

**NSLPP MEETING HELD ON 05/10/22****Attachments:**

1. Site Plan
2. Architectural Plans
3. Section Drawing

ADDRESS/WARD: 11 Ernest Street, Crows Nest (H)**APPLICATION No:** DA 249/22**PROPOSAL:** Change of use of commercial tenancy to retail (shoe shop) over the existing two storeys with operating hours 8am – 9pm and two employees on site.**PLANS REF:**

Plan No.	Rev	Description	Prepared by	Dated
1012.1	-	Proposed Shoe Shop – Site Plan	Linklater Associates P/L	08/08/2022
1012.2	-	Proposed Shoe Shop – Floor Plans	Linklater Associates P/L	08/08/2022
1012.3	-	Proposed Shoe Shop - Section	Linklater Associates P/L	08/08/2022

OWNER: North Sydney Council**APPLICANT:** Jack Nicholas James**AUTHOR:** Rachel Wu, Graduate Assessment Officer**DATE OF REPORT:** 14 September 2022**DATE LODGED:** 22 August 2022**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks approval for the change of use of a commercial tenancy to retail use (shoe shop) over the existing two-stories, with the operating hours 8am – 9pm daily, and two staff/employees on site.

The application is reported to the North Sydney Local Planning Panel for determination as a property owned by North Sydney Council. In accordance with the Minister’s Directions the Panel is required to determine the application. Given the relatively minor nature of the application and the lack of submissions, it is considered appropriate for the matter to be assessed internally with the panel’s determination lending appropriate independence and transparency

The subject property is a brick and rendered two-storey commercial office building with two covered parking spaces and informal waste storage at the rear. The property was used as a real estate agent office vacated in March 2022, with reception downstairs and office upstairs. It is currently vacant and proposes a change of use to a retail premise (shoe shop). No physical works are proposed for the site with the exception of wall shelving and furniture.

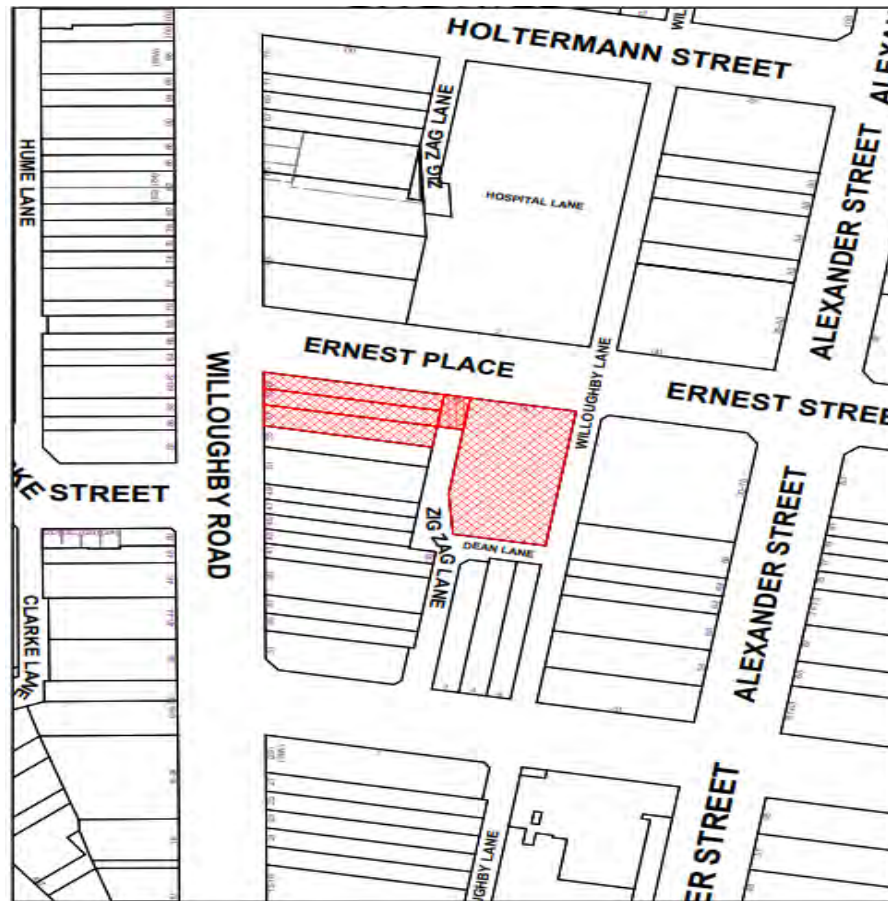
The subject site is next to public walkways at the front of the site and on the western elevation. The public walkway provides access to the rear service area of businesses in the vicinity and leads to Zig Zag Lane.

