

<b>JRPP No.</b>	<b>2010SYE003</b>
<b>DA No.</b>	<b>2009.225.1</b>
<b>Proposed Development</b>	<b>Alteration and addition to heritage item, demolition and construction of 8 level mixed use development ,11-13 Hercules Street, Ashfield</b>
<b>Applicant:</b>	<b>WJH Holdings Pty Limited C/I SPD Town Planners</b>
<b>Report By:</b>	<b>Atalay Bas – Manager Development Services – Ashfield Council</b>

## Assessment Report and Recommendation

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### 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 consent for:-

- Alterations and additions to the existing heritage item fronting Hercules Street;
- Demolition of all other structures on the site including the access bridge over Fox's Lane;
- Remediation of the site;
- Construction of a part 7 and part 10 level mixed use development comprising of:-
  - Five (5) retail tenancies at the ground floor;
  - Thirty four (34) residential apartments comprising of 8 x studios, 8 x 1 bedroom, 17 x 2 bedroom and 1 x 3 bedroom;
  - Nine (9) commercial tenancies;
  - Communal roof terrace; and
  - Four (4) basement parking levels accommodating 94 vehicles including a carwash bay, caretaker's space and a loading bay.

Plans of the proposal are included at **Attachment 1**.

### 2.0 Executive Summary

The proposed part 7 and part 10 storey mixed use building exceeds the maximum 6 storey height limit. However Part C9 of Ashfield Development Control Plan (DCP) which is a site specific DCP for the subject site allows a 2 storey bonus to the maximum building height only when there is a community benefit and or the provision of affordable housing. From a planning viewpoint an 8 storey mixed use building may be appropriate, however, there is no planning merit or justification to support a 10 storey building given that the proposal does not positively contribute to the streetscape and there are amenity issues with the proposed scheme.

The maximum allowable floor space ratio for the site is 2.0:1. However, Clause 54 of Ashfield Local Environmental plan 1985 (ALEP) allows a floor space ratio of 3:1 for mixed use building where the additional floor area is only used for residential purposes and the consent authority is satisfied that the development will not result in an adverse impact.

The proposal has a floor space ratio of 3.45:1 not including the existing heritage item which can be excluded if the consent authority is satisfied that the conservation of the heritage building is dependant on it making the exclusion. Council's Heritage Adviser has raised several issues with the proposed treatment of the heritage item and in this instance the exclusion of the heritage item from the floor space ratio is not justified. In addition, Council's urban designer is of the view that the resultant building is excessive in height and bulk and hence out of scale with the immediate surrounds. Due to the scale of the proposed building significant overshadowing is also evident.

The proposed scheme does not comply with the setback requirement stipulated in Council's DCP with the exception of a varying setback ranging from 3.737m to 0.885m at ground level along Fox's Lane. The proposal, if built as proposed, would adversely impact upon the potential development of adjoining sites for the reason that the proposed scheme is not compliant with the setbacks stipulated in the site specific DCP.

In summary, the assessment reveals that the proposal does not comply with the aims and objectives of Ashfield Local Environmental Plan 1985, Clause 37 of ALEP 1985 which relates to heritage considerations, Clause 54 of ALEP 1985 which relates to specific controls for the site and accordingly refusal of the application is recommended.

The proposal also does not comply with State Environmental Planning policy No. 65 – design qualities of Residential Flat Development (SEPP No.65) in respect to issues relating to context, scale, built form, density, landscape, amenity and safety and security.

Two objections have been received raising issues of amenity, impact on an existing right of way, overdevelopment, height, potential development of adjoining sites, setback, privacy and overshadowing.

### 3.0 Site and Surrounding Development

The subject site is located on the western side of Hercules Street, to the north of its junction with Liverpool Road. The site consists of one (1) allotment and is generally L-shaped with a total area of approximately 1,368 m<sup>2</sup>.

The site has a frontage to Hercules Street of 21.3m and a secondary frontage of approx 39.8m to Fox's Lane. The site is affected by a number of easements including a 2.97m wide right of way along the site's northern boundary allowing access from Fox's Lane to the rear of 5, 7 and 9 Hercules Street.

