour schemes**

Materials of construction are to be as specified in the schedule of finishes submitted with the development application and on the approved plans, except where amended by the conditions hereunder.

**F Conditions that must be complied with prior to installation of services**

nil

**G Conditions that must be complied with before the building is occupied**

**(1) Approval to use/occupy building**

The building or any part thereof must not be used or occupied until an Occupation Certificate has been obtained from the Principal Certifying Authority.

Note: If Council is chosen as the Principal Certifying Authority a fee is applicable prior to the release of the Construction Certificate.

***H*** **Conditions that are ongoing requirements of development consents**

nil

***I*** **Advisory Notes**

**(1) Modifications to your consent - prior approval required**

Works or activities other than those authorised by the approval including changes to building configuration or use will require the submission and approval of an application to modify the consent under Section 96 of the *Environmental Planning & Assessment Act 1979*. You are advised to contact Council immediately if you wish to alter your approved plans or if you cannot comply with other requirements of your consent to confirm whether a Section 96 modification is required.

**Warning:** There are substantial penalties prescribed under the *Environmental Planning and Assessment Act 1979* for breaches involving unauthorised works or activities.

**(2) Occupational health and safety**

All site works must comply with the occupational health and safety requirements of the NSW Work Cover Authority.

**(3) Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

- (1) if the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first;

and

- (2) The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

**(4) Boundary survey encroachment**

You are advised that the consent given, to build in close proximity to the allotment boundary, is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 that gives certain rights to adjoining owners, including use of the common boundary. In the absence of any structure standing well clear of the common boundary, you need to make yourself aware of your legal position, which may involve a survey to identify the allotment boundary.

**(5) Structure**

It should be noted that the structural design and the calculations have not been checked by Council; It is to be clearly understood by the applicant and any person concerned that the applicant and the engineer undertaking the design in the approved plans herewith/Construction Certificate Plans, are fully responsible for the structural adequacy of the structural design.

|                    |  |
|--------------------|--|
| <b>Subject</b>     | <b>DEVELOPMENT APPLICATION: 10.015.237.1<br/>244, 252, 254, 256 &amp; 260A LIVERPOOL ROAD ASHFIELD</b> |
| <b>File Ref</b>    | 10.2015.237.1  |
| <b>Prepared by</b> | Atalay Bas - Manager Development Services  |
| <b>Reasons</b>     | Matter requires Council determination  |
| <b>Objective</b>   | For Council to determine the application   |

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## OVERVIEW OF REPORT

### 1.0 Description of Proposal

Pursuant to Clause 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's consent to: -

- Consolidate 5 lots into 1 allotment,
- Create 2 new Stratum lots,
- Create new easements and release certain existing easements; and
- Amend the existing Ashfield Mall Car Parking Deed.

Plans of the proposal are included in **Attachments 1a** to **1e**.

### 2.0 Executive Summary

The proposal involves consolidating the existing five (5) Torrens title allotments into one (1) Torrens title allotment and Stratum subdivision into two (2) allotments. The reason for the Stratum subdivision is to accommodate the various components of the Joint Regional Planning Panel (JRPP) approved development application (DA 10.2013.114.1 approved on 25 September 2014) for the major redevelopment of the Ashfield Mall.

The proposed Stratum allotment 101 will accommodate residential and retail component of the development which will enjoy a frontage to Liverpool Road whereas proposed Stratum allotment 100 will accommodate the commercial component of the development (i.e. the Ashfield Mall building, car park and new development over the car park).

The proposal also involves the release of certain existing easements and creation of new easements. The main reason for release and creation of new easements is to accommodate the JRPP approved development. Currently there are numerous complicated layers of easements that need to be simplified and also facilitate the new building works. The easements that benefit Ashfield Council are explained in further detail in Section 8.2 of this report.

In addition, the existing deed concerning the roof top public car parking area and other Council car parking that was created on 15 September 1997 (most recent version) is proposed to be amended (refer to **Attachment 7** for new deed and **Attachment 8** for

**DEVELOPMENT APPLICATION: 10.015.237.1**  
**244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

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existing deed). Again this is required to accommodate the JRPP approved development, which involves the construction of another level of car parking (level 6 car park) on top of the existing roof top car park. In the approved scheme, the entire level 6 car park and a small number of spaces on level 5 (the existing roof top car park) will become Council's replacement public car parking area. In general the proposed amendments to the car parking deed are supported subject to conditions. Council's solicitor has reviewed the revised Ashfield Mall Parking Deed and has indicated that it is basically in order and reflects the transfer of rights across to the new Council regulated public car park.

### 3.0 Summary Recommendation

The development is recommended for conditional approval.

## BACKGROUND

### 4.0 Application Details

|                          |  |
|--------------------------|--|
| Applicant                | LTS Lockley  |
| Owner                    | Perpetual Trustee Company Ltd  |
| Lot/DP                   | Lot 1 DP 736779, Lot A DP 405790, Lot A & B DP 404055, Lot 100 DP 734467 |
| Date lodged              | 19/11/2015   |
| Application Type         | Local  |
| Construction Certificate | Not required as part of this application                                 |
| Section 94 Levy          | Not required as part of this application                                 |

### 5.0 Site and Surrounding Development

The subject site is located on the southern side of Liverpool Road within the Ashfield Town Centre. It is approximately 150m from Ashfield railway station.

Ashfield Mall represents a major commercial and retail site within the town centre and has frontage to Liverpool Road, the main shopping street within Ashfield. The site primarily occupies the majority of the street block bound by Liverpool Road to the north, Knox Street to the west, Norton Street to the south and Holden Street to the east. The site also forms part of the Ashfield Civic Precinct, which includes the Council administration building, town hall and other facilities. The main pedestrian entrance to the mall is from Liverpool Road.

The subject site has a total site area of 23,430m<sup>2</sup> comprising:-

**DEVELOPMENT APPLICATION: 10.015.237.1**  
**244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

| Address                | Lots  | Site Area            |
|------------------------|---|----------------------|
| 260A Liverpool Road    | Lot 1 DP 736779   | 21,887m <sup>2</sup> |
| 244-256 Liverpool Road | Lot 100 DP 734467, Lot A DP 405790, Lot A & B DP 404055 | 1,543m <sup>2</sup>  |

Surrounding development comprises retail and commercial development along the Liverpool Road frontage with low and medium density residential development to the west, south and east.

Refer to **Attachment 2** for a locality map.

## 6.0 Development History

Previous development applications submitted to Council for the subject site include:-

| NO.           | DATE                               | PROPOSAL  | DECISION                         |
|---------------|------------------------------------|---|----------------------------------|
| 10.2015.258.1 | 05/02/2016                         | Installation of 13 signs on hoardings and wall structures located within the Ashfield Mall forecourt at Ashfield Mall.  | Approved                         |
| 10.2014.19.2  | 09/03/2016                         | To modify Development Consent 10.2014.19 relating to the forecourt area.  | Approved                         |
| 10.2014.19.1  | 25/11/2014                         | Construction of a new Mall entrance canopy structure, new canopy structure over the approved pavilion and signage including a new illuminated pylon sign at the entrance to the forecourt of the Ashfield Mall shopping centre. | Approved                         |
| 10.2013.114.3 | 09/03/2016                         | Amendments include amendments to the facade design, roof design and profile of the pavilion structure towards Liverpool Road and rewording/clarification of certain conditions of consent.                                      | Approved                         |
| 10.2013.114.2 | 25/01/2016                         | To modify Development Consent 10.2013.114. Amendments relate to the residential component of the approved development.  | Approved by JRPP                 |
| 10.2013.114.1 | 31/5/2013<br>(amended 20/12/2013)  | Alterations and additions to the Ashfield Mall shopping centre  | Approved by JRPP                 |
| 10.2006.24.1  | 11/12/2007<br>(Refused by Council) | 125 Apartments, 3500sqm Retail space, 24 serviced Apartments and a Child Care Centre  | Approved by Land and Environment |

**DEVELOPMENT APPLICATION: 10.015.237.1**  
**244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

|  |                                |  |       |
|--|--------------------------------|--|-------|
|  | 03/04/2011<br>appeal<br>upheld |  | Court |
|--|--------------------------------|--|-------|

## ASSESSMENT

### 7.0 Zoning/Permissibility/Heritage

- The site is zoned B4 Mixed Use under the provisions of Ashfield LEP 2013.
- The property is not located within a Conservation Area.
- The property is not a heritage item.
- The property is located within the Ashfield Town Centre.

The proposed works are permissible with Council consent.

### 8.0 Comments & Discussion

#### 8.1 Lot Consolidation & Stratum Subdivision

The existing 5 lots being Lot 100 DP 734467, Lot A DP 405790, Lot A & B DP 404055 and Lot 1 DP 736779 are proposed to be consolidated into 1 allotment. In essence, the proposed lots to be consolidated is the site that contains the Ashfield Mall building including the forecourt area known as 260A Liverpool Road and 4 other allotments fronting Liverpool Road known as 244 Liverpool Road and 252 – 256 Liverpool Road Ashfield. The total site area to be consolidated is approximately 23,430m<sup>2</sup>.

Once the existing 5 lots are consolidated into 1 allotment, it is then proposed to create 2 new stratum lots known as Lot 100 and Lot 101. As indicated previously, the reason for the stratum subdivision is to accommodate the components of the JRPP approved development. The proposed stratum allotment 101 will accommodate residential and retail component of the development having frontage to Liverpool Road whereas the proposed stratum allotment 100 will accommodate the commercial component of the development (Ashfield Mall building, car park and new development over the car park).

Further strata subdivision of the stratum lots is likely to occur after completion of the new residential components of the project.

The proposal to consolidate existing allotments and create stratum subdivision was referred to Council's solicitor for comments and review. No concerns were raised in relation to the consolidation and creation of stratum subdivision.

#### 8.2 Creation & Release of Easements

The Council has the benefit of 18 easements over the Ashfield Mall site. Council's solicitor, who has been working with Council officers on this proposal over the past few months, has provided comments in respect to each easement (refer to **Attachments 3a to 3c**). Attachment 3a provides initial comments prior to the receipt of Section 88B instruments from the applicant. Attachment 3b includes supplementary comments following receipt of the Section 88B instruments. Attachment 3c contains comments relating to stage 2

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stratum subdivision.

A brief description of each easement is provided in **Attachment 4** and a ‘summary of the terms’ of those easements is described in **Attachment 5**. Proposed section 88B instruments for stage 1 and stage 2 stratum subdivision are provided in **Attachment 6a** to **6c**.

### 8.3 Amended Ashfield Mall Car Parking Deed

The most recent deed concerning public and Council car parking at Ashfield Mall was created on 15 September 1997 (refer to **Attachment 8**). This deed is now proposed to be amended. Amendment is required to accommodate the JRPP approved development. The revised Ashfield Mall Parking Deed is provided in **Attachment 7**.

In general terms, the original deed called for the provision of 394 public car parking spaces on Level 5 and a further 20 Council car parking spaces (currently located on level 2 of the Ashfield Mall building - basement area). Importantly, the terms in the original deed also include a clause which specifies that, in the event that the owner rebuilds the Centre Car Park or relocates the Public Car Park (Council’s roof top area) from Level 5 then the provision of a minimum of 330 public car parking spaces must be provided either at another site in the town centre or elsewhere on the Ashfield Mall land. The 20 Council car parking spaces must also be replicated if they are to be relocated making for an overall total of 350 replacement car parking spaces. When seeking development approval for the major redevelopment works the Mall took the opportunity to establish the minimum requirement of 350 spaces in the following split - 305 spaces covering the entire area of the new Level 6 and the remaining 45 spaces in a portion of the current roof top area (Level 5). Consequently, the revised deed reflects the car parking provision approved by the JRPP issued development consent (DA 10.2013.114.1).

In summary, the revised Ashfield Mall Parking Deed is split into two (2) sections. The first section deals with parking arrangements during the construction stage whereas the second part deals with the permanent parking arrangement, once level 6 is completed.

During the construction stage (refer to Schedule 1 of the Ashfield Mall Parking Deed **Attachment 7**) a total of 150 public and 20 Council Car parking spaces are provided on level 5 whereas 180 public car parking spaces are provided on levels 1 and 2 thereby making up the required 330 public and 20 Council car parking spaces. Level 5 can be accessed 24 hours 7 days a week (a condition (9) has been recommended requiring unrestricted access to level 5). However it is unlikely that the 180 public car parking spaces on levels 1 and 2 will be accessible 24/7 due to security requirements for Ashfield Mall. During the construction stage the public car parking spaces on levels 1 and 2 may be limited to 2 hours rather than 3 hours due to the current arrangement Ashfield Mall has in place.

Schedule 1 of the Ashfield Mall Parking Deed also has a provision that the owner must deliver to Ashfield Council a bank guarantee to the sum of \$150,000.00 which Council can call upon in the event the owner does not complete the works thus allowing Council to reinstate the public and Council car parking on level 5.

Part 2 in Schedule 2 and Schedule 3 of the Ashfield Mall Parking Deed contains parties’

**DEVELOPMENT APPLICATION: 10.015.237.1  
244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

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rights and obligations after level 6 has been built. In essence the provisions are similar to that of the original deed except there will be a total of 330 public and 20 Council spaces on levels 6 and 5. Other conditions covering further minor changes have been recommended which require the applicant to amend the proposed car parking deed to ensure that Council maintains its current benefits and to address omissions from some clauses.

The deed also includes provisions which recognize that should the Ashfield Council cease to exist as an entity in the future then its successor will accrue the benefits and rights outlined in the deed.

**SECTION 79C ASSESSMENT**

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act.

**9.0 The provisions of any Environmental Planning Instrument**

9.1 Local Environmental Plans

**Ashfield Local Environmental Plan 2013**

It is considered that the proposal complies with the provisions of the Ashfield LEP 2013.

Clause 2.6 requires that Council consent is required for land subdivision. The proposed stratum subdivision is permitted with Council consent pursuant to clause 2.6 of the Ashfield LEP 2013.

9.2 Regional Environmental Plans

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

It is considered that the stratum subdivision is generally consistent with the objectives of the Plan and would not have any adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

9.3 State Environmental Planning Policies

**State Environmental Planning Policy No. 55 – Remediation of land**

There is no evidence to suggest that the site is contaminated and as such does not apply. Detailed assessment of site contamination was considered during the assessment of the development application determined by JRPP.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

Not relevant as advertising is not proposed as part of this application.

**DEVELOPMENT APPLICATION: 10.015.237.1  
244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

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**State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

Not relevant as the originally approved building will not be modified or changed as part of this application.

**State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

Not relevant as the proposal does not involve housing for seniors or people with a disability. However, during the assessment of the development application for the construction of the buildings assessment of accessibility and universal accessible design was considered.

**State Environmental Planning Policy (Infrastructure) 2007**

Does not apply to stratum subdivision.

**State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

Does not apply to stratum subdivision.

**State Environmental Planning Policy (Affordable Rental Housing) 2009**

Does not apply to stratum subdivision, particularly considering that this application is to accommodate the approved buildings.

**10.0 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.**

Not applicable.

**11.0 The provisions of any Development Control Plan.**

The proposal has been considered against the provisions of the Ashfield Interim Development Assessment Policy 2013.

There are no specific controls for stratum subdivision proposals.

**12.0 Any matters prescribed by the regulations that apply to the land to which the development application relates.**

These matters have been considered in the assessment of this application.

**DEVELOPMENT APPLICATION: 10.015.237.1  
244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

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**13.0 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.**

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts upon the locality.

**14.0 The suitability of the site for the development**

These matters have been considered as part of the assessment of the development application. There are no natural hazards or other site constraints that are likely to have a significant adverse impact upon the proposed development. The proposed development is considered suitable in the context of the locality.

**15.0 Any submissions made in accordance with this Act or the regulations**

The proposal was notified to all adjoining and nearby affected property owners and occupants, from 26 November 2015 to 18 December 2015.

15.1 Summary of submissions

No submissions were received during the notification of the development application.

**16.0 The public interest**

Matters of the public interest have been taken into consideration in the assessment of the application. The revised easements and amended car parking deed will ensure that the public maintains access to the facility and public car parking areas.

**17.0 Referrals**

17.1 Internal

The proposal to consolidate existing allotments and create a stratum subdivision does not require comments from internal bodies.

17.2 External

The proposal to consolidate existing allotments and create a stratum subdivision does not require comments from external bodies.

**18.0 Other Relevant Matters**

Council's solicitor has been involved in numerous meetings with the applicant's representatives and Council officers over the past few months to review the information which has been provided and offer advice on amendments and changes to the easements relating to the subdivision plan and the car parking deed. He has indicated that the documents and plans are generally acceptable and reflect current access arrangements where no changes are required and, in relation to the revised car parking arrangements

**DEVELOPMENT APPLICATION: 10.015.237.1  
244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

---

the proposed transfer of rights across to the new Council regulated public car park are satisfactory.

**19.0 Building Code of Australia (BCA)**

Construction Certificate is not required to be lodged with the stratum subdivision application. All BCA matters were considered during the consideration of the application determined by JRPP.

**20.0 Financial Implications**

Nil.

**21.0 Conclusion**

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

The proposal is acceptable and is recommended for conditional approval.

**ATTACHMENTS**

|                     |  |          |
|---------------------|--|----------|
| <b>Attachment 1</b> | Draft plans, paking layout & Stage 2 stratum plan - Attachment 1a - 1e                 | 30 Pages |
| <b>Attachment 2</b> | Locality Map   | 1 Page   |
| <b>Attachment 3</b> | Council solicitors comments - Attachments 3a - 3c                                      | 19 Pages |
| <b>Attachment 4</b> | Brief description of easements   | 2 Pages  |
| <b>Attachment 5</b> | Summary of terms of easements  | 3 Pages  |
| <b>Attachment 6</b> | Stage 1 & Stage 2 of Section 88B Instrument & Stage 2 Admin Sheet - Attachment 6a - 6c | 25 Pages |
| <b>Attachment 7</b> | Revised Ashfield Mall Parking Deed   | 20 Pages |
| <b>Attachment 8</b> | Deed concerning Public Car Parking & Council Car Parking at Ashfield Mall              | 26 Pages |
| <b>Attachment 9</b> | Conditions   | 5 Pages  |

**DEVELOPMENT APPLICATION: 10.015.237.1  
244, 252, 254, 256 & 260A LIVERPOOL ROAD ASHFIELD**

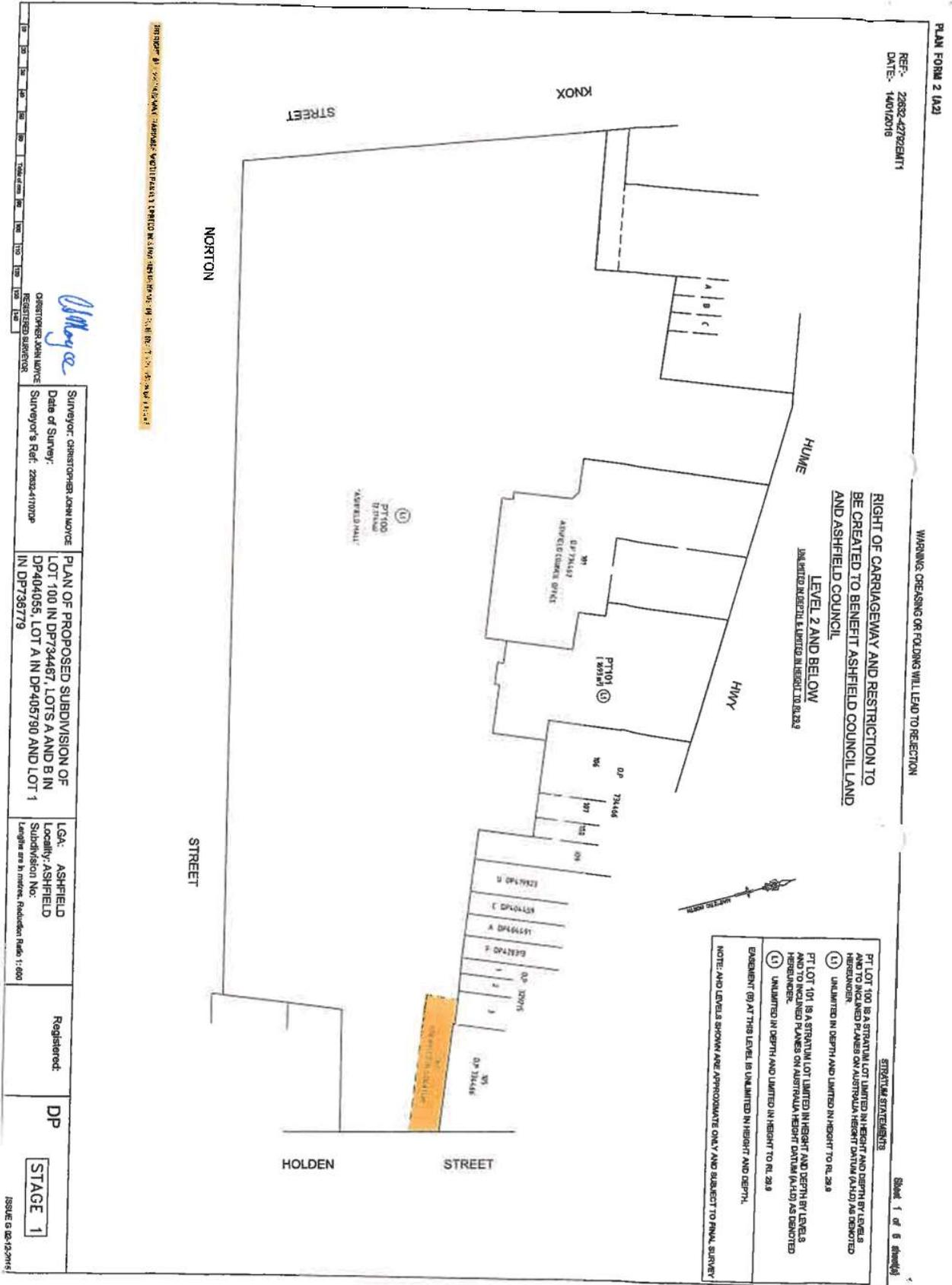
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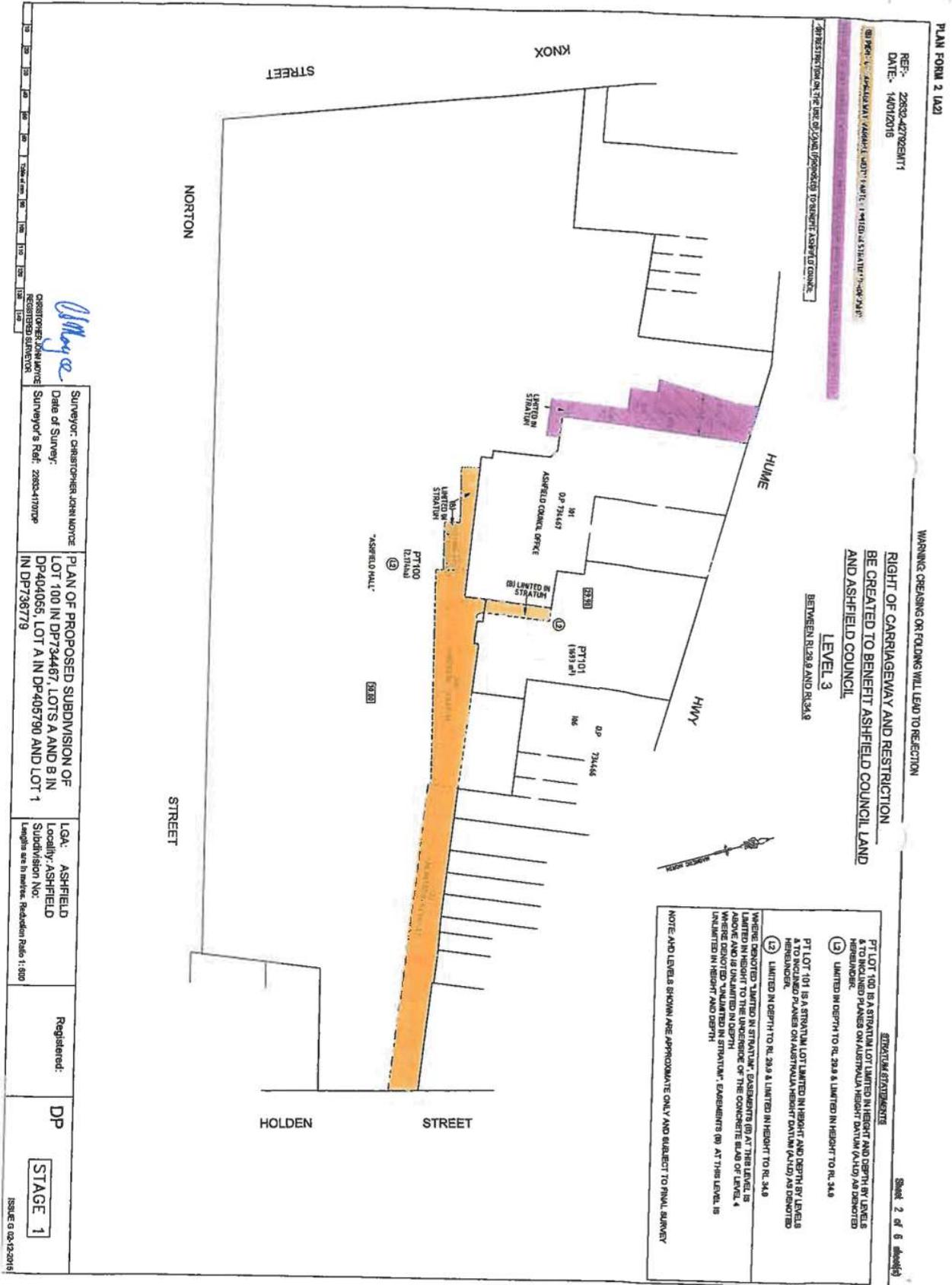
**RECOMMENDATION**

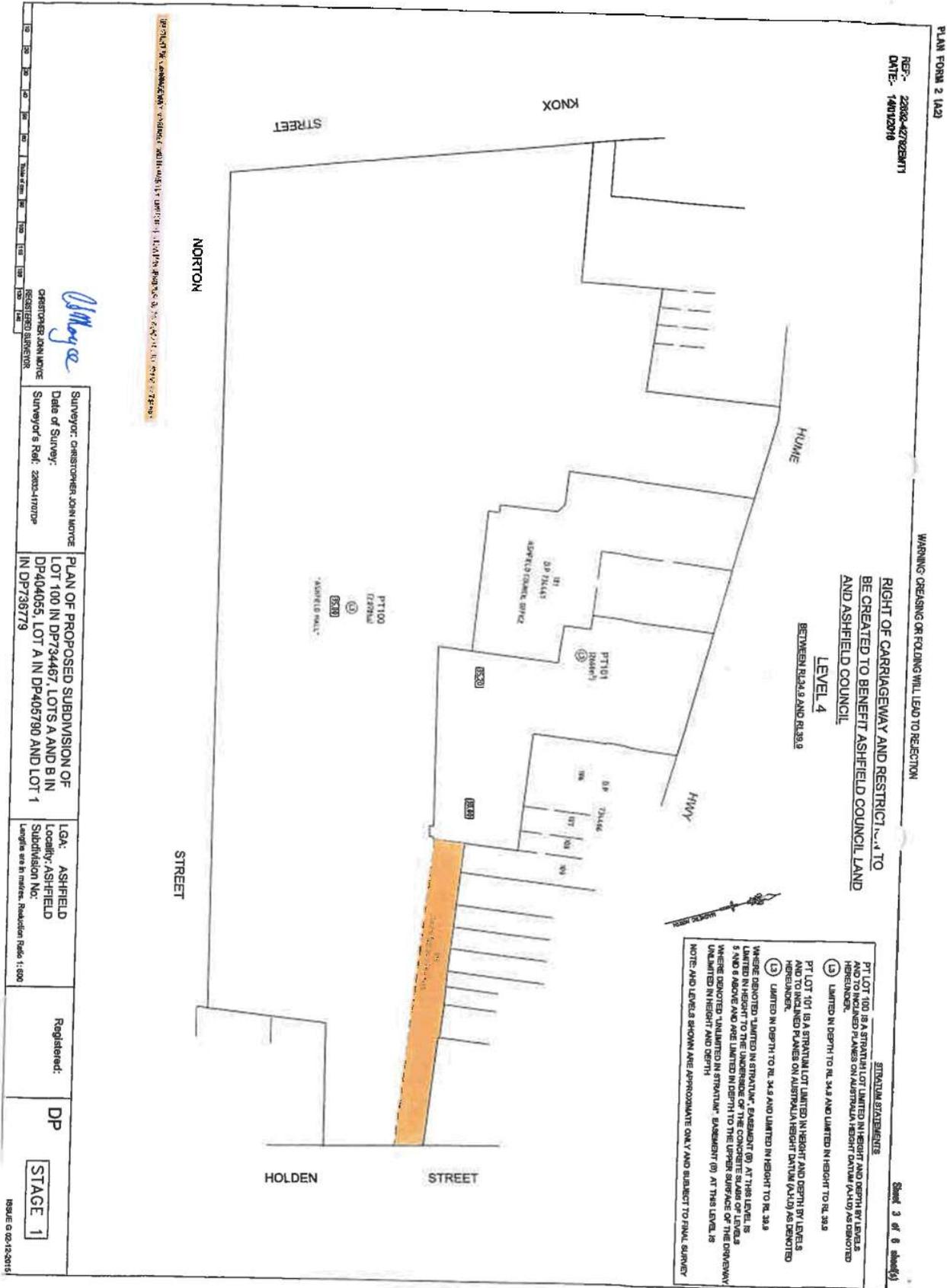
- A That Council as the consent authority pursuant to Clause 80(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) approve Development Application No. 10.2015.237.1 to:-**
- (i) Consolidate Lot 1 DP 736779, Lot 100 DP 734467, Lot A DP 405790, Lot A & B DP 404055 into one (1) allotment.**
  - (ii) Create two (2) new Stratum lots to be occupied by the components of the approved development (10.2013.114.1) to create:-**
    - Lot 100 – Commercial**
    - Lot 101 – Residential.**
  - (iii) Create new easements and release certain existing easements;**
  - (iv) Amend the existing Ashfield Mall car parking deed.**
- On Lot 1 DP 736779, Lot 100 DP 734467, Lot A DP 405790, Lot A & B DP 404055, known as 260A Liverpool Road Ashfield, 244 Liverpool Road Ashfield, 252 Liverpool Road Ashfield, 254 Liverpool Road Ashfield and 256 Liverpool Road Ashfield subject to the following conditions: -**
- B Authority be given to the General Manager to sign and execute all relevant documents to put the development consent into effect.**

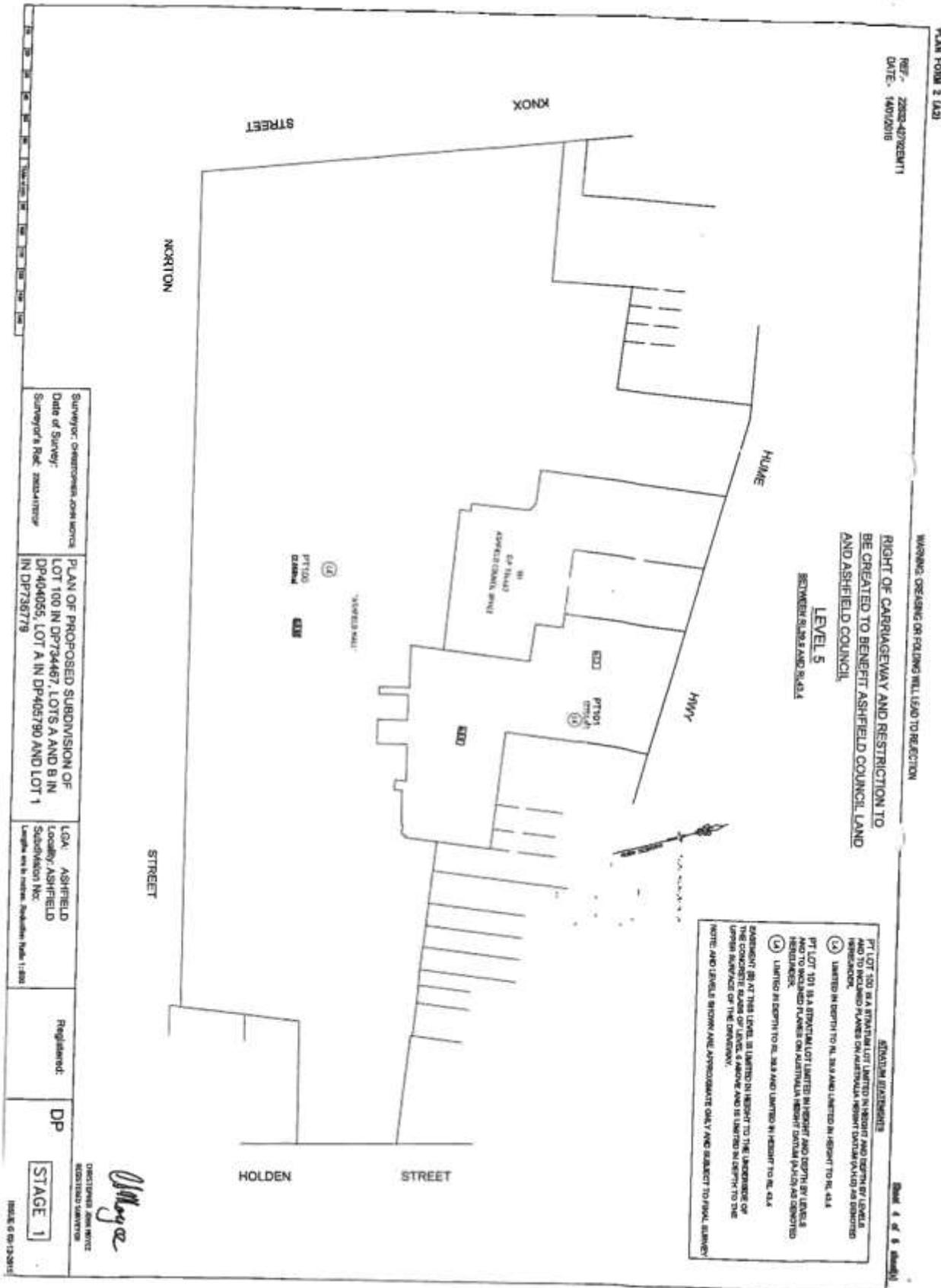
PHIL SARIN  
Director Planning and Environment

1A

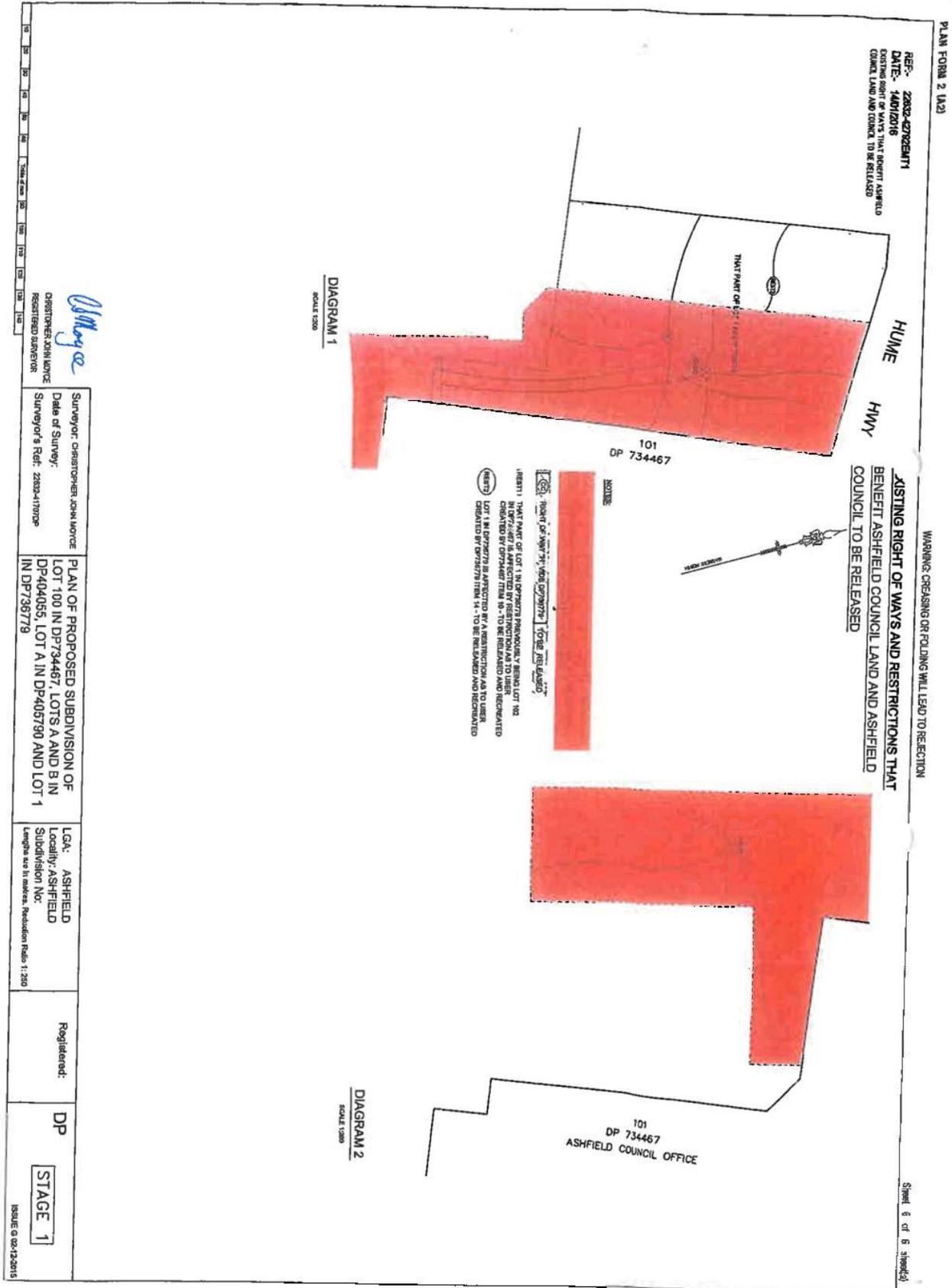












PLAN FORM 2 (A2)

Sheet 1 of 10 sheets

LOT DESCRIPTIONS

|         |                          |                                 |
|---------|--------------------------|---------------------------------|
| LOT 100 | RETAIL & SHOPPING CENTRE | TOTAL AREA 10,507 ha            |
| LOT 101 | RESIDENTIAL              | TOTAL AREA 12,109m <sup>2</sup> |

PLANS HAVE BEEN PREPARED FROM ARCHITECTURAL DRAWINGS BY JPR ARCHITECTS PTY LTD, PROJECT NO: 13259 DRAWING NO: DA 1001, ROAD TO DARGO RD/D, DATED 18-07-14

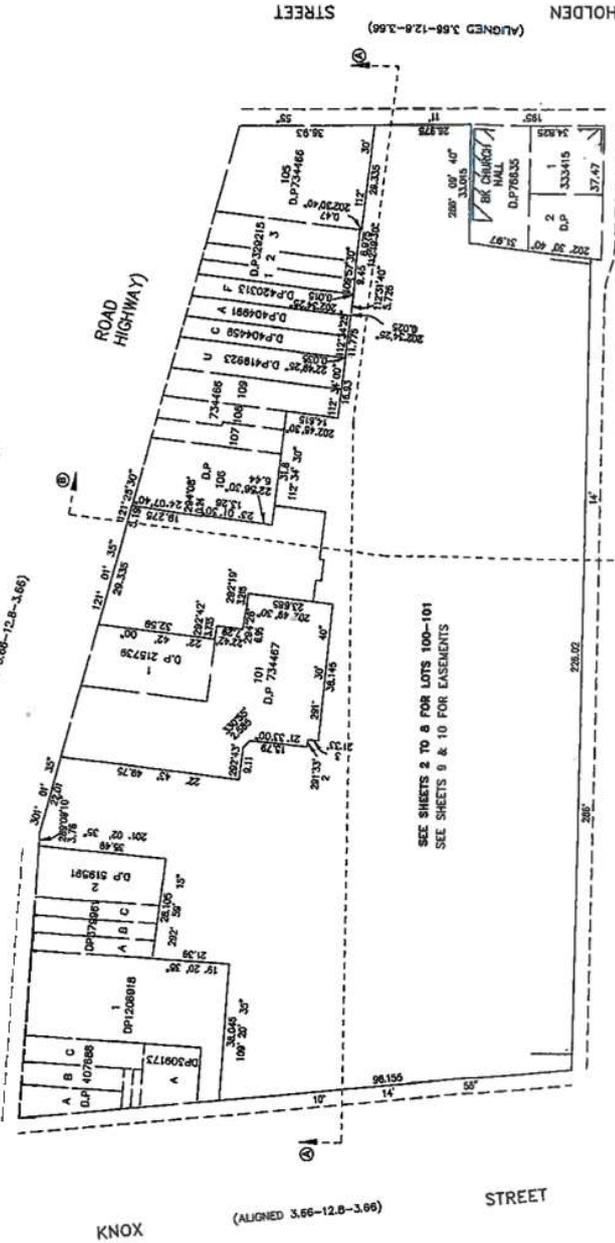
NOTES

1. THE FORMER BOUNDARIES HAVE NOT BEEN MARKED
2. ALL AREAS AND DIMENSIONS HAVE BEEN CHECKED FOR CONFORMANCE WITH THE REQUIREMENTS OF THE ACT AND REGULATIONS AND ARE SUBJECT TO THE ACT AND REGULATIONS
3. ADDITIONAL EASEMENTS WILL BE REQUIRED TO BE CREATED FOR THE ROAD TO DARGO RD/D AND ARE SUBJECT TO FINAL DETAILED DESIGN.
4. THE PROPOSED BOUNDARIES AND PROPOSED EASEMENTS SHOWN HEREON ARE SUBJECT TO THE PROVISION OF FINAL DESIGN PLANS AND MAY CHANGE IN ACCORDANCE WITH THOSE PLANS.

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

LIVERPOOL  
(HUME)

(ALIGNED 3.66-12.8-3.66)



Surveyor: CHRISTOPHER JOHN JOYCE  
Date of Survey: 22/08/17  
Surveyor's Ref: 2208-17702P

PLAN OF PROPOSED SUBDIVISION OF  
LOT 100 IN DP734467, LOTS A AND B IN  
DP404055, LOT A IN DP405790 AND LOT 1  
IN DP736779

LGA: ASHFIELD  
Locality: ASHFIELD  
Subdivision No:  
Lengths are in metres. Reduction Ratio: 1: 800

Registered:  
DP

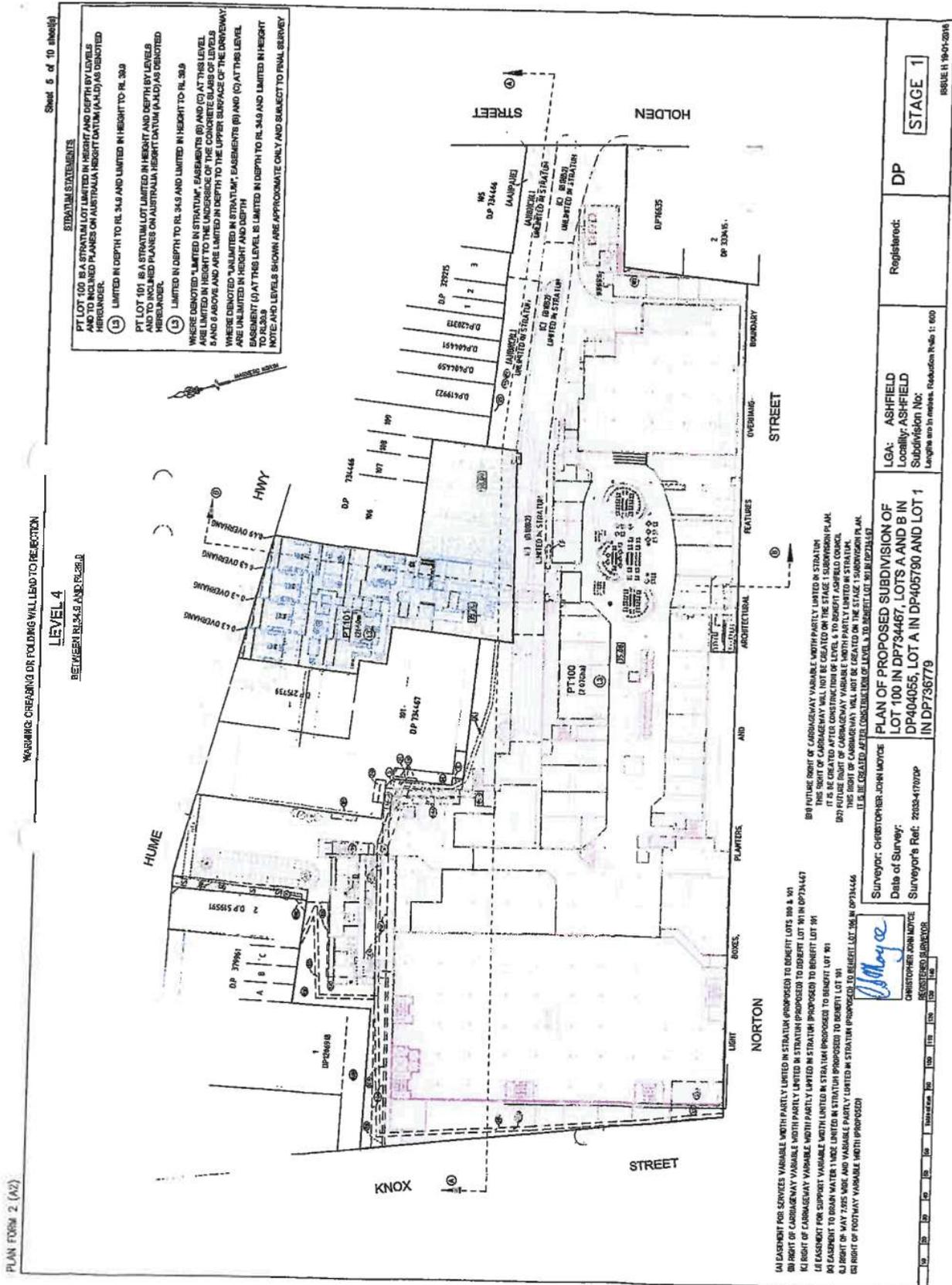
STAGE 1

ISSUE 11-01-2016

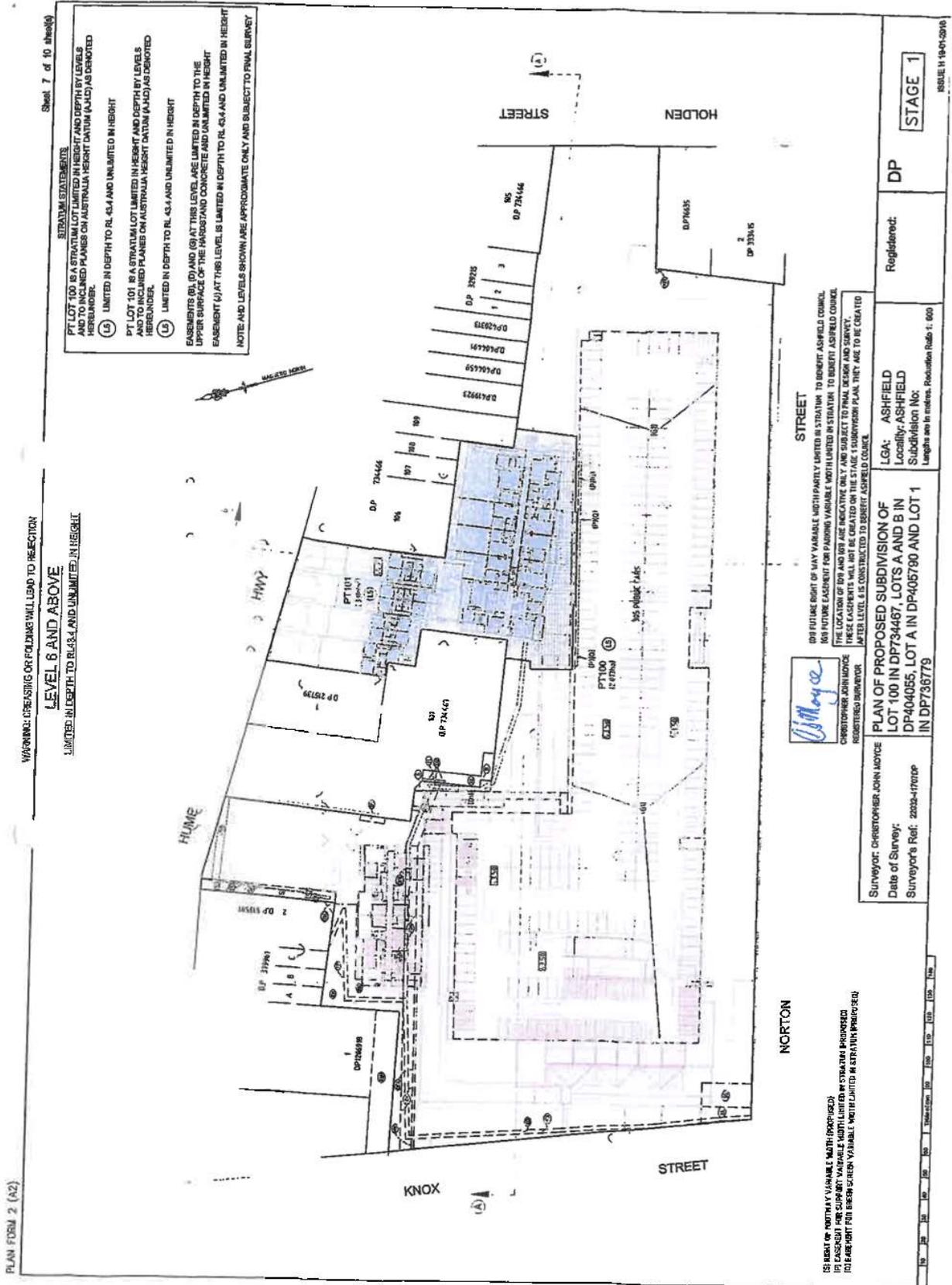












Sheet 7 of 10 sheets

**STRATUM STATEMENTS**

PT LOT 100 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS AND TO INCLINED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(15) LIMITED IN DEPTH TO RL 43.4 AND UNLIMITED IN HEIGHT

PT LOT 101 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS AND TO INCLINED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(16) LIMITED IN DEPTH TO RL 43.4 AND UNLIMITED IN HEIGHT

EASEMENTS (D), (D) AND (G) AT THIS LEVEL ARE LIMITED IN DEPTH TO THE UPPER SURFACE OF THE HANDSTAND CONCRETE AND UNLIMITED IN HEIGHT

EASEMENT (J) AT THIS LEVEL IS LIMITED IN DEPTH TO RL 43.4 AND UNLIMITED IN HEIGHT

NOTE: AND LEVELS SHOWN ARE APPROXIMATE ONLY AND SUBJECT TO FINAL SURVEY

WARNING: CHECKING OR FOLDING WILL LEAD TO REFLECTION

**LEVEL 6 AND ABOVE**

LIMITED IN DEPTH TO RL 43.4 AND UNLIMITED IN HEIGHT

ON FUTURE RIGHT OF WAY VARIABLE WIDTH PARTIALLY LIMITED IN STRATUM TO BENEFIT ASHFIELD COUNCIL

ON FUTURE EASEMENT FOR PARKING VARIABLE WIDTH LIMITED IN STRATUM TO BENEFIT ASHFIELD COUNCIL

THE LOCATION OF B10 AND B10 ARE INDICATED ONLY AND ARE SUBJECT TO FINAL DESIGN AND SURVEY.