On either side of the subject site are similar shopfronts with café/restaurant uses, beauty and massage uses and retail uses. In front of the subject site is the passive recreation space known as Ernest Place. Opposite the site on the northeast is the community facility Crows Nest Centre, and further north is the Holtermann Street Carpark. Northwest of the subject site is the heritage item I0182 over two lots and consists of the Northside Baptist Church.

The subject site and developments in the vicinity are generally zoned B4 Mixed Use with businesses on the ground level, and residential dwellings above. No.13 Ernest Street contains a café on the ground level and 61 residential units above. While the subject site is in close proximity to residential developments, it is unlikely to create an adverse impact on the amenity of the residential dwellings and the proposal is recommended for approval.

LOCATION MAP

† Property/Applicant ● Submitters - Properties Notified



DESCRIPTION OF PROPOSAL

This development application seeks approval for the change of use of a commercial tenancy to retail use, with the operating hours 8am – 9pm daily, and two staff/employees on site. No physical works are proposed that will alter the structural built form.

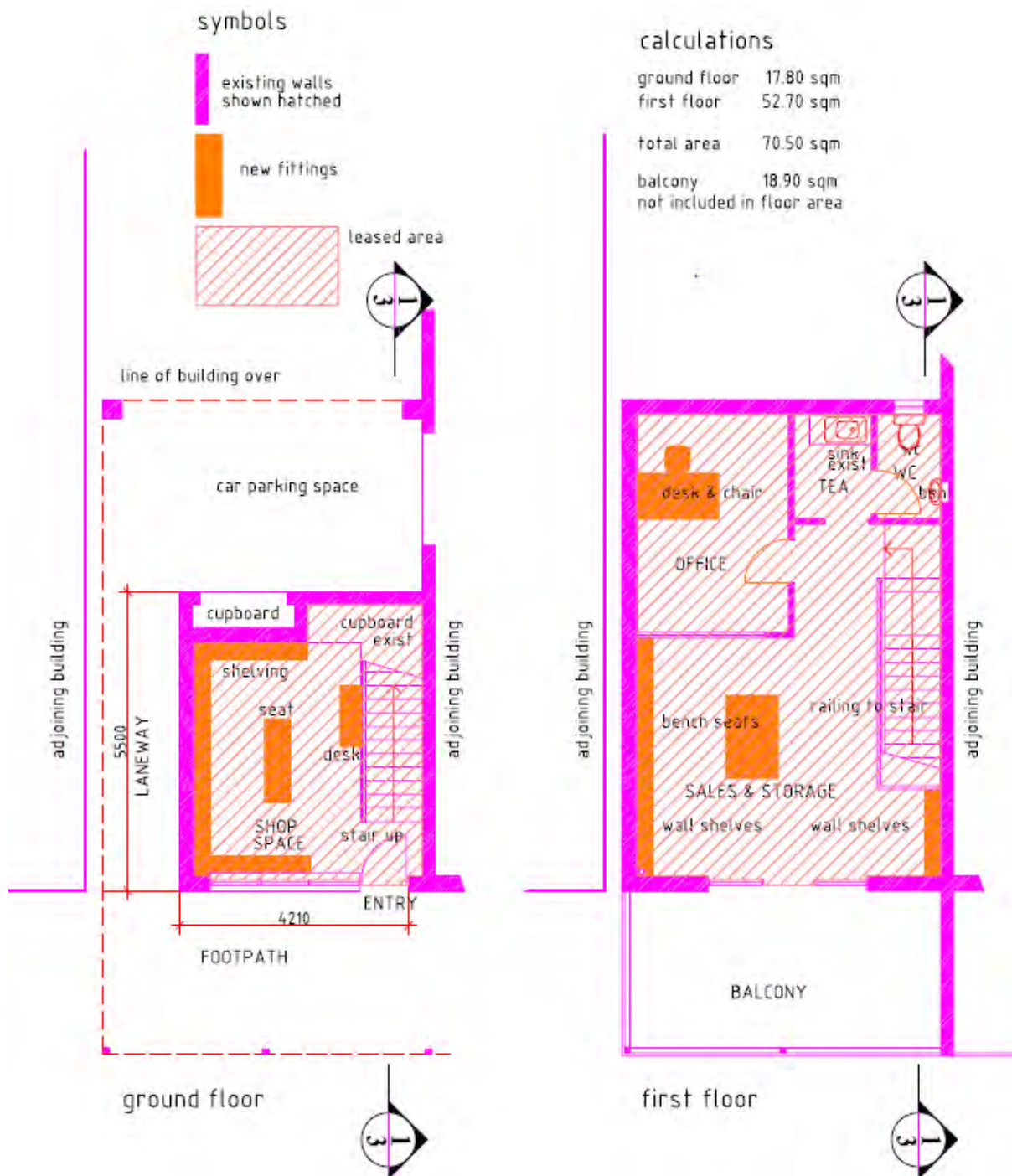