The site contains the former Ashfield Post Office building which is listed as a heritage item. Existing buildings on the site are part 2 and part 3 storeys in height and a pedestrian overpass links the site with the exchange building located on the western side of Fox's Lane.

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

## Background

### 4.0 Application Details

Applicant	WJH Holdings Pty Limited C/I SPD Town Planners
Owner	W J G Holdings Pty Ltd
Value of work	\$13,000,000
Lot/DP	LOT: 1 DP: 210155
Date lodged	23/12/2009
Date of last amendment	N/A
Application Type	The proposal constitutes Integrated Development in accordance with the provisions of the Environmental Planning and Assessment Act 1979, as the application requires the concurrence of the NSW Roads & Traffic Authority under the Roads Act, 1993.
Construction Certificate	Not submitted as part of the DA
Section 94 Levy	Applies if application was to be approved

### 5.0 Previous Discussions/Pre-lodgement

Several discussions and pre-lodgement meetings were held prior to the formal lodgement of the application. Letters were sent to the applicant on 23 October 2008, 2 December 2008, 2 June 2009, 9 June 2009 and two e-mails were sent on 19 June 2009 and 23 June 2009. Advice was given to the applicant, which includes but is not limited to the following:-

- To pursue an eight storey mixed use building demonstrating significant public benefit rather than the ten storey option submitted;
- To not exceed the maximum allowable floor space ratio;
- To clarify the extent of the existing right of way in terms of any height restrictions and what portion may be built upon;
- To resolve issues with the design of ground floor layout, particularly in respect to waste management, safety, pedestrian and vehicular access;
- To provide stormwater management details;
- To ensure the proposal's compliance with Australian Standards; and
- To address traffic safety issues along Fox's Lane.

The submitted scheme has not adequately addressed all of the issues previously raised. The applicant, prior to lodgement of the application, indicated that all of the issues had been addressed and the proposal should be considered in its current form. As the applicant has been made aware of outstanding issues on many occasions it is considered that the proposal should be determined on the basis of the applicant's final submission which is the current application.

### 6.0 Development History

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

<b>NO.</b>	<b>DATE</b>	<b>PROPOSAL</b>	<b>DECISION</b>
2001.132.1	14/05/01	Advertising sign	Withdrawn 30/08/01
2003.218.1	10/07/03	Combined rezoning and development application for demolition and the erection of mixed use development	Withdrawn 29/03/06

## Assessment

### 7.0 Zoning/Permissibility/Heritage

The site is zoned 3(a) - General Business under the provisions of Ashfield LEP 1985. The subject site contains the former Ashfield Post Office building which is listed as a heritage item. The site is also situated within the Ashfield Town Centre.

The proposed works are permissible with consent.