THESE EASEMENTS WILL NOT BE CREATED ON THE STAGE 1 STRATUM PLAN. THEY ARE TO BE CREATED AT THE LEVEL 6 IS CONSTRUCTED TO BENEFIT ASHFIELD COUNCIL.

*Christophor*

CHRISTOPHER JOHN MOYCE  
REGISTERED SURVEYOR

Surveyor: CHRISTOPHER JOHN MOYCE  
Date of Survey: 2023-1707SP  
Surveyor's Ref: 2023-1707SP

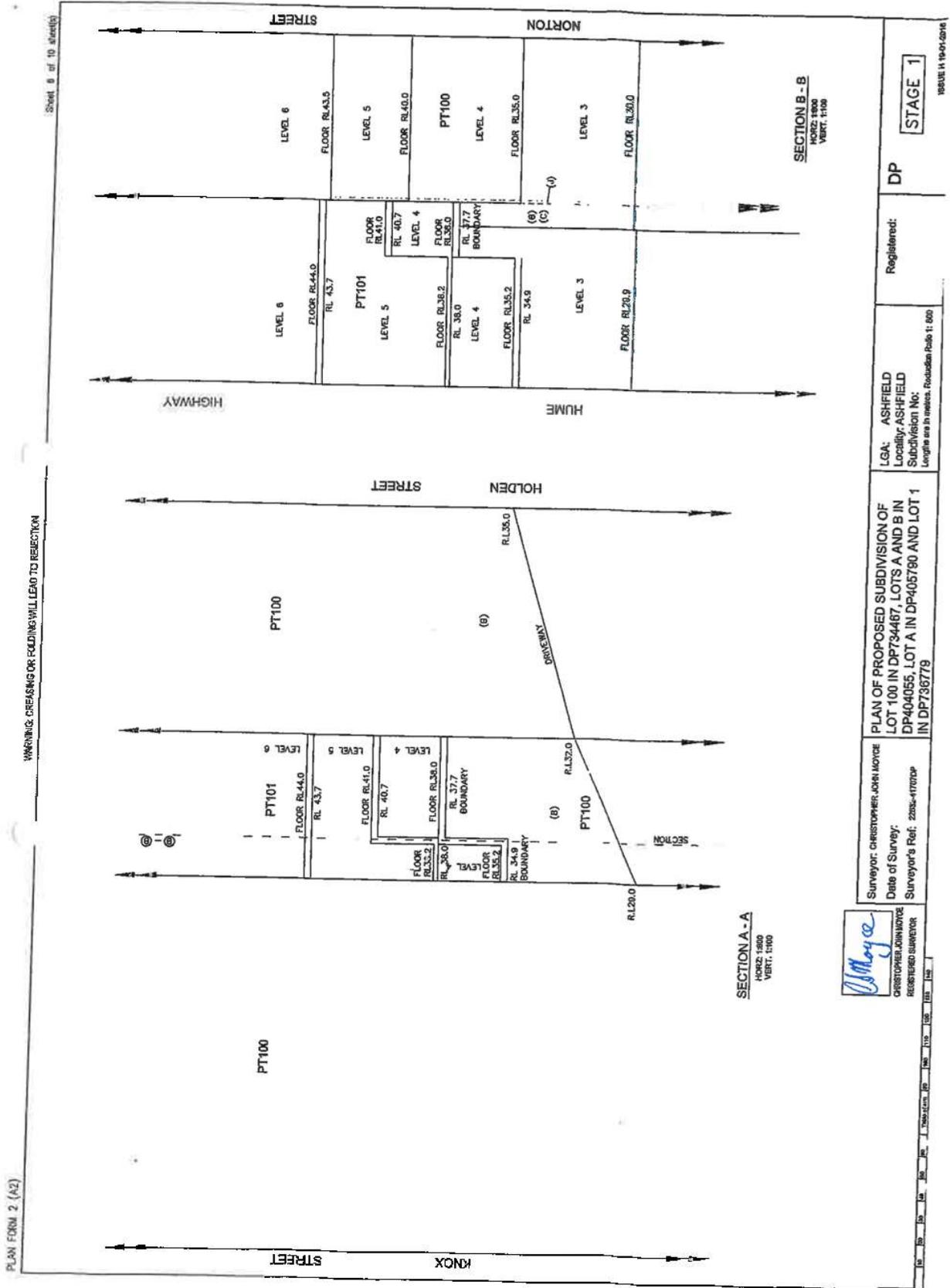
**PLAN OF PROPOSED SUBDIVISION OF LOT 100 IN DP734487, LOTS A AND B IN DP404055, LOT A IN DP405790 AND LOT 1 IN DP736779**

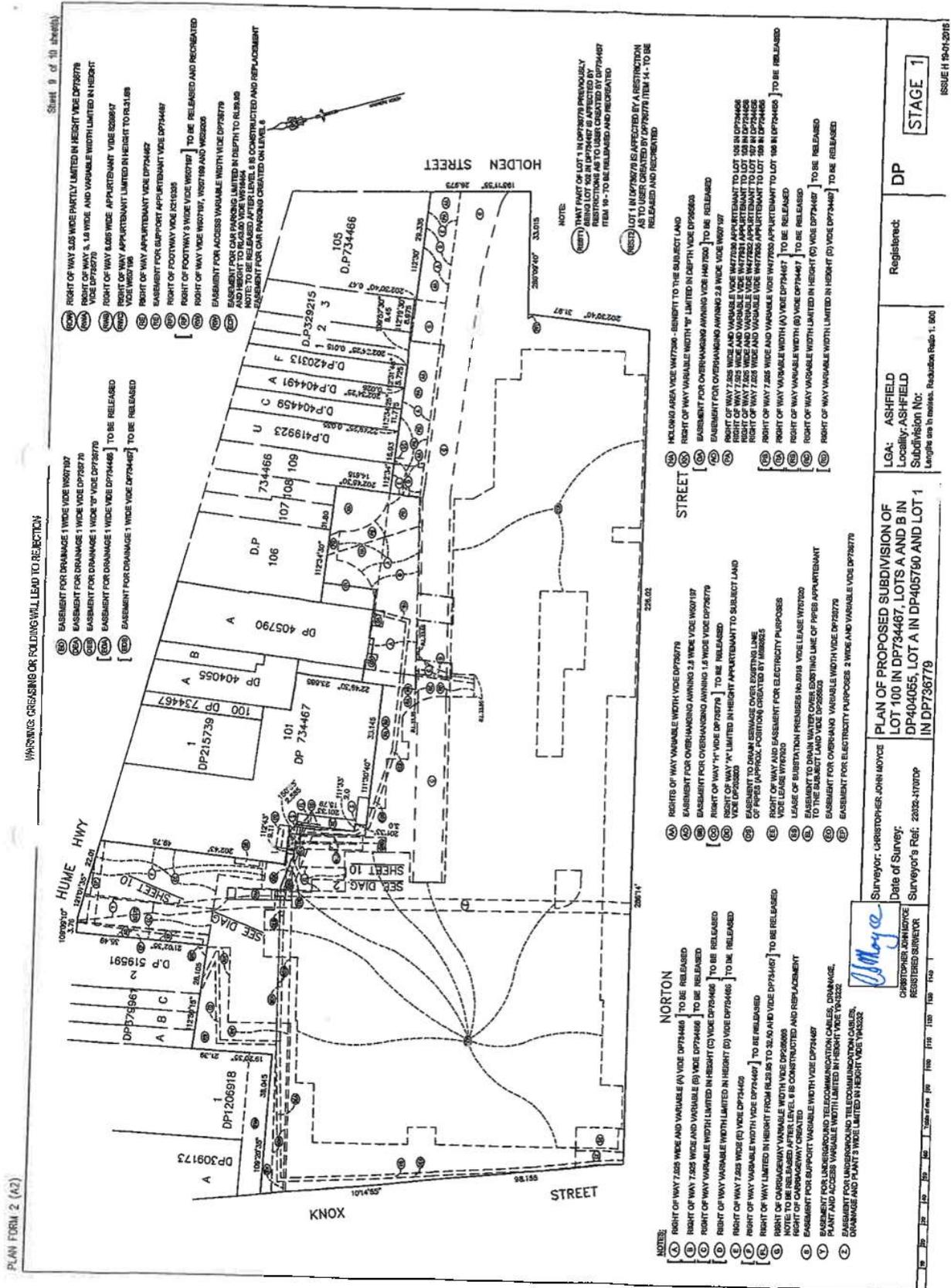
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Locality: ASHFIELD  
Subdivision No:  
Lengths are in metres. Reduction Ratio: 1: 600

**STAGE 1**

Registered: DP

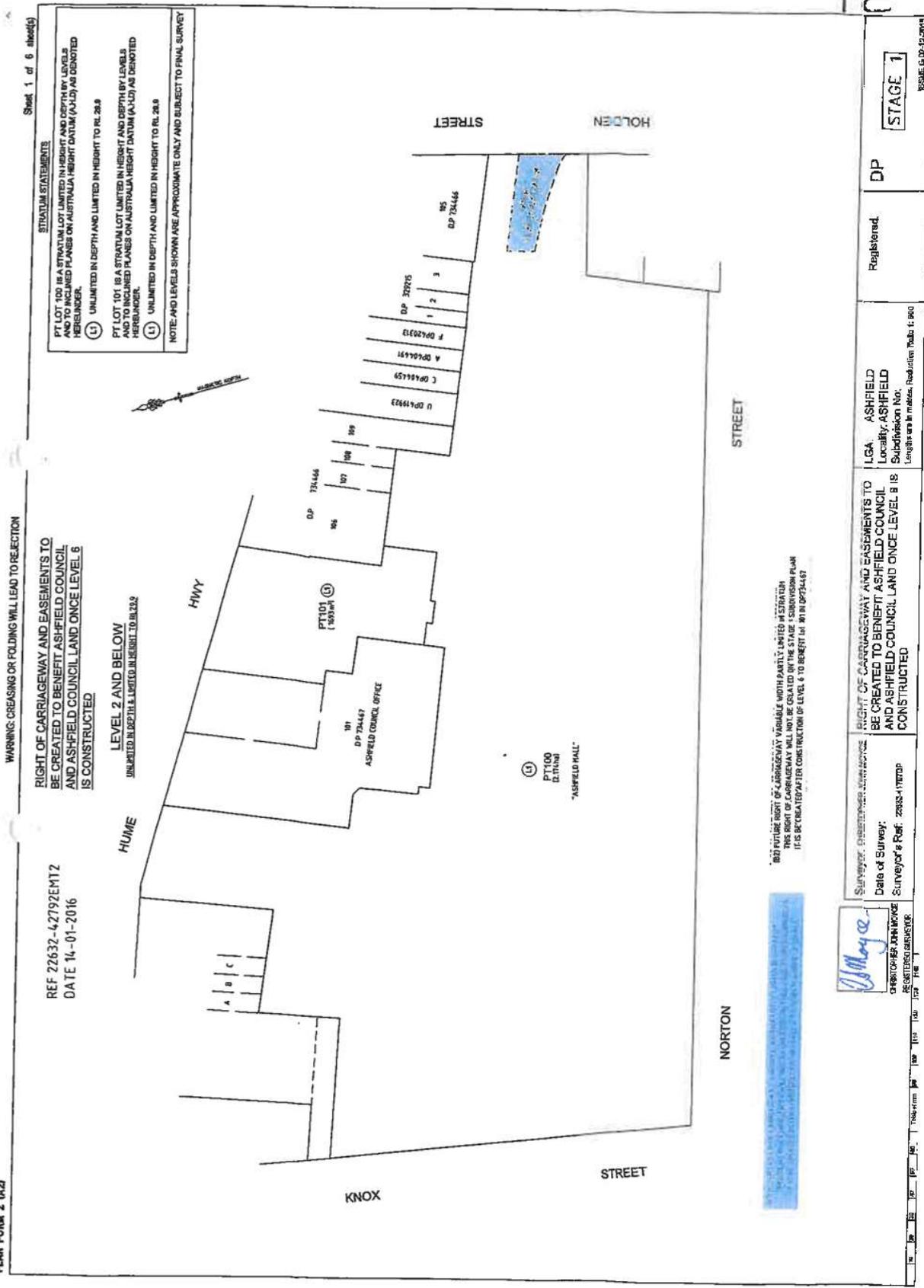
ISSUE 14 18-07-2016







PLAN FORM 2 (A2)



Sheet 1 of 6 sheet(s)

**STRATUM STATEMENTS**

PT LOT 102 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS AND TO INCLINED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(1) UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO RL 28.9

PT LOT 101 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS AND TO INCLINED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(1) UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO RL 28.9

NOTE: AHD LEVELS SHOWN ARE APPROXIMATE ONLY AND SUBJECT TO FINAL SURVEY

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

RIGHT OF CARRIAGEWAY AND EASEMENTS TO BE CREATED TO BENEFIT ASHFIELD COUNCIL AND ASHFIELD COUNCIL LAND ONCE LEVEL 6 IS CONSTRUCTED

LEVEL 2 AND BELOW UNLIMITED IN DEPTH & LIMITED IN HEIGHT TO RL 28.9

REF 22632-42792EM12  
DATE 14-01-2016

RIGHT OF CARRIAGEWAY AND EASEMENTS TO BE CREATED TO BENEFIT ASHFIELD COUNCIL AND ASHFIELD COUNCIL LAND ONCE LEVEL 6 IS CONSTRUCTED

*Allyce*  
CHRISTOPHER JOHN MOYCE  
REGISTERED SURVEYOR

SURVEYOR: CHRISTOPHER JOHN MOYCE  
Date of Survey: 28/03/2016  
Surveyor's Ref: 28033-17000

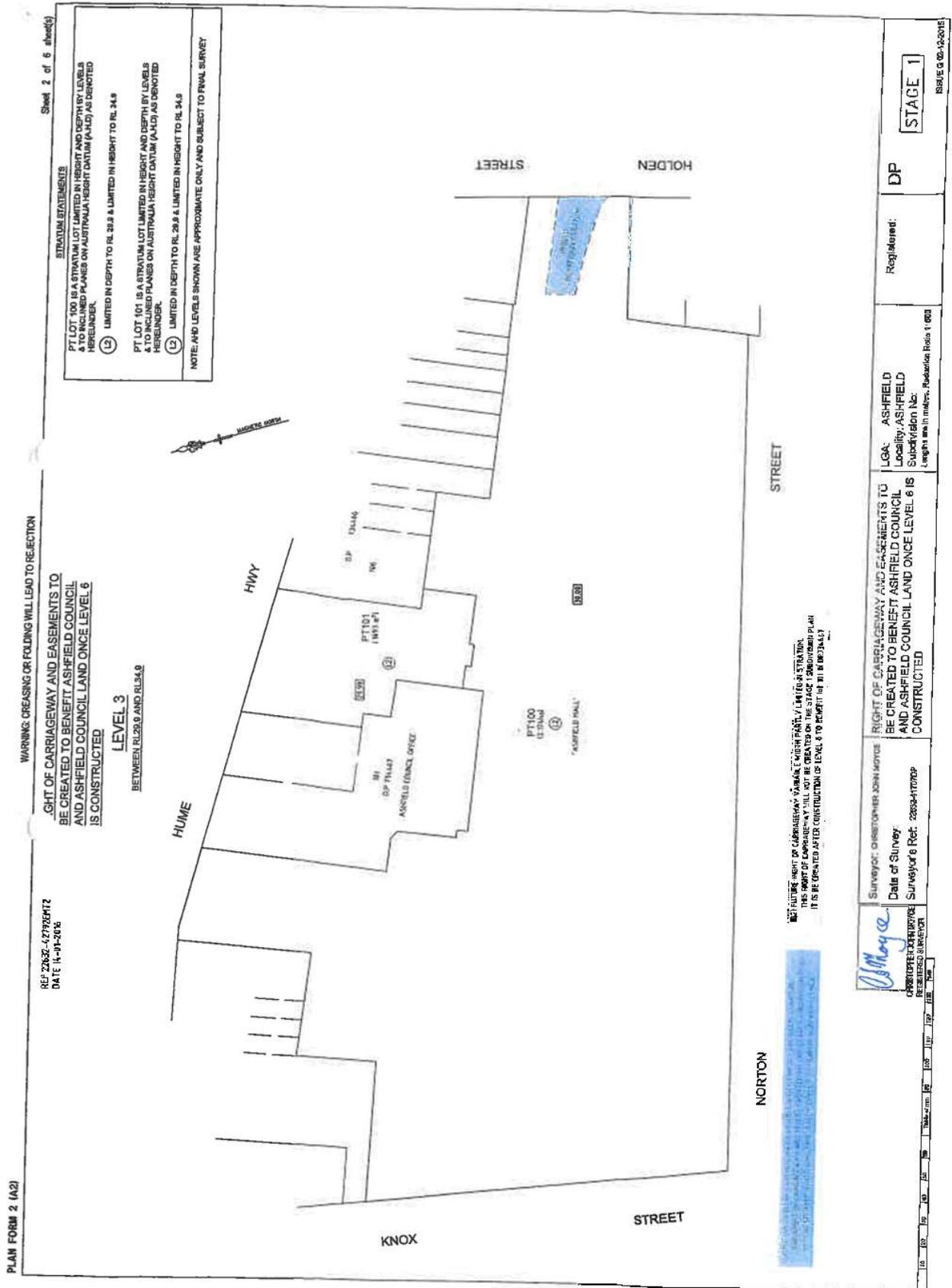
RIGHT OF CARRIAGEWAY AND EASEMENTS TO BE CREATED TO BENEFIT ASHFIELD COUNCIL AND ASHFIELD COUNCIL LAND ONCE LEVEL 6 IS CONSTRUCTED

LG.A. ASHFIELD  
Locality: ASHFIELD  
Subdivision No:  
Lengths are in metres, Reduction Ratio: 1:500

Registered DP

STAGE 1

ISSUE 6 02-12-2014



Sheet 2 of 6 sheet(s)

**STAMINA STATEMENTS**

PT LOT 100 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS 4 & TO INCLUDED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(2) LIMITED IN DEPTH TO RL 29.9 & LIMITED IN HEIGHT TO RL 34.9

PT LOT 101 IS A STRATUM LOT LIMITED IN HEIGHT AND DEPTH BY LEVELS 4 & TO INCLUDED PLANES ON AUSTRALIA HEIGHT DATUM (AHD) AS DENOTED HEREUNDER.

(2) LIMITED IN DEPTH TO RL 29.9 & LIMITED IN HEIGHT TO RL 34.9

NOTE: AHD LEVELS SHOWN ARE APPROXIMATE ONLY AND SUBJECT TO FINAL SURVEY

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

RIGHT OF CARRIAGEWAY AND EASEMENTS TO BE CREATED TO BENEFIT ASHFIELD COUNCIL AND ASHFIELD COUNCIL LAND ONCE LEVEL 6 IS CONSTRUCTED

**LEVEL 3**

BETWEEN RL29.9 AND RL34.9

REF: 22632-427926172  
DATE: 14-04-2016

NOT FUTURE HEIGHT OF CARRIAGEWAY TO BE CONSIDERED IN THIS REPORT OF EASEMENTS WILL NOT BE TAKEN INTO ACCOUNT. THIS STAGE 2 STRATUM PLAN IS TO BE OPERATED AFTER CONSTRUCTION OF LEVEL 6 TO BENEFIT THE DEVELOPMENT.

Surveyor: CHRISTOPHER JOHN MOYCE  
Date of Survey: 14/04/2016  
Survey of 6 Ref: 22632-427926172

CHRISTOPHER APPERLY  
REGISTERED SURVEYOR

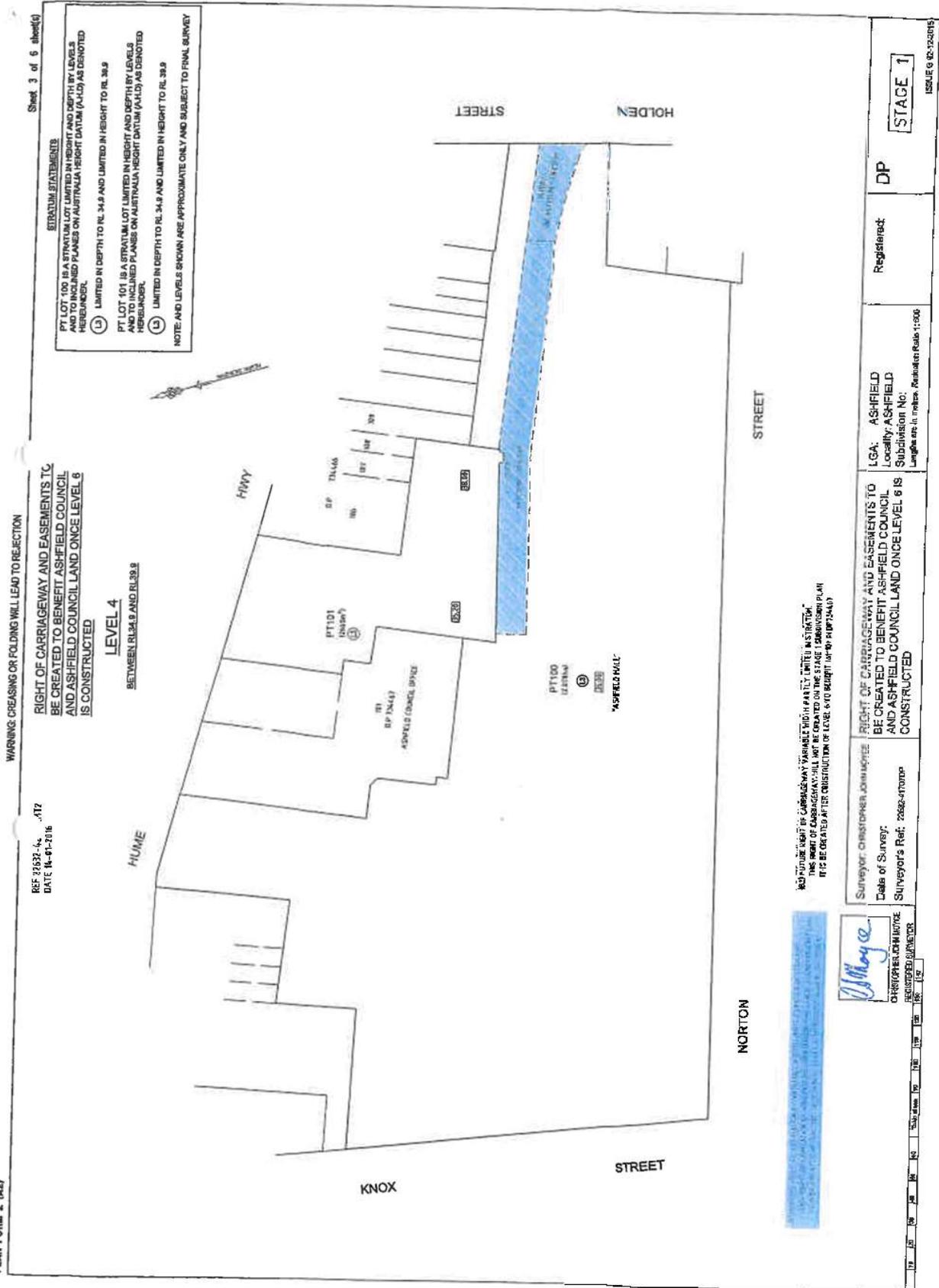
RIGHT OF CARRIAGEWAY AND EASEMENTS TO BE CREATED TO BENEFIT ASHFIELD COUNCIL AND ASHFIELD COUNCIL LAND ONCE LEVEL 6 IS CONSTRUCTED

LGA: ASHFIELD  
Locality: ASHFIELD  
Subdivision No:  
Lengths are in metres. Rasterline: 1:500

DP  
Replaces:  
**STAGE 1**

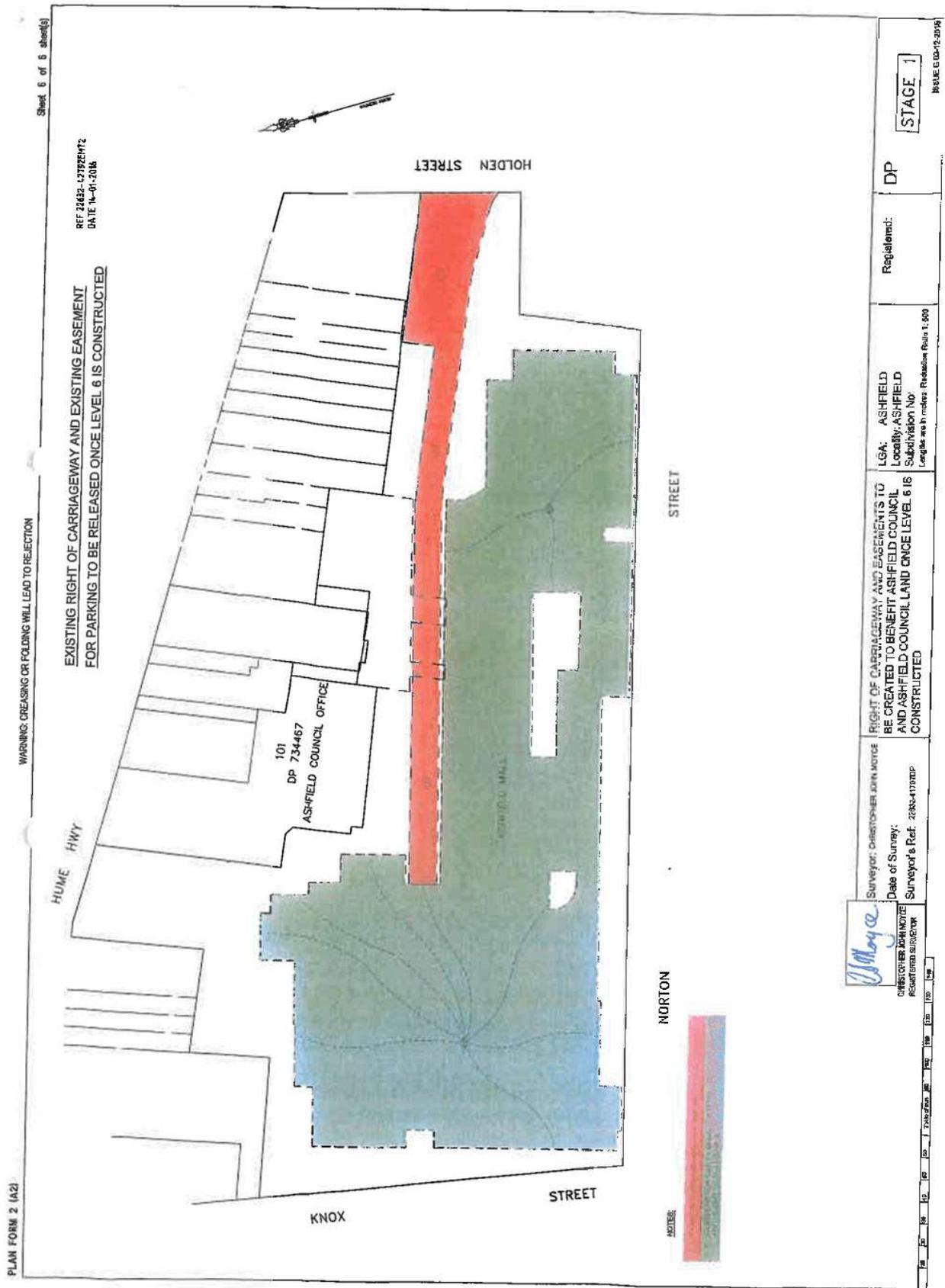
ISSUE 0 06/10/2016

PLAN FORM 2 (A2)













PLAN FORM 2 (A2)

WARNING: CREAMING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 6 sheets

LOCATION PLAN

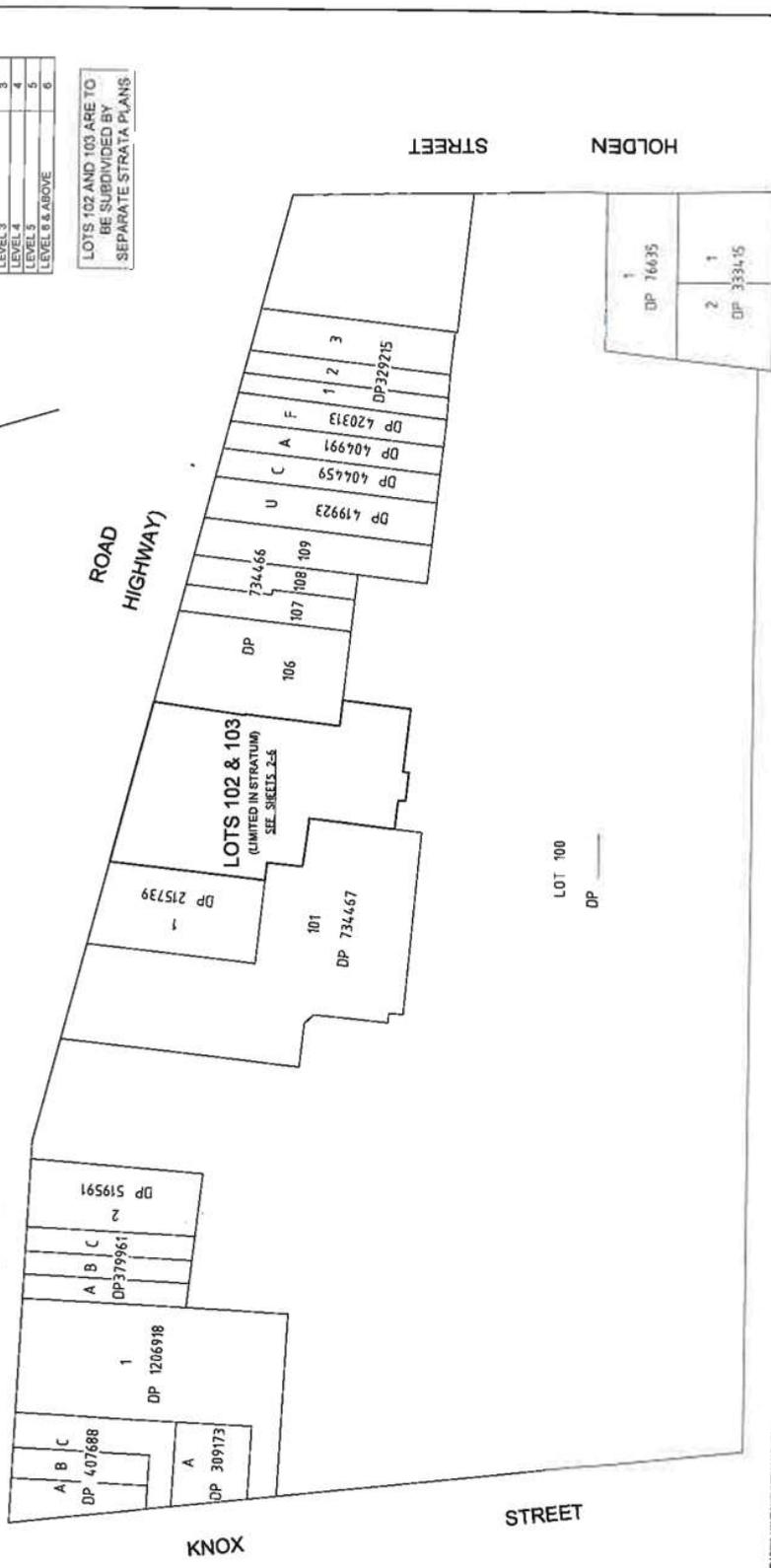
LOT 102 - RESIDENTIAL  
LOT 103 - RETAIL

| INDEX | CONTENTS        | SHEET |
|-------|-----------------|-------|
| 1     | LEVEL 2 & BELOW | 2     |
| 2     | LEVEL 3         | 3     |
| 3     | LEVEL 4         | 4     |
| 4     | LEVEL 5         | 5     |
| 5     | LEVEL 6 & ABOVE | 6     |

LOTS 102 AND 103 ARE TO BE SUBDIVIDED BY SEPARATE STRATA PLANS



LIVERPOOL (HUME)



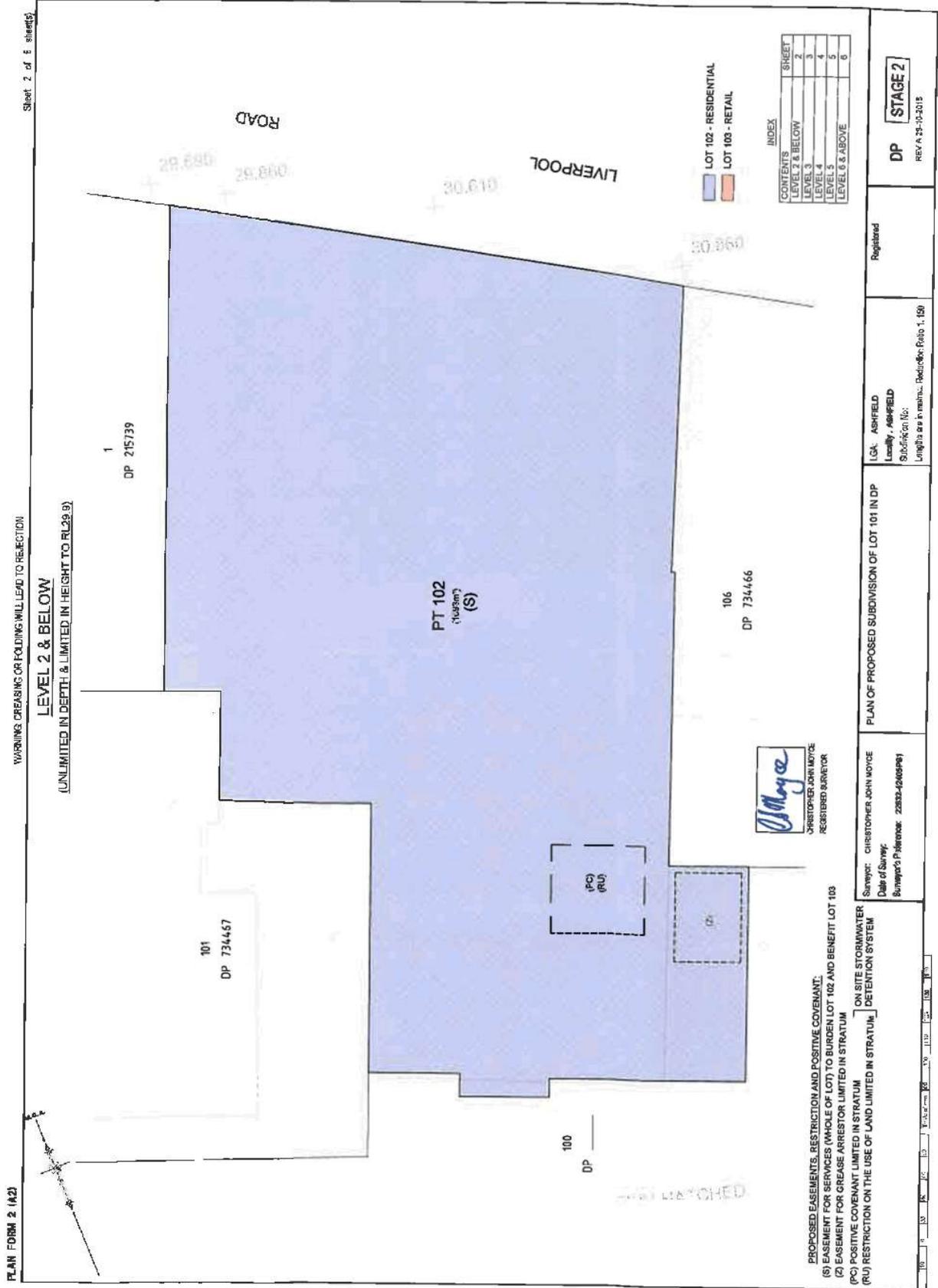
NOTES  
1. THE BOUNDARIES HAVE NOT BEEN MARKED  
2. THE PROPOSED BOUNDARIES HAVE BEEN COMPILED FROM PLANS OBTAINED FROM LAND AND PROVISIONS HAVE BEEN COMPILED FROM PLANS OBTAINED FROM LAND AND PROVISIONS ARE SUBJECT TO FINAL SURVEY  
3. THE PROPOSED BOUNDARIES AND PROVISIONS ARE SUBJECT TO APPROVAL OF FINAL DESIGN PLANS AND MAY CHANGE IN ACCORDANCE WITH THESE PLANS.

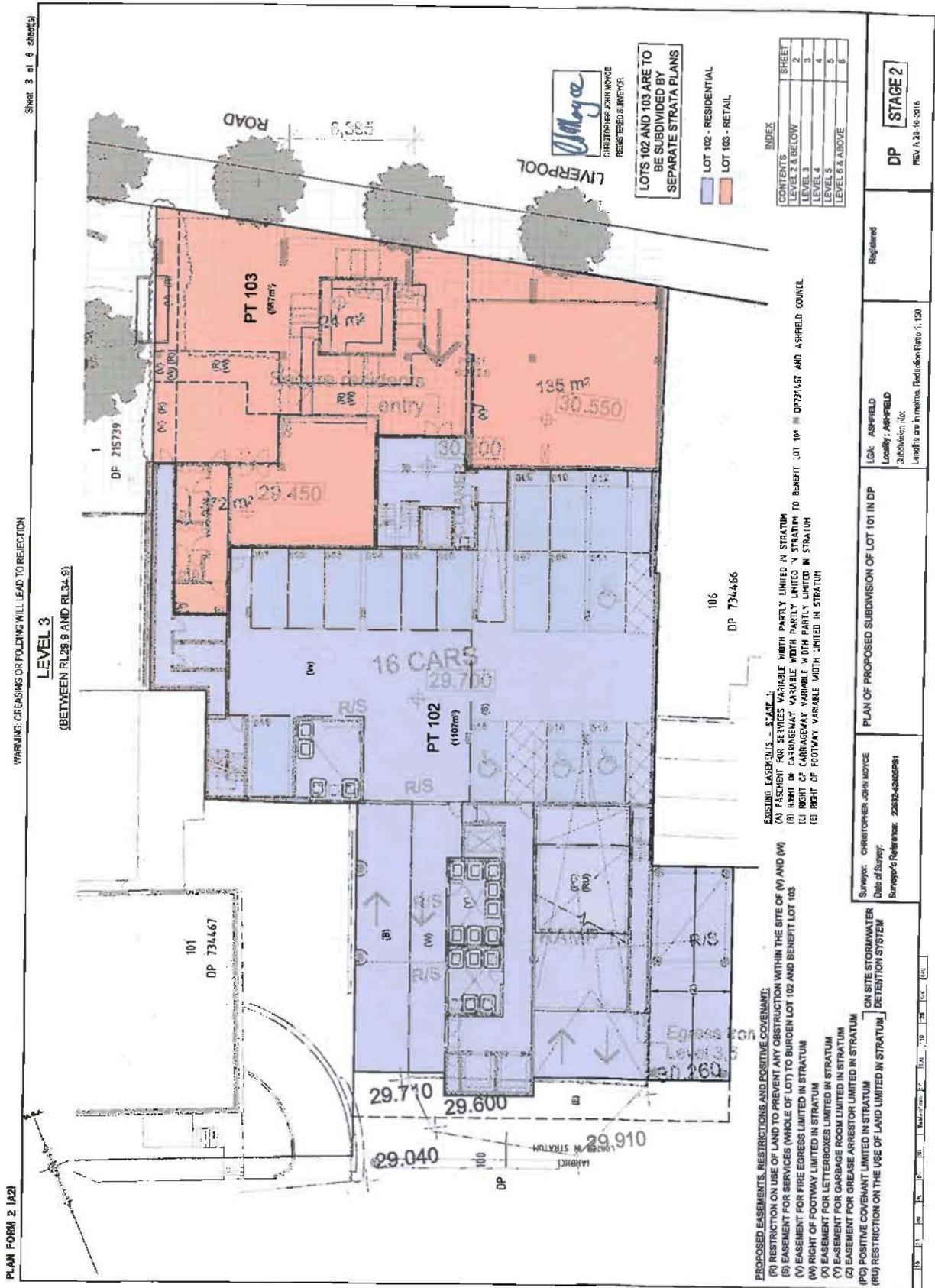
*Christophe John Moyce*  
CHRISTOPHER JOHN MOYCE  
REGISTERED SURVEYOR

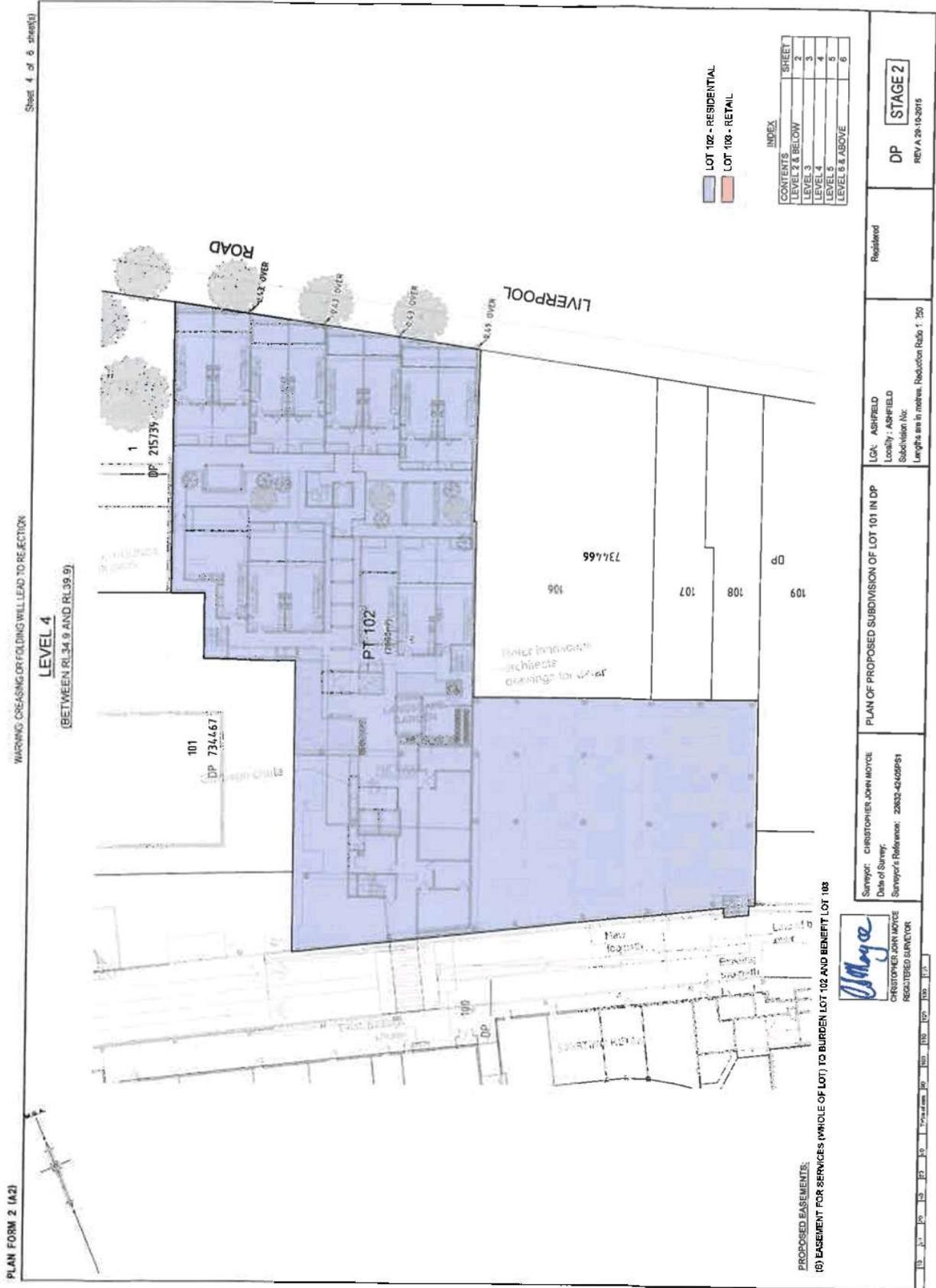
Surveyor: CHRISTOPHER JOHN MOYCE  
Date of Survey: 2012-04-09/9/11  
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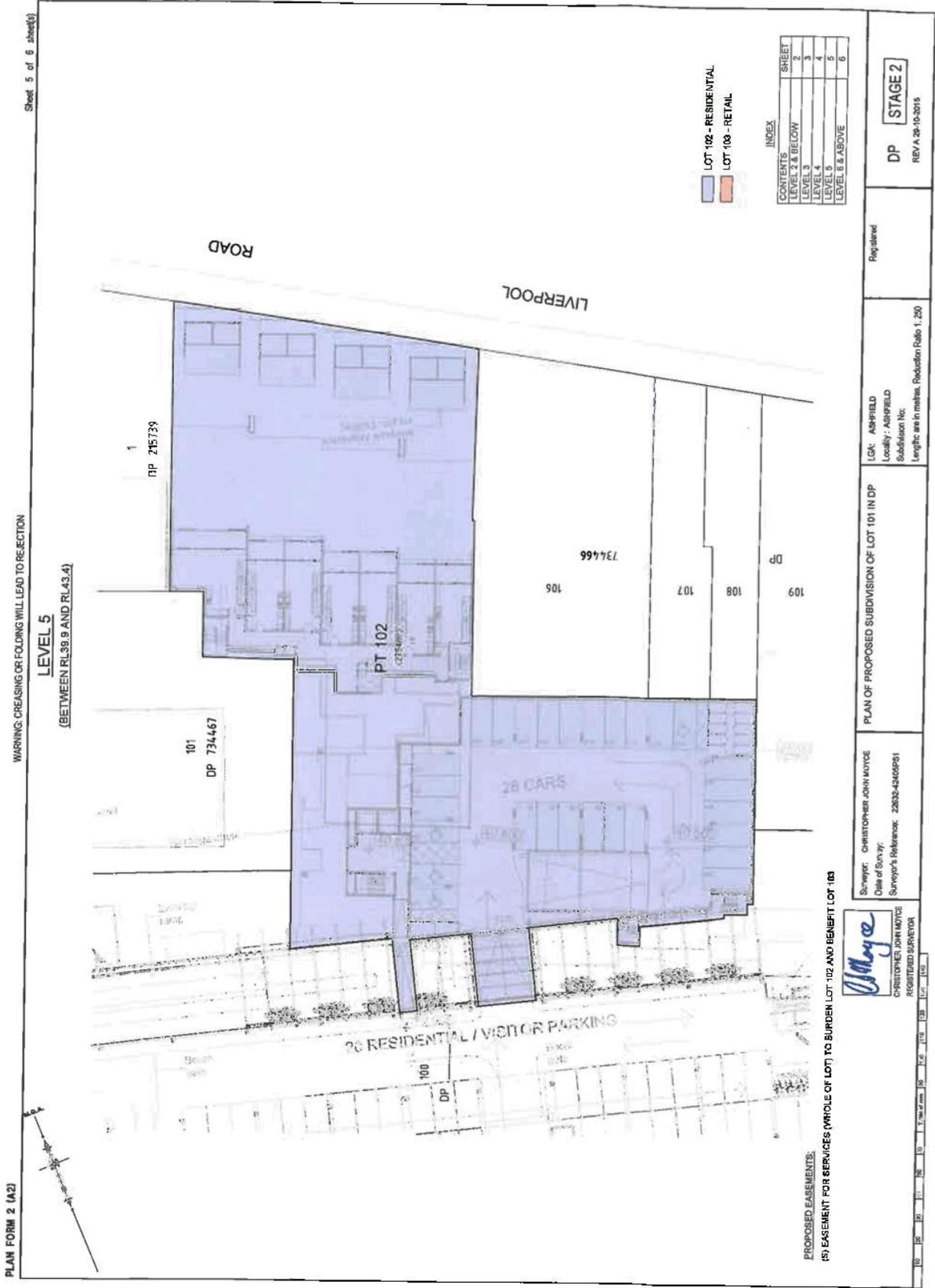
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Locality: ASHFIELD  
Suburb: Ashfield  
Map scale: 1:500  
Projection: GDA 1984  
Datum: GDA 1984