Figure 1 & 2: Proposed ground floor and first floor works

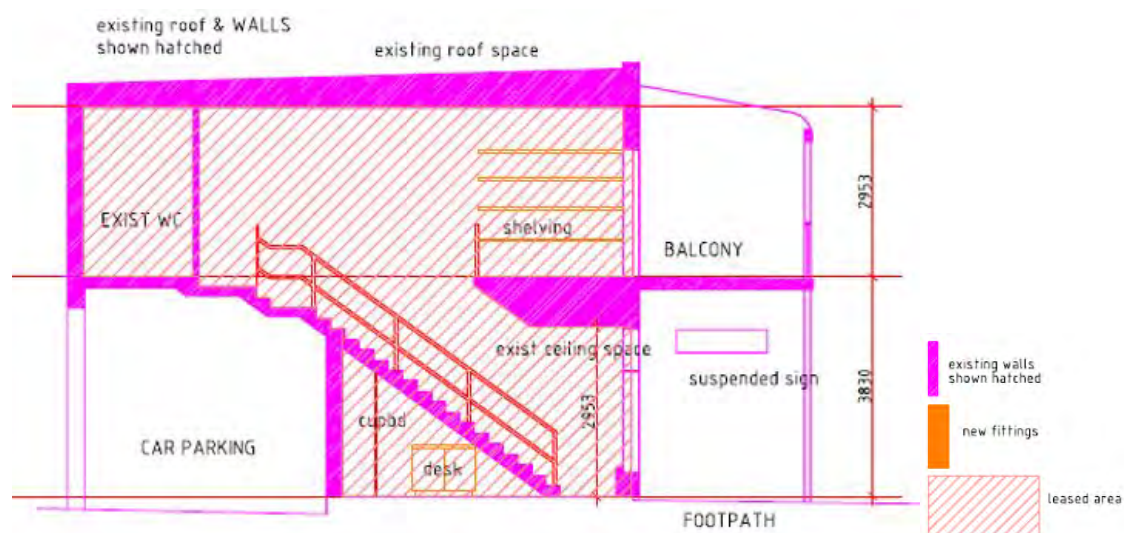


Figure 3: Proposed section

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning - B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes, 63 Willoughby Road, Crows Nest (I0182)
- Conservation Area - No
- Foreshore Building Line - No
- Environmental Planning & Assessment Act 1979 (As amended)
- Environmental Planning & Assessment Regulations 2021
- SEPP (Resilience and Hazards) 2021
- Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 1 in DP 729343, commonly known as 11 Ernest Street, Crows Nest. The subject site has a gross lettable retail floor area of 17.8 m² on ground level and 52.7m² on the first floor and two car parking spaces located behind the building. The subject site is a Council-owned property that was leased out previously for real estate office use. The site is zoned B4 Mixed Use and faces onto the public open space that is Ernest Place. The subject site is located at the corner of Ernest Street and Zig Zag Lane, with access to Zig Zag Lane via the public walkway on the eastern side of the site. Surrounding developments are generally one to two storeys shopfronts for café/restaurants, beauty salon and retail use. North of the subject site beyond Ernest Place is the Crows Nest Centre and Holtermann Street Carpark.