### 8.0 Compliance Table

Planning Control	Requirement	Proposed	Compliance Yes/No
FSR	Max 2.0:1, however additional 1.0:1 is allowed for residential uses.	3.45:1 not including the existing heritage item, 3.72 including the item. (Pursuant to Clause 37A (2) Heritage item can be excluded if Council is satisfied that the conservation of the building depends on it making the exclusion).	No
Height	Maximum 6 storey height limit (Max ceiling height RL 46.8 and max building height RL 48.1) <i>note: lift shafts, motor rooms and A/C or mechanical ducts can protrude.</i>	10 storey ceiling height is RL 58.40. Exceeds by 11.6m.	No
	Bonus of 2-storey height allowed for public benefit such as community rooms, public open space and/or other community facilities. Alternatively, provision of affordable housing no less than 5% of gross floor area. (Max ceiling height RL 52.8. and max building height RL 54.1) <i>Note: lift shafts, motor rooms and A/C or mechanical ducts can protrude.</i>	No specific public benefit proposed, however, applicant has indicated willingness to enter into a Voluntary Planning Agreement with the Council.	No
	Ground floor storey min height 4.0m between floor to underside of ceiling with space set aside above that for ductwork, structural beams, etc.	Floor to floor 4.3m at ground level provided with no provision for services. Structural beams encroach into minimum ceiling space.	No
	Storeys above ground floor max 3.2m floor to floor height with min 2.7m zone between floors to underside of ceiling.	Floor to floor 2.9m provided.	Yes
	Max 12.0m street wall height required with 12.0m setback at upper level to Hercules Street	Existing heritage building built at street alignment and 17.411m setback provided to upper levels.	Yes
	Setbacks	Minimum of 3.0m along northern boundary.	Nil setback.
	3.0m along Fox's Lane.	Varying setback ranging from 3.737m to 0.885m at ground level 0.885 at third level.	No
	Splay to south western part of the site to allow 2 hour winter solar access on June 21.	Buildings encroach into the south western area thus resulting in shadows to adjoining sites.	No
	Development setback zone – space at Fox's Lane enabling public verge/footpath area to be created which is wide enough to contain external public seating, space for tree planting. This area to be dedicated to Council at completion of development.	Adequate setback zone not provided.	No
Communal open space	25-30% of site where possible can be on roof level (342 – 410ms required).	273 m <sup>2</sup> roof top communal are provided on seventh level. The quality of space not adequate.	No
Vehicular	Resident min required 34 spaces	34	Yes

Parking	Visitor space min required 8.5 space	12	Yes
	Car wash bay min required 1space	1	Yes
	Caretaker space N/A	1	Yes
	Commercial/retail min 44.5	45	Yes
	Loading bay min required 1 space	1	Yes
Landscaping	2.5m height tree planting.	Basement parking occupies the entire site with exception of a very small sliver of land at south-west corner of site.	No
Through site linkage	3.0m wide path within site between Hercules Street and Fox's Lane.	2.9m provided with lift encroaching into the area.	Part complies

## 9.0 The Issues

### 9.1 Building Height

The proposed part 7 and part 10 storey mixed use building exceeds the maximum 6 storey height limit. However, Part C9 of Ashfield DCP, which is a site specific DCP for the subject site, allows a 2 storey bonus to the maximum building height only when there is:-

- (i) A community benefit such as community rooms, public open space and/or other community facilities; **and/or**
- (ii) Provision of affordable housing no less than 5% of gross floor area.

There is no planning merit or justification to support a 10 storey building given that the proposal does not positively contribute to the streetscape and there are amenity issues with the proposed scheme.

The proposed building is significantly larger in terms of bulk and scale when compared to the surrounding built form. The construction of an additional 2 storeys of extra floor area well beyond the maximum allowable, results in an inappropriate bulk and scale.

### 9.2 Floor Space Ratio

The maximum allowable floor space ratio for the site is 2.0:1. However Clause 54 of ALEP allows a floor space ratio of 3:1 for mixed use building where the additional floor area is only used for residential purposes and that the consent authority is satisfied that the development will not result in an adverse impact on any one or more of the following:-

- (i) The scale and character of the streetscape;
- (ii) The amenity of any existing or potential residential units on neighbouring land;
- (iii) Sunlight access to surrounding streets, open space and nearby properties;
- (iv) Wind flow patterns to surrounding streets, open space and nearby properties.

The proposal has a floor space ratio of 3.45:1 not including the existing heritage item. (The existing heritage item has a floor are of approximately 360m<sup>2</sup>). Pursuant to Clause 37A (2) of Ashfield Local environmental Plan 1985, heritage items can be excluded if the consent authority is satisfied that the conservation of the building depends on it making the exclusion.

Council's Heritage Adviser has raised several issues with the proposed treatment of the heritage item and in this instance the exclusion of the heritage item from the floor space ratio is not justified.

In addition Council's urban designer is of the view that the resultant building is too high and bulky and out of scale with the immediate surrounds and will result in significant overshadowing to properties to the south, south-east and south-west. In addition, future developments in these locations will have compromised amenity due to loss of solar access in winter. In light of the above the proposed additional floor space is not justified.