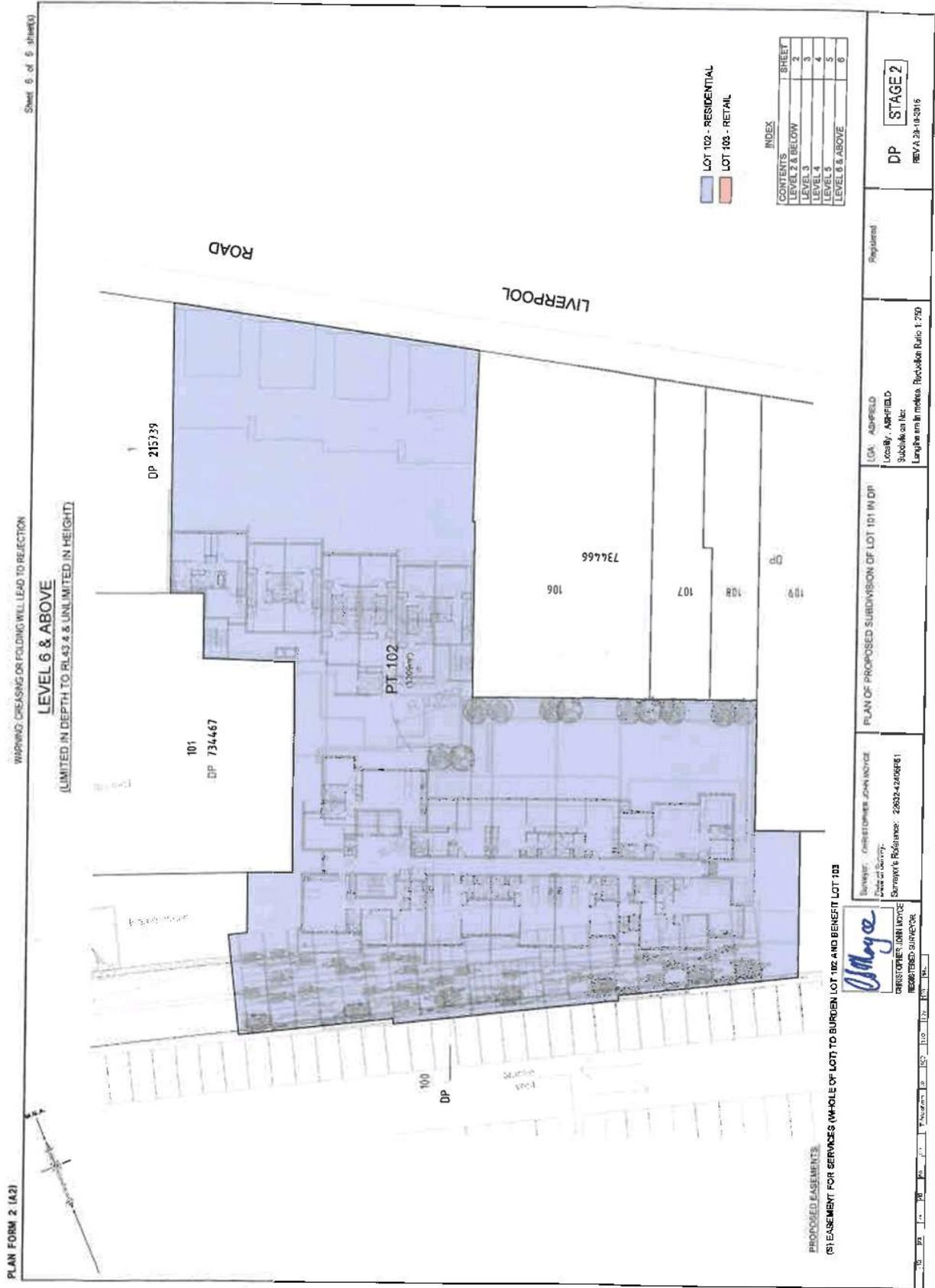
Registered  
PLAN OF PROPOSED SUBDIVISION OF LOT 101 IN DP  
DP STAGE 2  
REV A 25-10-2015

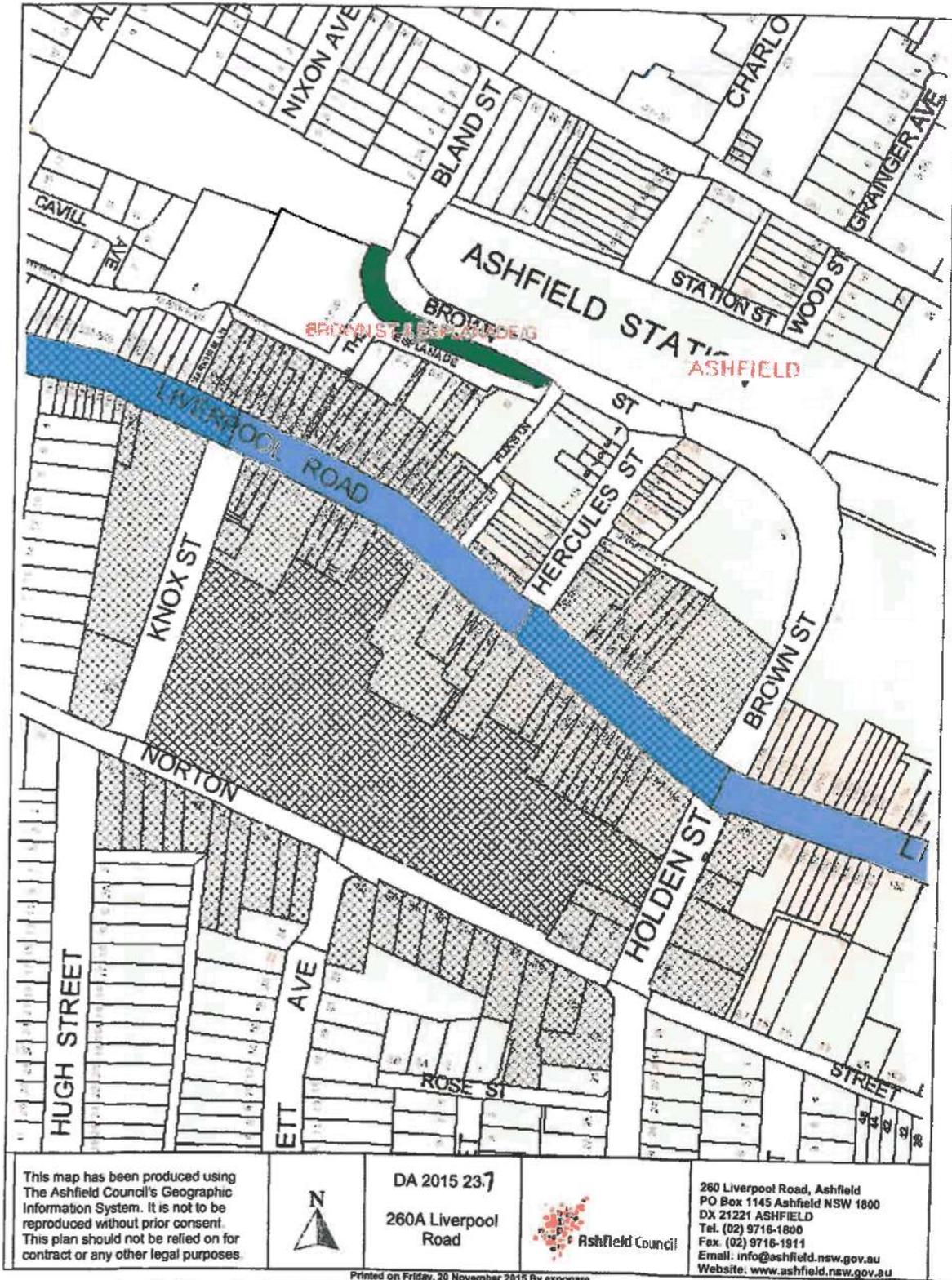












3a

**SUMMARY AND COMMENTS IN RESPECT OF COUNCIL'S INTEREST IN THE ASHFIELD MALL  
REDEVELOPMENT SITE AND THE DEVELOPER'S PROPOSAL IN RESPECT OF THOSE  
INTERESTS**

This document should be read in conjunction with: -

- 1 Summary of Council's registered interests in proposed development site prepared by us **Attachment 4** and Summary of Terms **Attachment 5**.
- 3 Draft Plan of Right of Carriageway and Restriction to be created to benefit Ashfield Council Land and Ashfield Council **Attachment 1a**.
- 4 Draft Plan of Subdivision **Attachment 1b**.
- 5 Draft Plan of Right of Carriageway and Easements to be created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed **Attachment 1c**.

**GENERAL COMMENT**

The Council, or the Council's land has the benefit of 18 easements over the Ashfield Mall site which are briefly described **Attachment 4**. A summary of the terms of each of those easements is appended at **Attachment 5**.

The developer proposes to consolidate a number of titles and re-subdivide them as shown in **Attachment 1b**. The sub-divided titles are to be burdened by the easements and restrictions shown in **Attachments 1a, 1b and 1c**.

**DEVELOPER'S PROPOSAL**

The numbers below refer to the numbers in the left hand column of **Attachment 4**.

**1 Right of Way 7.925 wide**

This is part of the right of way which leads behind the shops fronting Liverpool Road to the rear of Council's chambers.

The developer proposes that this right of way be released and replaced with a new right of carriageway giving vehicular access to Council's building. The right of carriageway is to be unlimited in height in parts and limited in heights (of varying levels) in other parts.

The replacement easement is shown on Sheets 1, 2 and 3 of **Attachment 1a** (coloured brown) as:-

- (B) right of carriageway variable width partly amended in stratum proposed to benefit Lot 101 in DP734467.

We have not been provided with a s.88B Instrument to accompany the plan on this occasion. However, we note that the description of the proposed easement in **Attachments 1a and in 1b** "right of carriageway".

The statutory definition of right of carriageway is "full and free right for every person who is in entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and re-pass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof."

It should be noted this easement is to benefit Councils land rather than the Council since it provides access via the rear of the properties fronting Liverpool Road to the rear of Lot 1 DP734467 which is the land owned by the Council. The major issue is the right of carriageway is not stated as benefitting the Council. That may not be important if the Council sees no benefit to the right of carriageway other than to serve the land currently owned by the Council.

A further issue is that the right of way currently enjoyed by Council is not restricted in height. The right of carriageway proposed to replace it is to be restricted in height at various points. The reason for the restriction is that the developer proposes a connection between the Ashfield Mall site and the development to take place on the land adjoining Liverpool Road to the east of Council's building.

We note that the points at which the right of carriageway will be restricted in height have been illustrated to Council's officers and we understand the officers have no concern about the potential restriction in height.

## **2 Right of way variable width limited in height**

This is part of the right of way to use a portion of the covered loading dock area to the south or right of way 1.

This right of way is identified as being released on sheet 5 of **Attachment 1a**. The right of way is in two parts shown in colours yellow and purple on sheet 5 of **Attachment 1a**. Both are to be released and not replaced.

We understand that is not of concern to the Council since the area lies within loading dock of the Ashfield Mall and is not used by the Council.

## **3 Right of way variable width**

This is a continuation of the right of way permitting vehicular access from Holden Street behind the shops fronting Liverpool Road to the rear of Council's building. This part of the right of way is located at the rear of Council's building and extends to the north along the eastern side of Council's building to the rear of the premises fronting Liverpool Road which lie immediately to the east of Council's buildings.

The site is shown coloured aqua on Sheet 5 of **Attachment 1a**.

It is proposed this easement be released and replaced by a new easement shown on Sheet 2 of **Attachment 1a**. It will be noticed that the area shown on Sheet 2 is not

of the same dimension and shape as the area shown on Sheet 5 of **Attachment 1a**. We understand the reasons for that have been explained to Council's officers and have been determined to be acceptable.

**4 Right of way variable width limited in height**

This is the westerly portion of the right of way which extends into the loading dock of the Ashfield Mall, which is discussed at point 2 above.

For the same reasons as mentioned in relation to point 2, this right of way is to be released and not replaced.

**5 Right of way variable width marked "F"**

This is the right of way over the open mall area immediately to the west of Council's premises connecting the entrance to the Ashfield Mall with Liverpool Road.

The area of this right of way is shown in pink at Sheet 5 of **Attachment 1a**. It is proposed that it be released and replaced by the easement shown in purple on Sheet 2 of **Attachment 1a** as "(DA) right of way of variable width partly limited in stratum proposed to benefit Lot 1 in DP734467.

Without an accompanying s.88B Instrument, the terms of this right of way are not spelt out. Although it appears to permit access to Council's lifts from Liverpool Road and all other points on the western boundary of Council's building, it is not clear whether the use of the words "right of way" rather than "right of footway" or "right of carriageway" is intended to mean that it is limited to passage on foot or is it to include vehicles. That will need to be determined.

**6 Easement for support variable width**

This is an easement for support of Council's land in the area of the stairs at the rear of Council's building.

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The proposed change to this easement is that it be limited to take account on new development surrounding and above it.

The easement is shown on sheets 2, 3, 4, 5 and 6 of **Attachment 1b** as "{J} Easement for support variable width limited in stratum (proposed)".

#### **7 Restriction as to user**

This is a restriction applying to the area of the right of way "F" referred to at point 5 above. The restriction provides:

*"No building or structure other than paving/landscaping or other facilities approved by Ashfield Council for use by the general public may be erected within the area of the right of way marked "F"."*

There is an obligation on the developer to maintain the paving and landscaping.

Sheet 6 of **Attachment 1a** indicates this restriction is to be released and recreated. Without the terms of the proposed s.88B Instrument we are unable to say what the terms of that restriction will become.

#### **8 Easement for overhang**

This is an easement for an overhanging portion of Council's building above the rear stairs.

The developer does not propose any change.

The site of the overhang is shown on sheets on sheets 3,5,6,7 and 9 of **Attachment 1b** as "{EO} Easement for overhang variable width under DP736779."

**9 Easement for drainage 1 wide**

This is an easement which runs from Council's building along the passage connecting to Knox Street and then along the western perimeter of the Ashfield Mall site to Norton Street.

The developer does not propose any changes. The site of the easement is shown on sheets 3,5,6,7 and 9 of **Attachment 1b** as "(DEA) Easement for drainage under DP736779".

**10 Right of way 3.05 wide**

This is the right of way which extends from the entrance to the Ashfield Mall along the northern perimeter of the Ashfield Mall to Knox Street.

The terms of the right of way are:

*"Free but non exclusive right for every person authorised by Ashfield Council to pass and re-pass with or without vehicles during usual trading hours of the shopping centre or such other times as Perpetual Trustees and Council agree. Limited in depth to the in line planes as shown on the RL's on those plans and limited in height to 2.3m above those planes. The right of way is extinguished if Council's land (Lot 101 in DP734467) is no longer owned by a Local Council."*

The terms also provide for the provision of a substituted right of way if Perpetual Trustees wish to extinguish that right of way.

It is proposed this right of way be released and not replaced.

**11 Right of way 3, 1.6 wide and variable**

This is a right of way over the various levels of the pedestrian ramp as it ascends from the Mall level to the top of the car park.

The terms of this easement are:

*"Free but non exclusive right for every person authorised by Ashfield Council to pass and re-pass on foot limited in the area of the right of way in depth to RL's shown on planes limited in height 2m above those planes provided that right of way may be relocated at any time with Council's consent such consent having regard to the convenience of foot access to the general public to and from the car park located on the roof of the shopping centre, with such consent not to be unreasonably withheld. In the event of redevelopment of the shopping centre, Perpetual Trustees shall ensure right of way is created to permit pedestrian access. Perpetual Trustees to pay Council's costs if relocation required".*

The developer does not propose any changes to this easement. It is shown on Sheets 3,5,6,7,9 and 10 of **Attachment 1b** as "(RWA) Right of Way 3, 1.6 Wide and Variable Width limited in height Vide DP736779".

## **12 Restriction as to user "A"**

This is a restriction over the western most portion of the Mall area between Liverpool Road and the Ashfield Mall shopping centre.

The terms of the restriction prevent the building of any structure or building other than paving/landscaping or other facilities as approved by Council in its absolute discretion within the area of the restriction.

Sheet 6 of **Attachment 1a** indicate this restriction is proposed to be released and recreated. We are unable to say what the terms of the new restriction will be in the absence of the s.88B Instrument which will accompany the Plan.

**13 Easement for overhanging awning 1.5 wide shown in DP736779**

This is the easement which permits of the canopy over the entrance to Council's chambers overhanging the Mall area. The terms of the easement allow for the replacement of the awning and the right to enter the land for repair, maintenance and replacement of the awning.

The developer does not propose a change to the easement.

The location of the easement is shown on Sheets 3,5,6,7,9 and 10 of **Attachment 1b** as "(BB) Easement for Overhanging Awning, Vide DP736779".

**14 Right of way "H" DP736779**

This is a right of way to drive delivery vehicles between certain points shown in the Mall area to the east of Council's building and the public street. It is expressed in confusing terms. We believe that it was intended that vehicles pass along a certain path within the Mall area to points adjoining Council's premises for the purposes of delivery.

The developer proposes to release this easement (see Sheet 6 of **Attachment 1a**).

It is not clear whether it is intended the new right of way referred to on Sheet 2 of **Attachment 1a** is intended to allow vehicular access over the same route. That will need to be determined once the terms of the "Right of Way" are made clear.

The question will be whether the new easement provides a convenient substitute for delivery points to the Council's buildings. It should be borne in mind that the right of way to the rear of Council's building will continue to exist.

**15 Easement for drainage 1 wide "B"**

This is an easement for drainage which permits the drainage from Council's site to connect with the easement for drainage referred to at point 9.

The developer does not propose any change. The easement is shown on Sheet 3,5,6,7,9 and 10 of **Attachment 1b** "{ED} Easement for Drainage 1 wide Vide W 507197".

#### 16 Easement for car parking

This is the roof top parking at Ashfield Mall.

The parking was created by a separate transfer granting the easement registered as dealing W516454. The terms of the easement are:

*"An easement in gross for the public at any time to bring, park and remove 394 motor cars on, to and from that part of the servient tenement shown as "proposed easement for car parking variable width" on Deposited Plan 736779 and otherwise on the terms and the conditions contained in Annexure "A" but reserving the rights and subject to the stipulations contained in Annexure "A"."*

Annexure A states:

*"The transferor reserves the right for itself and its successors in title the registered proprietors for the time being of all or any part of the servient tenement at any time by notice in writing to the Council of the Municipality of Ashfield (or its successor) given at any time:-*

- (a) To reserve for its licensees and the licensees of its successors in title parking for 4 motor cars within the site of this easement; and*
- (b) To revoke the said reservation of parking for 4 motor cars within the site of this easement".*

*If the transferor or its successors in title so require, the Council of the Municipality of Ashfield or its successor shall from time to time accept, in lieu*

*of the easement hereby granted a transfer and grant of an easement for the parking of not less than 330 motor cars in which the site of the easement is some other part of the land in the servient tenement but on terms which are in all other respects the same as the terms on which this easement is granted.*

*It is a condition of the grant of this easement that if, at any time, no part of the servient tenement is designated as the site for the parking of not less than 330 motor cars, the transferor shall provide by transfer granting easement or by such other means as a transferor or its successors in title and the Council of the Municipality of Ashfield or its successor agree, for the parking of not less than 330 motor cars on such other land in the vicinity of Ashfield Town Centre as the Council of the Municipality of Ashfield or its success may in its absolute discretion approve. The terms of the alternative transfer granting easement or other means as aforesaid shall be as close as practicable to and in all respects consistent with those hereof.*

*In the event of any disagreement between the transferor or its successors in title and the Council of the Municipality of Ashfield or its successor as to the terms of any alternative transfer granting easement or other means either party may, after one months notice in writing to the other, refer the disagreement for determination to a person who is a practising solicitor of not less than ten years in practice ("the umpire") and who is nominated at the request of either party by the President for the time being of the Law Society of New South Wales (or its successor) or if there be no president, a member of the controlling Council of the Law Society of New South Wales (or its successor). The opinion of the umpire shall be final and binding upon the transferor or its successors in title and the Council of the Municipality of Ashfield or its success and in determining such opinion the umpire shall act as an expert and not as an arbitrator. The fees of the umpire shall be borne equally between the transferor or its successors in title and the Council of the Municipality of Ashfield or its successor and either party paying the full amount thereof may recover one half from the other.*

*On the date the alternative transfer granting easement or other means as aforesaid for the parking of not less than 330 motor cars (whether in respect of land in the servient tenement or not) takes effect, this easement shall be automatically extinguished and the Council of the Municipality of Ashfield or its successor shall deliver a duly executed transfer releasing this easement to the transferor or its successors in title (as the case may be) and will do all such other things as are reasonably required to enable the Land Titles Office to remove this easement from the title of the servient tenement and, if pursuant to the terms hereof an alternative transfer granting easement has been granted, to enable the registration of the alternative transfer granting easement in the Land Titles Office.*

*The transferor or its successors shall bear the cost of substituting the transfers and grants or other means for this one."*

The developer proposes the easement for car parking be released (see Sheet 6 of **Attachment 1c**). That Sheet provides the existing right of carriageway and existing easement for parking will be released once Level 6 is constructed. What will replace it is shown on pages 1, 2, 3, 4 and 5 of **Attachment 1c**. Pages 1, 2 and 3 show the entrance from Holden Street and the ramp access to level 4. At level 5 the paths of travel are shown together with some areas for public parking and Council parking.

Level 6 shows the bulk of the public car parking for 305 cars together with a right of access to the area we believe will contain the public escalators and stairs.

It should be noted the existing right of carriageway and existing easement for parking will be released only once level 6 is constructed.

A close examination of sheets 1, 2 3 and 4 of **Attachment 1c** will show the cross hatched areas that are intended to benefit Lot 101 in DP 734467 which is the Council's land. The blue, yellow and purple areas shown on sheets 1, 2, 3, 4 and 5 of **Attachment 1c** indicate the sites of easements which will benefit the Council.

We believe the distinction is to make clear that while that which benefits the Council is for the benefit of the public that which benefits Lot 101 in DP 734467, is intended to benefit the owner of that land regardless of whether it remains the Council's. That point may require clarification with the developer.

The exact terms of the easement will need to be obtained from the developer. We have not been provided with the s.88B instrument which will accompany the Plan.

**17 Right of carriageway variable width**

This is the easement over the ramp which provides access to roof top parking from Holden Street.

We have commented in the previous point that this easement is to remain in place until Level 6 is constructed when it is to be released and replaced by the new easements shown on sheets 1, 2, 3 and 4 of **Attachment 1c**.

In a previous version, we had a concern that this easement is being limited to benefit certain land only. The new easement is proposed to benefit the Council which enable the public to gain access to the public car parking shown on sheets 4 and 5 of **Attachment 1c**.

**18 Right of way "B" variable width**

This is the right of way for a fire exit by a ramp and stair from the roof top car park. It is shown on Sheets 8 and 9 of **Attachment 5**.

The easement is not shown as released in **Attachment 1c** but we believe it is intended to be replaced by the easement shown in purple on sheet 5 of **Attachment 1c**.

What is of concern is that part of the public car parking is now proposed to be located on Level 5 along with car parking for Council vehicles.

It is not immediately clear to us from sheet 4 of **Attachment 1c** how all car parking spaces available to Council Staff or to the public on Level 5 will connect to emergency points. The point needs to be considered.

.....  
D Baxter  
March 2016

3b

**SUPPLEMENTARY SUMMARY AND COMMENTS IN RESPECT OF COUNCIL'S INTEREST IN  
THE ASHFIELD MALL REDEVELOPMENT SITE AND THE DEVELOPER'S PROPOSALS IN  
RESPECT OF THOSE INTERESTS**

This document should be read in conjunction with:

- 1 All documents referred to in the previous summary.
- 2 Draft Section 88B Instrument **Attachment 6a**

**GENERAL COMMENT**

We have now been provided with the draft Section 88B Instrument which will accompany the plan at **Attachment 1b**.

The developer proposes to create the easements shown in Part 1 of **Attachment 6a**. The developer proposes to release the easements shown and Part 1A of **Attachment 6a**. Some of the easements to be released will be replaced with easements to be created.

**EASEMENTS TO BE RELEASED**

The numbers below refer to the numbers in the left hand column of Part 1A (Release) on Sheets 3 and 4 of **Attachment 6a**.

- 1 **Right of way 7.925 wide and variable (A) firstly referred to in Deposited Plan 734466.**

This right of way currently benefits Lot 101 in DP734467 (Council's land). As noted in point 1 of **Attachment 3a**, the developer proposes to release this Right of Way and replace it with "Right of Carriageway variable width partly limited in stratum (B)." The creation of that right of way is referred to at item 2 of part 1 on Sheet 1 of

**Attachment 6a.** The lots to be burdened will be Lot 100 and Lot 101. The benefited lot will remain Council's land.

At point 1 of **Attachment 3a** we raised the issue of the lack of detail as to the terms of the new easement. Those terms are now set out in clause 2 of Sheet 7 of **Attachment 6a**. The terms are:

"Full and free but non-exclusive right for the Grantee and Authorised Uses to go, pass and repass with vehicles (or, in the case of emergency only, on foot) to and from the benefited lot or any part of it."

We are unable to say why use of the carriageway by persons on foot should be limited to the case of emergency only. We assume it is a safety issue because of vehicular use of the Right of Way by other parties with the right to use it. However, we note it appears that current Right of Way has been used, or is used, from time to time to gain access from the rear of Council's Chambers to Holden or vice versa. That aspect may require further consideration.

**3 Right of way variable width limited in height "C" thirdly referred to in Deposited Plan 734466**

This is the right of way over the ramp from Holden Street to the existing roof top parking.

**We cannot find an easement on Attachment 1c which replaces it. On Sheet 2 of Attachment 1b there are 2 proposed easements (B1) and (B2).**

**The note beside (B1) states:**

**"Future right of carriageway variable width partly limited in stratum. This right of carriageway will not be created on the Stage 1 subdivision plan. It is to be created after construction of Level 6 to benefit Ashfield Council."**

**The note beside (B2) states:**

"Future right of carriageway variable width partly limited in stratum. This right of carriageway will not be created on the Stage 1 subdivision plan. It is to be created after construction of Level 6 to benefit Lot 101 in DP734467." (the Council Land).

We understood from Attachment 1c Right of Carriageway variable width partly limited in stratum (C) was not to be released until commencement of construction of level 6. This aspect will need to be investigated.

**5 Right of way "F" eighthly referred to in Deposited Plan 734467**

This is the right of way discussed at point 5 of **Attachment 3a**. In our discussion in **Attachment 3a** we raised the question of what the terms of any easement which replaces it might be.

The easement is to be replaced by the easement shown at item 4 on Sheet 1 of **Attachment 6a** which is a right of way variable width partly limited in stratum (DA) which burdens Lot 100 and benefits Council's land.

The terms of that easement are set out on Sheet 7 of **Attachment 6a** and are:

"Full and free but non-exclusive right for the Grantee and Authorised Uses to go, pass and repass on foot at all times and for all purposes without road vehicles to and from the benefit of the lot or any part of it."

Those terms answer the questions of whether it is intended to cover passage on foot only or include vehicles. It is clear the terms do not include vehicles.

We understand that aspect is not of concern since vehicular access to the front of Council's Chambers is now gained by another route on Liverpool Road.

**6 Right of way "H" sixteenthly referred to in Deposited Plan 736779**

This right of way benefits the Council and is discussed at item 14 of **Attachment 3a**.

We believe this right of way is not to be replaced.

We note that right of way "H" does not appear to be identified as to its location or to be released in **Attachment 1b**.

**10 Right of way variable width "A" firstly referred to in Deposited Plan 734467**

This right of way benefits Council's land.

This is the right of way discussed at point 3 of **Attachment 3a**. It is to be released and replaced with right of carriageway variable width limited in stratum (B) referred to at item 2 on Sheet 1 of **Attachment 6a** the terms of which are set out at point 2 of Sheet 7 of **Attachment 6a** being:

"Full and free but non-exclusive right for the Grantee and Authorised Uses to go, pass and repass with vehicles (or, in the case of emergency only, on foot) to and from the benefited lot or any part of it."

**12 Right of way variable width limited in height "C" thirdly referred to in Deposited Plan 734467**

This is the right of way referred to at point 4 of our discussion in **Attachment 3a**. It is over a portion of the loading dock of the Ashfield Mall and is to be released and not replaced.

We understand that is not of concern to the Council.

.....  
D Baxter  
March 2016

3c

**SUMMARY AND COMMENTS ON PROPOSED PLAN OF SUBDIVISION (STAGE 2) TO  
CREATE LOTS 102 AND 103 OUT OF PROPOSED LOT 101 AT LIVERPOOL ROAD, ASHFIELD**

This document should be read in conjunction with:

- 1 Ashfield Mall – Development Impact on Council Easements – version 2.
- 2 Deposited Plan Administration Sheet – Stage 2 **Attachment 6c**
- 3 Draft Plan of Subdivision to create Lots 102 and 103 **Attachment 1e**
- 4 Draft Section 88B Instrument to accompany Deposited Plan **Attachment 6b**

**GENERAL COMMENT**

The developer proposes to subdivide Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 to create Lot 100 (The Ashfield Mall, the car park and towers to be erected thereon) and Lot 101 for retail and residential development which will enjoy a frontage to Liverpool Road.

The easements to be created are set out on Sheet 2 of **Attachment 6c**. That sheet does not indicate it is proposed to release any easements at that stage.

The sites of the proposed easements are set out on Sheets 2, 3, 4, 5 and 6 of **Attachment 1e**.

The terms of the proposed easements are set out in **Attachment 6b**.

**THE EFFECT ON THE COUNCIL**

Sheet 1 of **Attachment 6b** indicates that the only items to be created which will effect Council are Restriction on Use (RU) which is Item 8 and Positive Covenant (PC)

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which is Item 9. Both are expressed to burden proposed Lot 102 and benefit the Council.

The sites of the Restriction on Use and Positive Covenant are shown on Sheets 2 and 3 of **Attachment 1e**. Sheet 2 shows level 2 and below of Lot 102. Sheet 3 shows level 3 of Lot 102.

The terms of the Restriction and Positive Covenant are to be set out on Sheet 6 of **Attachment 6b**. However, at present both simply refer to Council's standard terms for a Restriction and Positive Covenant relating to the onsite stormwater detention system which will lie within Lot 102. Those terms are to be provided by the Council.

Sheet 3 of **Attachment 1e** shows that on level 3, Lot 102 will be burdened by the existing Right of Carriageway (B) variable width and partly limited in stratum which will benefit Council's land being Lot 101 in DP734467 and the Ashfield Council. Please refer to our comments at point 3 of **Attachment 3a**. No change is proposed from this situation set out there.

.....  
D Baxter  
March 2016

ASHFIELD MALL RE-DEVELOPMENT SITE  
Application No. 10.2006.24.1

SUMMARY OF COUNCILS REGISTERED INTEREST IN PROPOSED DEVELOPMENT SITE

Key to Plans:

|        |  |
|--------|--|
| Orange | Property owned by Council being Lot 101 DP734467 & Lot 1 DP215739  |
| Pink   | Property owned by Abacus Group Holdings Pty Limited being Lot 100 DP734467, Lots A & B DP404055, Lot ADP 405790        |
| Blue   | Property owned by Perpetual Trustee Company Limited being Lot 1 DP736779 (existing Ashfield Mall site)                 |
| Yellow | Area/ property over which Council holds registered interest (all areas highlighted yellow form part of Lot 1 DP736779) |

SUMMARY OF INTERESTS

| No. | Description  | Benefited Lot/Authority | Burdened Lot             | Instrument conferring benefit | Page no. |
|-----|--|-------------------------|--------------------------|-------------------------------|----------|
| 1   | Right of way 7.925 wide                                | Councils Land           | Perpetual Trustee's Land | s.88B DP734466 (item 1)       | 3        |
| 2   | Right of way variable width limited in height          | Councils Land           | Perpetual Trustee's Land | s.88B DP734466 (item 3)       | 3        |
| 3   | Right of way variable width                            | Councils Land           | Perpetual Trustee's Land | s.88B DP734467 (item 1)       | 3        |
| 4   | Right of way variable width limited in height          | Councils Land           | Perpetual Trustee's Land | s.88B DP734467 (item 3)       | 3        |
| 5   | Right of way variable width marked "F"                 | Councils Land           | Perpetual Trustee's Land | s.88B DP734467 (item 8)       | 3,4,5    |
| 6   | Easement for support variable width                    | Councils Land           | Perpetual Trustee's Land | s.88B DP734467 (item 9)       | 4,5      |
| 7   | Restriction as to user                                 | Ashfield Council        | Perpetual Trustee's Land | s.88B DP734467 (item 20)      | 4,5      |
| 8   | Easement for overhang variable width shown in DP736779 | Councils Land           | Perpetual Trustee's Land | s.88B DP736779 (item 2)       | 4,5      |

| Description                              | Benefited Lot/Authority | Burdened Lot             | Instrument conferring benefit | Page no. |
|--|-------------------------|--------------------------|-------------------------------|----------|
| 9 Easement for drainage 1 wide "A"       | Councils Land           | Perpetual Trustee's Land | s.88B DP736779 (item 4)       | 3,4,5    |
| 10 Right of Way 3.05 wide                | Councils Land           | Perpetual Trustee's Land | s.88B DP736779 (item 5)       | 4,5      |
| 11 Right of way 3, 1.6 wide and variable | Ashfield Council        | Perpetual Trustee's Land | s.88B DP736779 (item 6)       | 4,5      |
| 12 Restriction as to user "A"            | Ashfield Council        | Perpetual Trustee's Land | s.88B DP736779 (item 14)      | 3,4,5    |
| 13 Easement for Overhanging Awning 1.5   | Councils Land           | Perpetual Trustee's Land | s.88B DP736779 (item 15)      | 4,5      |
| 14 Right of way "H"                      | Ashfield Council        | Perpetual Trustee's Land | s.88B DP736779 (item 16)      | 3,4,5    |
| 15 Easement for drainage 1 wide "B"      | Councils Land           | Perpetual Trustee's Land | s.88B DP736779 (item 17)      | 4,5      |
| 16 Easement for car parking              | Ashfield Council        | Perpetual Trustee's Land | W516454                       | 7,8      |
| 17 Right of Carriageway variable         | Ashfield Council        | Perpetual Trustee's Land | s.88B DP265803 (item 1)       | 7,8      |
| 18 Right of Way "B" variable width       | Councils Land           | Perpetual Trustee's Land | s.88 DP265803 (item 3)        | 5        |

SUMMARY OF TERMS

| Interest No. | Terms  |
|--------------|--|
| 1            | Right of way 7.925 wide marked "A" in DP734466 (item 1 in s.88B)<br>Free but non-exclusive right for Council as owner of benefited land and persons it authorises to pass and repossess over area of right of way with vehicles (and in the case of emergency only, on foot)   |
| 2            | Right of way variable width limited in height marked "C" in DP734466 (item 3 in s.88B)<br>Free but non-exclusive right for Council as owner of benefited land and persons it authorises to pass and repossess over area of right of way with vehicles limited in height to the inclined plane shown by the reduced levels on AHD.                                |
| 3            | Right of way variable width marked "A" in DP 734467 (item 1 in s.88B)<br>Free but non-exclusive right for Council as owner of benefited land and persons it authorises to pass and repossess over area of right of way with vehicles (and in the case of emergency only, on foot)  |
| 4            | Right of way variable width limited in height marked "C" shown in DP734467 (item 3 in s.88B)<br>Free but non-exclusive right for Council as owner of benefited land and persons it authorises to pass and repossess over area of right of way with vehicles limited in height to the inclined plane shown by the reduced levels on AHD.                          |
| 5            | Right of way variable width marked "F" shown in DP734467 (item 8 in s.88B)<br>Free but non-exclusive right for Council as owner of benefited land and persons it authorises to pass and repossess over area of right of way on foot, without road vehicles, limited in height to a horizontal plane at 32.50 AHD and in depth to a horizontal plane at 29.95 AHD |
| 6            | Easement for support variable width shown in DP734467 (item 9 in s.88B)<br>Right to have staircase, concrete and other surfacing erected on Councils Land supported by soil on Perpetual Trustees land together with right to enter Perpetual Trustees Land to maintain, repair or replace staircase, concretes and other surfacing.                             |

|    |   |
|----|---|
| 7  | <p>Restriction as to user DP734467 (item 20 in s.88B)<br/>No building or structure other than paving/landscaping or other facilities approved by Ashfield Council for use by general public may be erected within area of right of way marked "F" (identified at 5 above). Perpetual Trustees must maintain paving and landscaping.</p>   |
| 8  | <p>Easement for overhang variable width shown in DP736779 (item 2 in s.88B)<br/>Right to permit those parts of the building on Councils Land to overhang Perpetual Trustees land where shown on DP736779 and right to enter Perpetual Trustees land for inspecting, repairing and maintaining area of overhang.</p>   |
| 9  | <p>Easement for drainage 1 wide marked "A" shown in DP736779 (item 4 in s.88B)<br/>Right to drain water in reasonable quantities across area of easement together with right to use any pipes already laid and right to enter the area of the easement (where not built over) for purpose of inspecting, maintaining, repairing, replacing the pipes upon 14 days notice to Perpetual Trustees. Must ensure as little disturbance as possible to Perpetual Trustees. Easement may be extinguished if reasonable alternative easement provided.</p>  |
| 10 | <p>Right of Way 3.05 wide shown in DP736779 (item 5 in s.88B)<br/>Free but non-exclusive right for every person authorised by Ashfield Council to pass and re-pass with or without vehicles during usual trading hours of the shopping centre or such other times as Perpetual Trustees and Council agree. Limited in depth to the inline planes as shown by the RL's on those plans and limited in height to 2.3 metres above those planes. Right of way is extinguished if Councils land (being lot 101 in DP734467) is no longer owned by a Local Council. Terms also provide for the provision of a substitute right of way of Perpetual Trustees wish to extinguish this right)</p>  |
| 11 | <p>Right of way 3, 1.6 wide and variable shown in DP736779 (item 6 in s.88B)<br/>Free but non-exclusive right for every person authorised by Ashfield Council to pass and re-pass on foot limited in the area of the Right of Way in depth to RL's shown on plan and limited in height to 2 metres above those planes, provided that Right of way may be re-located at any time with Councils consent such consent having regard to the convenience of foot access for the general public to and from the car park located on the roof of the shopping centre, with such consent not to be unreasonably withheld. In the event of redevelopment of the shopping centre, Perpetual trustees shall ensure right of way is created to permit pedestrian access. Perpetual Trustees to pay Councils costs if relocation required.</p> |
| 12 | <p>Restriction as to user "A" DP736779 (item 14 in s.88B)<br/>No building or structure other than paving/landscaping or other facilities as approved by Council in its absolute discretion may be erected within area marked "L" "M" "N" "O" on plan DP736779. Owner of burdened lot must maintain paving and landscaping.</p>  |

|    |   |
|----|---|
| 13 | <p>Easement for Overhanging Awning 1.5 wide shown in DP736779 (item 15 in s.88B)<br/>Right to permit the awning at present attached to the building on Councils Land and any replacement awning to overhang the Perpetual Trustees land where indicated on DP736779 right to enter Perpetual Trustees land for repair, maintenance and replacement of awning.</p>   |
| 14 | <p>Right of way "H" DP736779 (item 17 in s.88B)<br/>Council may drive delivery vehicles between points "A-A" and "B-B" and a public street within area marked "L" "O" "P" "Q" "R" and "S" on plan DP 736779 and points A-A and B-B shall be as designated by Perpetual Trustees from time to time.</p>  |
| 15 | <p>Easement for drainage 1 wide marked "B" shown in DP736779 (item 17 in s.88B)<br/>Right to drain water across and through site of easement in reasonable quantities together with right to use any pipes already laid or right to enter the area of the easement (where not built over) for purpose of inspecting, maintaining, repairing, replacing the pipes upon 14 days notice to Perpetual Trustees. Must ensure as little disturbance as possible to Perpetual Trustees. May be extinguished reasonable alternative easement provided.</p>  |
| 16 | <p>Easement for car parking (shown in W516454)<br/>Carparking for 394 cars limited in depth at RL99.90 and height at RL43. Perpetual Trustees may at any time revoke the reservation of 4 car spaces in the easement area and reserve those 4 car spaces for itself. If Perpetual Trustee require, Council will accept an alternative grant of easement for not less than 330 cars in some other place on the land in lieu of the 394 car spaces granted. Alternatively, Council may agree to the car parking being on other land in the vicinity of the Ashfield Town Centre. In the event of dispute, either party may refer the matter to a solicitor nominated by the President of the Law Society to determine the alternative transfer granting easement.</p> |
| 17 | <p>Right of Carriageway variable width shown in DP265803 (item 1 in s.88B)<br/>Easement in gross to the general public to pass with motor vehicles along the area of the right of way being between Holden street and the car parking on the roof, provided that a new right of carriageway will be created if an alternative grant of easement for car parking is created.</p>   |
| 18 | <p>Right of Way "B" variable width shown in DP265803 (item 3 in s.88B)<br/>Described as Right of way to allow person to pass through basement of Perpetual trustees land through fire stair exit on Councils Land. Right for persons authorised by Council as owner of benefited lot to pass on foot area of right of way, provided Perpetual Trustee may provide alternative right of way, this right may be extinguished.</p>   |

6a

**Instrument setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use Of Land or Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919**

(Sheet 1 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

**Full name and address of the owner of the land**

Lot 1 in Deposited Plan 736779

**Petpetual Trustee Company Limited**  
**ACN 000 001 007**  
Level 12, 123 Pitt Street  
Sydney NSW 2000

Lot 100 in Deposited Plan 734467  
Lots A and B in Deposited Plan 404055  
Lot A in Deposited Plan 405790

**Abacus Group Holdings Limited**  
**ACN 080 604 819**  
Level 34, 264-278 George Street  
SYDNEY NSW 2000

**Part 1 (Creation)**

| Number of item shown in the intention panel on the Plan | Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan | Burdened Lot(s) or parcel(s) | Benefited Lot(s), road(s), bodies or Prescribed Authorities |
|---|--|------------------------------|---|
| 1.  | Easement for services variable width partly limited in stratum (A)   | 100                          | 101   |
| 2.  | Right of carriageway variable width partly limited in stratum (B)  | 100<br>101                   | 101/734467<br>101/734467                                    |
| 3.  | Right of carriageway variable width partly limited in stratum (C)  | 100                          | 101   |
| 4.  | Right of way variable width partly limited in stratum (DA)   | 100                          | 101/734467  |
| 5.  | Right of footway variable width partly limited in stratum (E)  | 100                          | 101   |
| 6.  | Easement for parking variable width  | 100                          | 101   |

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(Sheet 2 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

| Number of item shown in the Intention panel on the Plan | Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan | Burdened Lot(s) or parcel(s) | Benefited Lot(s), road(s), bodies or Prescribed Authorities |
|---|--|------------------------------|---|
|   | limited in stratum (H)   |                              |   |
| 7.  | Easement for support variable width limited in stratum (J)   | 100                          | 101   |
| 8.  | Easement to drain water 1 wide limited in stratum (K)  | 100                          | 101   |
| 9.  | Right of way 7.925 wide and variable partly limited in stratum (L)   | 100                          | 106/734466  |
| 10.   | Right of footway variable width limited in stratum (M)   | 100                          | 101/734466  |
| 11.   | Restriction on the use of land (R)   | Part 100 designated R        | Ashfield Council  |
| 12.   | Easement for support variable width limited in stratum (P)   | 100                          | 101   |
| 13.   | Easement for green screen variable width limited in stratum (Q)  | 100                          | 101   |
| 14.   | Right of footway variable width (S)  | 100                          | 2/519591  |

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(Sheet 3 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

**Part 1A (Release)**

| Number of Item shown in the intention panel on the Plan | Identity of the easement or profit a prendre to be released and referred to in the Plan         | Burdened Lot(s) or parcel(s) | Benefited Lot(s), road(s), bodies or Prescribed Authorities |
|---|---|------------------------------|---|
| 1.  | Right of way 7.925 wide and variable "A" firstly referred to in Deposited Plan 734466.          | 1/736779                     | 101/734467  |
| 2.  | Right of way 7.925 wide and variable "B" secondly referred to in Deposited Plan 734466          | 1/736779                     | A/405790 and A/404055                                       |
| 3.  | Right of way variable width limited in height "C" thirdly referred to in Deposited Plan 734466  | 1/736779                     | 101/734467  |
| 4.  | Right of way variable width limited in height "D" fourthly referred to in Deposited Plan 734466 | 1/736779                     | A/405790 and A/404055                                       |
| 5.  | Right of way "F" eighthly referred to in Deposited Plan 734467                                  | 1/736779                     | 101/734467  |
| 6.  | Right of way "H" sixteenthly referred to in Deposited Plan 736779                               | 1/736779                     | Ashfield Council  |
| 7.  | Easement for overhanging awning referred to in Transfer H487500                                 | 1/736779                     | A/450790  |
| 8.  | Right of way 7.925 wide and variable firstly referred to in Transfer W477930                    | 1/736779                     | 106/734466  |
| 9.  | Right of way 7.925 wide and variable secondly referred to in Transfer W477930                   | 1/736779                     | 106/734466  |
| 10.   | Right of way variable width "A" firstly referred to in Deposited Plan 734467                    | 1/736779                     | 101/734467  |
| 11.   | Right of way variable width "B" secondly referred to in Deposited Plan 734467                   | 1/736779<br>1/736779         | A/404055<br>B/405790  |

(Sheet 4 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

| Number of item shown in the intention panel on the Plan. | Identity of the easement or profit a prendre to be released and referred to in the Plan         | Burdened Lot(s) or parcel(s) | Benefited Lot(s), road(s), bodies or Prescribed Authorities |
|--|---|------------------------------|---|
| 12.  | Right of way variable width limited in height "C" thirdly referred to in Deposited Plan 734467  | 1/736779                     | 101/734467  |
| 13.  | Right of way variable width limited in height "D" fourthly referred to in Deposited Plan 734467 | 1/736779                     | A/405790<br>A/404055  |
| 14.  | Easement for drainage 1 wide fifthly referred to in Deposited Plan 734466                       | 1/736779                     | A/405790  |
| 15.  | Easement for drainage 1 wide seventhly referred to in Deposited Plan 734467                     | 1/736779                     | A/405790  |
| 16.  | Right of footway 3 wide referred to in transfer W507197   | 1/736779                     | 2/519591  |

(Sheet 5 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

## PART 2 (Terms)

### DEFINITIONS

Where an easement, restriction or other right referred to in this Instrument is limited or partly limited in stratum, it is limited in stratum to the reduced levels on Australian Height Datum shown on the plan.