Mixed-use developments in the vicinity generally consist of businesses on the street level and residential dwellings above the ground floor. The closest residential dwellings to the subject site include No.13 Ernest Place which contains 61 residential units above ground floor.

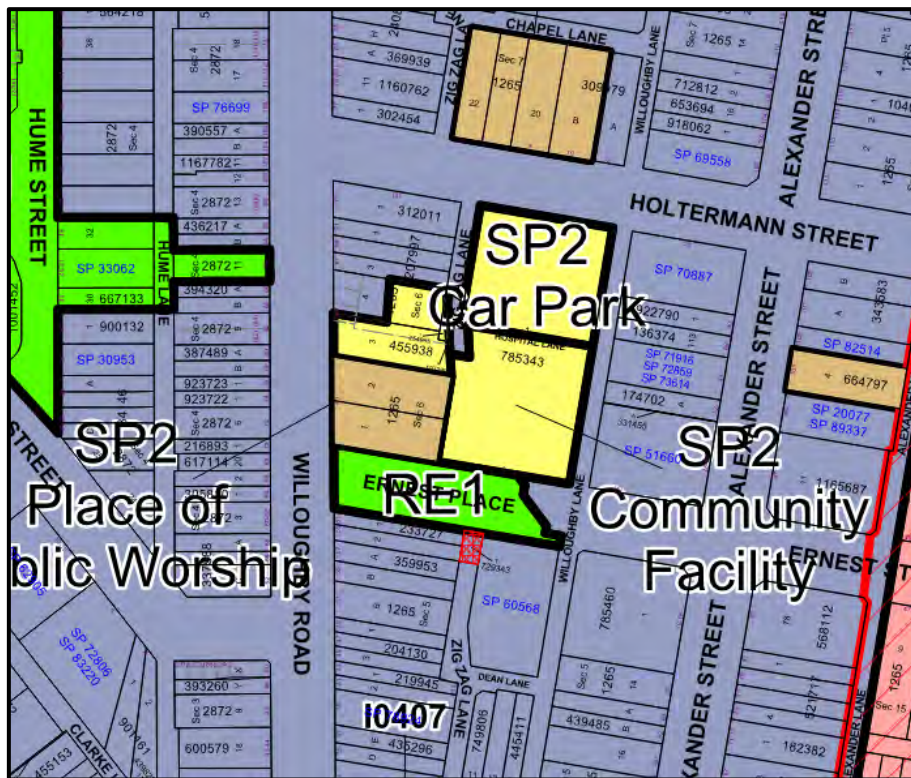


Figure 4: Zoning and heritage map



Figure 5: View to subject tenancy (right) and public walkway



Figure 6: View of the rear of the tenancy (two covered parking spaces and waste storage)