### 9.3 Heritage

Council's Heritage Adviser has raised several issues with the proposal. A summary of the issues are provided below:-

- *The rear wall of the retained building is significantly composed of a large, two storey high glazed window-wall, whose depictions in the documents are inconsistent between elevations and plans; since this window wall will be a major element in the appreciation of the listed building from both its exterior and interior, as well as from the proposed new building, it is a design matter of considerable importance and should be clear for assessment; the rest of the building being quite solid, the treatment as proposed could be argued to be anomalous in the context;*
- *A basement car park escape stair with solid balustrade walls appears to emerge into the rear courtyard area immediately adjacent to the proposed rear wall of the retained listed building, and in fact against part of its glazed area; this does not appear properly resolved;*
- *The roof of the retained building, through removal of the present lightweight addition and its surrounding pitched roof structure and iron cladding, is to be made a trafficable, accessible area which is partly covered by a new post-supported skillion roof along its rear wall line. The brick parapet wall will act as a balustrade. Again its depiction is not consistent but the appearance of this element is in my view, unsympathetic and inappropriate in context, and it will be visible from the street in skew angles from across the road in front of the property. In my opinion this element needs to be reconsidered, and redesigned.*

Please refer to **Attachment 3** for the complete report.

### 9.4 Setbacks

Council's site specific DCP for the subject site requires the following setbacks:-

- (i) Minimum of 3.0m along northern boundary;
- (ii) 3.0m along Fox's Lane;
- (iii) Splay to south western part of the site to allow 2 hour winter solar access on June 21;
- (iv) Development setback zone – space at Fox's Lane enabling public verge/footpath area to be created which is wide enough to contain external public seating, space for tree planting. This area to be dedicated to Council at completion of development.

The proposed scheme does not comply with the setbacks with the exception of a varying setback ranging from 3.737m to 0.885m at ground level along Fox's Lane. The development if built as proposed would preclude any development to adjoining sites for the reason that the proposed scheme is not compliant with the setbacks

stipulated in the site specific DCP. Compliance with the site specific DCP is of strategic importance as it ensures that appropriately scaled building is developed with reference to the context of the area as well as preserving future potential development of adjoining sites.

## 9.5 Existing Right of Way

There is an existing 2.97m wide right of way (ROW) burdening the site which provides access to the rear of 5, 7 and 9 Hercules Street. The ROW not only provides access to the rear of properties but also includes a substation and associated easement for cables to the substation.

The proposed scheme involves construction over part of the existing ROW which will have an impact on 5, 7 and 9 Hercules Street. An objection was received from the owners of 5 and 3 Hercules Street raising concern in respect to the impact the proposal will have on their enjoyment of the existing ROW. In addition, Energy Australia has also requested the applicant to contact them to discuss the status of the existing substation.

The proposed scheme will encroach into the existing ROW and thus result in issues to property owners who currently have full benefit of this area. The submitted plans do not indicate whether there is a limitation in respect to building over the ROW and in this respect approval of the proposal would not be in the public interest.

## 9.6 Ground Floor Design

Significant issues arise in relation to the design and layout of the ground floor particularly in respect to the following:-

- Adequate loading and unloading area is not provided, practicality in respect to manoeuvring a garbage collection vehicle;
- Simultaneous ingress and egress of other vehicles into the basement car park whilst the garbage truck is emptying bins. Vehicular conflict and queuing is likely to occur;
- Inadequate area provided for domestic and commercial waste storage;
- The designated basement commercial car parking and deliveries area is impractical for larger trucks endeavouring to gain access via the existing right of way;
- The reversing of large waste management trucks into the right of way ingress and egress area poses occupational health and safety issues for waste contractors;
- Safety of pedestrians using the right of way to gain access to the rear of 5 – 9 Hercules Street. Pedestrians are forced to share this access with vehicles; and
- Inadequate public domain treatment in accordance with Council's site specific DCP.

## 9.7 Access circulation along Fox's Lane

Concern is raised with the primary access via Fox's Lane. The high pedestrian usage along Liverpool Road commercial/retail strip raises safety concerns with additional traffic generated from the development.