For the purpose of this Instrument, the following words have the following meanings unless the contrary intention appears:

- (a) **Authorised User** means every person authorised by the Grantee or the Residential Grantee, where applicable, for the purposes of any easement created by this Instrument and includes, but is not limited to, the Grantee's Employees.
- (b) **Grantee** means:
  - (i) every person who is at any time entitled to an estate or interest in possession in the benefited lot, or any part of it with which the right shall be capable of enjoyment;
  - (ii) in the case of an easement in gross, the benefited authority.
- (c) **Grantee's Employees** means employees, servants, agents and contractors of the Grantee.
- (d) **Grantor** means the registered proprietor for the time being of the burdened lot or any part of it (as applicable).
- (e) **Grantor's Employees** means the employees, servants, agents and contractors of the Grantor.
- (f) **Instrument** means this section 88B Instrument.
- (g) **Plan** means the plan of subdivision to which this Instrument relates.

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**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

- (h) **Residential Grantee** means every person who is at any time entitled to an estate or interest in possession in a part of the residential portion of the benefited lot.
- (i) **Services** includes the supply of water, gas, electricity, telephone, cable television, fibre-optic and other data services and the discharge of sewage, sullage and other fluid wastes, all by means of underground pipes, wires, cables or conduits.
- (j) **Structures** means the vertical core wall and engaged column elements columns erected or to be erected on the burdened lot to provide support to the benefited lot.
- (k) **Work** means inspecting, repairing, maintaining or renewing the Structures, including, where necessary, replacement, upgrading and reconstruction of the Structures.

**1. TERMS OF THE EASEMENT FOR SERVICES (A) NUMBERED ONE IN THE PLAN**

1.1 The Grantee may:

- (a) use the burdened lot, but only within the site of this easement, to provide Services to or from each benefited lot, and
- (b) do anything reasonably necessary for that purpose, including:
  - (i) entering the burdened lot,
  - (ii) taking anything on to the burdened lot, and
  - (iii) carrying out work, such as constructing, placing, repairing or maintaining pipes, wires, cables, conduits, structures and equipment.

1.2 In exercising those powers, the Grantee must:

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**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

- (a) ensure all work is done properly, and
- (b) cause as little inconvenience as is practicable to the owner and any occupier of the burdened lot,
- (c) cause as little damage as is practicable to the burdened lot and any improvement on it,
- (d) restore the burdened lot as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

**2. TERMS OF THE RIGHT OF CARRIAGEWAY VARIABLE WIDTH PARTLY LIMITED IN STRATUM (B) NUMBERED TWO IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass with vehicles (or, in the case of emergency only, on foot) to and from the benefited lot or any part of it.

**3. TERMS OF THE RIGHT OF CARRIAGEWAY VARIABLE WIDTH PARTLY LIMITED IN STRATUM (C) NUMBERED THREE IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass with vehicles (or, in the case of emergency only, on foot) to and from the benefited lot or any part of it.

**4. TERMS OF THE RIGHT OF WAY VARIABLE WIDTH PARTLY LIMITED IN STRATUM (DA) NUMBERED FOUR IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass on foot at all times and for all purposes without road vehicles to and from the benefited lot or any part of it.

**5. TERMS OF THE RIGHT OF FOOTWAY VARIABLE WIDTH PARTLY LIMITED IN STRATUM (E) NUMBERED FIVE IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go,

(Sheet 8 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

pass and repass on foot at all times and for all purposes without road vehicles to and from the benefited lot or any part of it.

**6. TERMS OF THE EASEMENT FOR PARKING VARIABLE WIDTH LIMITED IN STRATUM (H) NUMBERED SIX IN THE PLAN**

- 6.1 Subject to the conditions in this easement, the Grantor grants the Residential Grantee and its Authorised Users the right to park motor vehicles that are not more than two tonnes in gross weight in the marked parking spaces on the site of this easement on a casual and temporary basis only.
- 6.2 The Grantor may make reasonable rules about the use of the site of this easement by the Grantee and its Authorised Users.
- 6.3 The Grantee and its Authorised Users must comply with:
- (a) any rules made by the Grantor under clause 7.2; and
  - (b) any reasonable directions of the Grantor relating to the use of the site of this easement.
- 6.4 The Grantor must maintain and repair the site of this easement.
- 6.5 The Grantor may suspend access to and use of the site of this easement:
- (a) in an emergency;
  - (b) for the purpose of undertaking construction work in accordance with a development consent; or
  - (c) for the purpose of cleaning, maintaining or repairing the site of this easement.
- 6.6 The Grantor may only suspend access to or use the site of this easement in accordance with clause 7.5 if the Grantor:
- (a) except in an emergency, gives reasonable prior notice of its intention to suspend access to and use of the site of this easement by notice posted on or near the relevant area; and

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**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

- (b) suspends access to an use of the Easement Site only for the period required and to the extent necessary to:
  - (i) remedy the emergency;
  - (ii) complete the construction work; or
  - (iii) clean, maintain or repair the Easement Site.

6.7 The Residential Grantee and its Authorised Users must not park, stop or stand any motor vehicle on any part of the site of this easement which is not designated for parking.

**7. TERMS OF THE EASEMENT FOR SUPPORT VARIABLE WIDTH LIMITED IN STRATUM (J) NUMBERED SEVEN IN THE PLAN**

7.1 Terms of easement

The Grantee has the right, consistent with the rights of other persons having the same or similar rights, to:

- (a) have improvements and structures within the benefited lot which require support, supported vertically, horizontally and in any other plane by the Structures with the site of this easement; and
- (b) require that the Structures remain on the burdened lot at all times.

7.2 Obligations to Repair

For the purposes of Section 88BA of the *Conveyancing Act 1919*, the Grantee covenants to maintain, at its cost, the Structures in good repair and in a safe condition.

7.3 Right of Entry

- (a) The Grantee and the Grantee's Employees may enter such part of the burdened lot as is reasonably necessary and to remain there for any reasonable time for the purpose of carrying out the Work.

(Sheet 10 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

- (b) Except when urgent maintenance is required, the Grantee must give to the Grantor or its nominee not less than 48 hours' prior written notice of the intention to exercise its rights of entry.
- (c) In carrying out the Work, the Grantee must, at its cost:
  - (i) ensure all work is done properly;
  - (ii) cause as little inconvenience as practicable to the Grantor and any occupier of or visitor to the burdened lot;
  - (iii) carry out, at its expense, any work necessary to safeguard the structural soundness of the Structures; and
  - (iv) restore the burdened lot as nearly as is practicable to its former condition.

#### 7.4 Damage

The Grantee must as soon as reasonably possible, at the cost of the Grantee, make good any damage (including, without limitation, any collateral damage) to the benefited lot caused by the Grantee or any of the Grantee's Employees in the course of carrying out the Work.

#### 7.5 Release and Indemnity

- (a) The Grantee's exercises of its rights created by this Instrument will be at its own risk and the Grantee hereby releases the Grantor and the Grantor's Employees from all claims and demands of every kind and from all liabilities in respect of any accident or damage to property or death of or injury to any person on or near the burdened lot which may arise as a result of the Grantee exercising the rights created by this easement, other than as may be caused directly or indirectly by the negligent or wilful act or omission of the Grantor or the Grantor's Employees.
- (b) Except to the extent that it is caused directly or indirectly or contributed to by the negligent or wilful act or omission of the Grantor or the Grantor's Employees, the Grantee indemnifies and will keep indemnified the Grantor and the Grantor's Employees from and against all actions, claims, demands,

(Sheet 11 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

losses, damages, costs and expenses incurred by the Grantor or the Grantor's Employees or for which the Grantor or the Grantor's Employees may become liable in respect of or arising from the exercise by the Grantee or any of the Grantee's Employees of its rights created by this easement, or arising from the Grantee's failure to maintain the Structures in good and substantial repair as required by this easement.

**8. TERMS OF THE EASEMENT TO DRAIN WATER 1 WIDE LIMITED IN STRATUM (K) NUMBERED EIGHT IN THE PLAN**

An easement to drain water as defined in Part 3 of Schedule 8 of the *Conveyancing Act 1919*.

**9. TERMS OF THE RIGHT OF WAY 7.925 WIDE AND VARIABLE PARTLY LIMITED IN STRATUM (L) NUMBERED NINE IN THE PLAN**

- 9.1 Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass with vehicles to and from the benefited lot or any part of it, subject to clause 10.2 of this Instrument.
- 9.2 The Grantor may authorise the drivers of vehicles effecting deliveries to the burdened lot to cause such vehicles to stand on the part of the site of this right of way shown on the plan as HA for extended periods and to obstruct this right of way for such extended periods in priority over any person seeking to exercise or use this right of way.
- 9.3 The Grantor can at any time extinguish this right of way provided that the Grantor grants to the Grantee an alternative right of way situated on the burdened lot which is substantially similar to this right of way (except as to its location). On registration of the instrument creating such alternative right of way this right of way is automatically extinguished and the Registrar-General is entitled to accept a Request executed by the Grantor to record the extinguishment of this right of way in the folio of the register for the burdened lot.

**10. TERMS OF THE RIGHT OF FOOTWAY VARIABLE WIDTH LIMITED IN STRATUM (M) NUMBERED TEN IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass on foot at all times and for all purposes without road vehicles to and

(Sheet 12 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

from the benefited lot or any part of it.

**11. TERMS OF THE RESTRICTION ON THE USE OF LAND NUMBERED ELEVEN IN THE PLAN**

- (a) Subject to paragraph (b), no structure, building or other improvement shall be erected on the part burdened by this restriction on use.
- (b) This restriction on use does not apply to any canopy, signage, paving, landscaping or other structures or facilities the installation of which is approved by Ashfield Council or its successor.
- (c) The registered proprietor of the burdened lot must not allow the part burdened by this restriction on use, or any items installed on the part burdened in accordance with paragraph (b), to be kept other than clean and in proper state of maintenance.
- (d) The Authority whose consent is required to release, vary or modify this restriction on the use of land is Ashfield Council or its successor.

**12. TERMS OF THE EASEMENT FOR SUPPORT VARIABLE WIDTH LIMITED IN STRATUM (P) NUMBERED TWELVE IN THE PLAN**

The Grantee has the right to have the structures comprising a framework for the growth and support of screening plants to be attached to and supported vertically, horizontally and in any other plane by the part of the building on the burdened lot lying with the site of this easement.

**13. TERMS OF THE EASEMENT FOR GREEN SCREEN VARIABLE WIDTH LIMITED IN STRATUM (Q) NUMBERED THIRTEEN IN THE PLAN**

The Grantor must permit and suffer:

- (a) the structures comprising a framework for the growth and support of screening plants;
- (b) planter boxes suspended from that framework;

(Sheet 13 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

(c) irrigation pipes; and

(d) plants,

to be and remain in the site of this easement.

**14. TERMS OF THE RIGHT OF FOOTWAY VARIABLE WIDTH (S) NUMBERED FOURTEEN IN THE PLAN**

A right of foot way within the meaning of Part 2 of Schedule 8 of the *Conveyancing Act 1919*.

(Sheet 14 of 14 Sheets)

**Plan:** Plan of subdivision of Lot 100 in Deposited Plan 734467, Lots A and B in Deposited Plan 404055, Lot A in Deposited Plan 405790 and Lot 1 in Deposited Plan 736779 covered by Subdivision Certificate No.

**EXECUTED by ##**  
(Attorney Perpetual)

**EXECUTED by ##**  
Abacus attorney

**EXECUTED by ##**  
(mortgagee under mortgage no.##)

**EXECUTED by Ashfield Council**

66

**Instrument setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use Of Land or Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919**

(Sheet 1 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited Plan [ ] covered by Subdivision Certificate No.

**Full name and address of the owner of the land** **Abacus Group Holdings Limited**  
ACN 080 604 619  
Level 34, 264-278 George Street  
SYDNEY NSW 2000

**Part 1 (Creation)**

| Number of item shown in the intention panel on the Plan | Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan | Burdened Lot(s) or parcel(s) | Benefited Lot(s), road(s), bodies or Prescribed Authorities |
|---|--|------------------------------|---|
| 1.  | Restriction on use variable width (R)  | 103                          | 102   |
| 2.  | Right of footway limited in stratum (W)  | 103<br>102                   | 102<br>103  |
| 3.  | Easement for letterboxes limited in stratum (X)  | 103                          | 102   |
| 4.  | Easement for garbage room limited in stratum (Y)   | 102                          | 103   |
| 5.  | Easement for grease arrestor limited in stratum (Z)  | 102                          | 103   |
| 6.  | Easement for services (whole of lot) (S)   | 102                          | 103   |
| 7.  | Easement for fire egress variable width limited in stratum (V)   | 103                          | 102   |
| 8.  | Restriction on use (RU)  | 102                          | Ashfield Council  |
| 9.  | Positive covenant (PC)   | 102                          | Ashfield Council  |
| 10.   | Restriction on use   | 103                          | 102   |

(Sheet 2 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No. .

## PART 2 (Terms)

### DEFINITIONS

Where an easement, restriction or other right referred to in this Instrument is limited or partly limited in stratum, it is limited in stratum to the reduced levels on Australian Height Datum shown on the plan.

For the purpose of this Instrument, the following words have the following meanings unless the contrary intention appears:

- (a) **Authorised User** means every person authorised by the Grantee for the purposes of any easement created by this Instrument and includes, but is not limited to, the Grantee's Employees.
- (b) **Grantee** means every person who is at any time entitled to an estate or interest in possession in the benefited lot, or any part of it with which the right shall be capable of enjoyment.
- (c) **Grantor** means the registered proprietor for the time being of the burdened lot or any part of it (as applicable).
- (d) **Grantor's Employees** means the employees, servants, agents and contractors of the Grantor.
- (e) **Grease Arrestor** means the grease arrestor situated on Lot 102.
- (f) **Instrument** means this section 88B Instrument.
- (g) **Plan** means the plan of subdivision to which this Instrument relates.
- (h) **Services** includes the supply of water, gas, electricity, telephone, cable television, fibre-optic and other data services, chilled water and the discharge of sewage, sullage and other fluid wastes, all by means of underground pipes, wires, cables or conduits.

(Sheet 3 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

**1. TERMS OF THE RESTRICTION ON USE VARIABLE WIDTH (R) NUMBERED ONE IN THE PLAN**

The Grantor must:

- (a) not place any fixed or moveable items on the site of this restriction on use; and
- (b) at the Grantor's cost cause any items placed or left on the site of this restriction on use to be removed promptly.

**2. TERMS OF THE RIGHT OF FOOTWAY LIMITED IN STRATUM (W) NUMBERED TWO IN THE PLAN**

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass on foot or using a mobility assistance device (such as a wheelchair or motorised mobility scooter) but without road vehicles at all times and for all purposes to and from the benefited lot or any part of it.

**3. TERMS OF THE EASEMENT FOR LETTERBOXES LIMITED IN STRATUM (X) NUMBERED THREE IN THE PLAN**

3.1 The Grantee may:

- (a) cause such letterboxes as are necessary to service the residential apartments situated on the benefited lot to be erected and maintained in the site of this easement; and
- (b) allocate letterboxes for the use of the occupiers of residential apartments in the benefited lot.

3.2 Authorised Users:

- (a) may use the letterbox allocated to them by the Grantee for the delivery of mail items capable of fitting in it,

(Sheet 4 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

- (b) must cause the letterbox allocated to them by the Grantee to be cleared regularly.

**4. TERMS OF THE EASEMENT FOR GARBAGE ROOM LIMITED IN STRATUM (Y)  
NUMBERED FOUR IN THE PLAN**

The Grantee and Authorised Users:

- (a) may cause garbage and waste generated on the lot benefited to be stored in garbage bins in the room comprising the site of this easement;
- (b) must ensure that:
  - (i) garbage and waste (other than recyclable materials) are drained and securely wrapped before being placed in a garbage bin allocated for garbage;
  - (ii) recyclable materials are cleaned and emptied, but not bagged, before being placed in a garbage bin allocated for recyclable materials;
  - (iii) they comply with any applicable waste and recycling guidelines;
  - (iv) bottles are drained and cleaned and not broken before placing them in a garbage container designated for that purpose and that bottles, glass or liquids are not deposited in a garbage bin; and
  - (v) no items are placed in a garbage bin such that the lid of the garbage bin cannot be securely closed.

4.2 An Authorised User must immediately clean up any spillage of waste, garbage or recyclable material caused by them.

4.3 The Grantee at its cost must:

- (a) cause the garbage bins in the room comprising the site of this easement to be emptied daily; and
- (b) cause the room comprising the site of this easement to be kept clean.

(Sheet 5 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

**5. TERMS OF THE EASEMENT FOR GREASE ARRESTOR LIMITED IN  
STRATUM (Z) NUMBERED FIVE IN THE PLAN**

**5.1 The Grantee and Authorised Users:**

- (a) may cause the drainage systems installed on the benefited lot to be connected to the Grease Arrestor;
- (b) may obtain access to the Grease Arrestor for the purposes of emptying, cleaning, inspecting, maintaining and repairing it;
- (c) must comply with all:
  - (i) applicable laws and standards,
  - (ii) requirements of Sydney Water, and
  - (iii) manufacturer's recommendations,regarding the use and operation of the Grease Arrestor;
- (d) must not cause anything to be introduced to any drainage system connected to the Grease Arrestor which causes or is likely to cause the Grease Arrestor to malfunction or to become blocked.

**5.2 The Grantee must at its cost cause the Grease Arrestor to be emptied, cleaned, inspected, repaired and maintained so as to ensure its continuous operation in accordance with all:**

- (i) applicable laws and standards,
- (ii) requirements of Sydney Water, and
- (iii) manufacturer's recommendations.

**6. TERMS OF THE EASEMENT FOR SERVICES (S) NUMBERED SIX IN THE PLAN**

An easement for services as specified in Schedule 1B of the Strata Schemes (Freehold Development) Act 1973.

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(Sheet 6 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

**7. TERMS OF THE EASEMENT FOR FIRE EGRESS VARIABLE WIDTH LIMITED IN STRATUM (V) NUMBERED SEVEN IN THE PLAN**

- 7.1 The Grantee and Authorised Users may go, pass and repass within the site of this easement by foot only for the purpose of egressing the benefited lot:
- (a) in an emergency; or
  - (b) for fire drill purposes;
  - (c) if the lifts in the benefited lot are not operational or are otherwise unavailable.
- 7.2 In exercising the right granted under this easement, the Grantee and Authorised Users must:
- (a) cause as little inconvenience as is practicable to the Grantor and any occupier of the burdened lot; and
  - (b) cause as little damage as is practicable to the burdened lot and any improvements on it.

**8. TERMS OF RESTRICTION ON USE (RU) NUMBERED EIGHT IN THE PLAN**

[Restriction on use covering the stormwater detention system beneath Lot 102 residential building – terms required by Ashfield Council to be inserted]

**9. TERMS OF POSITIVE COVENANT (PC) NUMBERED NINE IN THE PLAN**

[Public positive covenant covering the stormwater detention system beneath Lot 102 residential building – terms required by Ashfield Council to be inserted]

**10. TERMS OF RESTRICTION ON USE NUMBERED TEN IN THE PLAN**

The owner or occupier of the burdened lot or any part of it must not use or permit the burdened lot or that part to be used other than as a restaurant or café or for uses ancillary to a restaurant or café and in particular must not use or permit the burdened lot or that part to be used for any purpose referred to in this restriction on use regardless of whether that purpose is the primary purpose for which the burdened lot is used or is merely ancillary to another purpose:

(Sheet 7 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

- (a) **Adult Use:** as a brothel, massage parlour, strip club, for the provision of entertainment of an "adult" or "erotic" nature, for the sale of "adult" or "restricted" products and/or publications, as a "lingerie style" restaurant;
- (b) **Convenience store:** as a grocery shop, mixed business or convenience store;
- (c) **Discount Store:** as a disposal store, bargain or discount store;
- (d) **Entertainment:** as an Internet café, an amusement hall, video games parlour, pool hall or gaming centre;
- (e) **Colleges:** as a college or training institute providing on-site training (for example and without limitation, language education, coaching of high school or university students, sales training);
- (f) **Public Utility Customer Service:** as the office of a public utility or other public organisation where a substantial part of the intended or actual use includes the provision of customer service or accounts paying facilities to customers or members of the public who attend the burdened lot for that purpose (provided that this does not prohibit incidental visits by customers or the public, including for such purposes);
- (g) **Moneylending, etc.:** as the office or shop of a moneylender, pawnbroker, "cash converter" or similar business (not including the office of a bank, building society or credit union);
- (h) **Gymnasium:** as a gymnasium or fitness centre; and
- (i) **Other:** any noxious, noisome, noisy or other use likely to cause a nuisance or unreasonable disturbance to owners or occupiers of any other lot and any other use which does or is likely to have a material adverse affect on the value of any other lot or lots within the building (for example and without limitation, a use which involves or may involve significant levels of visitor traffic to the lot or other than incidental staff traffic outside normal business hours).

(Sheet 8 of 8 Sheets)

**Plan:** Plan of subdivision of Lot 101 in Deposited  
Plan [ ] covered by  
Subdivision Certificate No.

**EXECUTED by ##**

Abacus – attorney

**EXECUTED by ##**

(mortgagee under mortgage no.##)

**EXECUTED by Ashfield Council**

| PLAN FORM 6 (2013)  |   | WARNING: Creasing or folding will lead to rejection |  |
|---|---|---|--|
| DEPOSITED PLAN ADMINISTRATION SHEET   |   | Sheet 1 of 3 sheet(s)                               |  |
| Registered:<br>Title System:<br>Purpose:  | Office Use Only   | <b>STAGE 2</b>                                      |  |
| <b>PLAN OF PROPOSED SUBDIVISION OF LOT 101 IN DP</b>  | LGA: ASHFIELD<br>Locality: ASHFIELD<br>Parish: PETERSHAM<br>County: CUMBERLAND  |   |  |
| <p style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</p> <p>I, ..... (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>File Number: .....</p> <p>Office: .....</p>   | <p>Survey Certificate</p> <p>I, CHRISTOPHER JOHN MOYCE<br/>of LTS LOCKLEY, LOCKED BAG 5, GORDON NSW 2072<br/>a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on DRAFT</p> <p>*(b) The part of the land shown in the plan (*being/*excluding ^ .....)<br/>.....<br/>was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on,..... the part not surveyed was compiled in accordance with that Regulation.</p> <p>*(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>.</p> <p>Signature: ..... Dated: DRAFT</p> <p>Surveyor ID: .....</p> <p>Datum Line: .....</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>*Strike through if Inapplicable.</p> <p>^Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p> |   |  |
| <p style="text-align: center;">Subdivision Certificate</p> <p>I, .....<br/>*Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: .....</p> <p>Accreditation number: .....</p> <p>Consent Authority: .....</p> <p>Date of endorsement: .....</p> <p>Subdivision Certificate number: .....</p> <p>File number: .....</p> <p>*Strike through if Inapplicable.</p> |   |   |  |
| Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land.   | Plans used in the preparation of survey/compilation.  |   |  |
| Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A  | If space is insufficient continue on PLAN FORM 6A<br>Surveyor's Reference: 22632-42405PS1   |   |  |

PLAN FORM 6A (2012)      WARNING: Creasing or folding will lead to rejection

| <b>DEPOSITED PLAN ADMINISTRATION SHEET</b>   |                 | Sheet 2 of 3 sheet(s)  |
|--|-----------------|--|
| Office Use Only  | Office Use Only |  |
| <b>Registered:</b>   |                 |  |
| <b>PLAN OF PROPOSED SUBDIVISION OF LOT 101 IN DP</b>   |                 |  |
| Subdivision Certificate number: .....  |                 | This sheet is for the provision of the following information as required:<br>• A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i><br>• Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i><br>• Signatures and seals- see 195D <i>Conveyancing Act 1919</i><br>• Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. |
| Date of Endorsement: .....   |                 |  |
| <p>PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919, IT IS INTENDED TO CREATE:</p> <ol style="list-style-type: none"> <li>1. RESTRICTION ON USE VARIABLE WIDTH (R)</li> <li>2. RIGHT OF FOOTWAY LIMITED IN STRATUM (W)</li> <li>3. EASEMENT FOR LETTER BOXES LIMITED IN STRATUM (X)</li> <li>4. EASEMENT FOR GARBAGE ROOM LIMITED IN STRATUM (Y)</li> <li>5. EASEMENT FOR GREASE ARRESTOR LIMITED IN STRATUM (Z)</li> <li>6. EASEMENT FOR SERVICES (WHOLE OF LOT) (S)</li> <li>7. EASEMENT FOR FIRE EGRESS LIMITED IN STRATUM (V)</li> <li>8. RESTRICTION ON USE (RU)</li> <li>9. POSITIVE COVENANT (PC)</li> <li>10. RESTRICTION ON USE</li> </ol> |                 |  |
| If space is insufficient use additional annexure sheet   |                 |  |
| Surveyor's Reference: 22632-42405PS1   |                 |  |

PLAN FORM 6A (2012)      WARNING: Creasing or folding will lead to rejection

| DEPOSITED PLAN ADMINISTRATION SHEET                                 |                 | Sheet 3 of 3 sheet(s)   |
|---|-----------------|---|
| Registered:   | Office Use Only | Office Use Only   |
| PLAN OF PROPOSED SUBDIVISION OF LOT 101 IN DP                       |                 | This sheet is for the provision of the following information as required: <ul style="list-style-type: none"><li>• A schedule of lots and addresses - See 60(c) SSI Regulation 2012</li><li>• Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919</li><li>• Signatures and seals- see 195D Conveyancing Act 1919</li><li>• Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.</li></ul> |
| Subdivision Certificate number: .....<br>Date of Endorsement: ..... |                 |   |
| Signatures and Seals of Parties                                     |                 |   |
| If space is insufficient use additional annexure sheet              |                 |   |
| Surveyor's Reference: 22632-42405PS1                                |                 |   |



## Ashfield Mall Parking Deed

**BETWEEN**

**Perpetual Trustee Company Limited ACN 000  
001 007** as custodian for Abacus Ashfield Mall  
Property Trust ABN 23 341 374 487

**AND**

**Abacus Funds Management Limited ACN 007  
415 590** as trustee for Abacus Ashfield Mall  
Property Trust ABN 23 341 374 487

**AND**

**Ashfield Council**

**MILLS OAKLEY LAWYERS**  
Level 12, 400 George Street  
SYDNEY NSW 2000  
Telephone: +61 2 8289 5800  
Facsimile: +61 2 9247 1315  
DX 13025, SYDNEY, MARKET STREET  
[www.millsoakley.com.au](http://www.millsoakley.com.au)  
Ref: MYS/3085647



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## Parties

**Perpetual Trustee Company Limited ACN 000 001 007** as custodian for Abacus Ashfield Mall Property Trust ABN 23 341 374 487 of Level 12, 123 Pitt Street, Sydney NSW 2000

(“Owner”)

**Abacus Funds Management Limited ACN 007 415 590** as trustee for Abacus Ashfield Mall Property Trust ABN 23 341 374 487 of Level 34, 264 - 278 George Street, Sydney NSW 2000

(“Abacus”)

**Ashfield Council ABN 11 211 068 961** of 260 Liverpool Road, Ashfield NSW 2131

(“Council”)

## Background

- A. The Owner is:
- (i) the registered proprietor of the Site;
  - (ii) the successor in title to the original owner party to the Existing Deed.
- B. Abacus proposes to redevelop the Site in accordance with the Development Consent.
- C. Part of the Site is burdened by the Existing Easement, which provides 394 car parking spaces on the Site for use by the public.
- D. The Existing Deed:
- (i) regulates the operation, relocation and replacement of the Existing Easement;
  - (ii) provides for the provision of 20 car parking spaces for the use of Council staff, co-located with the Existing Easement; and
  - (iii) provides for the provision of an additional 20 car parking spaces for the use of Council staff.
- E. The Development Consent requires:
- (i) the provision on the Site of the Public Area and the Council Area;
  - (ii) the creation of the New Easement to accommodate the Public Area, replacing the Existing Easement; and
  - (iii) the parties to enter into this Deed to document their agreement regarding the location of, access to, use of and relocation of the Public Area and the Council Area.
- F. The parties also enter into this Deed to record their agreement regarding access to, and use of car parking spaces during the redevelopment of the Site.

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## Terms and Conditions

### 1 Definitions and interpretation

---

#### 1.1 Definitions

In this Deed unless the context otherwise requires:

|                               |   |
|-------------------------------|---|
| <b>Commencement Date</b>      | means date on which Abacus serves on Council notice of registration of one or more deposited plans or instruments which:<br>(a) release the Existing Easement, and<br>(b) create the New Easement,<br>accompanied by copies of the relevant plans or instruments as registered. |
| <b>Council Area</b>           | means the area providing 20 car parking spaces for the use of Council staff, to be situated in the redeveloped building on the Site.  |
| <b>Development Consent</b>    | means the determination of the Sydney East Joint Regional Planning Panel dated 25 September 2014 being consent number 10.2013.114.1.  |
| <b>Existing Deed</b>          | means the deed dated 15 September 1997 between Council and FAI Centre Pty Limited ACN 079 929 356.  |
| <b>Existing Easement</b>      | means the easement created by transfer W516454.   |
| <b>New Easement</b>           | means an easement providing for the:<br>(b) access to,<br>(c) use of, and<br>(d) relocation of,<br>the Public Area, on the terms set out in Part 2 of Schedule 2.   |
| <b>Occupation Certificate</b> | has the meaning given in section 109C of the <i>Environmental Planning and Assessment Act 1979</i> (NSW).   |
| <b>Public Area</b>            | means the area providing 330 car parking spaces for the use of the public, to be situated in the redeveloped building on the Site.  |
| <b>Site</b>                   | means Lot 1 in Deposited Plan 736779  |

#### 1.2 Interpretation

Unless the contrary intention appears in this Deed:

- (a) a reference to this Deed includes a variation or replacement of it and any attachments to it;
- (b) a reference to a Schedule is to a schedule to this Deed;
- (c) a reference to Acts, ordinances, codes or other laws includes regulations, consolidations and amendments;
- (d) the singular includes plural and vice-versa;



- (e) if something must be done on a day which is not a Business Day, it must be done on the next Business Day;
- (f) a reference to a person or body includes that person's or body's executors, administrators, successors, substitutes and assigns or, where a body changes its name, to that body by its new name;
- (g) any agreement, representation or warranty in favour of two or more persons is for their benefit jointly and severally;
- (h) any agreement, representation or warranty in favour of two or more persons binds them jointly and severally.

### **1.3 Schedules**

The parties covenant with each other on the terms and conditions contained in the Schedules.

## **2 Access to car parking during redevelopment**

Schedule 1 applies from the date of this Deed until the later of:

- (a) the Commencement Date; and
- (b) the date on which Abacus serves on Council a copy of an Occupation Certificate (which may be an interim Occupation Certificate) permitting vehicular and pedestrian access to and use of the parts of the Site comprising the Public Area and the Council Area.

## **3 Release of Existing Easement and creation of New Easement**

Schedule 2 applies from the date of this Deed until the Commencement Date.

## **4 Parties' rights and obligations after Commencement Date**

Schedule 3 applies from the Commencement Date.

## **5 Application and termination of Existing Deed**

### **5.1 Application of Existing Deed**

The parties acknowledge and agree that:

- (a) the Existing Deed binds them in respect of its subject-matter; and
- (b) to the extent that the terms of this Deed are inconsistent with the Existing Deed, this Deed prevails.

### **5.2 Termination of Existing Deed**

The Existing Deed terminates on the Commencement Date and from that date each of the parties releases the others in respect of any liability arising under the Existing Deed.

## **6 General**

### **6.1 Communication**

All notices, requests, applications and consents required or permitted to be given by one party to another party must be in writing, addressed as shown in this Deed or to an address which a party may from time to time give notice to each other party, and:



- (a) delivered to that party's address; or
- (b) transmitted by facsimile transmission to that party's address.

**6.2 Law & Jurisdiction**

This Deed is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

**6.3 Joint and Several Liability**

Every covenant or provision in this Deed applying to or binding, or a right conferred on, more than one person will bind or benefit them jointly and each of them severally.

**6.4 Amendment**

This deed may only be amended or supplemented in writing signed by the parties.

**6.5 Counterparts**

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. Execution of facsimile counterparts, and facsimile copies of executed counterparts, will be sufficient for this purpose.

**6.6 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

**6.7 Further Assurance**

Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it by notice from another party to promptly and effectively carry out and give full effect to this Deed and the rights and obligations of the parties under it.

**6.8 Entire Agreement**

This Deed, any annexures or schedules to it, and the instruments to be registered as provided for in Schedule 2, comprise the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this Deed and those annexures, schedules and instruments. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.

**6.9 Severability**

If any part of this Deed is void or unenforceable in any jurisdiction, then for the purposes of that jurisdiction:

- (a) if possible, that part is to be read down so as to be valid and enforceable; or
- (b) if (a) is not possible, and that part does not go to the essence of the deed, that part will be severed from this Deed and the rest of this Deed will continue to have full force and effect.



---

**6.10 Sale or transfer of the Site**

- (a) The Owner must not sell the Site without:
  - (i) informing the purchaser or transferee of the terms and provisions of this Deed;
  - (ii) procuring, at no cost to Council, the purchaser or transferee to enter into a deed whereby:
    - (A) the purchaser or transferee and Council covenant with each other in the same terms as such of the provisions of this Deed as remain in operation and effect at the date of that sale or transfer;
    - (B) the Owner and Council release each other from their respective obligations under this Deed with effect from the date of that sale or transfer.
- (b) Council must use its reasonable endeavours to execute the deed referred to in paragraph (a)(ii) without delay.

---

**7 Goods and Services Tax**

**7.1 Interpretation**

In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**).

**7.2 Gross up**

If a party to this Deed (the **Supplier**) makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

**7.3 Reimbursements**

If this Deed requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party is the amount or the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable **expense**.

**7.4 Indemnities**

If a party to this Deed has the benefit of an indemnity for a cost, expense, loss or outgoing (**indemnified cost**) under this Deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.

**7.5 Tax invoices, etc.**

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Deed.

---

## **8 Limitation of Liability**

### **8.1 Custodian's Limitation of Liability**

- (a) The Custodian enters into this Deed as agent of AFML (and AFML's capacity and liability are regulated by sub-clause 2). The Custodian can act only in accordance with the terms of the agreement under which it is appointed as AFML's agent and is not liable under any circumstances to any party under this Deed. This limitation of the Custodian's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- (b) The Custodian is not obliged to do or refrain from doing anything under this Deed (including, without limitation incur any liability) unless the Custodian's liability is limited in the same manner as set out in this sub-clause 1.
- (c) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Custodian in any way which exposes the Custodian to any liability.
- (d) If, whether by the express provisions of this Deed or by implication of law, the Custodian makes or is taken to have made any representation or warranty then, except for the representations and warranties that can only be within the Custodian's actual corporate knowledge, those representations and warranties are taken to have been made by AFML.

### **8.2 AFML's Limitation of Liability**

- (a) AFML is liable under this Deed only in its capacity as trustee of the Trust (and, if the Trust is a registered managed investment scheme, as responsible entity for that scheme). The liability of AFML arising under or in connection with this Deed is limited to and can be enforced against AFML only to the extent to which it can be satisfied out of property of the Trust out of which AFML is actually indemnified for the liability.
- (b) This limitation of AFML's liability:
  - (a) applies despite any other provision of this Deed and extends to all liabilities and obligations of AFML in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed; and
  - (b) survives termination of this Deed.
- (c) The parties other than AFML may not sue AFML in any capacity other than as trustee of the Trust (and if the Trust is a registered managed investment scheme, as responsible entity for that scheme), including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to AFML or prove in any liquidation, administration or arrangement of or affecting AFML (except in relation to property of the Trust).
- (d) The provisions of this clause do not apply to any obligation or liability of AFML to the extent that it is not satisfied because under the constitution establishing the Trust or by operation of law there is a reduction in the extent of AFML's indemnification out of the assets of the Trust, as a result of AFML's fraud, negligence or breach of trust.

- (e) For the purposes of paragraph (d) of this sub-clause, AFML will not be treated as having been negligent or having acted in breach of trust to the extent to which any failure by AFML to satisfy its obligations under this Deed has been caused or contributed to by a failure by the Custodian of the Trust property (or its delegate) or any other person to fulfil its obligations in relation to the Trust or any other act or omission of that Custodian (or its delegate) or any other person.

**8.3 Authority, Direction and Obligations of AFML**

- (a) AFML:
- (a) irrevocably authorises, instructs and directs the Custodian to enter into and perform; and
  - (b) agrees to:
    - (A) give all instructions and directions reasonably required so that the Custodian can continue to perform;
    - (B) obtain each approval or waiver reasonably required (other than the Custodian's own corporate authorisations and approvals) for the Custodian to enter into and perform; and
    - (C) indemnify the Custodian against any cost, expenses, loss or liability incurred or to be incurred by the Custodian in entering into or performing,  
the Custodian's obligations under and in connection with the Custody Agreement.
  - (b) AFML agrees not to give the Custodian any instruction or direction that, if complied with, would cause the Custodian to breach any of its obligations under or in connection with the Custody Agreement or any law.

**8.4 Definitions**

In this clause:

**AFML** means Abacus Funds Management Limited ACN 007 415 590;

**Custodian** means Perpetual Trustee Company Limited ACN 000 001 007;

**Custody Agreement** means the custody agreement between the Custodian and AFML in regard to the Trust dated 20 December 1999; and

**Trust** means Abacus Ashfield Mall Property Trust.



## Schedule 1 Access to car parking during redevelopment

1. Where the Construction Management Plan requires the restriction or closure of access to any part of the Current Building that is the subject of rights of access or parking under the Existing Easement or the Existing Deed:
  - (a) the Construction Management Plan must make provision for:
    - (i) spaces for:
      - (A) the public to park at least 150 Motor Cars on level 5 of the Current Building,
      - (B) Council to park 20 Motor Cars on level 5 of the Current Building,
    - (ii) vehicular and pedestrian access to and from those parking spaces, including revised arrangements for such access as the location of those parking spaces on level 5 of the Current Building is adjusted as construction progresses, and
    - (iii) spaces for the public to park at least 180 Motor Cars on levels 1 and 2 of the Current Building;
  - (b) the Owner agrees to observe and perform the requirements of the Construction Management Plan as it applies to the restriction or closure of access to that part or those parts; and
  - (c) Council acknowledges and agrees that:
    - (i) the restriction or closure of access to that part or those parts undertaken in accordance with the Construction Management Plan will not cause the Owner to be in breach of its obligations under the Existing Easement or the Existing Deed, and
    - (ii) during development of the Adjoining Development, an easement enabling the use of 20 residential visitor car parking spaces for the Adjoining Development will be created on the parts of site of the Existing Easement generally shown in Attachment A to this Deed; Council will not object to the creation, release or relocation of the site of the easement for those residential visitor car parking spaces and will, if requested, provide its consent to the registration of plans or instruments creating, releasing or relocating them.
2. The Owner must not later than the date on which a Construction Certificate is issued for the construction of the level 6 car park:
  - (a) enter into, and procure the Owner's mortgagee to enter into, a tripartite agreement with Council to regulate the rights and obligations of the parties in the event of default by Abacus under this Deed;
  - (b) deliver to Council a bank guarantee which secures payment to Council on demand the sum of \$150,000.00. Council may call upon the bank guarantee if:
    - (i) work on the Relevant Stage has ceased for a period of greater than three months;



- (ii) Council serves a notice on the Owner requiring the Owner to show cause why Council should not take steps to remove all scaffolding, formwork and other items restricting or preventing access to the car parking spaces on level 5 of the Current Building; and
  - (iii) the Owner does not:
    - (A) restart work on the Relevant Stage, or
    - (B) remove all scaffolding, formwork and other items restricting or preventing access to the car parking spaces on level 5 of the Current Building; and
  - (iv) Council removes scaffolding, formwork and other items restricting or preventing access to the car parking spaces on level 5 of the Current Building.
3. In this Schedule:
- Adjoining Development** means the retail and residential building to be constructed on the land in folios A/404055, B/404055, A/405790 and 100/734467.
- Construction Management Plan** means the construction management plan for the Relevant Stage approved by Council in accordance with condition B(2) of the Development Consent.
- Current Building** means the building erected on the Site as at the date of this Deed.
- Relevant Stage** means the stage of the redevelopment of the Site which requires the restriction or closure of access to any part of the Site that is the subject of rights of access or parking under the Existing Easement or the Existing Deed.

## Schedule 2 Release of Existing Easement and creation of New Easement

### Part 1 Parties' obligations to release Existing Easement and create New Easement

1. The parts of the Site intended at the date of this Deed to be the location of the Public Area and the means of access to it are the parts of the redevelopment of the Site shown as B1 and G1 on the plans which are Attachment A.
2. As soon as is practicable during the course of redevelopment of the Site, Abacus must:
  - (a) at its cost procure the preparation of a plan of survey suitable for registration either as:
    - (i) a deposited plan, or
    - (ii) a plan to be annexed to a dealing, identifying the location of the Public Area, and the means of access to and from it, in the redeveloped building on the Site;
  - (b) at its cost procure the preparation of:
    - (i) an instrument under section 88B of the *Conveyancing Act 1919*, for registration with the deposited plan referred to in clause 2(a)(i) to:
      - (A) create an easement in the terms set out in Part 2 of this Schedule 2, and
      - (B) release the Existing Easement, or
    - (ii) a Transfer Granting Easement, with the plan referred to in clause 2(a)(ii) annexed, to create an easement in the terms set out in Part 2 of this Schedule 2, together with a Transfer Releasing Easement in respect of the Existing Easement; and
  - (c) submit the relevant instrument and plan, or instruments and plan, referred to in clause 2(b), (the **Easement Replacement Documents**) to Council for approval and execution.
3. Council must cause the Easement Replacement Documents to be executed and returned to Abacus as soon as is reasonably practicable after they are submitted to Council.
4. Within two months after completion of the construction works required to create:
  - (a) the Public Area;
  - (b) the Council Area; and
  - (c) the means of vehicular and pedestrian access to each of them,Abacus must at its cost:
  - (d) cause the Easement Replacement Documents executed by Council to be executed by the Owner;
  - (e) procure the consent of any registered mortgagee to the registration of the Easement Replacement Documents; and
  - (f) cause the Easement Replacement Documents to be registered at Land & Property Information NSW.

**Part 2 – Terms of the New Easement**

Terms of easement in gross.

- (a) An easement in gross in favour of Council for the public 24 hours a day, 7 days a week, to bring, park and remove 330 Motor Cars on, to and from that part of the servient tenement shown as *[insert definition to match description on plan]* on *[the plan]* OR *[the plan which is Annexure B to this transfer granting easement]*.
- (b) If the registered proprietor of the servient tenement so requires, Council must accept, in place of the easement granted under this instrument, the grant of an easement for the parking of not less than 330 Motor Cars:
  - (i) the site of which is some other part of the servient tenement, and
  - (ii) on the same terms and conditions as those on which this easement is granted.
- (c) If, at any time, no part of the servient tenement is designated as the site for the parking of not less than 330 Motor Cars, the registered proprietor of the servient tenement must procure the grant in favour of Council of an easement for the parking of not less than 330 Motor Cars:
  - (i) by transfer granting easement, or by such other means as the registered proprietor of the servient tenement and Council agree;
  - (ii) on such other land in the vicinity of Ashfield town centre as Council in its absolute discretion approves; and
  - (iii) on terms and conditions as close as is practicable to, and in all respects consistent with, the terms and conditions of this instrument.
- (d) If there is any disagreement between the registered proprietor of the servient tenement and Council regarding the terms or means of the grant of either of the alternative easements for parking provided for in paragraphs (b) and (c), either party may, after giving not less than one month's notice to the other, refer the disagreement for determination by an Umpire:
  - (i) who must act as an expert and not an arbitrator; and
  - (ii) whose decision will be final and binding on the registered proprietor of the servient tenement and Council
  - (iii) whose fees must be borne in equal shares by the registered proprietor of the servient tenement and Council and either party paying the full amount of those fees may recover half from the other.
- (e) On the date on which a transfer granting easement or other instrument creating the alternative easement provided for in paragraph (b) or paragraph (c) is registered, the easement granted by this instrument will be automatically extinguished and Council must:
  - (i) deliver to the registered proprietor of the servient tenement a transfer releasing easement in respect of this easement;
  - (ii) do all other things as are reasonably required to enable:
    - A. the cancellation of the recording of this easement on the folio of the register for the servient tenement; and



**Ashfield Mall Parking Deed**

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- B. the registration of an alternative easement on the folio of the register for the servient tenement or, if applicable, the folio of the register for other land as contemplated under paragraph (c).
- (f) Subject to paragraph (d)(iii), the registered proprietor of the servient tenement must bear the costs of the creation of any alternative easement under paragraphs (b) or (c).
- (g) In this instrument:
  - (i) **Council** means Ashfield Council or its successor, the authority having the benefit of this easement in gross.
  - (ii) **Motor Car** means a motor vehicle:
    - A. defined in AS2890.1-2004, and
    - B. having a tare weight not exceeding 2.5 tonnes.
  - (iii) **Umpire** means person who is a solicitor of not less than 10 years in practice nominated at the request of either party by the President for the time being of the Law Society of New South Wales or, if there is no President by a member of the controlling council of the Law Society of New South Wales.