Figure 7: View of Community Centre opposite subject site



Figure 8: View towards subject site (with the yellow sign) from Ernest Place



Figure 9: View into the internal area of subject site at ground level

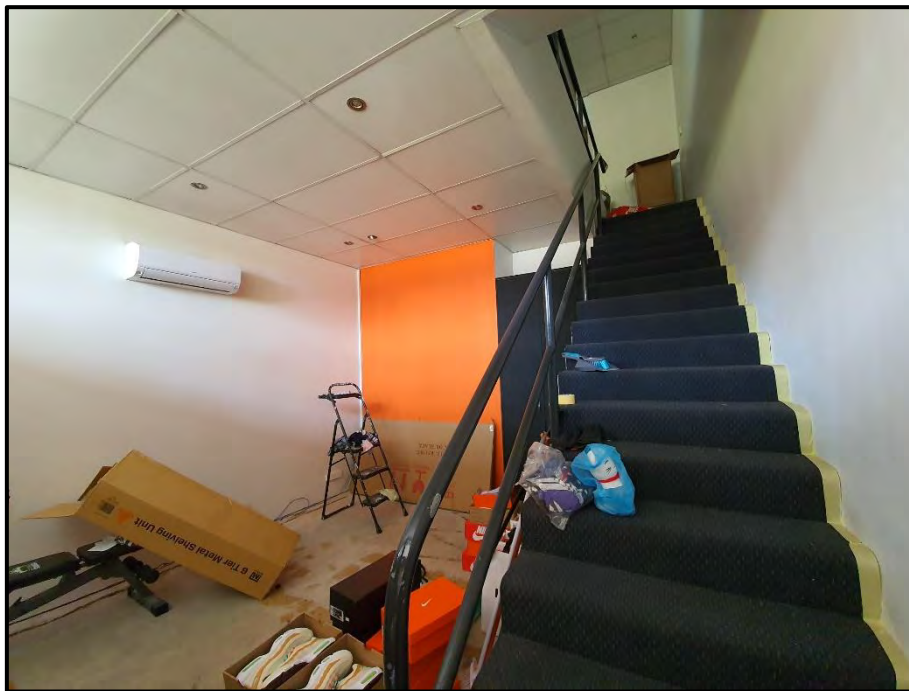


Figure 10: Ground floor

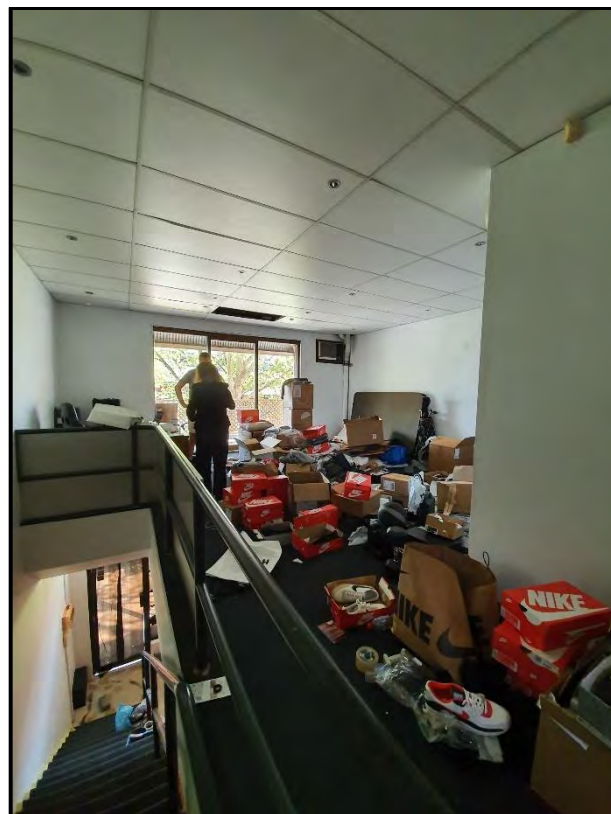


Figure 11: View from first floor

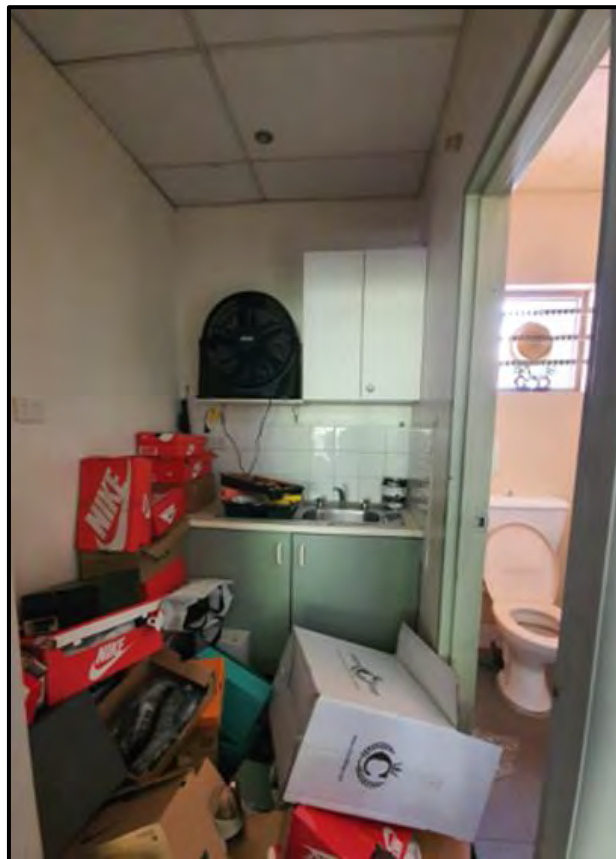


Figure 12: View into the tea area/WC on first floor



Figure 13: View towards the area marked as 'office' (left) in proposed plans

RELEVANT HISTORY

Previous applications

Development Application 931/99 granted approval on 12 October 1999 for the erection of an under-awning sign.