Traffic movement in a southerly direction along Fox's Lane would be compromised for large trucks as the proposal does not provide an appropriate splay rounding. During the pre-lodgement meetings the applicant indicated a splay rounding will be

provided to improve safety, however, this has not been incorporated in the proposed scheme.

There is the potential for perceived or real personal safety risks around the entry off Fox's Lane and in the pedestrian thoroughfare between Hercules Street and Fox's Lane. The main residential entry off Fox's Lane is from a laneway that has no other pedestrian access points. The entry is isolated some 15m from Brown Street.

## 9.8 SEPP No. 65

Part 2 of SEPP 65 sets out the following design quality principles as a guide to assess a residential flat development. The 'Residential Flat Design Code' (The Code) is referred to as an accepted guide as to how the principles are to be achieved. The following are areas of concern raised by Council's urban designer:-

- **Scale** - The FSR and height well beyond the maximum allowable. The resultant building too high and too bulky and out of scale with the immediate surrounds.
- **Built form** – proposal does not respect the recommended setbacks on the north, east or south sides of the development. The proposal if built as proposed would preclude any development to adjoining sites.
- **Density** - The shadow diagrams provided show significant overshadowing to properties to the south, south-east and south-west of the subject site. Future developments in these locations will have compromised amenity due to loss of sun in winter.
- **Landscape** – Roof top terrace provided as communal open space on the seventh floor which is not generously landscaped.
- **Amenity** – 16 of the residential apartments have bedrooms with no windows, however, most problematic are mono oriented units on the northern side of the building being apartments 2, 6, 10, 14,18,22,26 and 31. Windowless bedrooms will not receive adequate light or ventilation. The other 8 apartments 3, 7,11,15,19,23,27,32 have small windows immediately adjacent to private balconies that are no more than 1.5m away.
- **Safety and security** – personal safety risks around the entry of Fox's Lane and in the pedestrian thoroughfare between Hercules Street and Fox's Lane. The building has nooks and crannies that could conceal people.

Please refer to **Attachment 4** for the full report.

## 10.0 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. The following planning instruments and controls apply to the development:-

### **Ashfield Local Environmental Plan 1985 (as amended)**

The proposal is permissible with consent, however assessment reveals that the proposal does not comply with the aims and objectives of Ashfield Local

Environmental Plan 1985, Clause 32, 37 and 37 A of ALEP 1985 that relates to heritage considerations and Clause 54 of ALEP 1985 that relates to site specific controls.

### **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.

### **State Environmental Planning Policy No. 1 – Development Standards**

The applicant has lodged an objection pursuant to SEPP No.1 - Development Standards. The standard proposed to varied is Clause 54(4) of the ALEP 1985 relating to floor space ratio. The maximum permitted floor space ratio for the site is 2:1 however 3:1 is permitted for mixed use buildings where the additional floor area is only used for residential purposes and the consent authority is satisfied that the development will not result in an adverse impact.

The proposal has a floor space ratio of 3.45:1 not including the existing heritage item. (The existing heritage item has a floor area of approximately 360m<sup>2</sup>). Pursuant to Clause 37A (2) of Ashfield Local Environmental Plan 1985, heritage items can be excluded if the consent authority is satisfied that the conservation of the building depends on it making the exclusion. Including the heritage item the proposed floor space ratio will be approximately 3.72:1 well above the initial allowance of 2.0:1

The proposed variation is significant in numerical terms. It is considered that the purpose of a floor space ratio control is to establish standards for the maximum development density and intensity of land use and to control building bulk and scale. It is considered that the proposed development's excessive floor space ratio results in a development that does not appropriately respond to the built form and character of the surrounding locality and an establishes an intensity of development that adversely impacts on the amenity of the surrounding neighbourhood.

In view of the circumstances, the SEPP 1 objection is not considered to be well founded or worthy of support. For detail assessment please refer to Section 9.2 of this report.

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. The proposal will involve ground disturbance and hence remediation of the site is required.