### Schedule 3 Parties' rights and obligations after Commencement Date

1. Public Area
- 1.1 The Owner:
  - (a) licenses and authorises Council to use the Public Area to provide free parking areas pursuant to the *Local Government Act 1993*; and
  - (b) vests in Council the care, control and management of the Public Area for the accommodation of Motor Cars without payment of a fee or charge.
- 1.2 Subject to clause 2, the Public Area may be used by Council and the general public at all hours, every day of the year.
- 1.3 The Owner must:
  - (a) do everything reasonably practicable to ensure that:
    - (i) for so long as the Community Facilities Building is:
      - (A) owned or possessed by Council, and
      - (B) operated by Council for public or community purposes,there is available to Council and the general public, during the hours specified in clause 1.2, pedestrian access between the Public Area and the Community Facilities Building by means of the route shown in drawings DA 8501 and DA 8502 submitted in connection with the Development Consent, copies of which are annexed to this Deed, and
    - (ii) such means of pedestrian access is adequately lit AS1158.3.1:2005; and
  - (b) at no cost to Council cause the Public Area to be:
    - (i) maintained to an appropriate standard and in a proper and workmanlike manner,
    - (ii) illuminated during normal night trading hours of the Shopping Centre, and
    - (iii) lit with an appropriate level of security lighting AS1158.3.1:2005 outside normal night trading hours of the Shopping Centre.
- 1.4 Council:
  - (a) may:
    - (i) make, police and enforce rules regulating the use by the public of the Public Area, and
    - (ii) erect and maintain in the Public Area and the Council Area signs connected with the regulation of the public's use of the Public Area and the Council's use of the Council Area;
  - (b) must:
    - (i) make rules regulating the use by the public of the Public Area to the following effect:



- (A) the Public Area must be used only for the parking of Motor Cars and for no other purpose,
    - (B) vehicles having a tare (unladen) weight of more than 2.5 tonnes must not use the Public Area or the ramps giving access to and from it,
    - (ii) impose, and use its reasonable endeavours to enforce, a reasonable time limit for users of the Public Area, and
    - (iii) manage and control the Public Area including using its reasonable endeavours to enforce the rules made to regulate the use of the Public Area; and
  - (c) acknowledges that the rights created under this clause 1 do not confer on Council any estate or interest in the Public Area and, subject to the Easement, legal possession of the Public Area at all times remains vested in the Owner.
2. Owner's Reservations
- 2.1 Notwithstanding clause 1, but subject to the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*, the Owner reserves the right to:
- (a) change from time to time:
    - (i) the area, location and arrangement of the roadways, driveways and ramps giving access to and from the Public Area,
    - (ii) the arrangement and configuration of car parking spaces in the Public Area,
  - (b) repair, maintain, improve and clean the Public Area at such times and in such manner as it in its discretion determines,
  - (c) close off the Public Area from the remainder of the Complex outside the trading hours of the Shopping Centre;
  - (d) close the Public Area to such an extent as may, in the reasonable opinion of the Owner, be legally sufficient to prevent a dedication of the Public Area, or the accrual of any rights in the Public Area, to any person or the public.
3. Council Area
- 3.1 The Owner licenses Council to use the Council Area during the hours specified in clause 1.2 on the terms and conditions contained in this clause 3.
- 3.2 Council:
- (a) must:
    - (i) use the Council Area only for the parking of Motor Cars and not for the purpose of washing, cleaning, maintaining or otherwise repairing motor vehicles, and
    - (ii) take all reasonable steps to ensure that, except in the case of emergency, vehicles having a tare (unladen) weight of more than 2.5 tonnes are not taken on to the Council Area or the ramps giving access to and from it; and
  - (b) acknowledges that the rights created under this clause 3 do not confer on Council any estate or interest in the Council Area and legal possession of the Council Area at all times remains vested in the Owner.



- 3.3 Except to the extent caused by the wilful or negligent act or omission of the Owner, the Owner is not responsible or liable for:
- (a) the death, injury or other damage sustained by any person in, or en route to or from, any vehicle parked or usually parked in the Council Area, however occurring, and Council indemnifies the Owner and must keep the Owner indemnified against all actions, claims or demands in respect of any such death, injury or other damage;
  - (b) any damage that Council's vehicles or any of them sustain while entering, remaining in or leaving the Complex and any of Council's vehicles parked in the Council Area or elsewhere in the Complex shall be at the risk of Council, and Council to the fullest extent permitted by law releases the Owner from all liability in respect of any loss of or damage to any such vehicle, or anything attached to or contained in any such vehicle (whether belonging to the vehicle or not); and
  - (c) the theft of any vehicle from the Council Area or damage to any vehicle parked in the Council Area, however occurring or sustained, or for the theft from any vehicle of, or damage to, any parts, equipment or contents of any such vehicle, however occurring or sustained, and Council:
    - (i) to the fullest extent permitted by law releases the Owner from all claims and demands which may arise in respect of the theft of or from, or damage to, any of Council's vehicles or those of its members or employees, and
    - (ii) indemnifies the Owner and must keep the Owner indemnified against all actions, claims or demands in respect of any such theft or damage.
- 3.4 The licence to Council of the Council Area:
- (a) does not confer on Council:
    - (i) any right of exclusive occupation of the Council Area and the Owner may from time to time exercise all of its rights as owner including, without limitation, the Owner's rights to use, possess and enjoy the Council Area, provided that such rights shall not prevent or restrict the operation of the licence of the Council Area;
    - (ii) any estate or interest in the land comprising the Site;
  - (b) is a permitted right only and is not capable of being transferred or otherwise dealt with by Council in whole or in part.
- 3.5 The Owner all at times has full and free access to the Council Area for the purposes of:
- (a) access to other parts of the Complex;
  - (b) repairing, maintaining, improving and cleaning the Council Area;
  - (c) making use of the walls, ceiling and floors of the part of the Complex comprising the Council Area and the right to install, maintain, use, repair, alter and replace pipes, ducts, conduits and wires passing through the Council area and to use and run air, electricity, sewage, water, gas and other services through such pipes, ducts, conduits and wires and to enter upon the Council Area for such purposes, provided that in exercising such rights the Owner must not interfere with Council's use of the Council Area more than is reasonably required; and
  - (d) such other reasonable purposes as the Owner thinks fit.



- 3.6 The licence conferred on Council under this clause 3 terminates on the earlier of:
- (a) the date on which Public Area is relocated to land other than the Site, pursuant to the terms of the Easement; and
  - (b) the date on which Council ceases to own or occupy any part of the Council Land.
- 3.7 On termination of the licence of the Council Area:
- (a) Council must remove from the Council Area:
    - (i) all of its vehicles, and
    - (ii) any signs installed in the Council Area;
  - (b) if Council has not complied with paragraph (a) within one month after termination of the licence, the Owner may cause those vehicles and items to be removed, and anything done under this clause in good faith and with due care by the Owner or its authorised agent will be deemed to be done with the authority of and as agent for Council.
4. Council and the Owner must:
- (a) each at their own cost procure and maintain during the currency of this Deed a policy of public risk insurance with a reputable insurance company covering their respective interests in the Public Area, the Council Area and the car parking facilities provided elsewhere in the Complex; and
  - (b) at the written request of the other (which can be made not more frequently than once per calendar year) provide the requesting party with a certificate evidencing the existence and currency of the policy.
5. Damage or destruction
- 5.1 If:
- (a) the Complex is at any time destroyed or so damaged that the Shopping Centre is rendered unusable; and
  - (b) the Owner does not:
    - (i) within a reasonable period after such damage or destruction, and
    - (ii) upon request by Council to do so,repair or reconstruct the Complex in a configuration to provide similar car parking facilities to those required under the Development Consent, the Owner and the Council must enter into an agreement on terms and conditions to be mutually agreed to provide at the cost of the Owner car parking facilities for not fewer than 330 Motor Cars for members of the public and 20 Motor Cars for the use of Council staff on the Site or on such other land in the vicinity of Ashfield town centre as Council approves.
- 5.2 The parties acknowledge and agree that paragraphs (c) and (e) of the Easement apply to the provision of replacement car parking facilities under clause 5.1.
- 5.3 If the Owner and Council disagree whether the building to be constructed to replace the Complex will or does provide similar car parking facilities to those required under the Development Consent:
- (a) each party must give notice to the other appointing a person who is:
    - (i) a member of the Institute,

- (ii) a practising architect experienced in the design and construction of commercial buildings,  
for the purposes of determining the disagreement. If a party fails to make a nomination within two months of being required in writing by the other to do so, that other party may appoint both persons;
  - (b) if the appointed architects are unable to agree on a determination within two months after the appointment of the last of them, the parties must request the president (or if there is no president, a member of the controlling body) of Institute to appoint a practising architect experienced in the design and construction of commercial buildings to act as umpire to determine the disagreement;
  - (c) an umpire appointed under paragraph (b) must be provided, but is not bound by, the determinations of the architects appointed under paragraph (a);
  - (d) the determinations of the architects (if they agree) or the umpire (if appointed) will be final and binding on the parties and in reaching their determinations they must act as experts and not as arbitrators;
  - (e) the fees of the architects and the umpire (if appointed) must be borne in equal shares by the Owner and Council and either party paying the full amount of those fees may recover half from the other.
- 6. Definitions  
In this Schedule 3:
  - (a) terms defined in the main part of this Deed have the same meaning;
  - (b) a reference to a clause is a reference to a clause in this Schedule 3 unless expressly provided otherwise;
  - (c) **Community Facilities Building** means the community facilities building on the Council Land;
  - (d) **Complex** means the buildings of which the Public Area is part;
  - (e) **Council Land** means Lot 101 in Deposited Plan 734467;
  - (f) **Easement** means the easement created pursuant to Schedule 2 of this Deed;
  - (g) **Institute** means the New South Wales chapter of the Royal Australian Institute of Architects;
  - (h) **Motor Car** means a motor vehicle:
    - (i) defined in AS2890.1-2004, and
    - (ii) having a tare weight not exceeding 2.5 tonnes.
  - (i) **Shopping Centre** means the retail shopping centre forming part of the Complex.



**Execution Page**

**EXECUTED** as a Deed on

2016

**EXECUTED by Perpetual Trustee Company Limited**  
**ACN 000 001 007** by its attorney pursuant to  
Power of Attorney dated 18 September 2014  
registered Book 4676 No. 134  
who states that he/she has received no notice  
of revocation of the Power of Attorney,  
in the presence of:

.....  
Signature of witness  
Name of witness (*please print*)

.....  
Signature of Attorney  
Name & Title of Attorney (*please print*)

**EXECUTED by Abacus Funds Management Limited**  
**ACN 007 415 590** by its attorney pursuant to  
Power of Attorney registered Book 4601 No. 849  
who states that he/she has received no notice  
of revocation of the Power of Attorney,  
in the presence of:

.....  
Signature of witness  
Name of witness (*please print*)

.....  
Signature of Attorney  
Name & Title of Attorney (*please print*)

.....  
Signature of Attorney  
Name & Title of Attorney (*please print*)

DATED 15 September

'HOLDEN' STREET  
UNCOVERED SMALL  
CARPARK.

1987 (24366)

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| ASHFIELD COUNCIL |           |
| FILE NO.         | P710-4050 |
| POLICE NO.       | 1400      |
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ORIGINAL ON  
LD-1104

ASHFIELD COUNCIL  
(‘Council’)

FILE CENTRE PTY LIMITED  
(‘Owner’)

DEED  
CONCERNING  
PUBLIC CAR PARKING AND  
COUNCIL CAR PARKING  
AT ASHFIELD MALL

MINTER ELLISON  
Lawyers  
44 Martin Place  
SYDNEY NSW 2000  
DX 117 SYDNEY  
Telephone (02) 210 4444  
Facsimile (02) 235 2711  
Reference GLC:10230982

DEED dated 15 September 1997  
BETWEEN ASHFIELD COUNCIL of Council Chambers, Liverpool Road, Ashfield,  
New South Wales ('Council')  
AND FAI CENTRE PTY LIMITED ACN 079 929 356  
(Owner')

RECITALS

- A. The Owner has entered into a contract to purchase the land upon which Ashfield Mall is erected from Queensland Investment Corporation.
- B. The original developer of the Ashfield Mall agreed to provide substantial permanent car parking for the Council and the public and the Council agreed to regulate parking.

TERMS AND CONDITIONS OF DEED

1. Definitions

1.1 In this Deed unless the context otherwise provides or requires the following expressions have the meanings given to them:

'Ashfield Mall Land' means the land contained in Lot 1 Deposited Plan 736779.

'Car Parking Easement' means the easement for car parking granted by transfer-granting easement registered No W516454 a copy of which is attached hereto and marked 'A'.

'Centre' means the Shopping Centre Complex erected on the Ashfield Mall Land.

'Centre Car Park' means the areas constructed for and designed for car parking facilities on Levels 1, 2 and 5 of the Centre.

'Centre Manager' means the manager of the Centre for the time being appointed by the Owner and the servants and agents of such manager.

'Community Facilities Building' means the community facilities building on the Council Land.

'Council' means the Council and any other council as defined by the *Local Government Act 1993* which uses the whole or any part of the Council Land for community or public purposes.

'Council Land' means the land contained in Lot 101 Deposited Plan 734467.

'Council Parking Areas' means and refers to part or parts of the Centre Car Park comprising:

- (a) the 20 car parking spaces for the Council's use referred to in clause 5; and
- (b) the 20 car parking spaces for the Council's use described in clause 6.

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'Level 5 Car Park' means the car parking facilities for 394 vehicles situated on Level 5 of the Centre.

'Other Public Car Parks' means the car parking facilities in the areas coloured blue on the copy of Deposited Plan 736779 attached hereto and marked 'B' and include the various accessways to and from such facilities.

'Public Car Park' means:

- (a) until the Owner rebuilds the Centre Car Park or relocates the Car Parking Easement from Level 5 of the Centre - the Level 5 Car Park; or
- (b) car parking facilities forming part of the Centre Car Park for not less than 330 vehicles in accordance with clause 2.3(a).

'Remainder of the Centre Car Park' means that part of the Centre Car Park which is not the Public Car Park or the Council Parking Areas.

- 1.2 In this Deed reference to 'the Council' includes where not repugnant to the context the members, servants and agents of the Council.
- 1.3 In this Deed reference is made to Sections and Acts of Parliament of the State of New South Wales.
- 1.4 Every reference in this Deed to a statute or to any section or provision of a statute shall be read as if the following words were added to such reference:
  - 'or any modification, amendment or re-enactment thereof for the time being in force.'
- 1.5 Words importing the singular number shall include the plural and the masculine gender the feminine or neuter and vice versa and words importing persons shall include corporations and vice versa.
- 1.6 Headings and marginal notes have been inserted for guidance only and shall be deemed not to form part of this Deed.
- 1.7 If the last day for doing anything pursuant to this Deed falls on a Saturday, Sunday or public holiday, then that thing may be done on the next following day which is not a Saturday, Sunday or public holiday.
- 2. **Public Car Park**
  - 2.1 Until the Owner rebuilds the Centre Car Park or relocates the Car Parking Easement, the Level 5 Car Park shall be constituted as follows:
    - (a) the 330 public car parking spaces which are referred to in the Car Parking Easement as being the minimum if there is to be an alternative car park on the Ashfield Mall Land;
    - (b) the 20 car parking spaces described in clause 5 whether or not they are designated as provided in clause 5.2;

- (c) the 4 car parking spaces for the use of H J Nominees Pty Limited referred to in a Licence Agreement dated 30 October 1987 made between the Kern Corporation Limited, H. J. Nominees Pty Limited and Perpetual Trustees Australia Limited a copy of which is annexed hereto and marked 'C' in respect of which 4 car parking spaces the Owner and the Council acknowledge and agree that:
- (i) those spaces are in the location edged red on the plan attached hereto and marked 'D';
  - (ii) the Owner's entitlement pursuant to the Car Parking Easement to reserve for itself and its successors in title 4 car parking spaces is to enable the Owner to fulfil any obligations to H J Nominees Pty Limited under the said Licence Agreement so long as that obligation exists;
  - (iii) on the termination of the said Licence Agreement the said spaces shall be allocated to the additional public car parking spaces referred to in clause 2.1(d);
- (d) 40 car parking spaces as additional public car parking spaces but if and when the said Licence Agreement is terminated, 44 car parking spaces.
- 2.2 For so long as the Public Car Park is situated on Level 5 of the Centre, the Car Parking Easement shall consist of 394 car parking spaces and the Owner and the Council acknowledge that to this extent the Car Parking Easement is subject to this clause 2 and that neither party shall be entitled to object or make any claim against the other pursuant to the Car Parking Easement by reason of the constitution of the Public Car Park as provided in this clause 2.
- 2.3 If the Owner rebuilds the Centre Car park or relocates the Public Car Park from the Level 5 Car Park:
- (a) the Public Car Park shall comprise car parking facilities for not less than 330 vehicles in such positions in the Centre Car Park as the Owner from time to time designates;
  - (b) the Council shall be entitled to designate 20 car parking spaces specifically for its use on the same level of the rebuilt Centre Car Park or the relocated Public Car Park unless in the meantime the licence contained in clause 5.3 has terminated;
  - (c) the Car Parking Easement shall be released and replaced by an alternative Car Parking Easement or other means for the parking of not less than 330 vehicles as more fully set out in the Car Parking Easement;
  - (d) in the event of any disagreement under this clause 2.3 the provisions of clause 10.3 shall mutatis mutandis apply.

- 2.4 If the Public Car Park is relocated from the Ashfield Mall Land the terms of the Car Parking Easement alone shall, subject to clause 10.3, have application to the Owner's obligation to the Council to provide public car parking.
- 3. Licence of Public Car Parks**
- 3.1 On and by virtue of the exchange of parts of this Deed, the Owner licences and authorises the Council to use the Public Car Park and the Other Public Car Parks for free parking areas pursuant to the provisions of the *Local Government Act 1993* and vests the care, control and management of the Public Car Park and the Other Public Car Parks in the Council for the accommodation of vehicles without payment of a fee or charge.
- 3.2 The Public Car Park may be used by the Council and the general public on a 24 hour per day basis. Reasonable and appropriately lit pedestrian access between the Community Facilities Building and the Public Car Park shall be available to the Council and to the general public at all times referred to in clause 3.3 hereof.
- 3.3 The Owner shall do everything that is reasonably practicable to ensure that there is available to the Council and the members of the public, pedestrian access between the Community Facilities Building and the Public Car Park at all times during which the Council is in ownership or possession of the Community Facilities Building and operates the Community Facilities Building for public or community purposes.
- 3.4 The Council will manage and control the Public Car Park and the Other Public Car Parks and will be entitled to erect signs and to police and enforce all relevant regulations and restrictions relating to the parking of vehicles therein. The Council will impose, and use reasonable endeavours to enforce, a reasonable time limit for users of the Public Car Park.
- 3.5 In addition to any other restrictions that the Council shall promulgate for the Public Car Park in the exercise of this licence, the Council shall promulgate rules for the Public Car Park of or to the effect of the following:
- (a) the Public Car Park shall be used only for the parking of vehicles and for no other purpose;
  - (b) except in cases of emergency, no vehicle the tare weight of which exceeds 2 tonnes shall use that part of the Public Car Park which is located in the Level 5 Car Park or the access ramps to and from the Level 5 Car Park;
  - (c) the Council shall use reasonable endeavours to enforce the rules.
- 3.6 The Owner shall ensure that at no cost to the Council the Public Car Park is at all times maintained and during normal night trading hours of the Centre illuminated (and at other times to have an appropriate level of security lighting).
- 3.7 The Council acknowledges that the rights created by the licence pursuant to the provisions of this clause 3 do not confer upon the Council any estate or interest in the Public Car Park and the Other Public Car Parks and subject to the Car Parking Easement over the Public Car Park the legal possession of the Public Car Park and the Other Public Car Parks shall at all times remain vested in the Owner.

4. **The Owner's Reservations of Rights to Public Car Park**

- 4.1 Notwithstanding the provisions of clause 3 of this Deed, the Owner, subject to the provisions of the *Local Government Act 1993*, reserves the right to:
- (a) change from time to time the area, location and arrangement of the roadways, driveways, ramps in and to and from the Public Car Park and Other Public Car Parks;
  - (b) change from time to time the arrangement and configuration of car parking spaces in the Public Car Park;
  - (c) repair, maintain, improve and clean the Public Car Park and the Other Public Car Parks at such times and in such manner as it in its discretion determines;
  - (d) close the Public Car Park and the Other Public Car Parks temporarily from time to time for cleaning, maintenance, repairs and improvements PROVIDED THAT it first gives 48 hours prior notice to the Council (except in the case of an emergency when no notice shall be required);
  - (e) close off the Public Car Park from the remainder of the Centre outside the Centre's trading hours;
  - (f) close the Public Car Park and the Other Public Car Parks to such extent as may in the reasonable opinion of the Owner's Solicitors be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein.

5. **Council parking on same level as Public Car Park**

- 5.1 The Owner acknowledges that the Council is entitled from time to time on giving notice in writing to the Owner, to designate 20 car parking spaces specifically for its use on the same level of the Centre Car Park as the Public Car Park is from time to time located.
- 5.2 At the Council's request the Owner has agreed that while the Public Car Park is located in the Level 5 Car Park the Council's 20 car parking spaces shall be in the Public Car Park and are not required to be designated unless from time to time either party gives the other party notice in writing that that party requires the 20 car parking spaces to be designated. In this event:
- (a) if the Owner requires the Council to designate 20 car parking spaces, the Council shall within 30 days of receiving the Owner's notice designate 20 car parking spaces and notify the Owner of its designation, failing which the Owner shall be entitled to designate the Council's 20 car parking spaces by notice in writing to the Council;
  - (b) if the Council requires the designation of the 20 car parking spaces, it shall by notice in writing to the Owner notify the Owner of its designation.

Following the designation of the 20 car parking spaces by a party pursuant to this clause those 20 car parking spaces shall be the only spaces on that Level which the Council

shall be entitled to use until either party again designates 20 car parking spaces for the Council's use, whereupon the Council shall be entitled on that Level to use only the spaces again so designated.

- 5.3 The Owner hereby licenses and authorises the Council to use 20 parking spaces in the Level 5 Car Park subject to and on the terms and conditions contained in this clause 5.

**6. Council Parking on Level 2 or other places**

- 6.1 The Owner hereby licenses and authorises the Council its members and employees to park not more than 20 vehicles on Level 2 of the Centre in the 20 car parking spaces lying between the up ramp from Level 1 and the parcel pickup bay to the east of the ramp subject to and on the terms and conditions contained in this clause 6.
- 6.2 Access to and egress from such car parking spaces shall be available to the Council its members and employees only during such times as the Centre is open for trading and the Council acknowledges and agrees that if any vehicles belonging to or in use by the Council its members or employees are left in the Centre during times when the Centre is not open for trading such vehicles will be and remain in the Centre entirely at the risk of the Council its members or employees (as the case may be) and the Council hereby indemnifies and agrees to keep indemnified the Owner in respect of any loss or damage to any such vehicles other than loss or damage caused by the intentional or negligent act of the Owner its servants or agents.
- 6.3 The Council shall be entitled during the currency of this Licence at its own expense to:
- (a) erect signs in the area of the Council spaces on Level 2 of or to the effect that the area is for Council parking only; and
  - (b) chain off the Council spaces from the remainder of the Centre Car Park on Level 2,

provided that no damage is done to the structure of the Centre or that if damage is caused by the Council, its members, employees or agents it is forthwith made good at the Council's expense and the Council hereby indemnifies and agrees to keep indemnified the Owner against all losses, claims or damages for which the Owner may (in the absence of the intent or negligence of the Owner) become liable out of or as a result of such damage.

- 6.4 In place of the 20 car parking spaces referred to in clause 6.1, the Owner may allocate to the Council such 20 other under cover car parking spaces in the Centre Car Park as the Council and the Owner may from time to time agree. In this event the provisions of clause 6 shall apply to the reallocated car parking spaces *mutatis mutandis*.

**7. Conditions for Council Parking Areas**

- 7.1 The Council acknowledges that the rights created by the licenses granted pursuant to clause 5 and clause 6 of this Agreement do not confer upon the Council any estate or interest in the Council Parking Areas and the legal possession thereof shall at all times remain vested in the Owner.

- 7.2 The Council covenants and agrees that the purposes of the licenses granted pursuant to clause 5 and clause 6 of this Agreement that:
- (a) the Council Parking Areas shall be used only for the parking of vehicles and in particular shall not be used for the purpose of washing, cleaning, maintaining or otherwise repairing vehicles;
  - (b) the Council shall take all reasonable steps to ensure that except in cases of emergency, the tare weight of any vehicle in the Council Parking Areas shall not exceed 2 tonnes.
- 7.3 The Owner shall not be responsible in the absence of intent or negligence by the Owner for:
- (a) the death, injury or other damage sustained by any person in or en route to or from any vehicle parked or usually parked in the Council Parking Areas however occurring. The Council shall keep the Owner indemnified against all actions, claims or demands in respect thereof however arising except those caused by the intent or negligence of the Owner;
  - (b) any damage that the Council's vehicles or any of them may sustain while entering, remaining in or leaving the Centre Car Park and any of the Council's vehicles parked in the Centre Car Park shall be at the risk of the Council. The Council to the fullest extent permitted by law releases the Owner from all liability in respect of any loss of or damage to any such vehicle or anything attached thereto or contained therein (whether belonging to the vehicle or not) except that caused by the intent or negligence of the Owner;
  - (c) the theft of any vehicle from any of the Council Parking Areas or damage to any vehicle parked in any of the Council Parking Areas however occurring or sustained or for the theft from such vehicle of or damage to any parts, equipment or contents of any such vehicle howsoever occurring or sustained. The Council hereby releases the Owner to the fullest extent permitted by law from all claims and demands which may arise in respect of the theft of or from or damage to any of the Council's vehicles or those of its members or employees except that caused by the intent or negligence of the Owner and the Council shall keep the Owner indemnified against all actions, claims or demands in respect thereof however arising except as aforesaid.
- 7.4 The licenses to the Council of the Council Parking Areas shall not confer any right of exclusive occupation of the Council Parking Areas on the Council and the Owner may at any time and from time to time exercise all its rights as owner including (but without limiting the generality of this clause) the Owner's rights to use possess and enjoy the Council Parking Areas provided that such rights shall not prevent or restrict the operation of the licenses of the Council Parking Areas. The rights conferred on the Council pursuant to the licenses of the Council Parking Areas shall not confer on the Council any estate or interest in the Ashfield Mall Land. The Licence is a permitted right only and shall not be capable of being transferred or otherwise dealt with either in whole or in part. The Owner shall at all times have full and free access to the Council Parking Areas for the purpose of:
- (a) access to other parts of the Centre;

- (b) repairing, maintaining, improving and cleaning the Council Parking Areas;
- (c) the use of the walls, ceiling and floors of the Council Parking Areas and the right to install, maintain, use, repair, alter and replace pipes, ducts, conduits and wires leading through the Council Parking Areas and to use and run air, electricity, sewerage, drainage, gas and other services through such pipes, ducts, conduits and wires and to enter upon the Council Parking Areas for such purposes PROVIDED THAT in exercising such rights the Owner shall not interfere with the Council's use of the Council Parking Areas more than is reasonably required;
- (d) for such other reasonable purposes as it may think fit.

7.5 The Licence of the Council Parking Area pursuant to clause 5 shall terminate:

- (a) on the date the Public Car Park is relocated from the Ashfield Mall Land; or
- (b) on the date the Council no longer owns or occupies the Council Land or any part thereof,

whichever occurs first.

- (c) The Licence of the Council Parking Area pursuant to clause 6 shall terminate on the date the Council no longer owns or occupies the Council Land or any part thereof.

7.6 On termination of the licenses for the Council Parking Areas the Council shall remove all its vehicles from the Council Parking Areas together with any signs and chains the Council may have erected and in default thereof for 1 month the Owner shall be entitled to remove the same and any act or thing done under this clause in good faith and with due care by the Owner or its authorised agent shall be deemed to be done with the authority of and as agent for the Council.

#### 8. Council use of the Remainder of the Centre Car Park

8.1 At all times other than during such times as the Centre or any major part of it is open for trading the Owner shall at the request of the Council make available to the general public the Remainder of the Centre Car Park PROVIDED THAT:

- (a) the requirement for the use of the Remainder of the Centre Car Park shall be advised by the Council to the Owner and the Centre Manager by not less than 14 days notice in writing such notice to state the times within which the facility is required; and
- (b) the use of the Remainder of the Centre Car Park shall be subject to such reasonable control and security arrangements as the Centre Manager may in his reasonable discretion determine AND the Council hereby irrevocably undertakes to meet all costs incurred consequent upon such use of the Remainder of the Centre Car Park including but without prejudice to the generality of the foregoing costs of additional maintenance lighting and cleaning and the employment of such security and other staff as the Centre

Manager may reasonably determine necessary for the control and security of the Remainder of the Centre Car Park and the Centre in regard to such use and the costs of effecting reasonably necessary additional public risk insurance for the Remainder of the Centre Car Park.

- 8.2 In the absence of intent or negligence by the Owner its servants or agents, the Council indemnifies the Owner against all costs, claims and demands which may be made against the Owner and its servants or agents by any person using the Remainder of the Centre Car Park at all times during which the Remainder of the Public Car Park is made available to the general public by the Owner pursuant to this clause 8.
- 8.3 As soon as practicable following each occasion on which the Remainder of the Centre Car Park has been made available to the general public at the Council's request, the Owner or its Centre Manager shall; furnish to the Council a statement giving reasonable details of the costs incurred arising out of the Council's request and the use of the Remainder of the Centre Car Park by the general public. Except in the case of manifest error notified by either party to the other within 14 days of the service of such statement on the Council, such statement shall be prima facie evidence of the matters stated therein.
- 8.4 Within 28 days of receipt by the Council from the Owner of the statement, the Council shall pay the total amount of such statement to the Owner.
9. **Insurance**
- 9.1 The Council and the Owner shall at their own respective expenses each procure and maintain with a reputable insurance company during the currency of this Deed a policy of public risk insurance covering their respective interests in the Public Car Park the Other Public Car Parks and the Council Parking Areas and will at the written request of the other deposit with the requesting party a certificate evidencing the existence and currency of the policy.
10. **Damage or destruction of the Centre**
- 10.1 The Owner agrees with the Council that in the event that the Centre is at any time hereafter destroyed or so damaged that the Centre is rendered unusable as a shopping centre complex AND the Owner does not within a reasonable period following such damage or destruction and upon a request by the Council so to do reconstruct the Centre or erect a new complex on the site thereof providing similar car parking facilities to those in the Centre THEN the Owner shall enter into an agreement with the Council upon such terms and conditions as may be mutually agreed to provide at the cost of the Owner car parking facilities for not less than 412 vehicles upon the site of the Centre or such other land in the vicinity of the Ashfield Town Centre as the Council may approve.
- 10.2 The Owner and the Council acknowledge and agree that the provisions of the Car Parking Easement apply to 330 of the 412 car parking facilities referred to in clause 10.1.
- 10.3 In the event of any disagreement between the Owner and the Council as to whether the reconstructed Centre or the new complex will provide or does provide similar car parking facilities to those in the Centre each party shall appoint (by notice in writing to the other party) a person who is a member of the New South Wales Chapter of the

Royal Australian Institute of Architects (or its successors) and who is a practising architect experienced in the design and construction of commercial buildings for the purposes of determining the disagreement. If either party shall fail to make such an appointment within 2 calendar months of being required in writing so to do by the other of them, the other of them shall be entitled to appoint both persons in the manner aforesaid. In the event of such architects so appointed being unable to agree within 2 calendar months of the date of the appointment of the last of them, the parties hereto shall request the President for the time being of the said Chapter of the said Institute (or its successor) or if there be no President, a member of the controlling body of the said Chapter (or its successor) to appoint a practising architect experienced in the design and construction of commercial buildings to determine the disagreement. The umpire shall be furnished with, but shall not be bound by, the opinions of the firstmentioned architects. The opinion of such firstmentioned architects (if they agree), or the umpire (if they do not agree), shall be final and binding upon the parties and in determining such opinions such architects and umpire shall be acting as experts and not as arbitrators. The fees of all of the architects and the umpire shall be borne equally between the Owner and the Council and either party paying the full amount thereof may recover one half from the other.

**11. Sale or Transfer of the Centre**

- 11.1 The Owner shall not sell or transfer the Ashfield Mall Land or any part thereof without notifying and informing the purchaser or transferee of the terms and provisions of this Deed and shall procure such purchaser or transferee, at no cost to the Council, to enter into a deed with like provisions to this Deed including in such deed this clause 11.1 with the purchaser or transferee taking the place in such deed of the Owner in this one. Such deed shall release the Owner from such obligations under this Deed as are taken over by the purchaser or transferee. The Council will use reasonable endeavours to execute such deed without delay.

**12. Release**

The Owner and the Council release Queensland Investment Corporation ("QIC") from all obligations which QIC has pursuant to the deed concerning public car parking and council carparking at Ashfield Mall entered into by the Council and QIC, on and from the date the contract referred to in recital A is completed.

**13. General Conditions**

- 13.1 Except where the Owner has complied with its obligations pursuant to clause 11.1, neither the Council nor the Owner shall assign or part with or be relieved of any of their rights, powers or obligations hereunder or the benefit of this Deed without the prior written consent of the other.
- 13.2 Any notice to be given by the Council to the Owner shall be delivered to the Owner at its principal office for the time being in Australia or sent by security post addressed to the Owner at its principal office for the time being in Australia. Any notice to be given by the Owner to the Council shall be delivered to the Council at the address shown in this Deed or sent by security post to the address shown in this Deed or at such other address of the Council of which the Council has given written notice to the Owner. If any notice served by either party is served by post it shall be deemed to be duly served

at the expiration of 7 days after the time of posting unless in the meantime the notice is returned unclaimed.

- 13.3 Any notice to be given by any of the parties may be executed under common seal, or signed by the attorney or attorneys of the party or by any Director, Secretary, Manager or solicitor for the time being of the Owner or the General Manager or Deputy General Manager or Solicitor of the Council.
- 13.4 Unless application is mandatory by law, no statute, proclamation, order, regulation or moratorium whether present or future shall apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions of or accruing hereunder to the parties.
- 13.5 This Deed shall be governed by and performed according to the law of the State of New South Wales.

EXECUTED as a deed.

THE COMMON SEAL of ASHFIELD )  
 COUNCIL is affixed by resolution of )  
 Council )

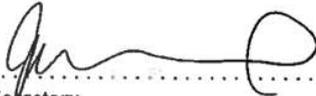


General Manager



Mayor

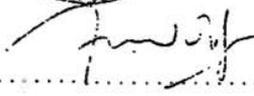
THE COMMON SEAL of )  
 FILL CENTRE PTY LIMITED )  
 is affixed in accordance with its articles of )  
 association in the presence of )

Secretary

Robert F. Baulderstone

Name of secretary (print)



Director

Frank M Wolf

Name of director (print)

00008  
BOX# B78 , DLG# W516454 , TCKT# UL1470

STAMP DUTY

TRANSFER GRANTING EASEMENT  
REAL PROPERTY ACT, 1900  
(See Instructions for Completion on back of form)

W516454  
TG  
\$ 35

DESCRIPTION OF LAND  
Notes (a)  
VOL 885E  
P620-  
1/736779  
New being added of land comprised in  
Curb. of Title, Vol. 885 Fol. 137

TRANSFEREE  
Notes (b)  
COLES MYER LTD. of 127 Liverpool Street, Sydney

TRANSFEESE  
Notes (c)  
THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD of Council Chambers,  
Liverpool Road, Ashfield

Notes (d)  
(The above named TRANSFEREE) hereby acknowledges receipt of the consideration of \$1.00 and TRANSFEESE and GRANTEE an EASEMENT in gross for the public at any time to bring, park and remove three hundred and ninety four (394) motor cars on, to and from that part of the servient tenement shown as "Proposed Easement for Car Parking Variable Width" on Deposited Plan 736779 and otherwise on the terms and conditions contained in Annexure "A" but reserving the rights and subject to the stipulations contained in Annexure "A" out of the servient tenement and appurtenant to the dominant tenement as the TRANSFEESE

PRIOR ENCUMBRANCES  
Notes (e)  
subject to the following PRIOR ENCUMBRANCES: 1. \_\_\_\_\_  
2. \_\_\_\_\_

EXECUTION  
Notes (f)  
DATE 10 July 1986  
We hereby certify this deed to be correct for the purposes of the Real Property Act, 1900.  
Signed in my presence by the Attorney for the  
Signatory of Witness  
K. Wood  
Name of Witness (BLOCK LETTERS)  
30/14-75 DOCK RD. CENTENNIAL PK.  
Address and occupation of Witness  
SECRETARY  
Signed in my presence by the transferee who is personally known to me  
THE COMMON SEAL OF THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD was hereunto  
Signatory of Witness  
affixed by order of the Council  
Name of Witness (BLOCK LETTERS)  
K. Spindle  
Address and occupation of Witness  
TOWN CLERK  
COLES MYER LTD. by its Attorney who hereby states that at the time of executing this Transfer Granting Easement he has received no notice of revocation of the Power of Attorney Registered No. 523 Book 330 pursuant to which he has just executed this Transfer Granting Easement  
(Myles McVeity)  
Mayor  
Signatory of Transferee

TO BE COMPLETED BY LOOSEBAY PARTY  
Notes (g) and (h)

LOGGED BY

LOCATION OF DOCUMENTS  
CT OTHER  
Herewith  
in R.G.O. with W507198  
Produced by

Delivery Base Number 238N

Checked  
RCY  
Signed  
RDZ  
Paid  
N43  
REGISTRATION 29-10-1986  
Stamp  
REGISTRY GENERAL

059  
\$35  
S

"X"

ARTICLE MARKED "A" TO TRANSFER GRANTING EASEMENT FROM CILLES MOYEN LTD.  
TO THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

DATED: 10<sup>th</sup> July 1966

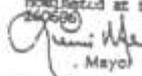
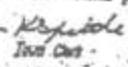
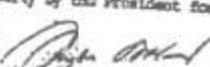
The Transferor reserves the right for itself and its successors in title the registered proprietors for the time being of all or any part of the servient tenement at any time by notice in writing to The Council of the Municipality of Ashfield (or its successor) given at any time:-

- (a) to reserve for its licensees and the licensees of its successors in title parking for 4 motor cars within the site of this Easement; and
- (b) to revoke the said reservation of parking for 4 motor cars within the site of this Easement.

If the Transferor or its successors in title so require, The Council of Municipality of Ashfield or its successor shall from time to time accept, in lieu of the easement hereby granted, a transfer and grant of an easement for the parking of not less than 330 motor cars in which the site of the easement is some other part of the land in the servient tenement but on terms which are in all other respects the same as the terms on which this easement is granted.

It is a condition of the grant of this easement that if, at any time, no part of the servient tenement is designated as the site for the parking of not less than 330 motor cars, the Transferor shall provide by a transfer granting easement or by such other means as the Transferor or its successors in title and The Council of the Municipality of Ashfield or its successor agree, for the parking of not less than 330 motor cars on such other land in the vicinity of Ashfield Town Centre as The Council of the Municipality of Ashfield or its successor may in its absolute discretion approve. The terms of the alternative transfer granting easement or other means as aforesaid shall be as close as practicable to and in all respects consistent with those hereof.

In the event of any disagreement between the Transferor or its successors in title and The Council of the Municipality of Ashfield or its successor as to the terms of any alternative transfer granting easement or other means either party may after one month's notice in writing to the other, refer the disagreement for determination to a person who is a practising solicitor of not less than 10 years in practice ("the umpire") and who is nominated at the request of either party by the President for the time

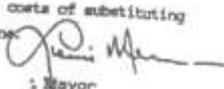
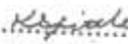
 Mayor  
 J. C. C. C.  


being of the Law Society of New South Wales (or its successor) or if there be no President, a member of the controlling council of the Law Society of New South Wales (or its successor). The opinion of the umpire shall be final and binding upon the Transferor or its successors in title and the Council of the Municipality of Ashfield or its successor and in determining such opinion the umpire shall act as an expert and not as an arbitrator. The fees of the umpire shall be borne equally between the Transferor or its successors in title and the Council of the Municipality of Ashfield or its successor and either party paying the full amount thereof may recover one half from the other.

On the date the alternative transfer granting easement or other means as aforesaid for the parking of not less than 330 motor cars (whether in respect of land in the servient tenement or not) takes effect, this easement shall be automatically extinguished and the Council of the Municipality of Ashfield or its successor shall deliver a duly executed transfer releasing this easement to the Transferor or its successors in title (as the case may be) and will do all such other things as are reasonably required to enable the Land Titles Office to remove this easement from the title of the servient tenement and, if pursuant to the terms hereof an alternative transfer granting easement has been granted, to enable the registration of the alternative transfer granting easement in the Land Titles Office.

The Transferor or its successor shall bear the costs of substituting transfers and grants or other means for this one.

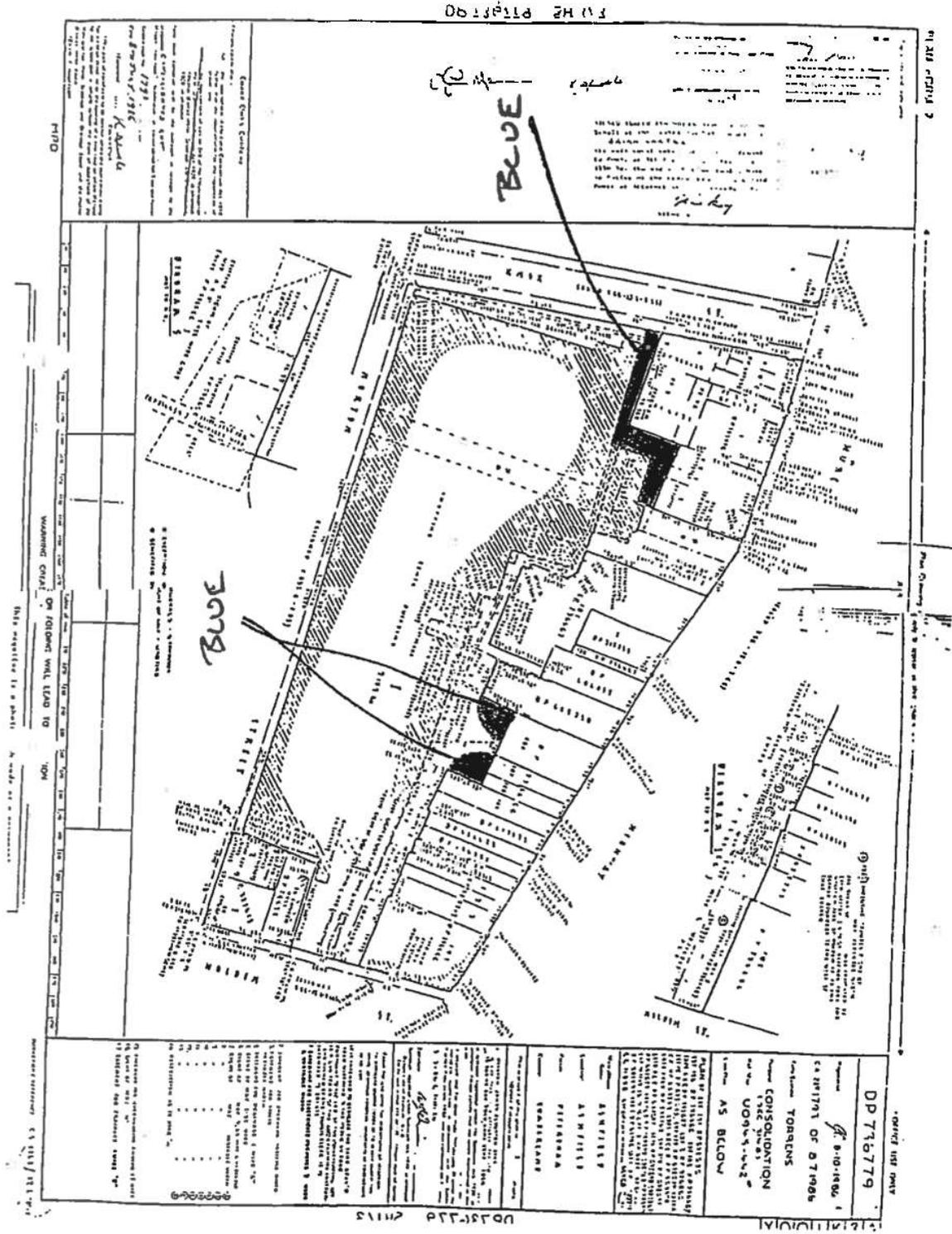
  
.....  
Attorney of Transferor

  
: Mayor  
  
.....  
Town Clerk of Transferor

15 - 5  
300685  
5A8399



73 B



DATED 30 October 1987

BETWEEN

KERN CORPORATION LTD

of the first part

AND

H.J. NOMINEES PTY. LIMITED

of the second part

AND

PERPETUAL TRUSTEES AUSTRALIA LIMITED

of the third part

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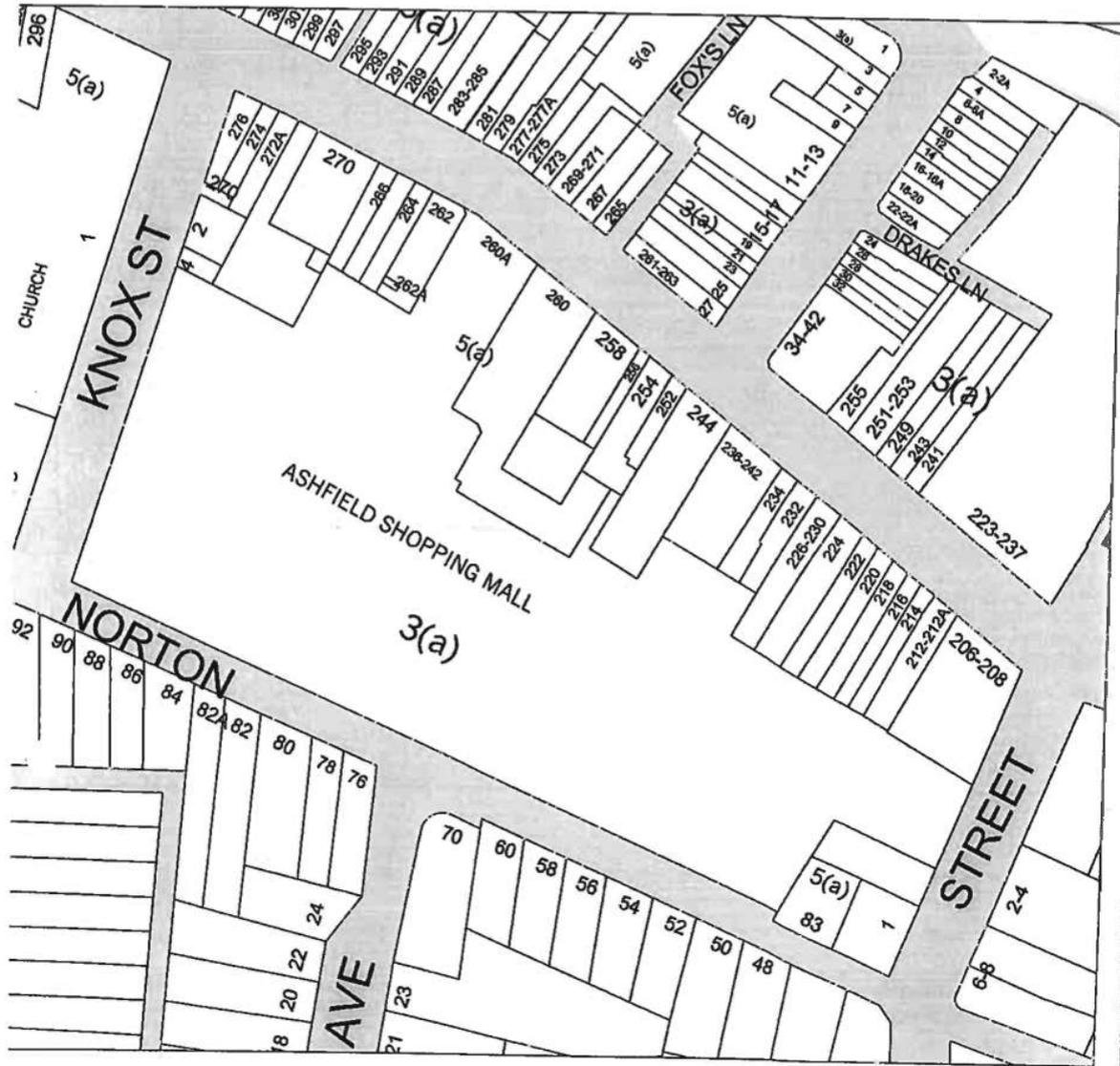
CAR PARKING LICENCE