Current Application

<i>Date</i>	<i>Action</i>
22/08/2022	Lodged with Council
09/09/2022	The application was notified as per Council's Community Participation Plan. The notification period ended on 23 September 2022 . No submissions were received during this period.
19/09/2022	Site inspection conducted by assessment officer.

SUBMISSIONS

On 09 September 2022, Council notified adjoining properties and the Holtermann Precinct of the proposed development seeking comment between **09 September – 23 September 2022**. Council received nil submissions.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

Environmental Planning and Assessment Act 1979 (as amended)

SEPP (Resilience and Hazards) 2021

The provisions of SEPP (Resilience and Hazards) 2021 requires Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site (where required). Clause 4.6 of the SEPP requires that Council must consider the following:

- (i) whether the land is contaminated; and
- (ii) if the land is contaminated, whether the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (iii) if the land requires remediation to be made suitable for the proposed development, will the land be remediated before the land is used for that purpose.

The premises has previously been used for the purpose of a commercial office (Real estate sales) and as such is unlikely to contain any contamination which would prevent the proposed use for retail purposes.

Subject to compliance with SafeWork NSW requirements and standard conditions of consent, Council may be satisfied that the land is suitable for the intended use.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as a change of use from a commercial premise (office premise) to a commercial premise (retail premise) and change in hours of operation.

The subject site is zoned B4 Mixed Use whereby development for the purpose of a commercial premise is permissible with consent under NSLEP 2013. Under the local environmental plan, commercial premises is defined as any of the following –

- (a) business premises,*
- (b) office premises,*
- (c) retail premises.'*

The application proposes a change of use from an office premise (Real estate office) to a retail premise (shoe shop) which is permissible with consent under the NSLEP 2013.

2. Objectives of the zone

The objectives for a B4 Mixed Use zone are stated below:

- *'To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed-use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.'*

The proposal is consistent with the relevant objectives of the zone and is satisfactory in this regard.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 70.50m²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	No change	10m	YES
Clause 4.4a – Non residential FSR	No change	0.5:1	N/A

3. Non-Residential floor space ratios

The objectives of this clause are as follows:-

- (a) *to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- (b) *to encourage an appropriate mix of residential and non-residential uses,*
- (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

Planning comment: The proposed change of use to a retail shop (shoe shop) and operating hours maintains the site's use as a commercial premise under NSLEP 2013 and promotes the activation of the streetscape consistent with the objectives of this clause. No change in the non-residential floor space ratio is proposed.

4. Earthworks

The application does not involve excavation and is satisfactory in this regard.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
2.2.1 Diversity of Activities	Yes	The proposal activates the street for pedestrians and will contribute to economic and social vitality in the area.
2.2.2 Maximise Use of Public Transport	Yes	No car parking is proposed on site. The subject site is well-served by public buses.
2.3 Environmental Criteria		
2.3.1 Clean Air	Yes	The proposal will not affect the air quality in the locality.
2.3.2 Noise	Yes	The proposal for a shoe shop is unlikely to create an adverse impact on the noise amenity in the locality.
2.3.7 Solar Access	Yes	No physical changes are proposed that will affect the existing solar access into the interior of the subject site. The proposal retains the glass façade of the building.
2.3.8 Views	Yes	No changes are proposed that will alter the access to views from the property and within the vicinity of the property.
2.3.9 Acoustic Privacy	Yes	The subject site contains residential dwellings in the vicinity including No.13 Ernest Street, which contains 61 units above the ground level. The residential dwellings are unlikely to be adversely impacted in terms of acoustic privacy as the proposed shoe shop only operates indoors.
2.3.10 Vibration	Yes	The proposal for a shoe shop is unlikely to create an adverse impact in terms of vibration.
2.3.11 Visual Privacy	Yes	The proposal looks onto Ernest Place and will not intrude into the visual privacy of residential dwellings.
2.4 Quality built form		
2.4.1 Context	Yes	The proposal for a shoe shop responds to the context of other types of businesses that activate the streetscape including retail, café and restaurants.