The applicant has submitted a Remediation Action Plan (RAP) that recommends the site can be made suitable for the proposed mixed use development subject to implementation of remediation and validation works in accordance with the submitted RAP.

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

Assessment reveals that the proposal does not comply and satisfy all of the ten design quality principles of SEPP No. 65 – Design Qualities of Residential Flat Development. Of particular importance to the consideration of the application are the

issues of residential amenity, bulk and scale, context, solar access, landscape, built form, density, safety and security and future potential development of adjoining sites.

#### 11.0 The provisions of any Development Control Plan

The proposal has been considered against the provisions of Ashfield Development Control Plan (DCP) 2007:

C1	ACCESS AND MOBILITY	Lifts are provided within the development allowing appropriate access. Residential apartments 2, 6, 10 and 14 are capable of being adaptable dwellings which complies with the requirement to have a minimum of 10% of apartments within a residential flat building adaptable.
C3	ASHFIELD TOWN CENTRE	The proposal lacks compliance with Council's DCP Part C3, particularly in respect to access and safety, building height, impact on adjacent sites to reach their full development potential, solar access, building setback, setbacks for public open space, adequate communal open space, adequate service areas, location of driveway, waste management, loading and unloading areas, heritage consideration and floor space ratio.
C9	11-13 HERCULES STREET	The proposal lacks compliance with Council's DCP Part C9, particularly in respect to heritage, building height, setback, solar access, access and safety, landscape, communal open space and building address to Fox's Lane.
C11	PARKING	Adequate onsite car parking is provided to service the development, however, adequate loading and unloading areas are not provided and pedestrian safety is not adequately addressed.

It is considered the application does not comply with the parts as indicated and therefore does not warrant support.

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

Clause 7 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Conditions of consent can be imposed in this regard, if the application was to be approved.

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider relevant Australian Standards relating to the demolition of structures. Appropriate conditions can be imposed in the event the application was to be approved.

#### 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 adverse environmental and social impacts upon the locality.

Concern is raised that the bulk and scale of the proposed development will not make a positive contribution to the streetscape. The proposed building is significantly larger in terms of bulk and scale when compared to the surrounding built form. The construction of an additional 2 storeys and extra floor space well beyond the maximum allowable, results in a building of inappropriate bulk and scale.

The proposal does not achieve adequate setbacks on the north, east or south sides of the development. The development, if built as proposed, would compromise the development potential of adjoining sites.

The submitted shadow diagrams show significant overshadowing to properties to the south-east, south and south-west of the subject site. Future development in these locations will have compromised amenity due to loss of solar access in winter.

#### 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. However, the proposed development is considered not to be suitable in the context of the locality when considering height and bulk, scale, heritage treatment, contribution to the streetscape, traffic, access and safety, loading and unloading, site facilities, waste management, location and treatment of drive way, ground floor design, preservation of existing easements and public domain treatment.

#### 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, occupants, and Councillors from 19 January to 17 February 2010.

#### 15.1 Summary of submissions

Two (2) submissions were received during the notification of the development application. Please refer to **Attachment 5** for a copy of the submissions.

The matters raised in these submissions are summarised below. The issues raised by the objectors have been addressed in the report in detail.

Submissions	Issues Raised
Leo Karanikolas 128 Victoria street Ashfield NSW 2131 (Owner of 5 Hercules Street)	<ul style="list-style-type: none"><li>• The proposal will impact on the use of the existing right of way.</li><li>• As a result of the proposal there will be no vehicle access to the rear thus reducing the trading potential of the premises i.e. loading area will be removed.</li></ul>

<p>Nexus architecture on behalf of Vince Barilla 3 Gilchist Place Balmain, NSW 2041 (owner of 3 Hercules Street)</p>	<ul style="list-style-type: none"> <li>• Proposal is an overdevelopment by virtue that it does not comply with ALEP and proposed FSR is over the maximum allowable.</li> <li>• Proposal is over the height limit and does not comply with Council's DCP.</li> <li>• Proposal will affect the amenity of existing residents and the amenity of possible future residents on the adjoining sites to the east.</li> <li>• Proposal will deny and adversely impact on the future development potential of adjoining sites.</li> <li>• Inadequate setbacks.</li> <li>• Proposed balconies and living areas not adequately setback resulting in privacy impacts.</li> <li>• Overlooking.</li> <li>• Overshadowing.</li> <li>• Residential amenity.</li> <li>• Bulk and scale.</li> </ul>
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## 15.2 Mediation

A mediation meeting was not held as the issues raised by the objectors have been adequately covered in this report.