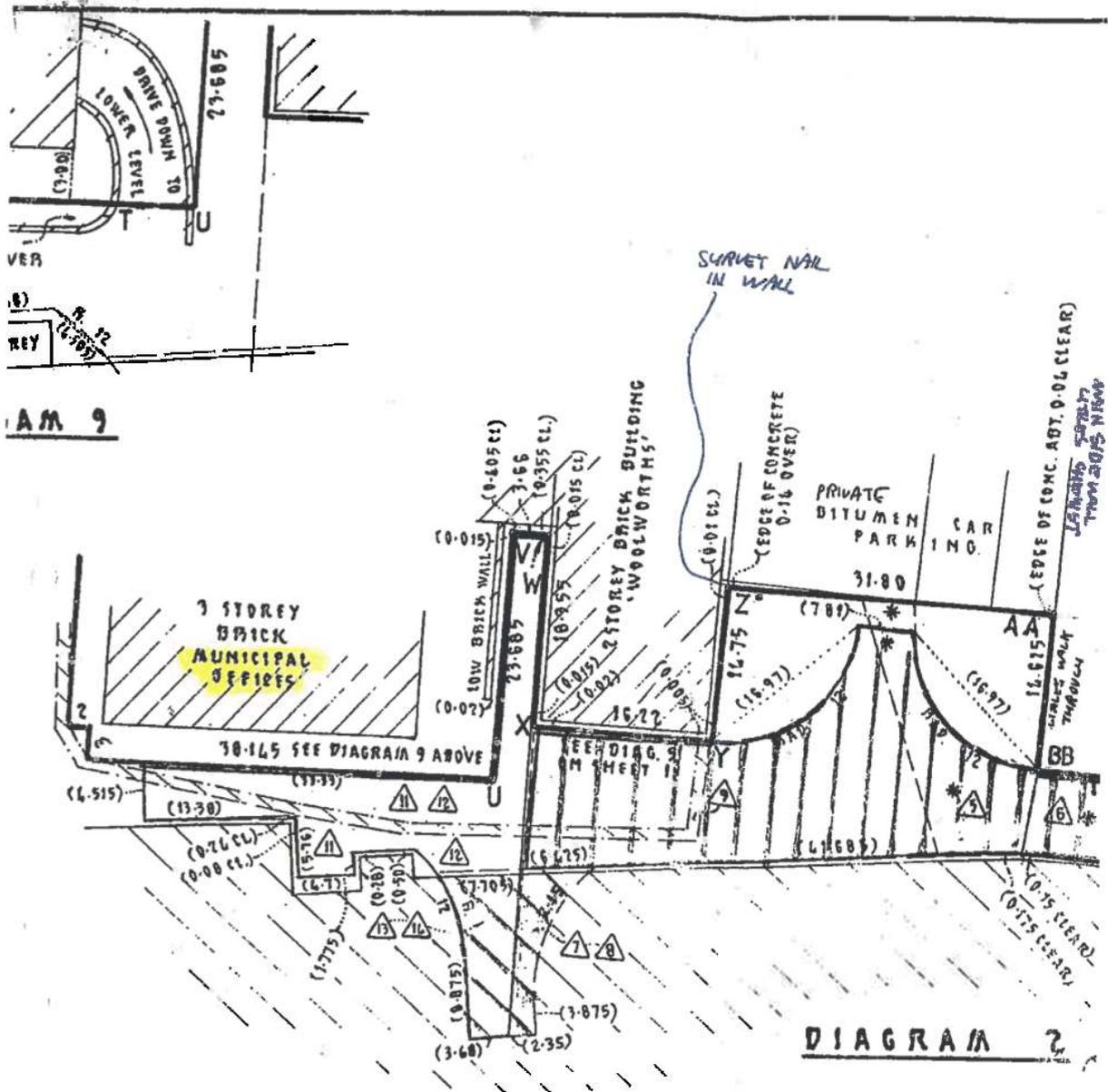
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FREEHILL, HOLLINGDALE & PAGE  
Solicitors  
19-29 Martin Place  
SYDNEY N.S.W. 2000

Telephone: 225 5000  
Ref: PAM:32B

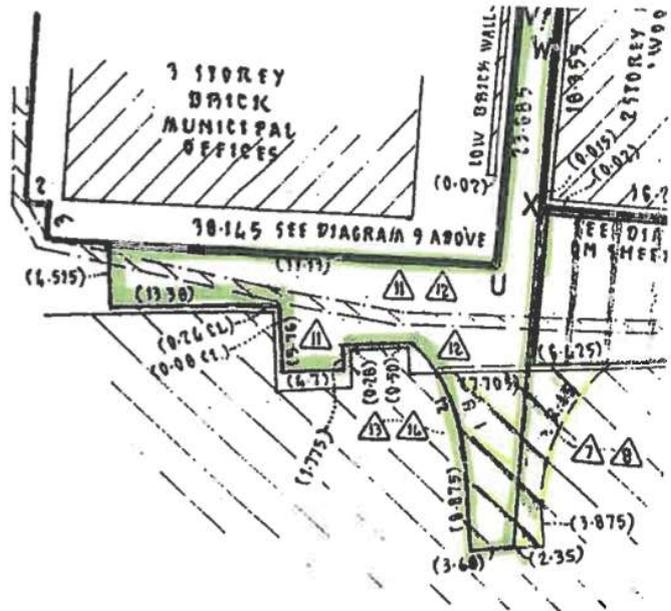
CP5132 - 28/10/87





| DESCRIPTION   |
|---|
| MENT FOR DRAINAGE 1 WIDE                                  |
| 1 VAR. WIDTH (LIMITED IN INCLINED PLANE SHOWN BY THE RLS. |
| 1 VARIABLE WIDTH.   |
| 1 7.925 WIDE & VARIABLE                                   |
| AY  |
| AY  |





| INCUMBRANCE NO.<br>AS SHOWN ON SECOND<br>SCHEDULE ON C.T. | DESCRIPTION   |
|---|---|
| △ 9   | EASEMENT FOR DRAINAGE 1 WIDE  |
| △ 13 △ 14 △ 7 △ 8   | RIGHT OF WAY VAR. WIDTH (LIMITED IN HEIGHT TO THE INCLINED PLANE SHOWN BY THE R.L.S.) |
| △ 11 △ 12   | RIGHT OF WAY VARIABLE WIDTH.  |
| △ 5 △ 6   | RIGHTS OF WAY 7.925 WIDE & VARIABLE   |
| △ 24 TO △ 25  | RIGHTS OF WAY   |
| △ 39 TO △ 45  | RIGHTS OF WAY   |
| △ 10  | RIGHT OF WAY 7.925 WIDE   |

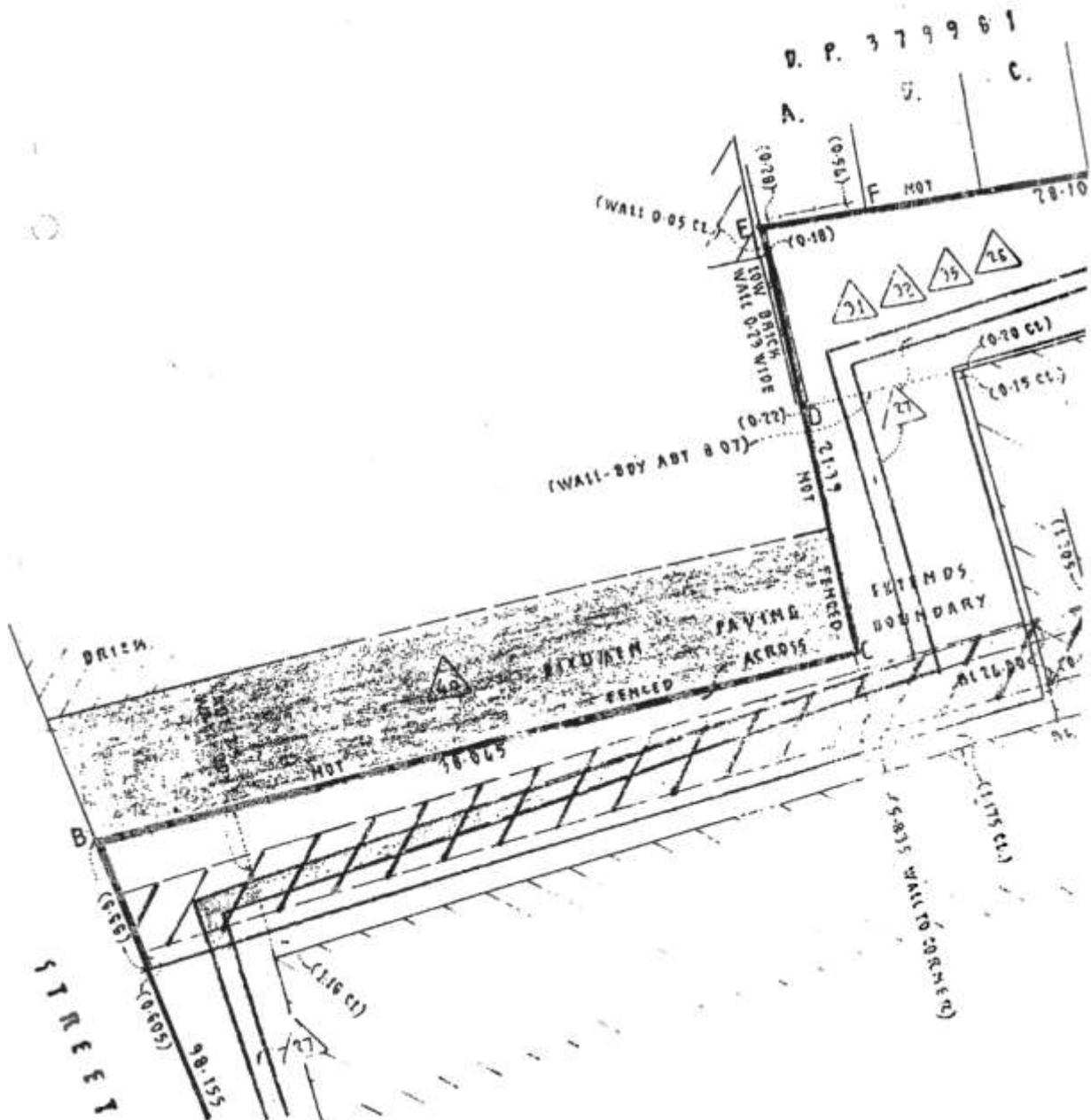
This is Sheet 3 of the plan referred to in and to accompany our report to MESSRS. MINTER ELLISON MORRIS FLETCHER, SOLICITORS, D.X. 117 SYDNEY and dated 3-8-1994  
FRANK M. JASON & CO. PTY. LIMITED

Per. Registered Surveyor,

POSED EASEMENT FOR UNDERGROUND  
COMMUNICATION CABLES, DRAINAGE,  
MOTOR ACCESS, VARIABLE WIDTH,  
LIMITED IN HEIGHT, VIDE D.P. 639789)

POSED EASEMENT FOR UNDERGROUND  
COMMUNICATION CABLES, DRAINAGE,  
MOTOR ACCESS, VARIABLE WIDTH,  
LIMITED IN HEIGHT, VIDE D.P. 639789)

GLASS WALL, WINDOW  
WHEN OPEN OVERHANG

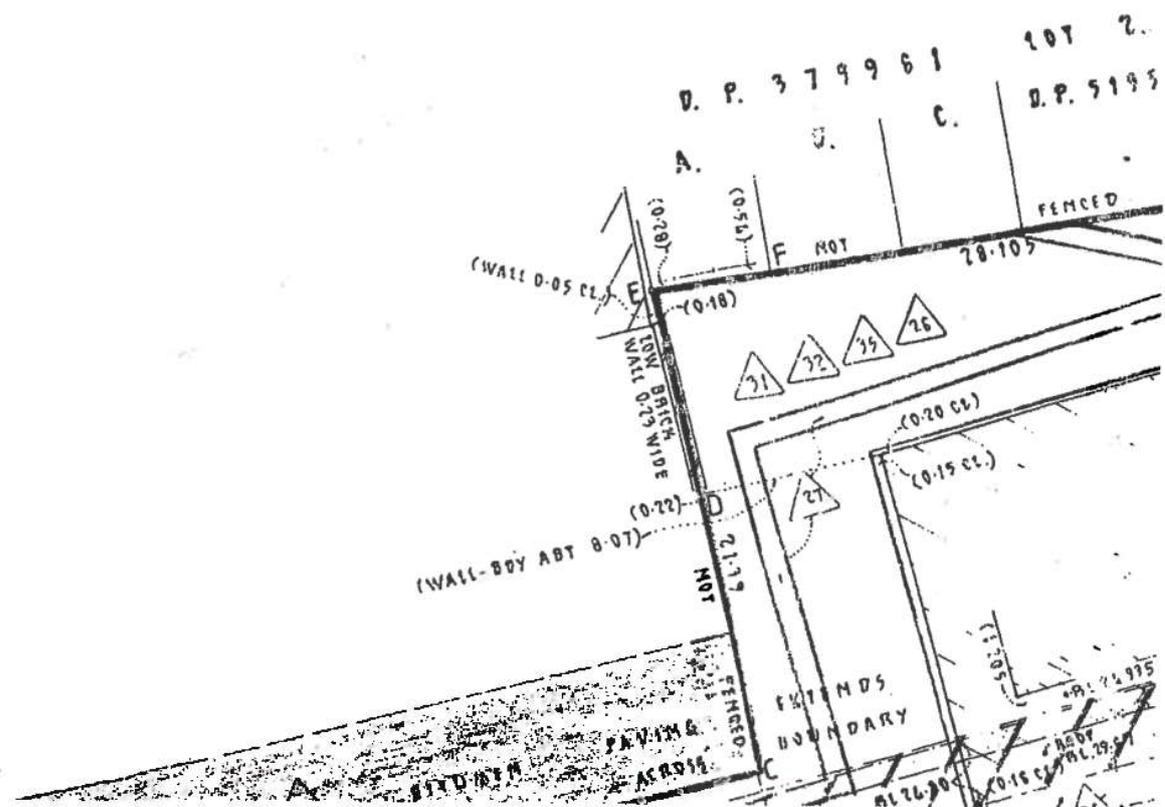


EASEMENT FOR UNDERGROUND  
INSTALLATION CABLES, DRAINAGE,  
AND SERVICES OF VARIABLE WIDTH.  
SEE PLAN, VIDE D.P. 639789)

EASEMENT FOR UNDERGROUND  
INSTALLATION CABLES, DRAINAGE,  
AND SERVICES (LIMITED IN HEIGHT,  
SEE PLAN)



(2.70 ELEC EASEMENT  
(0.705 CLEAR)  
AWNING OVERHANGS 0.62  
ADVERTISING SIGN OVERHANGS 0.9  
(0.025 CLEAR)  
1 & 2 STOREY  
BRICK  
BUILDING  
M<sup>2</sup> 262  
GLASS WALL WINDOWS ON 2<sup>ND</sup> FLOOR  
WHEN OPEN OVERHANG 0.75  
(0.055 CLEAR)  
(0.505 CLEAR)







## CONDITIONS

DA 2015.237.1

260A Liverpool Road Ashfield, 244 Liverpool Road Ashfield, 252 Liverpool Road Ashfield, 254 Liverpool Road Ashfield, 256 Liverpool Road Ashfield 2131

Description of Work as it is to appear on the determination: -

- A. Consolidation of Lot 1 DP 736779, Lot 100 DP 734467, Lot A DP 405790, Lot A & B DP 404055 into one (1) allotment.
- B. Creation of two (2) new Stratum lots to be occupied by the components of the approved development (10.2013.114.1) to create:-
  - Lot 100 – Commercial; and
  - Lot 101 - Residential
- C. Create new easements and release certain existing easements; and
- D. Amend the existing Ashfield Mall car parking deed.

### (1) Approved Plans Stamped by Council

The development must be carried out only in accordance with Development Application No. 10.2015.237.1 and approved plans, except as amended by the conditions specified hereunder :-

| Prepared by            | DWG No       | Issue                  | Title  |
|------------------------|--------------|------------------------|--|
| JPRA                   | 8501         | B                      | Level 5 Parking plan   |
| JPRA                   | 8502         | B                      | Level 6 Floor Plan   |
| Christopher John Moyce | Sheet 1 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and restriction to be created to benefit Ashfield Council Land and Ashfield Council Level 2 and below                           |
| Christopher John Moyce | Sheet 2 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and restriction to be created to benefit Ashfield Council Land and Ashfield Council Level 3                                     |
| Christopher John Moyce | Sheet 3 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and restriction to be created to benefit Ashfield Council Land and Ashfield Council Level 4                                     |
| Christopher John Moyce | Sheet 4 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and restriction to be created to benefit Ashfield Council Land and Ashfield Council Level 5                                     |
| Christopher John Moyce | Sheet 5 of 6 | Stage 1<br>G02-12-2015 | Existing Right of way and restriction that benefit Ashfield Council Land and Ashfield Council to be released   |
| Christopher John Moyce | Sheet 6 of 6 | Stage 1<br>G02-12-2015 | Existing Right of way and restriction that benefit Ashfield Council Land and Ashfield Council to be released   |
| Christopher John Moyce | Sheet 1 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and easements to be created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed Level 2 and Below |
| Christopher John Moyce | Sheet 2 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and easements to be created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed Level 3           |
| Christopher John Moyce | Sheet 3 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and easements to be created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed Level 4           |
| Christopher John Moyce | Sheet 4 of 6 | Stage 1<br>G02-12-2015 | Right of carriageway and easements to be created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed Level 5           |
| Christopher John       | Sheet 5 of 6 | Stage 1                | Right of carriageway and easements to be   |

|                        |                |                        |   |
|------------------------|----------------|------------------------|---|
| Moyce                  |                | G02-12-2015            | created to benefit Ashfield Council and Ashfield Council Land once Level 6 is constructed Level 6           |
| Christopher John Moyce | Sheet 6 of 6   | Stage 1<br>G02-12-2015 | Existing Right of carriageway and existing easements for parking to be released once Level 6 is constructed |
| Christopher John Moyce | Sheet 1 of 10  | Stage 1<br>H19-01-2016 | Survey Plan   |
| Christopher John Moyce | Sheet 2 of 10  | Stage 1<br>H19-01-2016 | Level 2 and Below   |
| Christopher John Moyce | Sheet 3 of 10  | Stage 1<br>H19-01-2016 | Level 3   |
| Christopher John Moyce | Sheet 4 of 10  | Stage 1<br>H19-01-2016 | Level 3   |
| Christopher John Moyce | Sheet 5 of 10  | Stage 1<br>H19-01-2016 | Level 4   |
| Christopher John Moyce | Sheet 6 of 10  | Stage 1<br>H19-01-2016 | Level 5   |
| Christopher John Moyce | Sheet 7 of 10  | Stage 1<br>H19-01-2016 | Level 6 and above   |
| Christopher John Moyce | Sheet 8 of 10  | Stage 1<br>H19-01-2016 | Section A-A & B-B   |
| Christopher John Moyce | Sheet 9 of 10  | Stage 1<br>H19-01-2016 | Rights of way and easements   |
| Christopher John Moyce | Sheet 10 of 10 | Stage 1<br>H19-01-2016 | Rights of way and easements   |
| Christopher John Moyce | Sheet 1 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Location Plan  |
| Christopher John Moyce | Sheet 2 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Level 2 & Below  |
| Christopher John Moyce | Sheet 3 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Level 3  |
| Christopher John Moyce | Sheet 4 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Level 4  |
| Christopher John Moyce | Sheet 5 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Level 5  |
| Christopher John Moyce | Sheet 6 of 6   | Stage 2<br>A29-10-2015 | Stage 2 Stratum Plan of Proposed subdivision Level 6 & above  |

|                      |                            |
|----------------------|----------------------------|
| <b>Prepared by</b>   | <b>Document</b>            |
| Mills Oakley Lawyers | Ashfield Mall Parking Deed |

**(2) Subdivision Certificate**

A separate application is to be made to Ashfield Council to obtain approval of the final plan of subdivision and issue of the Subdivision Certificate.

**(3) Development Consent Compliance**

- (a) The stratum subdivision is to be consistent with the structure and approved use of the buildings granted by Development Consent 10.2013.114.1.
- (b) Relevant conditions of consent as imposed under Development Consent 10.2013.114.1, shall be complied to the satisfaction of Ashfield Council and in this respect documentary evidence of compliance with conditions shall be submitted to Ashfield Council prior to issue of the stratum subdivision certificate.

**(4) Sydney Water - Section 73 Compliance Certificate**

A Section 73 (Subdivider) Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then follow the "e-Developer" icon or telephone Sydney Water 13 20 92 for assistance.

Following application, a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of an occupation or subdivision certificate.

**(5) Building Management Statement**

The Building Management Statement or/and Strata Management Statement is to address the statutory requirements for the whole of the development site to integrate the management of the separate components of the development as if it was a single building.

**(6) Public & Council Car Parking Area**

Levels 5 & 6 shall provide a minimum of 330 public & 20 Council car parking spaces as shown on drawing DA 8501 and DA 8502.

A certificate of occupation shall not be issued for the whole of the development site, the subject of this consent, until the Applicant or any successor in title at its cost provides the required public & Council car parking spaces.

**(7) All Essential Services to be provided to The Public & Council Area Prior to issue of Certificate of Occupation**

The Public & Council car park area shall contain, at no cost to Council, all essential services including fire services, drainage/stormwater services, ventilation services, line markings and be fully compliant with all relevant provisions of the Building Code of Australia, prior to issue of occupation certificate.

**(8) Easements for Access to Council Car Park Area**

An easement for access shall be created in favour of Council for the purpose of permitting vehicular & pedestrian ingress to and egress from the Council car park area. The easement for access shall be created at the Applicant's cost and to the satisfaction of Council prior to the release/signing of the final Ashfield Mall Parking Deed.

**(9) Unrestricted Access to Public & Council Parking Area Level 5**

Clause 1 (a) (i) (A) & (B) in Schedule 1 of the Ashfield Mall Car Parking Deed shall be reworded to allow 24/7 access to the Public & Council Car Park Area on Level 5. Amendments shall be made to the satisfaction of Council prior to the release/signing of the final Ashfield Mall Parking Deed.

**(10) Bank Guarantee**

Clause 2 (b) in Schedule 1 of the Ashfield Mall Car Parking Deed shall contain an additional provision that Council will call upon Bank Guarantee in the event a minimum of 330 public & 20 Council car parking spaces are not provided in accordance with the deed. Amendments shall be made to the satisfaction of Council prior to the release/signing of the final Ashfield Mall Parking Deed.

**(11) Provision of 330 Public & 20 Council Car Parking Spaces**

Part 2 (b) & (c) in Schedule 2 of the Ashfield Mall Car Parking Deed shall be reworded to include the provision of 330 Public & 20 Council Car Parking Spaces. Amendments shall be made to the satisfaction of Council prior to the release/signing of the final Ashfield Mall Parking Deed.

**(12) Provision of Notice to Council**

Clause 2.1 (d) in Schedule 3 of the Ashfield Mall Car Parking Deed shall be reworded to include the provision of 48 hours' notice to Council for any works on Public car parking area. Amendments shall be made to the satisfaction of Council prior to the release/signing of the final Ashfield Mall Parking Deed.

**(13) Strata subdivision**

Any proposal to strata subdivide stratum lots in this subdivision will require:-

- (a) A separate application to Council to obtain approval of the final Strata Plan and endorsement of Strata Certificate in accordance with Section 37 of the Strata Schemes (Freehold Development) Act 1973.
- (b) That prior to the issue of the Strata Certificate under Section 37 of the Strata Scheme (Freehold Development) Act 1973, the Occupation Certificate must be obtained from Principal Certifying Authority and a copy furnished to Ashfield Council.
- (c) That the final Strata plan is consistent with the approved structure and use of the building or part thereof as approved by Development Consent 10.2013.114.1 and is to comply with all relevant conditions of the consent.
- (d) That any Strata Management Statement is to adequately address the ongoing maintenance, upgrading and repairs of the part of the development occupying each lot in the subdivision.
- (e) The creation of a documentary Restriction on Use pursuant to Section 39 of the Strata Scheme (Freehold Development) Act 1973 on all utility car parking and storage spaces in the scheme and/or the creation of a documentary Restriction on Use of Land, pursuant to Section 88B of the Conveyancing Act 1919 burdening all car parking and storage space part-lots in the scheme in terms consistent with the statutory provisions of Section 39 of the Act and to the satisfaction of Ashfield Council.
- (f) The creation of a documentary Restriction on Use of Land over Common Property within the basement car parking and access areas, exclusive of visitor and service space, pursuant to Section 88B of the Conveyancing Act 1919, in

terms prohibiting its use for the parking or storage of vehicles, boats, trailers and the like and prohibiting the Owners Corporation from granting or permitting to be granted any lease, license or exclusive use rights over the common property for that purpose, and to Ashfield Council's satisfaction.

- (g) The creation of a documentary Restriction on Use of Land over residential lots in the Strata Plan, pursuant to Section 88B of the Conveyancing Act 1919, appurtenant to Ashfield Council, in terms requiring the apartments to be used for permanent residential accommodation and not for the purpose of short-term rental accommodation such as hotel, serviced apartment, boarding house, tourist and back-packer accommodation (unless prior Council approval granted) and to Ashfield Council's satisfaction.

**(14) Easements**

An amended instrument pursuant to Section 88B of the Conveyancing Act 1919 addressing the issues raised in Council's Solicitors comments contained in Attachments 3a, 3b and 3c shall be submitted to the satisfaction and approval of Ashfield Council'.

The S.88B Instrument shall set out the terms of all easements to the satisfaction of Ashfield Council prior to the final plan of subdivision and issue of the Subdivision Certificate.

|                    |   |
|--------------------|---|
| <b>Subject</b>     | <b>INVESTMENT REPORT FEBRUARY 2016</b>                      |
| <b>File Ref</b>    | FY-24-03  |
| <b>Prepared by</b> | Myooran Vinayagamoorthy - Chief Financial Officer           |
| <b>Reasons</b>     | Legislative Requirement                                     |
| <b>Objective</b>   | To report the balance of investments as at 29 February 2016 |

**Overview of Report**

In accordance with the requirements of Clause 212 of the Local Government (General) Regulation 2005, Council is provided with a listing of all investments made pursuant to Section 625 of the Local Government Act 1993 and held as at 29 February 2016.

**Background**

Clause 212 of the Local Government (General) Regulation 2005 requires that a report be presented to Council each month listing all investments with certification from the Responsible Accounting Officer.

Council's cash at bank and investments as at 29 February 2016 amounted to \$30,114,977.41. It should be noted that the amount currently invested represents all of Council's external and internal restrictions (i.e. grants, section 94 funds, loans, etc) as well as cash flow requirements.

The movement of cash and investments during the month of February 2016 is as follows:

|   |                        |
|---|------------------------|
| Cash at Bank and Investments as at 31 Jan 2016    | \$28,081,544.94        |
| Increase/ (Decrease) during the month of Feb 2016 | <u>\$ 2,033,432.47</u> |
| Cash at Bank and Investments as at 29 Feb 2016    | <u>\$30,114,977.41</u> |

Represented By:

|                           |                        |
|---------------------------|------------------------|
| Book Value of Investments | \$28,017,189.87        |
| Cash at Bank              | <u>\$ 2,097,787.54</u> |
|                           | <u>\$30,114,977.41</u> |

Receipts for the month of February exceeded payments because the third instalment of Rates and Annual Charges was due on 28 February 2016. Council also received the third instalment of the Financial Assistance Grant of \$145,186.50.

**Return on Investment**

The following tables show the return on investment of Council's funds over a range of periods.

**INVESTMENT REPORT FEBRUARY 2016**

| Date       | Monthly Return* | Quarterly Return* | Annual Return* | Two Years Return* | Three Years Return* |
|------------|-----------------|-------------------|----------------|-------------------|---------------------|
| 29/02/2016 | 2.42%           | 2.73%             | 2.78%          | 3.13%             | 3.33%               |
| 31/01/2016 | 2.89%           | 2.77%             | 2.82%          | 3.15%             | 3.37%               |
| 31/12/2015 | 2.89%           | 2.76%             | 2.91%          | 3.19%             | 3.41%               |
| 30/11/2015 | 2.57%           | 2.71%             | 2.97%          | 3.22%             | 3.46%               |
| 31/10/2015 | 2.82%           | 2.63%             | 3.03%          | 3.26%             | 3.50%               |
| 30/09/2015 | 2.74%           | 2.60%             | 3.08%          | 3.30%             | 3.56%               |
| 31/08/2015 | 2.35%           | 2.65%             | 3.17%          | 3.35%             | 3.60%               |
| 31/07/2015 | 3.03%           | 2.94%             | 3.27%          | 3.43%             | 3.67%               |
| 30/06/2015 | 2.94%           | 2.98%             | 3.31%          | 3.48%             | 3.71%               |
| 31/05/2015 | 2.86%           | 3.10%             | 3.38%          | 3.53%             | 3.80%               |
| 30/04/2015 | 3.15%           | 3.12%             | 3.42%          | 3.57%             | 3.85%               |
| 31/03/2015 | 3.28%           | 3.46%             | 3.46%          | 3.59%             | 3.88%               |
| 28/02/2015 | 2.93%           | 3.54%             | 3.50%          | 3.64%             | 3.92%               |

\* Returns are calculated based on the closing monthly balance of cash & investments.

The average yield on the short term portfolio for February 2016 was 2.82% whilst the comparative benchmark yield for 90 days bank swap rates was 2.28%.

The year to date interest on investments as at 29 February 2016 is \$529,780.

**Financial Implications**

Nil

**Other Staff Comments**

Nil

**Public Consultation**

Nil

**Conclusion**

I certify that the investments have been made in accordance with the Local Government Act 1993 (as amended), the Local Government (General) Regulation 2005 and the Council's Investment Policy adopted 23/08/2011 at the Budget and Operations Review Committee meeting.

**ATTACHMENTS**

|                     |                                    |         |
|---------------------|------------------------------------|---------|
| <b>Attachment 1</b> | Investment Portfolio Feb2016       | 2 Pages |
| <b>Attachment 2</b> | Investments Graph Feb2016          | 1 Page  |
| <b>Attachment 3</b> | Interest Investments Graph Feb2016 | 1 Page  |

**INVESTMENT REPORT FEBRUARY 2016**

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**RECOMMENDATION**

**That the Investment Report for February 2016 be received and noted.**

NELLETT KETTLE  
Director Corporate & Community Services

Investment Portfolio Feb2016

INVESTMENT PORTFOLIO BY ASSET CLASS AS AT 29 February 2016

| DATE OF INVESTMENT  | DATE OF MATURITY | DAYS | YIELD/ COUPON% | WITH WHOM INVESTED | DEPOSIT TYPE | ISSUER RATING | PERCENTAGE OF PORTFOLIO | ORIGINAL INVESTMENT | Investment Value shown in Financial Statement as at 31/01/2016 | MONTH END MARKET VALUE |
|---|------------------|------|----------------|--------------------|--------------|---------------|-------------------------|---------------------|--|------------------------|
| <b>Liquids , Cash &amp; Accruals (invested with ADIs)</b> |                  |      |                |                    |              |               |                         |                     |  |                        |
| 28-Aug-15   | 2-Mar-16         | 187  | 2.77%          | COMMONWEALTH       | Term Deposit | A1+/AA-       | 5.56%                   | \$500,000.00        | \$500,000.00   | \$507,095.75           |
| 31-Aug-15   | 2-Mar-16         | 184  | 2.90%          | AMP                | Term Deposit | A1/A+         | 5.56%                   | \$500,000.00        | \$500,000.00   | \$507,309.59           |
| 31-Aug-15   | 9-Mar-16         | 191  | 2.83%          | SUNCORP METWAY     | Term Deposit | A1/A+         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,404.52           |
| 1-Sep-15  | 9-Mar-16         | 190  | 2.66%          | BENDIGO/ADELAIDE   | Term Deposit | A2/A-         | 3.70%                   | \$1,000,000.00      | \$1,000,000.00   | \$1,013,846.58         |
| 1-Sep-15  | 16-Mar-16        | 197  | 2.81%          | NATIONAL AUST BANK | Term Deposit | A1+/AA-       | 14.81%                  | \$500,000.00        | \$500,000.00   | \$507,583.15           |
| 1-Sep-15  | 16-Mar-16        | 197  | 2.73%          | COMMONWEALTH       | Term Deposit | A1+/AA-       | 5.56%                   | \$500,000.00        | \$500,000.00   | \$507,367.26           |
| 2-Sep-15  | 23-Mar-16        | 203  | 2.75%          | ME BANK            | Term Deposit | A2/BBB+       | 7.41%                   | \$1,000,000.00      | \$1,000,000.00   | \$1,015,294.52         |
| 2-Sep-15  | 23-Mar-16        | 203  | 2.73%          | ANZ                | Term Deposit | A-1+          | 5.56%                   | \$500,000.00        | \$500,000.00   | \$507,591.64           |
| 9-Sep-15  | 30-Mar-16        | 203  | 2.76%          | ANZ                | Term Deposit | A-1+          | 5.56%                   | \$1,000,000.00      | \$1,000,000.00   | \$1,015,350.14         |
| 9-Sep-15  | 30-Mar-16        | 203  | 2.91%          | SUNCORP METWAY     | Term Deposit | A1/A+         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$508,092.19           |
| 23-Sep-15   | 30-Mar-16        | 189  | 2.80%          | AMP                | Term Deposit | A1/A+         | 5.56%                   | \$500,000.00        | \$500,000.00   | \$507,249.32           |
| 23-Sep-15   | 6-Apr-16         | 196  | 2.85%          | BANKWEST           | Term Deposit | A+/A-1        | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,652.05           |
| 7-Oct-15  | 6-Apr-16         | 182  | 2.85%          | BANKWEST           | Term Deposit | A+/A-1        | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,105.48           |
| 7-Oct-15  | 13-Apr-16        | 189  | 2.70%          | MY STATE BANK      | Term Deposit | A2/BBB        | 1.85%                   | \$500,000.00        | \$500,000.00   | \$506,990.41           |
| 14-Oct-15   | 13-Apr-16        | 182  | 2.90%          | SUNCORP METWAY     | Term Deposit | A1/A+         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,230.14           |
| 21-Oct-15   | 20-Apr-16        | 182  | 2.80%          | BANKWEST           | Term Deposit | A+/A-1        | 11.11%                  | \$500,000.00        | \$500,000.00   | \$506,980.82           |
| 21-Oct-15   | 20-Apr-16        | 182  | 2.68%          | PEOPLES CHOICE CU  | Term Deposit | A2/BBB+       | 3.70%                   | \$500,000.00        | \$500,000.00   | \$506,681.64           |
| 28-Oct-15   | 27-Apr-16        | 182  | 2.90%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,230.14           |
| 28-Oct-15   | 27-Apr-16        | 182  | 2.75%          | RURAL BANK         | Term Deposit | A2/A-         | 7.41%                   | \$500,000.00        | \$500,000.00   | \$506,856.16           |
| 30-Oct-15   | 4-May-16         | 187  | 2.85%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$507,300.68           |
| 4-Nov-15  | 4-May-16         | 182  | 2.80%          | RURAL BANK         | Term Deposit | A2/A-         | 7.41%                   | \$500,000.00        | \$500,000.00   | \$506,980.82           |
| 4-Nov-15  | 4-May-16         | 182  | 2.80%          | RURAL BANK         | Term Deposit | A2/A-         | 7.41%                   | \$500,000.00        | \$500,000.00   | \$506,980.82           |
| 11-Nov-15   | 4-May-16         | 175  | 2.80%          | RURAL BANK         | Term Deposit | A2/A-         | 7.41%                   | \$500,000.00        | \$500,000.00   | \$506,712.33           |
| 18-Nov-15   | 4-May-16         | 168  | 2.80%          | PEOPLES CHOICE CU  | Term Deposit | A2/BBB+       | 3.70%                   | \$500,000.00        | \$500,000.00   | \$506,443.84           |
| 18-Nov-15   | 4-May-16         | 168  | 2.85%          | BANKWEST           | Term Deposit | A+/A-1        | 11.11%                  | \$1,000,000.00      | \$1,000,000.00   | \$1,013,117.81         |
| 25-Nov-15   | 4-May-16         | 161  | 2.80%          | NATIONAL AUST BANK | Term Deposit | A1+/AA-       | 14.81%                  | \$500,000.00        | \$500,000.00   | \$506,175.34           |
| 25-Nov-15   | 4-May-16         | 161  | 2.95%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$506,506.16           |
| 2-Dec-15  | 4-May-16         | 154  | 2.80%          | NATIONAL AUST BANK | Term Deposit | A1+/AA-       | 14.81%                  | \$500,000.00        | \$500,000.00   | \$505,906.85           |
| 2-Dec-15  | 4-May-16         | 154  | 2.94%          | COMMONWEALTH       | Term Deposit | A1+/AA-       | 5.56%                   | \$500,000.00        | \$500,000.00   | \$506,202.19           |
| 2-Dec-15  | 18-May-16        | 168  | 2.77%          | BANK OF SA         | Term Deposit | A1+/AA-       | 3.70%                   | \$1,000,000.00      | \$1,000,000.00   | \$1,012,749.59         |
| 9-Dec-15  | 18-May-16        | 161  | 2.95%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$506,506.16           |
| 9-Dec-15  | 25-May-16        | 168  | 3.00%          | SUNCORP METWAY     | Term Deposit | A1/A+         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$506,904.11           |
| 13-Jan-16   | 25-May-16        | 133  | 3.00%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$505,465.75           |
| 2-Dec-15  | 1-Jun-16         | 182  | 2.90%          | ING                | Term Deposit | A2/A-         | 3.70%                   | \$1,000,000.00      | \$1,000,000.00   | \$1,014,460.27         |
| 13-Jan-16   | 1-Jun-16         | 140  | 2.95%          | SUNCORP METWAY     | Term Deposit | A1/A+         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$505,657.53           |
| 20-Jan-16   | 8-Jun-16         | 140  | 3.05%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$505,849.32           |
| 27-Jan-16   | 8-Jun-16         | 133  | 2.95%          | NATIONAL AUST BANK | Term Deposit | A1+/AA-       | 14.81%                  | \$1,000,000.00      | \$1,000,000.00   | \$1,010,749.32         |
| 3-Feb-16  | 15-Jun-16        | 133  | 3.03%          | BANK OF QLD        | Term Deposit | A2/A-         | 11.11%                  | \$500,000.00        | \$500,000.00   | \$505,520.41           |
| 3-Feb-16  | 15-Jun-16        | 133  | 2.95%          | ME BANK            | Term Deposit | A2/BBB+       | 7.41%                   | \$500,000.00        | \$500,000.00   | \$505,374.66           |
| 10-Feb-16   | 22-Jun-16        | 133  | 2.70%          | IMB                | Term Deposit | A2/BBB        | 3.70%                   | \$500,000.00        | \$500,000.00   | \$504,919.18           |
| 11-Feb-16   | 22-Jun-16        | 132  | 2.90%          | ME BANK            | Term Deposit | A2/BBB+       | 7.41%                   | \$500,000.00        | \$500,000.00   | \$505,243.84           |
| 11-Feb-16   | 29-Jan-16        | 139  | 2.95%          | BANKWEST           | Term Deposit | A+/A-1        | 11.11%                  | \$500,000.00        | \$500,000.00   | \$505,617.12           |
| 17-Feb-16   | 6-Jul-16         | 140  | 2.80%          | IMB                | Term Deposit | A2/BBB        | 3.70%                   | \$500,000.00        | \$500,000.00   | \$505,369.86           |
| 22-Feb-16   | 6-Jul-16         | 135  | 2.95%          | NATIONAL AUST BANK | Term Deposit | A1+/AA-       | 14.81%                  | \$1,000,000.00      | \$1,000,000.00   | \$1,010,910.96         |

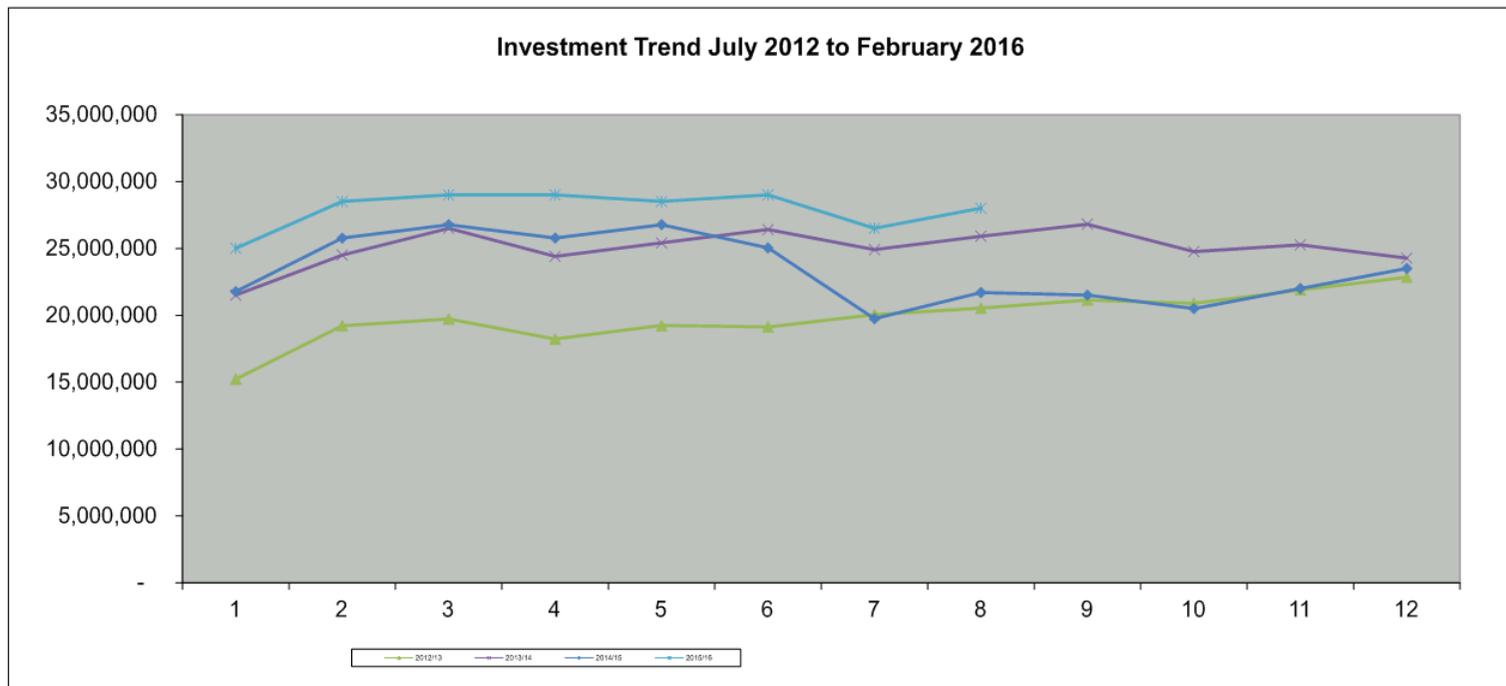
|  |           |     |       |                    |              |         |              |                                       |   |                                       |                                       |
|--|-----------|-----|-------|--------------------|--------------|---------|--------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| 24-Feb-16  | 13-Jul-16 | 140 | 2.95% | NATIONAL AUST BANK | Term Deposit | A1+/AA- | 14.81%       | \$500,000.00                          | \$500,000.00                              | \$505,657.53                          |                                       |
| 29-Feb-16  | 13-Jul-16 | 135 | 2.87% | ANZ                | Term Deposit | A-1+    | 5.56%        | \$1,000,000.00                        | \$1,000,000.00                            | \$1,010,615.07                        |                                       |
| <b>Total Term Deposits and Interest Bearing Securities</b>                   |           |     |       |                    |              |         |              | \$27,500,000.00                       | \$27,500,000.00                           | \$27,860,809.02                       |                                       |
| <b>Call Account</b>  |           |     |       |                    |              |         |              | <b>Balance beginning of the month</b> | <b>Interest, Withdrawals and Deposits</b> | <b>Balance as at End of the Month</b> | <b>Balance as at End of the Month</b> |
|  |           |     | 1.30% | CBA BUSINESS SAVER | 11AM         | A1+/AA- | \$516,533.23 | \$656.64                              | \$517,189.87                              | \$517,189.87                          |                                       |
| <b>Total Term Deposits , Interest Bearing Securities &amp; Call Deposits</b> |           |     |       |                    |              |         |              | <b>\$27,500,656.64</b>                | <b>\$28,017,189.87</b>                    | <b>\$28,377,998.89</b>                |                                       |

\*Please note the call account interest is paid at end of the month

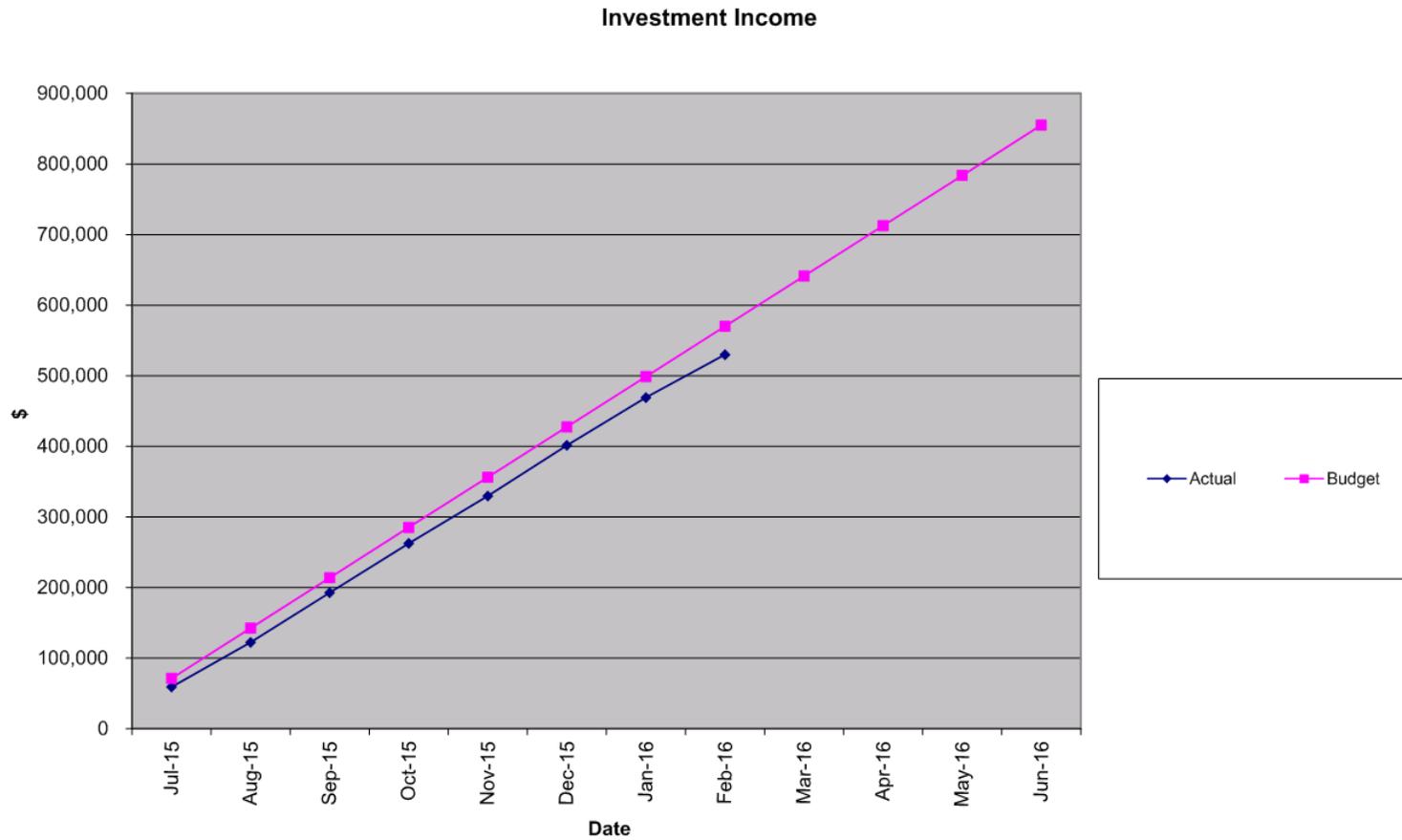
| <b>INVESTMENT SUMMARY</b>                           |                        |
|---|------------------------|
| TOTAL OF INVESTMENT PREVIOUS MONTH                  | \$26,516,533.23        |
| TOTAL OF INVESTMENT THIS MONTH                      | \$28,017,189.87        |
| DAILY AVERAGE YIELD                                 | 2.82%                  |
| HIGHEST YIELD                                       | 3.05%                  |
| LOWEST YIELD  | 1.30%                  |
| <b>TOTAL: JANUARY INVESTMENTS</b>                   | <b>\$26,516,533.23</b> |
| <b>Add: Investments</b>                             |                        |
| Bankwest  | \$500,000.00           |
| NAB   | \$1,000,000.00         |
| ANZ   | \$1,000,000.00         |
| CBA   | \$656.54               |
| ME Bank   | \$500,000.00           |
|   | <b>\$3,000,656.54</b>  |
| <b>Less: Investments withdrawn for expenses</b>     |                        |
| AMP   | (\$1,500,000.00)       |
|   | (\$1,500,000.00)       |
| <b>Balance as per February Investment Portfolio</b> | <b>\$28,017,189.77</b> |

INVESTMENTS TREND GRAPH

|         | July       | Aug.       | Sept.      | Oct.       | Nov.       | Dec.       | JAN        | FEB        | MARCH      | APRIL      | MAY        | JUNE       |
|---------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 2012/13 | 15,222,707 | 19,226,222 | 19,729,634 | 18,233,007 | 19,236,193 | 19,139,166 | 20,041,929 | 20,544,234 | 21,146,431 | 20,898,747 | 21,900,823 | 22,850,823 |
| 2013/14 | 21,508,420 | 24,510,224 | 26,511,903 | 24,413,443 | 25,414,923 | 26,416,410 | 24,918,038 | 25,919,540 | 26,821,117 | 24,772,458 | 25,273,787 | 24,273,787 |
| 2014/15 | 21,775,107 | 25,776,314 | 26,777,477 | 25,778,681 | 26,779,805 | 25,040,281 | 19,746,879 | 21,707,724 | 21,508,788 | 20,509,688 | 22,010,564 | 23,511,382 |
| 2015/16 | 25,012,218 | 28,513,010 | 29,013,727 | 29,014,456 | 28,515,115 | 29,015,832 | 26,516,533 | 28,017,190 |            |            |            |            |



G:\Investments\2016 Investment Report Attachments\Feb16\Investments\_Graphver\_Feb 16.xls



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|                    |   |
|--------------------|---|
| <b>Subject</b>     | <b>COUNCILLOR MEMBERSHIP OF INTERNAL AUDIT COMMITTEE</b>  |
| <b>File Ref</b>    | sc271   |
| <b>Prepared by</b> | Nellette Kettle - Director Corporate & Community Services |
| <b>Reasons</b>     | Council resolution  |

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**Overview of Report**

**This report concerns Councillor representation on the Internal Audit Committee.**

**Background**

Councillor representatives (Clrs M Raiola and Wang) were appointed to the Internal Audit Committee for a twelve month period in October 2012.

Due to oversight, these Councillor representatives have continued their representation in perpetuity during the Council term.

This situation has arisen partly because the 12 month appointment period is out of step with all other Councillor appointments to standing and advisory committees (which are for 4 years) but also due to a failure in our control system to capture the re-appointment date. The control environment is being addressed to ensure this does not happen in the future.

**Financial Implications**

Nil

**Other Staff Comments**

N/A

**Public Consultation**

N/A

**Conclusion**

Council will need to decide whether to change its representatives on the Committee at this late stage in the Council term.

Given the uncertainty around the time remaining in the Council term due to the State Government reform agenda; the importance of internal audit and the Internal Audit Committee to an organisation during times of change, it is recommended that Council maintain continuity for the Committee and continue the current representation until the end of the Council term.

**COUNCILLOR MEMBERSHIP OF INTERNAL AUDIT COMMITTEE**

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**ATTACHMENTS**

There are no supporting documents for this report.

**RECOMMENDATION**

**That Council re-affirm the existing Councillor representatives on the Internal Audit Committee until the end of the current Council term.**

NELLETT KETTLE  
Director Corporate & Community Services

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|                    |  |
|--------------------|--|
| <b>Subject</b>     | <b>REPORT ON INTERNAL AUDIT COMMITTEE MEETING 29 FEBRUARY 2016</b>   |
| <b>File Ref</b>    | SC271  |
| <b>Prepared by</b> | Nellette Kettle - Director Corporate & Community Services            |
| <b>Reasons</b>     | As per the Internal Audit Committee Charter                          |
| <b>Objective</b>   | To inform Council on the activities of the Internal Audit Committee. |

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**Overview of Report**

**This report provides Council with a report on the Internal Audit Committee Meeting held on 29 February 2016.**

**Background**

The Internal Audit Committee plays a pivotal role in the governance framework to provide Council with independent oversight and monitoring of Council's audit processes, including Council's internal control activities. This oversight includes internal and external reporting, risk management activities, internal and external audit and compliance.

The Internal Audit Committee must act with independence and objectivity and '*at arm's length*' from Council. As an example, unlike other Committee's non member Councillors are not able to attend Internal Audit Committee meetings unlike all other Council committees.

In order to ensure the confidentiality, objectivity and independence of the Internal Audit Committee, business papers are not distributed to non member Councillors or published in the public arena. Councillors are provided with a confidential copy of the Internal Audit Committee's minutes.

The mechanism via which the Internal Audit Committee provides assurance and a reporting mechanism to Council is via a brief summary report to Council after each Internal Audit Committee meeting and via the Committee Chairperson's annual address to Council.

Where non member Councillors have a particular concern or issue they wish to raise with the Internal Audit Committee this should be done via the Committee Chairperson.

**Report**

A meeting of the Internal Audit Committee was held on 29 February 2016.

A summary of the matters considered is below:

- Committee members welcomed Ms Lee Wong back to the Committee.

**REPORT ON INTERNAL AUDIT COMMITTEE MEETING 29 FEBRUARY 2016**

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- 2015 internal audit plan - the Committee considered reports on recently completely audits of Work Health and Safety, Waste Services and Information Technology. The Internal Auditor assessed the processes and controls as satisfactory for all three audits.
- 2016 proposed internal audit plan – the Committee endorsed the internal audit plan for 2016 which has been reset in response to changes in the internal and external environment driven by the local government reform agenda. The audits for 2016 are:
  - Asset management – capital projects
  - Service delivery – customer complaints and enquiries
  - People – accuracy and completeness of employee records
  - Information and systems – access and security
  - Financials – fraud and corruption/budgeting
  - Organisational transition (possible merger)
- Status update on implementation of internal audit recommendations – the Committee considered a report updating on actions that have been completed since the last report and noted progress made in relation to outstanding items.
- Proposed changes to local government legislation – the Committee considered a report on the State Government’s proposed changes to local government legislation, including officer commentary on the proposed changes. The Committee endorsed the officer’s comments and in particular those objecting to the proposed changes to Annual Reports, which would require Internal Audit Committees to endorse annual reports as factually accurate, noting that this is not possible without conducting an audit itself, which is not an appropriate role for the Committee.
- Council mergers – the Committee received a copy of the Minister’s merger proposal for Ashfield, Leichhardt and Marrickville Councils and received a verbal briefing from the General Manager on developments in relation to Council mergers, including contingency planning with Marrickville and Leichhardt Councils that has occurred since December 2015.
- Council Mergers Risk Management Plan – the Committee considered and endorsed the Council Mergers Risk Management Plan, noting that it is a living document that will need to be updated regularly. The Risk Management Plan identifies 38 operational risks associated with the proposed merger.
- Risk Register update – the Committee received and considered a copy of the Council’s recently updated Risk Register.
- Corruption Prevention Action Plan – the Committee considered and endorsed an updated Corruption Prevention Action Plan, which contains actions in the areas of People Management, Resource Management, Core Services Management and Policy, Audit and Controls over the next four years.

**Financial Implications**

N/A

**REPORT ON INTERNAL AUDIT COMMITTEE MEETING 29 FEBRUARY 2016**

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**Other Staff Comments**

N/A

**Public Consultation**

N/A

**Conclusion**

This report is provided to inform the Council on the activities of the Internal Audit Committee.

**ATTACHMENTS**

There are no attachments for this report

**RECOMMENDATION**

**That the report be received and noted.**

NELLETT KETTLE  
Director Corporate & Community Services

|                    |  |
|--------------------|--|
| <b>Subject</b>     | <b>PUBLIC ART POLICY</b>   |
| <b>File Ref</b>    | SC14   |
| <b>Prepared by</b> | Jane Pollard - Arts, Culture and Community , Team Leader   |
| <b>Reasons</b>     | To guide the development and delivery of relevant and quality Public Art across the Ashfield Local Government Area (LGA)                 |
| <b>Objective</b>   | For Council to consider adoption of the Draft Public Art Policy and Public Art in Private Developments Guidelines – Developer Guidelines |

### Overview of Report

A draft version of the Public Art Policy, and Public Art in Private Developments – Developer Guidelines was submitted to the Community Activities and Functions Committee on 17 November 2016. The Draft Policy and Guidelines were adopted for public exhibition, with the exhibition period closing on Friday 5 February 2016. No public comment or feedback was received.

### 1. Background

The Public Art Policy has been created to support the creation and delivery of relevant Public Art in the Ashfield Local Government Area that represents and inspires our community.

Ashfield Council sees Public Art as a valuable component of creating ‘place’ that enhances the livability and animation of public spaces, engages community and supports and revitalises the local economy and neighbourhoods.

To ensure Public Art is embedded into the fabric of the LGA, Council seeks to have Public Art incorporated into:

- All developments valued at 5 million or greater
- All Gateway sites, or significant sites across the LGA regardless of their value
- Council’s Arts & Culture and Public Space Activation programs

The purpose of the Public Art Policy and associated Guidelines is to provide:

- Direction and guidance to, commission and install quality Public Art that enhances, preserves and celebrates cultural diversity, unique local identity, social value, history and contemporary image of the Ashfield Local Government Area.
- A framework to ensure collaboration between artists, community, developers and other relevant internal and external stakeholders pending location and scope of the public artwork.
- Details and guidance on the role of Ashfield Council and relevant stakeholders in developing, funding, promoting, managing and conserving Public Art in the Ashfield Local Government Area.

## PUBLIC ART POLICY

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### 2. Supporting Implementation Guidelines

The policy is supported by *Guidelines for Public Art in Private Developments*

These Guidelines have been developed primarily as a tool for Planning & Environment staff to provide guidance and advice to private developers during the pre-development and development application process to encourage activation and creation of public art on private development sites.

The policy and guidelines will assist Council to advocate for and influence the creation of public art in private developments and the public domain, leading to the creation of public art that benefits and meets the local identity of the Ashfield community, and thereby also engages those that may not ordinarily engage with Public Art.

This draft policy was tabled at the 8 March 2016 Council Meeting. The following outlines two pertinent issues raised, and staff responses to ensure these concerns are addressed:

- Cllr Dury indicated that Council should be working more closely with local business to reduce illegal graffiti on private walls.

**Staff response.** In response to this comment the following has been added to the Guiding Principles of the Draft Public Art Policy (refer page 5 of attached Policy document)

#### ***Guiding Principles***

##### ***6.4 Align and embed integration of Public Art into Public and Private developments and place***

- *Influence and integrate Public Art into the fabric of public and private infrastructure and planning developments across the Ashfield LGA. Initiate agreements between Ashfield Council and Developers for public and private infrastructure and planning developments.*
- *Embed Public Art into all Council public domain strategies, with a focus on the Ashfield Town Centre Renewal (TCR) project, Parks Plans of Management and Greenway strategy.*
- *Crime prevention, and designing out crime methodologies to be embedded in Public Art projects to support ongoing development of attractive and lively public and private domain.*

This issue has recently been considered at a program level via the Ashfield Town Centre Renewal project. With support from the Business Relations Coordinator four privately owned walls are being targeted for a public art project with the dual aim of beautifying the area, and reducing illegal graffiti. Staff will continue to consider this issue in future programs and projects relating to public art.

- Cllr Lofts raised the issue of ongoing maintenance of murals across the LGA.

## **PUBLIC ART POLICY**

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**Staff response.** Public Art is taking a higher priority in line with the Community Strategic Plan. Now that our policy framework has been reviewed the next phase to be updated and assessed is Council's Art Collection maintenance plan and resourcing.

### **3. Financial Implications**

Public Art may be funded using the following funding sources, as detailed in the attached Public Art Policy:

- **Developer Public Art Fund.**  
Major developments valued at \$5m or greater will be asked to contribute to Public Art in the Ashfield LGA. This contribution can be done via options with a minimum value for each option being at 1% of total value of the development:
- **Council Public Art Fund**  
Council annual Public Art fund administered and managed by Council.
- **External Grants**  
Grants awarded through external agencies and departments.

### **3. Other Staff Comments**

An internal working party made up of staff from Planning & Environment, Works and Infrastructure and Community Programs was established to support the development of this policy and associated guidelines. The outcome is a well-developed suite of documents that supports a cross Council approach to implementation of this important Policy.

The Policy and Guidelines also provides Council with a tool to assist working closely with Developers to provide them with an opportunity to contribute to the community, with a focus on Public Art.

### **4. Public Consultation**

Council has developed the policy and guidelines in collaboration with review and assessment of approaches taken by other neighbouring Councils.

Community Feedback was sought via a public exhibition period which closed Friday 5 February 2016. No public comment or feedback was received.

### **5. Conclusion**

The Public Art Policy will provide Council with strategic direction in relation to Public Art and support in driving projects, developments and interventions that enhance the growth of a creative, artistic and culturally diverse Ashfield community.

Council did not receive any community comment or feedback during the public exhibition period therefore the content of the draft policy and guidelines will not be changed.

## **ATTACHMENTS**

- Attachment 1** Attachment 1 to Public Art in Private Developments - 2 Pages  
Register of Significant Sites

**PUBLIC ART POLICY**

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|                     |   |          |
|---------------------|---|----------|
| <b>Attachment 2</b> | Draft Public Art Policy   | 8 Pages  |
| <b>Attachment 3</b> | Draft Public Art in Private Developments - Developer Guidelines | 36 Pages |

**RECOMMENDATION**

**1/2 That Council adopt the Ashfield Public Art Policy**

**2/2 That Council adopt the Ashfield Public Art in Private Developments – Developer Guidelines**

NELLETT KETTLE  
Director Corporate & Community Services



# DRAFT Public Art Policy

This policy will be reviewed by: Arts, Culture & Community  
Next review date: November 2017

|   |   |
|---|---|
| <b>Title:</b>                                     | Public Art Policy   |
| <b>Summary:</b>                                   | This policy outlines the objectives for Public Art in the Ashfield Local Government Area.   |
| <b>TRIM Record Number:</b>                        |   |
| <b>Date of Issue:</b>                             | October 2015  |
| <b>Approval:</b>                                  |   |
| <b>Version Control:</b>                           | Draft Public Art Policy   |
| <b>Contact Officer:</b>                           | Team Leader, Arts, Culture & Community  |
| <b>Relevant References:</b>                       | <p><i>Ashfield Council's:</i></p> <ul style="list-style-type: none"> <li>• Public Art Strategy</li> <li>• Arts and Culture Advisory Network – Public Art Sub-Committee</li> <li>• Reconciliation Action Plan (RAP)</li> <li>• Public Domain Strategies – Ashfield Town Centre Renewal (TCR) strategy</li> <li>• Ashfield 2023 – Our Place, Our Future Council Community Plan 2013-2017</li> <li>• Social Snapshot 2013</li> </ul> |
| <b>Main Legislative or Regulatory References:</b> | <p>Local Government Act 1993<br/>Section 94A Development Contributions Plan<br/>Section 94 Development Contributions Plan</p>   |
| <b>Applicable Delegation of Authority:</b>        | <p>As per Corporate and Community Services delegate<br/>As per Planning &amp; Environment delegate</p>  |
| <b>Related Ashfield Council Policy:</b>           | <ul style="list-style-type: none"> <li>• Strategic Community Plan 2023</li> <li>• Procurement Policy</li> <li>• Graffiti Control/ Bill Poster Removal Policy</li> <li>• Ashfield Civic Centre User Policy</li> <li>• Statement of Business Ethics</li> <li>• Reconciliation Action Plan</li> </ul>  |
| <b>Related Ashfield Council Procedure:</b>        | <ul style="list-style-type: none"> <li>• Public Art Implementation Guidelines</li> <li>• Public Art in Private Developments Guidelines</li> <li>• Art Collection Policy</li> <li>• Cultural Gift Program</li> </ul>   |

## 1. Background

The Public Art Policy has been developed to support the creation and delivery of relevant Public Art<sup>1</sup> in the Ashfield Local Government Area that represents and inspires our community.

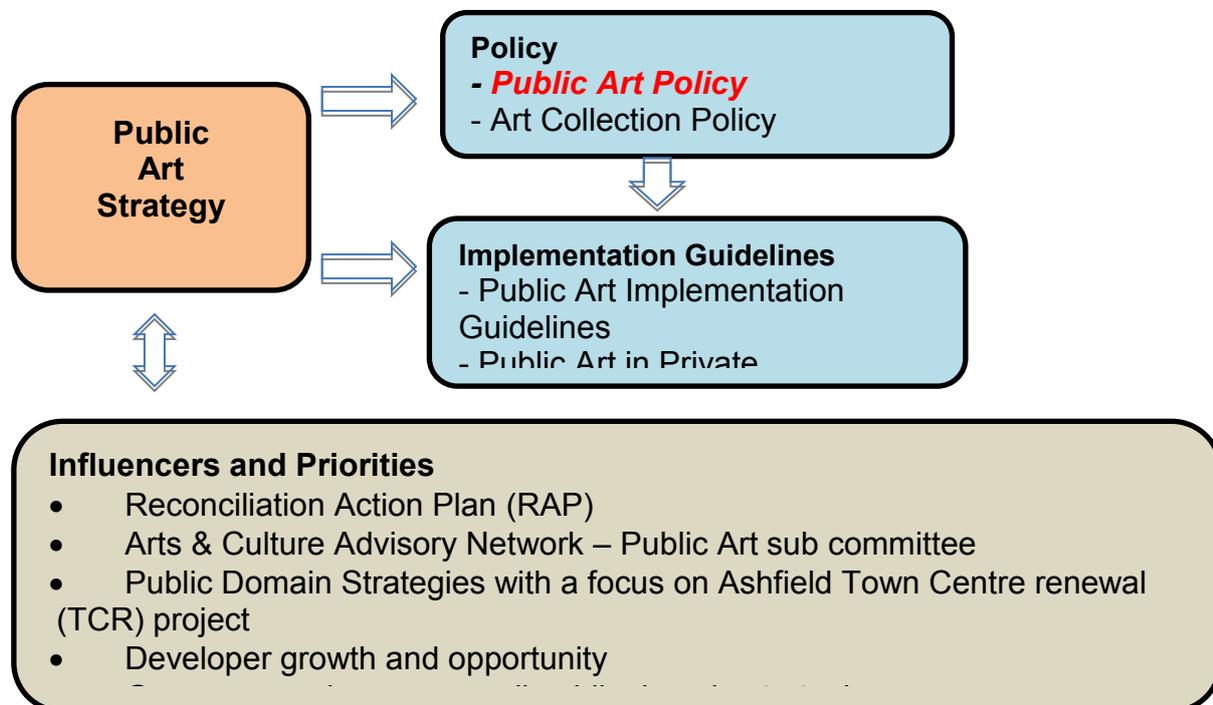
Ashfield is a place of unique, culturally enriched neighbourhoods<sup>2</sup> where everyone matters, and community life is celebrated and enriched by its culturally diverse population. Ashfield Council's strategic community plan, '*Ashfield 2023 - Our Place, Our Future*' is underpinned by seven themes, with one being a creative and inclusive community. Council is committed to delivering programs that support and enhance the growth of a creative, artistic and culturally diverse community.

In respect of the traditional owners of the land, the Wangal People, who form part of the Eora Nation, Ashfield Council has a Reconciliation Action Plan in place that supports the strategic community plan. Council believes that by strengthening dialogue between Aboriginal and Torres Strait Islander peoples and other Australians we will increase reconciliation, and by establishing a two-way process of learning we will continue to be a 'meeting place' for all cultures.

Our diverse communities, and the traditional owners will be targeted, and engaged in this policy wherever possible.

## 2. Policy Positioning

This Policy provides the mother statement that drives and delivers Council's Public Art Strategy, and should be read in conjunction with associated Implementation Guidelines and policies as detailed below.



<sup>1</sup> For a definition of Public Art refer Section 5 of this Policy

<sup>2</sup> Council's [Social Snapshot of Ashfield](#) outlines essential social research and statistics for the Ashfield Local Government Area.

### 3. Policy Statement

Ashfield Council sees Public Art as a valuable component of creating 'place' that enhances the liveability and animation of public spaces, engages community and supports and revitalises the local economy and neighbourhoods.

To ensure Public Art is embedded into the fabric of the Local Government Area (LGA), Council seeks to have Public Art incorporated into:

- All developments valued at 5 million or greater
- All Gateway sites, or significant sites across the LGA regardless of their value
- Council's Arts & Culture and Public Space Activation programs

### 4. Purpose

The purpose of the Public Art Policy and associated Guidelines is to provide:

- Direction and guidance to, commission and install quality Public Art that enhances, preserves and celebrates cultural diversity, unique local identity, social value, history and contemporary image of the Ashfield Local Government Area.
- A framework to ensure collaboration between artists, community, developers and other relevant internal and external stakeholders pending location and scope of the public artwork.
- Details and guidance on the role of Ashfield Council and relevant stakeholders in developing, funding, promoting, managing and conserving Public Art in the Ashfield Local Government Area.

This policy applies to all existing Public Art under the care and control of Ashfield Council, and to all future Public Art procurement within the public domain, and in private developments. Refer to Council's *Public Art in Private Developments – Developer Guidelines* and *Council's Art Collection Policy* for further details.

### 5. Definitions

Public Art<sup>3</sup> is Art created by and/or led by professional Artists and located outside of a typical gallery context in indoor and outdoor environments, and in its broadest sense can be defined as artistic works or activities accessible to the public.

Public Art can adopt many forms and approaches from community cultural development, socially engaged practice, place-making projects, stand-alone Public Artworks, through to art "built in" conceptual contribution by artists to the design of public spaces and facilities, or art integrated within landscape or urban design. It can reflect a diverse range of styles and practices from traditional to contemporary art, utilise a range of art forms and mediums, and can be either permanent, temporary or ephemeral

Public Art can mean many things to many people. The definitions at **Attachment 1** provide clarification to support implementation of this policy.

## 6. Guiding Principles

The following Guiding Principles underpin, and provide a foundation for the implementation of the Public Art Policy and associated Guidelines.

### 6.1 Drive and Ensure Excellence and Relevance

- Advocate for and ensure Public Art of high quality and artist merit is commissioned, created and installed across the Ashfield LGA utilising a range of mediums and processes including social engagement practices.
- Maintain the heritage and stories of our locality and unique neighbourhoods by forging relationships with, and targeting artists from Aboriginal and Torres Strait Islander and culturally diverse backgrounds to tender for commissions, and engage in Public Art projects.

### 6.2 Support and advocate for Artists

- Influence Public Art across the Ashfield LGA that engages and support Artists and a range of arts practice, mediums and processes.
- Ensure artists are remunerated with fair and equitable award or market rates, and that copyright conditions are respected.

### 6.3 Secure Public Art funding

- Lead and influence external funding and partnership opportunities as well as internal budget allocations to secure adequate funding and support for Public Art initiatives and projects
- Ensure adequate funds are quarantined for Artist fees, quality materials, maintenance and restoration of public art.

### 6.4 Align and embed integration of Public Art into Public and Private developments and place

- Influence and integrate Public Art into the fabric of public and private infrastructure and planning developments across the Ashfield LGA. Initiate agreements between Ashfield Council and Developers for public and private infrastructure and planning developments.
- Embed Public Art into all Council public domain strategies, with a focus on the Ashfield Town Centre Renewal (TCR) project, Parks Plans of Management and Greenway strategy.
- Crime prevention, and designing out crime methodologies to be embedded in Public Art projects to support ongoing development of attractive and lively public and private domain.

### 6.5 Communication and Collaboration underpins process

- Utilise the expertise of Council's Arts & Culture Advisory network and or Public Art committee, and relevant staff to provide advocacy and advisory to external parties regarding Public Art across the Ashfield LGA.
- Influence Public Art initiatives using key partnerships with individual artists, community members, the arts sector, community organisations, the business and public sectors, and implement programs that engage, educate and communicate to the public about Public Art

## 7. Funding Sources

Public Art will be funded using the following funding sources:

### 7.1 Developer Public Art Fund

Major developments valued at \$5m or greater will be asked to contribute to Public Art in the Ashfield LGA. *Refer Public Art in Private Developments – Developer Guidelines for further details.*

### 7.2 Council Public Art Fund

Council annual Public Art fund administered and managed by Council.

### 7.3 External Grants

Grants awarded through external agencies and departments

## 8. Developments in, or near Town Centres, Gateway and/or Significant Sites

Developments located in or near Town Centres (Ashfield, Haberfield, Summer Hill), or near/on prime Gateway sites or significant sites (an area of natural, cultural, or economic significance) will be targeted, and negotiated with Council to support the development and installation of relevant Public Art work despite the value of the development. The proponent will provide project funds to cover artwork; development, concept, artist fees, materials, installation and maintenance, and the developer contribution will be based on minimum 1% of overall development value. *Refer Public Art in Private Developments – Developer Guidelines for further details*

## 9. Assessment Criteria

All Public Art works commissioned in the Ashfield LGA will be evaluated and assessed against the following criteria:

- Relevance to the Aims, Purpose and Guiding Principles detailed in Ashfield Council's Public Art Policy
- Integrity and originality
- Artist/Design excellence and innovation.
- Relevance and appropriateness of the work in relation to its site.
- Consistency with current planning, heritage and environmental policies and plans of management
- Consideration for public safety and the public's use of, and access to the public art, and domain.
- Consideration of maintenance (including vandalism), permanency and durability particularly if the artwork is considered enduring<sup>4</sup>.
- Evidence of funding sources and satisfactory budget, including an allocation for ongoing maintenance
- If involving a community engagement component, relevance and appropriateness of process for target group/s

## 10. Art Collection Policy – Title and Maintenance

Public Art commissioned under this Policy and associated Guidelines will form part of Council's Art Collection, which includes maintenance requirements and de-accession. Maintenance arrangements will be included in each Public Art project agreement. Refer Art Collection Policy for further details.

Objects entering the permanent collection will be accompanied by a legal document transferring 'Title', that is full rights of ownership to Ashfield Council, once the commissioner has accepted the artwork as completed and paid the agreed commission fee.

## 11. Intellectual Property and Copyright

Council will have exclusive copyright licence of the works, however full copyright will remain with the artist/author of the work/object.

## Definitions

### Item – Public Art

Public Art is an overarching terminology that encompasses a range of further descriptions to define the type, size, dimensions, purpose, function and length of time in the public realm. Each public art is unique and will usually fall under more than one description as detailed below:

| Description and Inclusions   | Exclusions   |
|--|--|
| <p><b>Art</b><br/>Is a work that broadly embraces visual, oral and performing arts that broadens, challenges or questions traditional cultural views. It is any original human creation, which contains an idea and culminates in a set of processes with the outcome considered to be art.</p>  |  |
| <p><b>Artist</b><br/>For the purposes of inclusiveness the term artist is applied to visual artists, performing artists, writers, musicians, craft designers filmmakers, photographers and includes mixed media. Artist will also work across these platforms.</p>   |  |
| <p><b>Commemorative</b><br/>Public Art that is to commemorate a celebration or a significant event from the passages of time.</p>  |  |
| <p><b>Community Art</b><br/>Arts based projects where the creative practices, processes, concepts and decisions have substantial community participation, or the project is community initiated and led. Community art is essential to community cultural development and place making practices. Community art projects completed, installed and or performed in the public realm are classified as public art.</p> |  |
| <p><b>Enduring/ Permanent</b><br/>The life of the public artwork is considered to be enduring (permanent). This is approximately 10 years for painted murals and 20 years as a minimum for sculptural artworks or as set out in the artist contract/s at time of commissioning.</p>  |  |
| <p><b>Exhibition</b><br/>A collection of public artworks in the public realm either indoors or outdoors which was created by an artist/s for the intention of a public display within a specified timeframe.</p>   |  |
| <p><b>Integrated/Functional Art</b><br/>Artworks that are created by an artist and fully Incorporated within the design of the built or natural environment, e.g. street furniture, buildings, bollards, gardens, sand dunes, footpaths, lighting, sound etc.<br/>Works can sometimes be purely functional without being integrated.</p>   | <p>Standard signage.<br/><br/>Standard, or off the shelf style street and park furniture.<br/><br/>Works that an urban designer, architect or landscape architect would design as part of their scope.</p> |
| <p><b>Interpretive</b><br/>The purpose of the public art is to describe, educate and comment on issues, events and situations. Examples include; markers, nodes, text, aural messages and inlays. Public art can be considered interpretive and/or conceptual; meaning that it is up to</p>  |  |

the viewer to explore and interpret the underlying layers to the work or performance.

#### Major

A significant cost associated to the public art commissioning, usually \$100,000 or more.

#### Performance based/Roaming

Artists performing in a public space are considered a form of public art. This can include; musicians, dancers, comedians, actors, poets, film-makers, buskers, circus performers and projectionists.

#### Plonk

A work that deliberately (or sometimes unintentionally) is placed in a specific location but does not relate or is responsive to that location. Usually the work was not designed for the location it has ended up in. This type of public art installation can sometimes work well or can be very controversial.

#### Scale

Scale refers to size and terminology.

From largest to smallest:

- Landmark
- Gateway
- Iconic/Signature/Significant
- Human
- Small
- Micro

#### Site Specific

An artwork that is site specific refers to it being designed specifically for, and responsive to a particular site through scale, material, form and conceptual story.

#### Socially Engaged Art Practice

A practice that is developed and delivered through collaboration, participation, dialogue, provocation and immersive experiences. The focus is on process, and the artist seeks to embed themselves within a community providing opportunities to respond to a specific need and/or agenda of the community and hence widen participation.

*(Lynn Frogget et al, New Model Visual Arts Organisation & Social Engagement <http://www.creativityworks.org.uk/our-impact/socially-engaged-art/>)*

#### Street

Aerosol murals, paste-ups, stencils etc. that are located in public places, e.g. fences and buildings in urban streets and laneways etc. They are classed as legal (not graffiti) and have approval by owners to be displayed.

#### Temporary/Ephemeral

Public art that is not permanent. It may have a set period of time that it is to remain in the public realm or may organically decompose and/or disappear. Includes illumination.

#### 2D

Public art that is considered flat and 2-dimensional; e.g. street art, murals, projections, paste ups, framed works, art integrated into the face of a wall, floor or fence.

#### 3D

Public art that is considered 3-dimensional and can be viewed from various angles; e.g. sculptures, holograms, artworks that are free standing, suspended or on footings, plinths, and various types of integrated art works.



# DRAFT Public Art Policy

This policy will be reviewed by: Arts, Culture & Community  
Next review date: November 2017

|   |   |
|---|---|
| <b>Title:</b>                                     | Public Art Policy   |
| <b>Summary:</b>                                   | This policy outlines the objectives for Public Art in the Ashfield Local Government Area.   |
| <b>TRIM Record Number:</b>                        |   |
| <b>Date of Issue:</b>                             | October 2015  |
| <b>Approval:</b>                                  |   |
| <b>Version Control:</b>                           | Draft Public Art Policy   |
| <b>Contact Officer:</b>                           | Team Leader, Arts, Culture & Community  |
| <b>Relevant References:</b>                       | <p><i>Ashfield Council's:</i></p> <ul style="list-style-type: none"> <li>• Public Art Strategy</li> <li>• Arts and Culture Advisory Network – Public Art Sub-Committee</li> <li>• Reconciliation Action Plan (RAP)</li> <li>• Public Domain Strategies – Ashfield Town Centre Renewal (TCR) strategy</li> <li>• Ashfield 2023 – Our Place, Our Future Council Community Plan 2013-2017</li> <li>• Social Snapshot 2013</li> </ul> |
| <b>Main Legislative or Regulatory References:</b> | <p>Local Government Act 1993<br/>Section 94A Development Contributions Plan<br/>Section 94 Development Contributions Plan</p>   |
| <b>Applicable Delegation of Authority:</b>        | <p>As per Corporate and Community Services delegate<br/>As per Planning &amp; Environment delegate</p>  |
| <b>Related Ashfield Council Policy:</b>           | <ul style="list-style-type: none"> <li>• Strategic Community Plan 2023</li> <li>• Procurement Policy</li> <li>• Graffiti Control/ Bill Poster Removal Policy</li> <li>• Ashfield Civic Centre User Policy</li> <li>• Statement of Business Ethics</li> <li>• Reconciliation Action Plan</li> </ul>  |
| <b>Related Ashfield Council Procedure:</b>        | <ul style="list-style-type: none"> <li>• Public Art Implementation Guidelines</li> <li>• Public Art in Private Developments Guidelines</li> <li>• Art Collection Policy</li> <li>• Cultural Gift Program</li> </ul>   |

## 1. Background

The Public Art Policy has been developed to support the creation and delivery of relevant Public Art<sup>5</sup> in the Ashfield Local Government Area that represents and inspires our community.

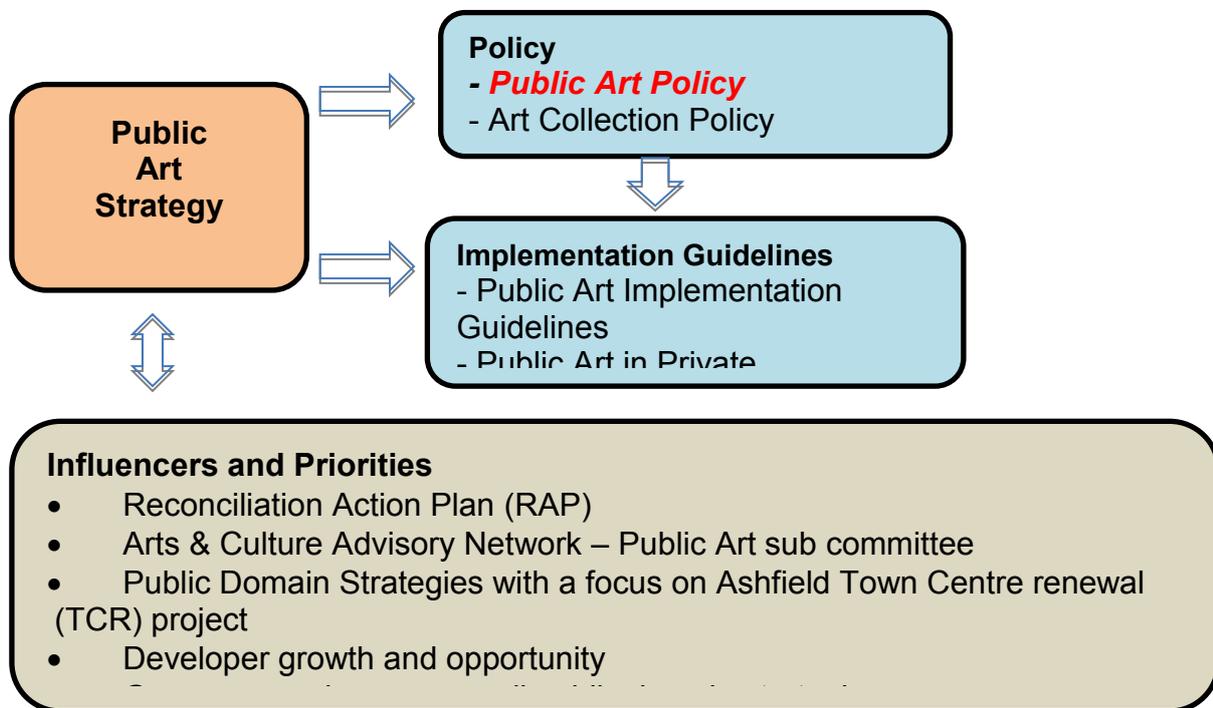
Ashfield is a place of unique, culturally enriched neighbourhoods<sup>6</sup> where everyone matters, and community life is celebrated and enriched by its culturally diverse population. Ashfield Council's strategic community plan, '*Ashfield 2023 - Our Place, Our Future*' is underpinned by seven themes, with one being a creative and inclusive community. Council is committed to delivering programs that support and enhance the growth of a creative, artistic and culturally diverse community.

In respect of the traditional owners of the land, the Wangal People, who form part of the Eora Nation, Ashfield Council has a Reconciliation Action Plan in place that supports the strategic community plan. Council believes that by strengthening dialogue between Aboriginal and Torres Strait Islander peoples and other Australians we will increase reconciliation, and by establishing a two-way process of learning we will continue to be a 'meeting place' for all cultures.

Our diverse communities, and the traditional owners will be targeted, and engaged in this policy wherever possible.

## 2. Policy Positioning

This Policy provides the mother statement that drives and delivers Council's Public Art Strategy, and should be read in conjunction with associated Implementation Guidelines and policies as detailed below.



<sup>5</sup> For a definition of Public Art refer Section 5 of this Policy

<sup>6</sup> Council's [Social Snapshot of Ashfield](#) outlines essential social research and statistics for the Ashfield Local Government Area.

### 3. Policy Statement

Ashfield Council sees Public Art as a valuable component of creating 'place' that enhances the liveability and animation of public spaces, engages community and supports and revitalises the local economy and neighbourhoods.

To ensure Public Art is embedded into the fabric of the Local Government Area (LGA), Council seeks to have Public Art incorporated into:

- All developments valued at 5 million or greater
- All Gateway sites, or significant sites across the LGA regardless of their value
- Council's Arts & Culture and Public Space Activation programs

### 4. Purpose

The purpose of the Public Art Policy and associated Guidelines is to provide:

- Direction and guidance to, commission and install quality Public Art that enhances, preserves and celebrates cultural diversity, unique local identity, social value, history and contemporary image of the Ashfield Local Government Area.
- A framework to ensure collaboration between artists, community, developers and other relevant internal and external stakeholders pending location and scope of the public artwork.
- Details and guidance on the role of Ashfield Council and relevant stakeholders in developing, funding, promoting, managing and conserving Public Art in the Ashfield Local Government Area.

This policy applies to all existing Public Art under the care and control of Ashfield Council, and to all future Public Art procurement within the public domain, and in private developments. Refer to Council's *Public Art in Private Developments – Developer Guidelines* and *Council's Art Collection Policy* for further details.

### 5. Definitions

Public Art<sup>7</sup> is Art created by and/or led by professional Artists and located outside of a typical gallery context in indoor and outdoor environments, and in its broadest sense can be defined as artistic works or activities accessible to the public.

Public Art can adopt many forms and approaches from community cultural development, socially engaged practice, place-making projects, stand-alone Public Artworks, through to art "built in" conceptual contribution by artists to the design of public spaces and facilities, or art integrated within landscape or urban design. It can reflect a diverse range of styles and practices from traditional to contemporary art, utilise a range of art forms and mediums, and can be either permanent, temporary or ephemeral

Public Art can mean many things to many people. The definitions at **Attachment 1** provide clarification to support implementation of this policy.

## 6. Guiding Principles

The following Guiding Principles underpin, and provide a foundation for the implementation of the Public Art Policy and associated Guidelines.

### 6.1 Drive and Ensure Excellence and Relevance

- Advocate for and ensure Public Art of high quality and artist merit is commissioned, created and installed across the Ashfield LGA utilising a range of mediums and processes including social engagement practices.
- Maintain the heritage and stories of our locality and unique neighbourhoods by forging relationships with, and targeting artists from Aboriginal and Torres Strait Islander and culturally diverse backgrounds to tender for commissions, and engage in Public Art projects.

### 6.2 Support and advocate for Artists

- Influence Public Art across the Ashfield LGA that engages and support Artists and a range of arts practice, mediums and processes.
- Ensure artists are remunerated with fair and equitable award or market rates, and that copyright conditions are respected.

### 6.3 Secure Public Art funding

- Lead and influence external funding and partnership opportunities as well as internal budget allocations to secure adequate funding and support for Public Art initiatives and projects
- Ensure adequate funds are quarantined for Artist fees, quality materials, maintenance and restoration of public art.

### 6.4 Align and embed integration of Public Art into Public and Private developments and place

- Influence and integrate Public Art into the fabric of public and private infrastructure and planning developments across the Ashfield LGA. Initiate agreements between Ashfield Council and Developers for public and private infrastructure and planning developments.
- Embed Public Art into all Council public domain strategies, with a focus on the Ashfield Town Centre Renewal (TCR) project, Parks Plans of Management and Greenway strategy.
- Crime prevention, and designing out crime methodologies to be embedded in Public Art projects to support ongoing development of attractive and lively public and private domain.

### 6.5 Communication and Collaboration underpins process

- Utilise the expertise of Council's Arts & Culture Advisory network and or Public Art committee, and relevant staff to provide advocacy and advisory to external parties regarding Public Art across the Ashfield LGA.
- Influence Public Art initiatives using key partnerships with individual artists, community members, the arts sector, community organisations, the business and public sectors, and implement programs that engage, educate and communicate to the public about Public Art

## 7. Funding Sources

Public Art will be funded using the following funding sources:

### 7.1 Developer Public Art Fund

Major developments valued at \$5m or greater will be asked to contribute to Public Art in the Ashfield LGA. *Refer Public Art in Private Developments – Developer Guidelines for further details.*

### 7.2 Council Public Art Fund

Council annual Public Art fund administered and managed by Council.

### **7.3 External Grants**

Grants awarded through external agencies and departments

## **8. Developments in, or near Town Centres, Gateway and/or Significant Sites**

Developments located in or near Town Centres (Ashfield, Haberfield, Summer Hill), or near/on prime Gateway sites or significant sites (an area of natural, cultural, or economic significance) will be targeted, and negotiated with Council to support the development and installation of relevant Public Art work despite the value of the development. The proponent will provide project funds to cover artwork; development, concept, artist fees, materials, installation and maintenance, and the developer contribution will be based on minimum 1% of overall development value. *Refer Public Art in Private Developments – Developer Guidelines for further details*

## **9. Assessment Criteria**

All Public Art works commissioned in the Ashfield LGA will be evaluated and assessed against the following criteria:

- Relevance to the Aims, Purpose and Guiding Principles detailed in Ashfield Council's Public Art Policy
- Integrity and originality
- Artist/Design excellence and innovation.
- Relevance and appropriateness of the work in relation to its site.
- Consistency with current planning, heritage and environmental policies and plans of management
- Consideration for public safety and the public's use of, and access to the public art, and domain.
- Consideration of maintenance (including vandalism), permanency and durability particularly if the artwork is considered enduring<sup>8</sup>.
- Evidence of funding sources and satisfactory budget, including an allocation for ongoing maintenance
- If involving a community engagement component, relevance and appropriateness of process for target group/s

## **10. Art Collection Policy – Title and Maintenance**

Public Art commissioned under this Policy and associated Guidelines will form part of Council's Art Collection, which includes maintenance requirements and de-accession. Maintenance arrangements will be included in each Public Art project agreement. Refer Art Collection Policy for further details.

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**3D**

Public art that is considered 3-dimensional and can be viewed from various angles; e.g. sculptures, holograms, artworks that are free standing, suspended or on footings, plinths, and various types of integrated art works.



## Public Art in Private Developments

### *Developer Guidelines*



*Harmony Wall Project (2015), Hamish & Rose  
Drakes Lane Ashfield  
Photography, Adrian Clement*

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## 1. Background

These Guidelines support the implementation of Ashfield Council's Public Art Policy, and Strategy.

The Public Art Policy and Strategy has been created to support Public Art<sup>9</sup> in the Ashfield Local Government Area. Ashfield is a place of unique, culturally enriched neighbourhoods where everyone matters, and community life is celebrated and enriched by its culturally diverse population. Ashfield Council's strategic community plan, '*Ashfield 2023 - Our Place, Our Future*' is underpinned by seven themes, with one being a creative and inclusive community. Council is committed to supporting and driving projects, developments and interventions that support and enhance the growth of a creative, artistic and culturally diverse community. Council's [Social Snapshot of Ashfield](#) outlines essential social research and statistics for the Ashfield Local Government Area.

In respect of the traditional owners of the land, the Wangal People, who form part of the Eora Nation, Ashfield Council has a Reconciliation Action Plan in place that supports the strategic community plan. Council believes that by strengthening dialogue between Aboriginal and Torres Strait Islander peoples and other Australians we will increase reconciliation, and by establishing a two-way process of learning we will continue to be a 'meeting place' for all cultures. Our traditional owners will be targeted, and engaged in this policy wherever possible.

Public art provides scope for integration between private developments and the community, culture and environment in which they are constructed, as well as for major developments to enhance their distinctiveness through a unique and quality design interface. These guidelines set out the process for both Council and Developers to work together to strive for the creation of vibrant, economically sustainable and liveable communities that celebrate the unique diversity of the Ashfield LGA.

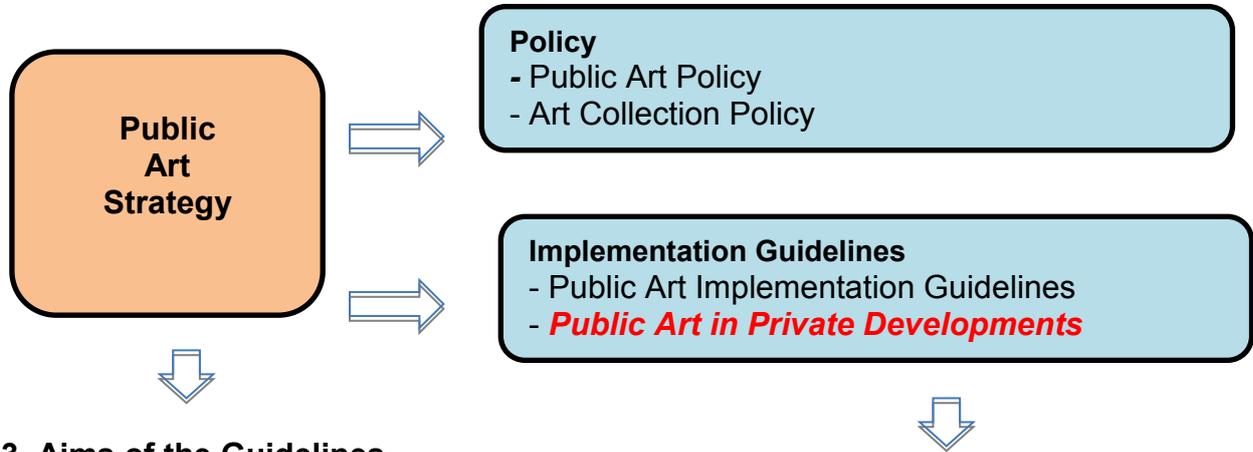
Local government is progressively more involved in implementing requirements to ensure major development, including commercial, industrial, public administration and retail development contributes to the variety of public art work in the public domain. As major development can include significant portions of public domain this type of development has the potential to integrate public art into its design and effectively amalgamate development into the environment in which it is situated. Effective public art will be unique in the way it both reflects and contributes to the distinctive identity of an area. This is achieved through interpretation of the immediate environment and prominent local characteristics.

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<sup>9</sup>For a definition of Public Art, refer to Section 11 and ATTACHMENT 4 of these Guidelines.

## 2. Positioning of these Guidelines within Council's Public Art Strategy

These Guidelines provide tools, direction and support to drive and deliver Council's Public Art Strategy, and should be read in conjunction with associated Policies and Implementation Guidelines as detailed below. These guidelines in particular aim to assist developers, art consultants, artists, architects, landscape architects and project managers in the provision of public art in private developments.



## 3. Aims of the Guidelines

### Influencers and Priorities

- Reconciliation Action Plan (RAP)
- Arts & Culture Network – Public Art Sub Committee (PASC)
- Public Domain Strategies with a focus on Ashfield Town Centre renewal (TCR) project
- Developer growth and opportunity

The overall aim of these guidelines is to assist developers to engage with the local community to:

- Include public art within private development so as to better integrate development into the environmental and cultural aspects of a locality, and ensure major development contributes positively to the streetscape, place making and the overall beautification and appeal of the LGA.
- Embed public art as an integral part of the private development process and encourage communication between stakeholders including the Arts & Culture Network - Public Art sub committee, artists and design professionals in order to achieve a multi disciplinary team based approach to the provision of public art in Ashfield LGA
- Support economic development and the creation of opportunities for artists and creative industries within the Ashfield LGA through the continued improvement and creative approach to the built environment and public domain.
- Promote the integration of economic, social and ecological sustainability principles into private development in order to encourage vibrant and liveable communities, facilitate economic development and prosperity, and provide for the future health of the local environment.
- Provide more opportunities for residents and visitors to the Ashfield LGA to participate in, engage with, and view the arts as a part of their everyday lives.

#### 4. Purpose of these Guidelines

The purpose of these Guidelines is to assist Council and Developers to:

- Ensure high quality public art is included in accessible public spaces in all, major developments<sup>10</sup> within the LGA.
- To detail, and present Guiding Principles (Point 6 below) that provide a foundation for Developers for the provision of Public Art in the LGA.
- Prescribe requirements for Developers in relation to Public Art in major developments, and outline Development Application and other required procedures underpinned by the Guiding Principles at point 6 below.
- Ensure that when developers are embedding Public Art into development concepts and plans that they follow design and criteria appropriate to the Ashfield LGA through the provision of conceptual considerations linked to the Guiding Principles detailed at point 6 below.