## 16.0 The public interest

Matters of the public interest have been taken into consideration in the assessment of the application. It is not in the interest of the public to recommend approval of the application for reasons outlined in the report.

## 17.0 Referrals

Comments received from both internal and external bodies are summarised below.

<b>Department</b>	<b>Comments</b>
Council's Urban Designer	<p>Raises the following issues:-</p> <ul style="list-style-type: none"> <li>• Inadequate setback;</li> <li>• Overshadowing;</li> <li>• Excessive height</li> <li>• Excessive FSR;</li> <li>• Overshadowing;</li> <li>• Security and safety concerns;</li> <li>• Inadequate ventilation and privacy;</li> <li>• Inadequate communal open space;</li> <li>• Poor amenity; and</li> <li>• Lack of landscape space</li> </ul> <p>Refer to Attachment 4 for complete copy of report.</p>
NSW Police Force	No significant issues raised. Conditions recommended in respect to lighting and surveillance system.
Energy Australia	Requires the applicant to contact Energy Australia to arrange future electricity supply and discuss arrangements for the existing Energy Australia substation which is on the site and within the existing right of way.
RTA	No comments received to date. RTA was contacted on several occasions the last being on 22 February 2010.
Council Heritage Adviser	<p>Raises several issues in respect to:-</p> <ul style="list-style-type: none"> <li>• Inappropriate the treatment of the heritage building;</li> <li>• Use of the roof top of the heritage building not appropriate;</li> <li>• The appearance of the proposed brick parapet wall to the roof of the</li> </ul>

	heritage building is unsympathetic and inappropriate in context and it will be visible from the street in skew angles from across the road in front of the property.  Refer to Attachment 3 for complete copy of report.
Council Building Surveyor	Several issues raised in respect to BCA compliance such as maximum travel distance exceeded, fire safety and head clearance.
Council Engineer	Several issues raised in respect to stormwater calculations, safety, loading and unloading areas, truck access and traffic flow.
RailCorp	Conditions of consent recommended in respect to noise and construction management.
Council Landscape Officer	Several issues raised in respect to planter box details and proposed landscape species.

### **Financial Implications**

Section 94 Contributions would be payable in accordance with the Council's Section 94 Plan in the event the application was to be approved.

### **Conclusion**

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act have been taken into consideration in the assessment of the application. The proposed development significantly exceeds the maximum floor space ratio permitted for development in the 3(a) business zone. The proposed development does not satisfy the design parameters, aims and objectives of Ashfield Development Control Plan, particularly Part C3 – Ashfield Town Centre and Part C9 – Site Specific DCP. The proposal is considered to be excessive in height, bulk and scale and will not complement the existing streetscape. The proposed ground floor layout/arrangement also is considered inadequate.

All of these issues reflect the fact that the proposal is an overdevelopment of the site which results in a poor design outcome. Consequently, the application is recommended for refusal.