#### 5. Who do these Guidelines apply to?

These Guidelines apply to:

All privately initiated multiple residential, mixed-use developments, commercial or industrial projects that include a significant amount of public (or publicly accessible) spaces

All developments, which have a construction value of \$5 million and over.

Developments located in Town Centres (Ashfield, Haberfield, Summer Hill), prime Gateway sites will be targeted.

Development on, or near sites of significance - Refer Attachment 1 '*Council's Register and Map of Significant Sites, Locations and People for Public Art*' for a detailed list of significant sites across the LGA.

It should be noted that:

- Public art referred to in these guidelines will generally be located within the curtilage of a privately owned development site, and includes both private developers, and State and Federal Agency owned land/properties.
- Inclusion of public art is not a prerequisite for approval in single dwelling houses or other small developments (with the exception of gateway and specific sites) and in these instances is to be pursued at the discretion of the owner or developer.

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<sup>10</sup> Major Development Refers to all developments valued at \$5 Million or greater in terms of total development cost. Refer Attachment 5 for further definitions.

## **6. Public Art Guiding Principles**

The following Guiding Principles underpin, and provide a foundation for the implementation of the Public Art Policy and associated Guidelines.

### **6.1 Drive and Ensure Excellence and Relevance**

- Advocate for and ensure Public Art of high quality and artist merit is commissioned, created and installed across the Ashfield LGA utilising a range of mediums and processes including social engagement practices.
- Maintain the heritage and stories of our locality and unique neighbourhoods by forging relationships with, and targeting artists from Aboriginal and Torres Strait Islander and culturally diverse backgrounds to tender for commissions, and engage in Public Art projects.

### **6.2 Support and advocate for Artists**

- Influence Public Art across the Ashfield LGA that engages and support Artists and a range of arts practice, mediums and processes.
- Ensure artists are remunerated with fair and equitable award or market rates, and that copyright conditions are respected.

### **6.3 Secure Public Art funding**

- Lead and influence external funding and partnership opportunities as well as internal budget allocations to secure adequate funding and support for Public Art initiatives and projects
- Ensure adequate funds are quarantined for Artist fees, quality materials, maintenance and restoration of public art.

### **6.4 Align and embed integration of Public Art into Public and Private developments and place**

- Influence and integrate Public Art into the fabric of public and private infrastructure and planning developments across the Ashfield LGA. Initiate agreements between Ashfield Council and Developers for public and private infrastructure and planning developments.
- Embed Public Art into all Council public domain strategies, with a focus on the Ashfield Town Centre Renewal (TCR) project, Parks Plans of Management and Greenway strategy.
- Crime prevention, and designing out crime methodologies to be embedded in Public Art projects to support ongoing development of attractive and lively public and private domain.

### **6.5 Communication and Collaboration underpins process**

- Utilise the expertise of Council's Arts & Culture Advisory network and or Public Art committee, and relevant staff to provide advocacy and advisory to external parties regarding Public Art across the Ashfield LGA.
- Influence Public Art initiatives using key partnerships with individual artists, community members, the arts sector, community organisations, the business and public sectors, and implement programs that engage, educate and communicate to the public about Public Art

## 7. Developer Requirements

### 7.1 Developer Public Art Fund

Major developments valued at \$5m or greater will be asked to contribute to Public Art in the Ashfield LGA, by contributing to Council's Developer Public Art Fund. This contribution can be done by one of the following options with a minimum value for each option being at 1% of total value of the development:

- 7.1.1 A **financial contribution** is given to Council to support the implementation of Council's Public Art Strategy at Council's discretion.
- 7.1.2 The **Developer agrees to install a Public Artwork** on the development site. This could be delivered in one of the following ways:
  - A. **As part of the overall Development plan.** This contribution will be embedded into the overall Development budget and be quarantined for Public Art. The Public Art costs and associated responsibilities lie with the proponent, and will be based on meeting Council's requirements as set out in these Guidelines.
  - B. **A collaborative project between Council and the Developer** negotiated during the DA process, involving the proponent making available land and/or space (E.g. wall, public thoroughfare etc.) for the installation of a public artwork. The proponent will also provide project funds to cover artwork development, concept, artist fees, materials, installation and maintenance. Council will oversee, and manage the implementation of the Public Art work, which may include a community engagement element. This option must also meet requirements set out in these Guidelines.

### 7.2 Developments in or near Town Centres, Gateway and/or Significant Sites

Developments located in or near **Town Centres** (Ashfield, Haberfield, Summer Hill, Croydon), or near/on prime **Gateway sites or significant sites** (an area of natural, cultural, or economic significance) will be targeted, and negotiated with Council to support the development and installation of relevant Public Art work despite the value of the development. The proponent will provide project funds of either a minimum of 1% of the value of the development, or an adequate budget to cover artwork; development, concept, artist fees, materials, installation and maintenance.

Where a development is located within an identified Town Centre, Gateway, or Significant Site (an area of natural, cultural, or economic significance) under '*Council's Register and Map of Significant Sites, Locations and People for Public Art* (REFER ATTACHMENT 1) the public artwork should be consistent with the objectives and design themes of those relevant to each unique site – These can be requested as required. The developer is to demonstrate how this is achieved and demonstrate how the public artwork is responsive to these attributes.

Public Art projects in developments in or near identified Town Centres, Gateways and/or Significant Sites can be either embedded into the overall Development budget (refer 7.1.2 A above), or Council will oversee, and manage the implementation of the Public Art work, which may include a community engagement element (refer 7.1.2 B above).

### 7.3 Local Cultural and Environmental Considerations

To ensure public art is effectively integrated into its context the concept and design of proposed artworks must consider the Public Art Guiding Principles (Section 6) and, where relevant, the following:

- **History** - the many layers of history and contemporary culture, which make any location or place within the LGA rich with content. Refer Attachment 2 – ‘*Council’s Register and Map of Significant Sites, Locations and People for Public Art*’
- **Culture** - modern society and its wide-ranging impacts on how different social and cultural groups within the LGA understand their place in the world.
- **Environment** - the qualities of natural landscape, natural light, topography and local flora and fauna within the locality.
- **Urban Form** - existing urban character and desired future character of the area as well as site-specific characteristics.
- **Sustainability** - the increasing role of government and community in the movement toward a sustainable future.

## 8. Application Process

A public artwork is to be generally located within the curtilage of the development site proposed for the major development except where the proponent has entered into a mutual agreement with Council to provide the public artwork on public land, and where the provision of public art on public land meets the requirements of the Public Art Policy and these guidelines.

**Consultation and pre-lodgement discussions with Council staff are recommended** to ensure that any issues are resolved at the earliest date possible, and that the concepts meet the Guiding Principles outlined in Section 6 above. These discussions can also assist with the verification of the qualifications of the Public Art Coordinator/ project manager being nominated by the proponent.

### 8.1 Pre-lodgement Application Requirements – Public Art

The Developer is to submit a Preliminary Application for the Public Art component (REFER ATTACHMENT 2) of the development prior to lodgement of a development application. Preliminary applications for developments that are planning to include a Public Artwork should include consideration of the following:

- A preliminary description of the proposed public artwork including materials to be used, ensuring that the concept meets the definition of ‘Public Art’ as detailed in Section 9, and at ATTACHMENT 5 of these guidelines
- A brief explanation as to the intention of the artwork and sensitivity to existing urban design qualities, identified Town Centres, Gateways and/or Significant Sites (where applicable) and linkages with the Public Art Guiding Principle as detailed at Point 6 of these guidelines.
- Preliminary schematics for the public artwork which can include sketches, montages, digital renditions or other suitable concept schematics;
- Consideration of mechanisms to preserve and maintain the artwork during its life, with consideration that any changes, or removal will require Council approval.
- The anticipated public art budget

## 8.2 Development Application Requirements – Public Art Master Plan

For the Public Art pre-lodgement application to be progressed a **Public Art Master Plan** (Refer ATTACHMENT 3) will need to be developed and submitted as part of the Development Application process.

The **Master Plan** is to include the following:

- Indication of funding option and evidence of relevant personal and/or Council support:
  - OPTION 7.1.2 A - Identification of the public art coordinator or verified project manager
  - OPTION 7.1.2 B - Evidence of support, and discussions with relevant Council Staff for a collaborative project by completing relevant section of both the Pre-Lodgement and Master Plan forms detailed at ATTACHMENTS 2 & 3.
- A detailed description of the proposed public artwork including materials to be used, ensuring that the concept meets the definition of 'Public Art' as detailed in Section 9, and at ATTACHMENT 5 of these guidelines
- A detailed description of how the proposed artwork integrates into the site and surrounds, the development intention of the artwork and sensitivity to existing urban design qualities, and identified Town Centres, Gateways and/or Significant Sites (where applicable).
- Details of the artist/s including a resume and evidence of skills appropriate to the scale of the work
- Location of the artwork within the subject site and dimension details (height, width etc)
- Justification as to how the proposed artwork satisfies both the Public Art Guiding Principles Section 6, and the selection criteria detailed at Section 8 of these guidelines
- Include evidence of research and consultation documentation undertaken throughout the concept development process for the artwork.
- Description of mechanisms to preserve and maintain the artwork during its life, with consideration that any changes, or removal will require Council approval
- The anticipated **Public Art budget** and necessary quotations will need to be included when incorporating Public Art into a Development Application. The following should be considered when developing the budget:
  - Total financial allocation towards a public artwork. The developer is to consider the budget carefully and can include; all pre-lodgement investigations, design advice, community engagement (if applicable), coordination costs, artist fees, cost of material, and construction, and maintenance costs but excludes the cost of land where upon the public artwork is located.
  - Public Art can be incorporated into the design features of a building. The finances allocated toward the construction of a building can be included into the public art budget if this component is demonstrated to be public art. The artwork may serve a dual role of providing effective public domain services such as lighting or shading, provided the work is consistent with the objectives and definitions of these guidelines, DCP and its appendices. Council will exercise discretion as the determining authority in regards to whether the design concepts proposed as 'public artwork' satisfy the requirements contained within these guidelines and the DCP.

- An Artist Verification Statement, which provides evidence that the artist has viewed all documentation to be submitted as part of the development application, and is satisfied that the submitted documentation is consistent with the final design concept of the artwork.

**PLEASE NOTE to assist Developers with this process the following has been provided:**

- A Public Art Master plan template at ATTACHMENT 3.
- Developer Requirements – Major Development, Gateway and/or Significant Site Process Flowchart at ATTACHMENT 4.

## 9. Approval and Assessment

### 9.1 Approval Process

- All Development Applicants with a Public Art component will be referred through the Ashfield Council *Arts & Culture Advisory Network (A&C Network) - Public Art sub-committee (PASC)*. **Refer Section 10 for more detail.**
- All Applications will be assessed against the Assessment Criteria detailed at 9.2 below
- The final design concept must be approved by the PASC prior to the issue of the initial Construction Certificate for the major development.
- The public artwork is to be constructed and installed prior to release of an Occupation Certificate for the development. Council will negotiate check points pre and during installation ensuring quality and integrity of the artwork.
- A Certificate of Completion is to be signed by the artist and submitted to Council prior to the release of an Occupation Certificate for the development.

### 9.2 Assessment Criteria

Evaluation and approval of all artworks will be based on the following criteria:

- Relevance to the Aims, Purpose and Guiding Principles detailed in Ashfield Council's Public Art Policy and Public Art in Private Development - Developer Guidelines.
- Integrity and originality
- Artist/Design excellence and innovation.
- Relevance and appropriateness of the work in relation to its site.
- Consistency with current planning, heritage and environmental policies and plans of management
- Consideration for public safety and the public's use of, and access to the public art, and domain.
- Consideration of maintenance (including vandalism), permanency and durability particularly if the artwork is considered enduring<sup>11</sup>.
- Evidence of funding sources and satisfactory budget, including an allocation for ongoing maintenance
- If involving a community engagement component, relevance and appropriateness of process for target group/s

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<sup>11</sup> The life of the public artwork is considered to be enduring (permanent). This is approximately 10 years for painted murals and 20 years as a minimum for sculptural artworks or as set out in the artist contract/s at time of commissioning.

## 10. Arts & Culture Network – Public Art Sub Committee (PASC)

The PASC will be made up of Council staff, and key external stakeholders with the relevant skill set and expertise.

Council staff representation will be drawn from across the organisation ensuring planning, construction/engineering and arts, culture and public art skills are represented.

External representation will be drawn from the existing Council Arts & Culture network, the arts sector and the community ensuring public art experts are engaged, and the community voice is heard. The committee will come together on a needs basis to assess Development Applications that include a major Public Art component. Depending on the scale, and medium being used, relevant experts will be targeted to ensure the integrity of the decision making process, and the work.

## 11. Art Collection Policy - Title and Maintenance

Public Art commissioned under this Policy and associated Guidelines will form part of Council's Art Collection, which includes maintenance requirements and de-accession. Maintenance arrangements will be included in each Public Art project agreement. Refer Art Collection Policy for further details.

Objects entering the permanent collection will be accompanied by a legal document transferring 'Title', that is full rights of ownership to Ashfield Council, once the commissioner has accepted the artwork as completed and paid the agreed commission fee.

## 12. Intellectual Property and Copyright

Council will have exclusive copyright licence of the works, however full copyright will remain with the artist/author of the work/object.

## 13. Definitions

Public Art<sup>12</sup> is Art created by and/or led by professional Artists and located outside of a typical gallery context in indoor and outdoor environments, and in its broadest sense can be defined as artistic works or activities accessible to the public.

Public Art can adopt many forms and approaches from community cultural development, socially engaged practice, place-making projects, stand-alone Public Artworks, through to art "built in" conceptual contribution by artists to the design of public spaces and facilities, or art integrated within landscape or urban design. It can reflect a diverse range of styles and practices from traditional to contemporary art, utilise a range of art forms and mediums, and can be either permanent, temporary or ephemeral

Public Art can be incorporated into the design features of a building. Council encourages this in all developments that fall under these guidelines, and recommends the inclusion of artists, and other relevant key design and community stakeholders in the initial design process.

Public Art can mean many things to many people. The definitions at **Attachment 5** provide clarification to support implementation of this policy.

## 14. Attachments

**ATTACHMENT 1 - Ashfield Council's Register and Map of Significant Sites, Locations and People for Public Art '**

**ATTACHMENT 2 - Pre-Lodgement Application - Preliminary Application for Public Art in a Major Development**



**Pre-lodgement Application  
Preliminary Application for Public Art in a Major Development**

**Development Details**

Site Address: \_\_\_\_\_

Development Value: \_\_\_\_\_ Date of Application: \_\_\_\_\_

**Developer/s Contact Details**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ (M) \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ (M) \_\_\_\_\_

**OFFICE USE ONLY:** \_\_\_\_\_

Date received: \_\_\_\_ Officer Assigned to the project: \_\_\_\_\_

Position: \_\_\_\_\_ Ext: \_\_\_\_\_

Funding Option: 7.1.1                      7.1.2 A                      7.1.2B  
*(please circle)*

Town Centre, Gateway and /or Significant Site: YES /NO \_\_\_\_\_

Pre Lodgement Application TRIM Reference: \_\_\_\_\_

**Instructions**

- **Consultation and pre-lodgement discussions with Council staff are recommended** to ensure that any issues are resolved at the earliest date possible, and that the concepts meet the Guiding Principles outlined in Section 6 above. These discussions can also assist with the verification of the qualifications of the Public Art Coordinator/ project manager being nominated by the proponent.

**Contact Details:**

**Development Application and Planning Issues:**

Manager Development Services  
 Planning & Environment  
 Ph 02 9716 1954

**Artwork concept and Community Development opportunities:**

Team Leader Arts, Culture & Community  
 Ph 02 9716 1841

- Please complete all relevant sections of this form and email to: [info@ashfield.nsw.gov.au](mailto:info@ashfield.nsw.gov.au)
- If you require more space than is provided please provide additional details in a Word Doc or Pdf ensuring that information is well labelled and link to relevant questions
- Council would like any materials delivered electronically. Please forward any relevant drawings, images, plans etc. using the following as a guide for preferred formats:

| What   | Format   |
|--|--|
| Resume/s<br>Artist Verification<br>Statement, additional<br>descriptions beyond the<br>scope of this format. | Word Doc or Pdf  |
| Images/plans of the<br>concept   | <ul style="list-style-type: none"> <li>• Max 5 x jpegs or pdfs (each image numbered and named)</li> <li>• Brief description of numbered work including medium and dimensions (Word doc or pdf – max 50 words/image)</li> </ul>                 |
| Film/Video/ Multimedia   | Hard copy options: <ul style="list-style-type: none"> <li>• 10 minutes of DVD or MP4 on USB drive</li> <li>• Brief synopsis (Word doc or pdf - max 150 words)</li> </ul>   |
|  | Soft copy options: <ul style="list-style-type: none"> <li>• URL to YouTube or Vimeo</li> <li>• Brief synopsis (Word doc or pdf – max 150 words)</li> </ul>   |
| Music  | Hard copy options: <ul style="list-style-type: none"> <li>• 10 minutes on CD or music files on a USB drive</li> <li>• Lyrics and/or a description of artwork (Word doc or pdf - max 150 words) or lyrics for max 3 songs</li> </ul>            |
|  | Soft copy options: <ul style="list-style-type: none"> <li>• URL to online music source eg Sound Cloud, Band Camp with</li> <li>• Lyrics and/or a description of artwork (Word doc or pdf - max 150 words) or lyrics for max 3 songs</li> </ul> |



**1.3 Town Centre Gateway, or Significant Site**

Where a development is located within an identified gateway, or significant site (an area of natural, cultural, or economic significance) under ‘*Council’s Register and Map of Significant Sites, Locations and People for Public Art* (REFER ATTACHMENT 1) the public artwork should be consistent with the objectives and design themes of those relevant to each unique site – These can be requested as required. Please describe how this has been considered in the above project description.

**(MAX 150 words)**

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**1.4 Maintenance and Preservation**

**Preservation**

Please provide a brief description of what mechanisms you will envisage being implemented to preserve the Public Art work ensuring longevity, and limiting risk of unnecessary alterations and/or removal without first seeking Council approval.

***For example*** - Provide Council with a right of way, and possibility of an easement in favour of Council.

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**Maintenance** – Please Note if you proceed with this Artwork there will be a requirement to attach a detailed description of how the Public Artwork will be maintained to the *Public Art Master Plan* – refer ATTACHEMNT 3. For example a maintenance manual.

**1.5 Preliminary schematics for the public artwork – ONLY if available**

Please attach preliminary schematics for the public artwork, which can include sketches, montages, digital renditions or other suitable concept schematics;

***Refer Instruction section of this form for guidance on acceptable electronic formats***

## 2. Anticipated Public Art Budget

Anticipated overall **Public Art budget?** \_\_\_\_\_

Please Note at Development Application stage you will be required to provide a detailed budget that includes necessary quotations for the Public Art by completing a Detailed **Budget Table**. The following should be considered when developing the budget:

- Total financial allocation towards a public artwork. The developer is to consider the budget carefully and can include; all pre-lodgement investigations, design advice, community engagement (if applicable), coordination costs, artist fees, cost of material, and construction, and maintenance costs but excludes the cost of land where upon the public artwork is located.
- Public Art can be incorporated into the design features of a building. The finances allocated toward the construction of a building can be included into the public art budget if this component is demonstrated to be public art. The artwork may serve a dual role of providing effective public domain services such as lighting or shading, provided the work is consistent with the objectives and definitions of these guidelines, DCP and its appendices. Council will exercise discretion as the determining authority in regards to whether the design concepts proposed as 'public artwork' satisfy the requirements contained within these guidelines and the DCP.

ATTACHMENT 3 - Public Art in a Major Development Master Plan TEMPLATE



Public Art in a Major Development  
MASTER PLAN TEMPLATE

Development Details

Site Address: \_\_\_\_\_

Development Value: \_\_\_\_\_ Date of Application: \_\_\_\_\_

Developer/s Contact Details

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ (M) \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ (M) \_\_\_\_\_

OFFICE USE ONLY: \_\_\_\_\_

Date received: \_\_\_ Officer Assigned to the project: \_\_\_\_\_

Position: \_\_\_\_\_ Ext: \_\_\_\_\_

Funding Option: \_\_\_\_\_

Town Centre, Gateway and /or Significant Site: YES /NO \_\_\_\_\_

Pre Lodgement Application TRIM Reference: \_\_\_\_\_

**Instructions**

- **Consultation and pre-lodgement discussions with Council staff are recommended** to ensure that any issues are resolved at the earliest date possible, and that the concepts meet the Guiding Principles outlined in Section 6 above. These discussions can also assist with the verification of the qualifications of the Public Art Coordinator/ project manager being nominated by the proponent.

**Contact Details:**

**Development Application and Planning Issues:**

Manager Development Services  
 Planning & Environment  
 Ph 02 9716 1954

**Artwork concept and Community Development opportunities:**

Team Leader Arts, Culture & Community  
 Ph 02 9716 1841

- Please complete all relevant sections of this form and email to: [info@ashfield.nsw.gov.au](mailto:info@ashfield.nsw.gov.au)
- If you require more space than is provided please provide additional details in a Word Doc or Pdf ensuring that information is well labelled and link to relevant questions
- Council would like materials delivered electronically. Please forward any relevant drawings, images, plans etc. using the following as a guide for preferred formats:

| What   | Format   |
|--|--|
| Resume/s<br>Artist Verification<br>Statement, additional<br>descriptions beyond the<br>scope of this format. | Word Doc or Pdf  |
| Images/plans of the<br>concept   | <ul style="list-style-type: none"> <li>• Max 5 x jpegs or pdfs (each image numbered and named)</li> <li>• Brief description of numbered work including medium and dimensions (Word doc or pdf – max 50 words/image)</li> </ul>                 |
| Film/Video/ Multimedia   | Hard copy options: <ul style="list-style-type: none"> <li>• 10 minutes of DVD or MP4 on USB drive</li> <li>• Brief synopsis (Word doc or pdf - max 150 words)</li> </ul>   |
|  | Soft copy options: <ul style="list-style-type: none"> <li>• URL to YouTube or Vimeo</li> <li>• Brief synopsis (Word doc or pdf – max 150 words)</li> </ul>   |
| Music  | Hard copy options: <ul style="list-style-type: none"> <li>• 10 minutes on CD or music files on a USB drive</li> <li>• Lyrics and/or a description of artwork (Word doc or pdf - max 150 words) or lyrics for max 3 songs</li> </ul>            |
|  | Soft copy options: <ul style="list-style-type: none"> <li>• URL to online music source eg Sound Cloud, Band Camp with</li> <li>• Lyrics and/or a description of artwork (Word doc or pdf - max 150 words) or lyrics for max 3 songs</li> </ul> |

**1. Funding Option**

Please circle agreed funding option – A or B:

The **Developer agrees to install a Public Artwork** on the development site. This could be delivered in one of the following two ways:

- A. As part of the overall Development plan.** This contribution will be embedded into the overall Development budget and be quarantined for Public Art. The Public Art costs and associated responsibilities lie with the proponent, and will be based on meeting Council’s requirements as set out in these Guidelines.
  
- B. A collaborative project between Council and the Developer** negotiated during the DA process, involving the proponent making available land and/or space (E.g. wall, public thoroughfare etc.) for the installation of a public artwork. The proponent will also provide project funds to cover artwork development, concept, artist fees, materials, installation and maintenance. Council will oversee, and manage the implementation of the Public Art work, which may include a community engagement element. This option must also meet requirements set out in these Guidelines.

**2. Town Centre, Gateway and /or Significant Site**

Is your development in or near (please circle, and provide detail)

**Town Centre:**    Ashfield    Summer Hill                      Haberfield                      Croydon

**Gateway:** \_\_\_\_\_  
 \_\_\_\_\_

**Significant Site:** \_\_\_\_\_  
 \_\_\_\_\_

**3. Public Art Coordinator/Project Manager (FUNDING OPTION A ONLY)**

Details of Identification Public Art coordinator or verified Project Manager, and evidence of skills appropriate to manage scale of the work. Refer Council’s list of preferred Public Art Coordinators/Project Managers

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Resume attached (please circle):    YES                      NO

**4. Council Collaboration (FUNDING OPTION B ONLY)**

Location within the development site dedicated to a Public Art work: \_\_\_\_\_

\_\_\_\_\_

Will this artwork include a community development component YES NO

Provide brief description of community development component: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Council has provided in principal support to collaborate on delivering the project pending agreement on; Artist and Partnership Letter of Engagement, right of way/consideration of easement in favour of Council, maintenance and ownership responsibilities, communication strategy, agreed budget etc.

YES

NO

*Please attach letter of support from relevant section of Council*

Council staff member/s\* who will collaborate on the project

Name: \_\_\_\_\_

Position: \_\_\_\_\_ Ext: \_\_\_\_\_

*\* This will ordinarily be the an Arts & Culture worker from the Arts, Culture & Community Team.*

**5. Artist/s Details**

Details of the artist/s including a resume and evidence of skills appropriate to the scale of the work.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Resume attached (please circle): YES NO

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_







**7. Maintenance and Preservation**

**7.1 Preservation**

Please provide a detailed description of what mechanisms will be in place to preserve the Public Art work ensuring longevity, and limiting risk of unnecessary alterations and/or removal without first seeking Council approval.

*For example - Provide Council with a right of way, and possibility of an easement in favour of Council.*

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**7.2 Maintenance**

Please provide a detailed description of how the Public Artwork will be maintained. For example maintenance manual.

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## 8. Public Art Budget

What is the anticipated **Public Art budget**? \_\_\_\_\_

You are required to provide necessary quotations for the Public Art, and a detailed Budget using the table on the following page as a guide. The following should be considered when developing the budget:

- Total financial allocation towards a public artwork. The developer is to consider the budget carefully and can include; all pre-lodgement investigations, design advice, community engagement (if applicable), coordination costs, artist fees, cost of material, and construction, and maintenance costs but excludes the cost of land where upon the public artwork is located.
- Public Art can be incorporated into the design features of a building. The finances allocated toward the construction of a building can be included into the public art budget if this component is demonstrated to be public art. The artwork may serve a dual role of providing effective public domain services such as lighting or shading, provided the work is consistent with the objectives and definitions of these guidelines, DCP and its appendices. Council will exercise discretion as the determining authority in regards to whether the design concepts proposed as 'public artwork' satisfy the requirements contained within these guidelines and the DCP.

## 9. Artist Verification Statement,

Please attach an Artist verification statement, which provides evidence that the artist has viewed all documentation to be submitted as part of the development application, and is satisfied that the submitted documentation is consistent with the final design concept of the artwork.

**Budget Details**

| Item Category  | Item detail | Cost | Explanatory Notes<br><i>If required</i> |
|--|-------------|------|---|
| <b>Pre-lodgement investigations</b>  |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Design advice</b>   |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Community engagement<br/><i>(If applicable)</i></b>                       |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Coordination Costs</b><br>e.g. Public Art coordinator/Project Manager fee |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Artist/s Fees</b>   |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Material/ construction costs</b>  |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Maintenance Costs</b>   |             |      |   |
|  |             |      |   |
|  |             |      |   |
| <b>Other</b>   |             |      |   |
|  |             |      |   |
|  |             |      |   |

ATTACHMENT 4

Procedure for Incorporating Public Art into Development Applications - Flow Chart

Major Development (valued at \$5m or over ) OR Development in a gateway, Town Centre

Developer to commence pre-lodgement discussions with

Developer to decide which of the Developer Public Arts Funds Options they wish to pursue:

- 7.1.1 – Developer financial contribution
- 7.1.2 A - Public Art Work incorporated as part of the development, and managed by the Developer

Funding Option

Council calculates lump sum. Value calculated at 1% of total value of the development.

Funding Option

Developer submits preliminary pre-lodgement application for the public art component. This is to include details at 7.2 of these Guidelines, and the completion of the Application - ATTACHMENT 2

Funding Option

Council provides feedback on pre-

Funding Option

Council provides feedback on pre-lodgement application and nominates internal Project Manager, and investigates Community Development

A Development Application lodged with Council that must include the Masterplan, design for the public artwork and the Artist Verification Statement. Refer details at sections 8 & 9 of these Guidelines to assist

The final design concept along with the Masterplan for the public artwork is to be approved by the PASC (where appropriate), and signed off by Council prior to release of construction certificate

The public artwork is to be constructed and installed, with a Certificate of Completion signed by the artist, and submitted to Council prior to the release of an Occupation Certificate. Council will negotiate check points pre and during the installation ensuring quality and integrity of the work. This should include inspections of the artwork pre-installation, and final

Final site inspection and finalisation of paperwork including title, exchange maintenance plan etc.

Developer commits to and supports a marketing campaign to promote new Public artwork in collaboration with Council.

Funding Option 7.1.2 B

Internal processes triggered ensuring development of robust Project Plans, Agreements and protocol covering artist engagement, artwork check points ownership/maintenance of the artwork,

**ATTACHMENT 5 - Public Art and Developer Definitions**

**Item – Public Art**

Public Art is an overarching terminology that encompasses a range of further descriptions to define the type, size, dimensions, purpose, function and length of time in the public realm. Each public art is unique and will usually fall under more than one description as detailed below:

| Description and Inclusions   | Exclusions   |
|--|--|
| <p><b>Art</b><br/>Is a work that broadly embraces visual, oral and performing arts that broaden, challenges or questions traditional cultural views. It is any original human creation, which contains an idea and culminates in a set of processes with the outcome considered to be art.</p>   |  |
| <p><b>Commemorative</b><br/>Public Art that is to commemorate a celebration or a significant event from the passages of time.</p>  |  |
| <p><b>Community Art</b><br/>Arts based projects where the creative practices, processes, concepts and decisions have substantial community participation, or the project is community initiated and led. Community art is essential to community cultural development and place making practices. Community art projects completed, installed and or performed in the public realm are classified as public art.</p> |  |
| <p><b>Enduring</b><br/>The life of the public artwork is considered to be enduring (permanent). This is approximately 10 years for painted murals and 20 years as a minimum for sculptural artworks or as set out in the artist contract/s at time of commissioning.</p>   |  |
| <p><b>Exhibition</b><br/>A collection of public artworks in the public realm either indoors or outdoors which was created by an artist/s for the intention of a public display within a specified timeframe.</p>   |  |
| <p><b>Integrated/Functional Art</b><br/>Artworks that are created by an artist and fully Incorporated within the design of the built or natural environment, e.g. street furniture, buildings, bollards, gardens, sand dunes, footpaths, lighting, sound etc.<br/>Works can sometimes be purely functional without being integrated.</p>   | <p>Standard signage.<br/><br/>Standard, or off the shelf style street and park furniture.<br/><br/>Works that an urban designer, architect or landscape architect would design as part of their scope.</p> |
| <p><b>Interpretive</b><br/>The purpose of the public art is to describe, educate and comment on issues, events and situations. Examples include; markers, nodes, text, aural messages and inlays. Public art can be considered interpretive and/or conceptual; meaning that it is up to the viewer to explore and interpret the underlying layers to the work or performance.</p>                                    |  |
| <p><b>Major</b><br/>A significant cost associated to the public art commissioning, usually \$100,000 or more.</p>  |  |
| <p><b>Performance based/Roaming</b><br/>Artists performing in a public space are considered a form of public art. This can include; musicians, dancers, comedians, actors,</p>   |  |

poets, film-makers, buskers, circus performers and projectionists.

**Plonk**

A work that deliberately (or sometimes unintentionally) is placed in a specific location but does not relate or is responsive to that location. Usually the work was not designed for the location it has ended up in. This type of public art installation can sometimes work well or can be very controversial.

**Scale**

Scale refers to size and terminology.

From largest to smallest:

- Landmark
- Gateway
- Iconic/Signature/Significant
- Human
- Small
- Micro

**Site Specific**

An artwork that is site specific refers to it being designed specifically for, and responsive to a particular site through scale, material, form and conceptual story.

**Socially Engaged Art Practice**

A practice that is developed and delivered through collaboration, participation, dialogue, provocation and immersive experiences. The focus is on process, and the artist seeks to embed themselves within a community providing opportunities to respond to a specific need and/or agenda of the community and hence widen participation.

*(Lynn Frogget et al, New Model Visual Arts Organisation & Social Engagement <http://www.creativityworks.org.uk/our-impact/socially-engaged-art/>)*

**Street**

Aerosol murals, paste-ups, stencils etc. that are located in public places, e.g. fences and buildings in urban streets and laneways etc. They are classed as legal (not graffiti) and have approval by owners to be displayed.

**Temporary/Ephemeral**

Public art that is not permanent. It may have a set period of time that it is to remain in the public realm or may organically decompose and/or disappear. Includes illumination.

**2D**

Public art that is considered flat and 2-dimensional; e.g. street art, murals, projections, paste ups, framed works, art integrated into the face of a wall, floor or fence.

**3D**

Public art that is considered 3-dimensional and can be viewed from various angles; e.g. sculptures, holograms, artworks that are free standing, suspended or on footings, plinths, and various types of integrated art works.

**Item - Artist**

For the purposes of inclusiveness the term artist is applied to visual artists, performing artists, writers, musicians, craft designers filmmakers, photographers and includes mixed media. Artist will also work across these platforms.

**Description and Inclusions**

**Exclusions**

**Community**

An artist with facilitation and community development skills who is able to guide or lead community members to participate in meaningful and empowering community art projects

**Emerging**

A person who is starting their professional career as an artist. Can be a young person or an adult usually in the first five years of starting their arts practice.

**Hobbyist (semi-professional)**

A person who works intermittently in their chosen field of arts practice and is not actively seeking recognition as a professional artist nor is making their primary source of living from their arts practice. Has no ABN.

**Professional (Established)**

Any arts practitioner working in the arts who makes their primary source of living from their art and is either professionally trained or recognised as a professional artist through their track record and accepted by their professional peers as an artist.

**Item - General Terms**

**Description and Inclusions**

**Exclusions**

**Artist Verification Statement**

Refers to a document signed by the commissioned artist that verifies that the artist is satisfied with the final design concept in regard to the proposed integration of the artwork into the subject development site.

**Accession**

The process of acquiring public art, either through commission or acceptance as a gift.

**Certificate of Completion**

Refers to a document signed by the commissioned artist that verifies that the public artwork has been completed and installed on site.

**Community Group**

Not-for-profit groups, agencies, organisations

**De-accession**

The process of permanently removing a public artwork from the public realm.

**Developer**

Large-scale organisations responsible for developing new precincts, including open space, streetscapes and new builds. Can include State/Federal Government if undertaking a Developer's role within the LGA.

**Development Cost**

Refers to the total financial cost to the applicant of a proposed development excluding the cost of land and associated holding costs. This includes the planning and project management of the development.

**Gateway Site**

Gateway site in reference to public art denotes original artwork that is developed and designed specifically in response to, and for location in, a particular site that has been identified by Council as 'Gateway' site.

Artwork that is of a generic design and has not been developed in response to the specific site is not considered to comply with this definition.

**Integrated Teams**

Integrated can sometimes refer to a process; e.g. a professional artist is independently appointed and integrated into a new project from the outset and becomes part of a newly formed integrated team, working alongside architects, urban designers, landscape architects and other professionals.

**Intellectual Property/Copyright**

**Title (ownership of the Artwork) is separate from Copyright in the Artwork.** Council will have exclusive copyright licence of the commissioned work, however full copyright will remain with the artist/author of the work/object. However agreement can be reached through a contract to transfer elements of copyright.

**Major Development**

Refers to all development valued at \$5 Million or greater in terms of total development cost.

**Moral Rights**

Under the Copyright Act 1968, Moral Rights ensure that the author/creator have their work treated in a certain way. There are three kinds of Moral Rights, namely:

- A right to attribution.
- A right to not have authorship falsely attributed.
- A right of integrity. (The right to not have an author’s work subject to changes which may be derogatory to the author’s reputation; e.g. that the work will be presented in agreed locations to acceptable standards)

**Prequalified List**

Refers to a public register of self-nominated Public Art Project Managers who have been assessed by Council to satisfy the public art project manager criteria. The Prequalified Public Art Project Managers List is available from Council.

**Public Art Sub Committee (PASC)** a sub-committee of Council’s Arts & Culture Advisory Network. The PASC will support the implementation of the Public Art Policy and Strategy by providing guidance on a needs basis to Council on proposed public artworks where appropriate. The committee is made up of both internal and external stakeholders and relevant experts.

**Public Administration Development**

Development for the purposes of an office, administrative or other like purposes by the Crown, a statutory body, or an organisation established for public purposes, and includes a courthouse or a police station.

**Public Art Budget**

Is the total financial allocation towards a public artwork, which includes any coordination costs, community engagement, artist fees and the cost of materials, construction, maintenance and excludes the cost of land where upon public art is located.

**Public Art Manager (external to Council)**

Is an external specialist that the Developer is required to engage pending funding source option detailed in Section 7 of this policy. Their role is responsible for the planning, management and reporting of the Public Art proposal and Master Plan to Council on behalf of the proponent. A Public Art Manager must meet the requirements of the role, and be approved by Council

**Public Art Master Plan**

Is the documentation submitted with the development application which includes the identification of a Public Art Manager and Project Artist(s), summarises research, site assessment, art concept development and artwork location(s), reporting of proposed conceptual design including fabrication techniques, materials, relevance of the concept to the site and surrounding area, and detailed budget including quotes. Refer ATTACHMENT 3.

**Public Domain**

- Streets, paths, trails, transport corridors, entrance routes and roadways.
- National Parks, reserves, local parks and playgrounds.

Private property that is considered out of the public view

- Beaches, rivers, lakes, wetlands, jetties, mangroves and dunes.
- Sky, air (sound and smell)
- Community and civic indoor and outdoor spaces, squares, halls, libraries and centres.
- Privately owned facades, buildings and places which have either access or direct view to the public - Includes land and property owned by private developers, and State and Federal Agencies

**Place making**

Social capital through a concept that interesting and vibrant places attract people and create a sense of connection and belonging. Place making in its truest form has no defined boundaries and is a continuous process of value adding for the enjoyment of people. Place making can be structured or organic, long term or short term and can occur as a redevelopment or community initiative to improve local places. Quality public art can be a defining contributor to good place making.

**Private Sector**

**Business, Contractors, Consultants**

**Quality**

The work is considered to be of a high artistic standard, underpinned by a strong conceptual response, is original, innovative, robust and aesthetically appealing. Quality work reflects the highest standards of research, production and presentation.

**Title**

Title refers to the full rights of ownership of the Artwork. Title is separate from Copyright in the Artwork.

Title will be transferred to the commissioner once they have accepted the artwork as completed and paid the full commission fee.

**Verified Project Manager**

Refers to a project manager who has demonstrated skills, experience and ability that enables them to also take the role of a Public Art Coordinator.

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|--------------------|--|
| <b>Subject</b>     | <b>TENDER 15/23046 (RETENDER) - HAWTHORNE CANAL FLOODPLAIN RISK MANAGEMENT STUDY &amp; PLAN AND THE DOBROYD CANAL FLOODPLAIN RISK MANAGEMENT STUDY &amp; PLAN.</b>   |
| <b>File Ref</b>    | sc1150   |
| <b>Prepared by</b> | Tony Giunta - Senior Engineer - Infrastructure Management  |
| <b>Reasons</b>     | To advise Council of the results of the tender process completed in accordance with the Local Government Act 1993 (NSW, Part 3, Division 1, Section 55 and Section 377 of the Local Government Act 1993), for the Hawthorne Canal Floodplain Risk Management Study and Plan & the Dobroyd Canal Floodplain Risk Management Study and Plan. |
| <b>Objective</b>   | To seek a resolution from Council to enter into a contract with a successful Tenderer to appoint as the Consultant to provide consultancy services for the Hawthorne Canal Floodplain Risk Management Study and Plan & the Dobroyd Canal Floodplain Risk Management Study and Plan.  |

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#### **Overview of Report**

**Council resolved in May 2015 to adopt both the Hawthorne and Dobroyd Canal Flood Studies Final Reports and to commence the next stage of the Floodplain Risk Management Process, being the Floodplain Risk Management Study and Plan.**

**The Council has received approval for financial support from the Office of Environment & Heritage to assist with the undertaking of this study and planning process.**

**This report explains the background for Council to decide if it wishes to enter into a contract with the entity recommended as the Principal Consultant. The report also details the tender process (criteria, weightings, and evaluation) supporting the recommendation for Council's consideration, with the confidential matters being within the Confidential Attachments.**

#### **Background**

The Floodplain Management process is to ensure that future development of flood affected areas are carried out using procedures which recognise the nature of flooding and ascertain that the risk to present and future residents and consequent flood damages to properties are not increased.

**Tender 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study & Plan and The Dobroyd Canal Floodplain Risk Management Study & Plan.**

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The main objectives of Council undertaking a Floodplain Risk Management Study and Plan is to evaluate management strategies for the floodplain in terms of both existing and proposed development and to establish and recommend emergency response protocols.

Council originally advertised a Request for Tenders in September 2015 with a view to appoint a suitably qualified Consultant to undertake a Floodplain Risk Management Study and Plan under the proposed Contract Number 15/23046. The results of this tender process were reported to Council at the Council meeting held on 10 November 2015. At this meeting Council resolved to not accept the only tender submitted by WMAwater Pty Ltd and invite fresh applications from persons interested in tendering for the proposed contract.

As a result of Council's resolution, in November 2015, suitably qualified consultants were invited by Council to submit proposals with a view to appoint a Consultant to undertake a Floodplain Risk Management Study and Plan under the proposed Contract Number 15/23046 (Retender).

This report provides the information on the tendering process undertaken, the evaluation criteria, the tender evaluation process and the outcome.

**Council's Direction**

Not applicable.

**Tender Process**

The tasks undertaken as part of the tendering process are as follows:

1. Tender Documents prepared and reviewed in-house, a Tender Evaluation Plan (TEP) was prepared, and a Tender Evaluation Committee (TEC) appointed prior to inviting fresh applications from suitably qualified consultants.
2. Expressions of Interest were sought from recognised and suitably qualified consultants from a preferred list provided by The Office of Environment and Heritage (OEH), and a prequalified list of consultants from Local Government Procurement. A total of 6 (six) entities were invited as listed below including WMAwater Pty Ltd as per Council's resolution.
  - i. WMAwater Pty Ltd
  - ii. Lyall & Associates
  - iii. BMT WBM Pty Ltd
  - iv. Cardno (NSW/ACT) Pty Ltd
  - v. Molino Stewart Pty Ltd
  - vi. Sinclair Knight Merz Pty Ltd

All of the above entities, except for Sinclair Knight Merz Pty Ltd confirmed their interest in tendering for the proposed contract and obtained the tender documents.

3. On the 17 November 2016, tender documents for TENDER 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study and Plan & the Dobroyd Canal

**Tender 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study & Plan and The Dobroyd Canal Floodplain Risk Management Study & Plan.**

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Floodplain Risk Management Study and Plan were provided to the five (5) entities that confirmed an interest to tender.

4. The tender was advertised for a period of 21 days, and closed on 8 December 2015 at 9.30 am. Council's Tender Opening Committee in the presence of the Independent Observer opened the Tender Box. There were no clarifications sought during the tender period, therefore no Addenda issued.
5. The tender is based on Schedule of Prices – Lump Sum and intended to appoint a Consultant under the proposed Contract Number 15/23046 (Retender)
6. The Evaluation Criteria established in the tender are as follows:
  - a. Compliance Assessment Criteria that are not point scored. (Attachments are those referred to in the Tender Documents).
    - Attachment A – Fee Proposal
    - Attachment B1 – Hawthorne Canal FRMS & P - Hourly Rates for Study Team Members
    - Attachment B2 – Dobroyd Canal FRMS & P - Hourly Rates for Study Team Members
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 1)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 2)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 3)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 4)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 5)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 6)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Stage 1-6 Total Cost)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Other Itemised Costs)
    - Attachment C1 – Hawthorne Canal FRMS & P - Cost Schedule (Additional Costs)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 1)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 2)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 3)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 4)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 5)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 6)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Stage 1-6 Total Cost)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Other Itemised Costs)
    - Attachment C2: Dobroyd Canal FRMS & P - Cost Schedule (Additional Costs)
  - b. Compliance Assessment Criteria that are point scored.
    - The consultants proposed lump sum price, including resource allocations and hourly rates
    - Understanding and appreciation of the brief

**Tender 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study & Plan and The Dobroyd Canal Floodplain Risk Management Study & Plan.**

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- The consultant's resources and expertise across the various appropriate specialist disciplines, including capability of the proposed study team and their experience in projects of a similar nature
- The consultant's demonstrated understanding of relevant Commonwealth, State and Local Government issues including legal implications
- The consultant's proposed consultation plan
- Additional costs not included in the lump sum price

The above criteria are not necessarily in order of priority or given equal weighting in the evaluation.

c. Scoring of Price

- In accordance with the TEP clause 5.5, Tendered Prices were weighted using the methodology outlined in the TEP.

7. The TEC met on 7 December 2015 to sign the Conflicts of Interest Declarations as the identities of the invited tenderers was already known. The TEC also met on 7 December 2015 to review and accept the TEP and to understand the evaluation process including methodology.
8. The TEC met on 7 March 2016 and 15 March 2016 to assess and evaluate the 4 (four) tenders received from the following entities.
  - i. WMAwater Pty Ltd
  - ii. Lyall & Associates
  - iii. BMT WBM Pty Ltd
  - iv. Cardno (NSW/ACT) Pty Ltd

Prior to the tender closing date, Molino Stewart Pty Ltd advised that they would not be submitting a Tender.

9. The TEC, completed the tender assessments and the evaluation process in accordance with the requirements set out in the TEP.

## **Financial Implications**

The results of the assessments of the tender submissions are contained within the confidential attachments to this report.

Tenderers have submitted their response as strictly "Commercial in Confidence" and requested that commercially sensitive aspects of their respective offer be discussed by Council officers, Councillors and others in closed sessions only and is not to be made public. The Tenderers consider the information that is commercial in confidence nature if disclosed to the public and to their competitors, could be damaging to their business.

Council has received approval for financial support from the Office of Environment & Heritage to assist with the undertaking of this study and plan process. The financial assistance being provided is \$66,666 for this project. The Office of Environment & Heritage have advised that additional funding can be applied for once the actual cost for this project is known and will be considered on its merits.

**Tender 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study & Plan and The Dobroyd Canal Floodplain Risk Management Study & Plan.**

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**Other Staff Comments**

Ms. Menaka Kulatunge – Strategic Procurement Specialist

The re-tendering process undertaken has satisfied the legislative and statutory requirements and the intent of:

- the Local Government Act 1993 (NSW), Part 3, Division 1, Section 55 (4) (b),
- Local Government (General) Regulation 2005, Part 7 Tendering, Division 2, in particular Sections 169 and 170, Local Government (General) Regulation 2005, Part 7 Tendering, Division 3 Sections 173 to 178.

**Public Consultation**

Not applicable.

**Conclusion**

The procurement process has complied with the relevant legislative requirements for tendering and with Council's Procurement Policy.

In accordance with the Local Government Act 1993, Section 10A subsection's (c) and (d), it is advised that all attachments herewith be considered in closed committee because they may confer a commercial advantage on a person with whom the Council is proposing to conduct business and reveal commercial in-confidence information.

**ATTACHMENTS**

- Attachment 1** Tender Evaluation Report - Contract 15/23016 12 Pages  
(Retender) - - **CONFIDENTIAL ATTACHMENT** - *It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (c) (d) of the Local Government Act, 1993, on the grounds that the matter relates to information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; AND commercial information of a confidential nature that would, if disclosed:*  
*(i) prejudice the commercial position of the person who supplied it, or*  
*(ii) confer a commercial advantage on a competitor of the council, or*  
*(iii) reveal a trade secret.*

**Tender 15/23046 (Retender) - Hawthorne Canal Floodplain Risk Management Study & Plan and The Dobroyd Canal Floodplain Risk Management Study & Plan.**

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**RECOMMENDATION**

- 1/2 That this report be noted and accepted.
- 2/2 That the recommendations made within the confidential report for contract 15/23046 (Retender) be accepted.

CATHY EDWARDS-DAVIS  
Director Works & Infrastructure