### **Attachments**

- Attachment 1 – Plans of the Proposal
- Attachment 2 – Locality Map
- Attachment 3 – Heritage Adviser Comments
- Attachment 4 – Urban Design Comments
- Attachment 5 – Submissions

### **Recommendation**

- A. The objection to Clause 54(4) of the Ashfield Local Environmental Plan 1985 (as amended), lodged pursuant to State Environmental Planning Policy No. 1, is not considered to be well-founded and it is recommended that the objection not be supported; and**
- B. That the Sydney East Joint regional Planning Panel as the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse consent to Development Application No.10.2009.225.01 on Lot 1 in DP: 21015511 known as 11 – 13 Hercules Street, Ashfield for the following reasons:**

- (1) The proposal does not comply with the aims and objectives of the Ashfield Local Environmental Plan 1985;**
- (2) The proposal does not enhance the Ashfield Town Centre;**
- (3) The proposal exceeds the maximum allowable floor space ratio as set out in Clause 54 of the Ashfield Local Environmental Plan 1985;**
- (4) The proposal exceeds the maximum allowable building height as set out in the site specific DCP;**
- (5) The proposal is an overdevelopment of the site resulting in a development that does not appropriately respond to the built form and character of the surrounding locality and an intensity of development that adversely impacts on the amenity of the surrounding neighbourhood;**
- (6) The resulting building is out of scale with the locality and immediate surroundings;**
- (7) The proposal if built in its current form will have an adverse impact on the amenity and development potential of neighbouring properties due to non-compliance with the required building setbacks;**
- (8) The proposal does not provide the required 3m building setback along Fox's Lane to allow for public domain improvements and adequate solar access;**
- (9) The proposal does not comply with the aims for Heritage Conservation as set out in Clause 30 of the Ashfield Local Environmental Plan 1985;**
- (10) The proposal does not comply with Clause 37 of the Ashfield Local Environmental Plan 1985 in respect to conservation of the existing heritage item;**
- (11) The proposal does not comply with the objectives and development standards contained in Council's DCP for the Ashfield Town Centre;**
- (12) The proposal does not comply with the site specific controls as set out in Clause 54 of the Ashfield Local Environmental Plan 1985;**
- (13) The proposal does not comply with the objectives of the site specific Development Control Plan;**
- (14) Adequate residential amenity is not provided to residential apartments 2, 6, 10, 14, 18, 22, 26, 31, due to inadequate light and ventilation;**

- (15) Overshadowing of adjoining properties to the south, south-east, and south-west will compromise the future development of these sites resulting in a poor level of amenity.**
- (16) Adequate landscaping and provision of mature tree planning has not been provided;**
- (17) Waste storage and waste collection areas are not adequate;**
- (18) The proposed building encroaches over the existing right of way and hence will reduce the usability of the existing right of way;**
- (19) The proposal will result in personal safety and security issues around the around the entry off Fox's Lane and in the pedestrian thoroughfare between Hercules Street and Fox's Lane.**
- (20) The proposed development is considered unsatisfactory on traffic, access, safety and parking related grounds for the following reasons:**
  - a) The traffic report submitted with the application substantially under estimates the additional traffic volumes likely to be generated by the proposed development and consequently does not adequately address the traffic generation impacts of the proposed development;**
  - b) The proposal will result in safety concerns with additional traffic generated from the development, particularly considering the high level of pedestrian traffic in the vicinity of the subject land;**
  - c) The size of vehicles proposed to service the proposed development would have difficulty manoeuvring safely through the existing road system in the vicinity of the site, particularly along Fox's Lane;**
  - d) The proposal does not provide adequate pedestrian amenity and safety;**
  - e) The layout will result in vehicular conflict and vehicle queuing as a result of the ingress and egress arrangements where garbage trucks servicing the site will block driveway access;**
  - f) The reversing of large waste management trucks into the right of way ingress and egress area poses occupational health and safety issues for waste contractors;**
  - g) The proposal will result in safety issues for pedestrians using the right of way to gain access to the rear of 5 – 9 Hercules Street. In particular, pedestrians will be required to share this access with service and occupant vehicles.**
- (21) The proposed development does not satisfactorily address the design principles contained in State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, particularly Principle 1 – Context and Setting; Principle 2 – Scale; Principle 3 – Built Form; Principle 6 – Landscape; Principle 7 – Amenity and Principle 8 – Safety and Security.**
- (22) The proposal is not in the public interest.**

- C. That those persons who lodged a submission in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.**
- D. The Roads and Traffic Authority be forwarded a copy of the Joint Regional Planning Panel's determination of the application.**