2.4.9 Through Site Pedestrian Links	Yes	No alterations are proposed to the existing pedestrian link between Ernest Street through to Zig Zag Lane and surrounds.
2.4.10 Streetscape	Yes	The proposal will promote the creation of a lively and active street frontage through the economic activity.
2.4.11 Entrances and Exits	Yes	The proposal does not alter the entrances/exits on site. The existing entrance/exit facing onto Ernest Place is highly distinguishable and is satisfactory in this regard.
2.4.12 Night-time appearance	Yes	The proposal does not alter the structural built form of the subject site. The internal illumination is likely to spill onto the public footpaths that will improve the visual interest of the street at night without affecting residential amenity. The trading hours proposed 8am to 9pm daily is compatible with the restaurants/bars in the vicinity that generally close between 9pm to 10:30pm, or later.
2.4.13 Public Spaces and facilities	Yes	The proposal for a change of use to a shoe shop will not impact on the public spaces and facilities. The proposed built form is likely to maintain a positive relationship with Ernest Place and the community centre to contribute the recreation, economic and social opportunities in the area.
2.5 Quality Urban Environment		
2.5.1 Accessibility	N/A	No physical works are proposed to the built form of the building.
2.5.2 Safety and Security	Yes	The proposal retains the level of safety and security on the subject site.
2.5.7 Vehicular Access	Yes	No provision for car parking is available on site. The car parking spaces behind the site are not for the use of the subject property.
2.5.8 Car Parking	N/A	The subject site does not contain car parking provision. The proposal is satisfactory in this regard.
2.5.9 Garbage Storage area within 2m of street or laneway boundary	Yes	The existing garbage storage is located at the rear of the property in close proximity to Zig Zag Lane and is satisfactory in this regard.
2.6 Efficient Use of Resources		
2.6.1 Energy efficiency	N/A	The proposal is for a change of use and operating hours. The proposal does not encompass any physical works and is satisfactory in this regard.
2.6.2 Passive Solar Design	Yes	The proposal retains the glass windows on both the ground floor and first-floor that will enable passive solar access.
2.6.4 Natural Ventilation	Yes	Access to natural ventilation is available through the existing window and balcony on the first-floor and the entrance/exit door opening on the ground floor façade.
2.6.5 Water Conservation	N/A	No change is proposed to the existing water utilities.
2.6.6 Waste Management & Minimisation	Yes	No physical works are proposed for the application which entails a change of use and operating hours and is satisfactory in this regard.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 7- Late Night Trading Hours

7.2 Matters for Consideration	Yes	The proposed trading hours are appropriate and operates within the maximum trading hours listed in the NSDCP 2013. Accessibility to public transport, safety and security are considered and the proposal is deemed satisfactory.
7.3 Trading Hours <ul style="list-style-type: none"> • B4 Mixed use (Indoors) – 7am – 11pm (Mon-Wed); 7am – Midnight (Thurs-Sat); 7am – 10pm (Sun) 	Yes	The proposed trading hours are 8am – 9pm daily which falls within the permissible hours of operation. The trading hours proposed is compatible with the restaurants/bars in the vicinity that generally close between 9pm to 10:30pm, or later. The retail use (shoe shop) will contribute to the economic and social nightlife in the area without adversely impacting on the residential amenity of nearby dwellings.

Part C of North Sydney Development Control Plan 2013 (NSDCP 2013)

Section 3.0 – St Leonards/Crows Nest Planning Area

Section 3.2 – Crows Nest Town Centre

Ernest Place is identified as a focus for the Town Centre in Part C Area Character Statements. The proposal fronts Ernest Place and will preserve the significance of Ernest Place as a public space. No physical works are proposed except for a change of use and hours of operation. The proposal is consistent with the desired future character of the area through the potential contribution to the activation of the streetscape by the economic and social benefits of the change of use to a retail (shoe shop).

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is not subject to payment of contributions towards the provision of local infrastructure.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	YES
2.	Policy Controls	YES
3.	Design in relation to existing building and natural environment	YES
4.	Landscaping/Open Space Provision	YES
5.	Traffic generation and Carparking provision	YES
6.	Loading and Servicing facilities	YES
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	YES
8.	Site Management Issues	YES
9.	All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	YES

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Holtermann Precinct for 14 days between **09 – 23 September 2022**. Council received nil submissions during the notification period.

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a B4 Mixed Use zone where change of use of a commercial premise and change in hours of operation are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

CONCLUSION + REASONS

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and general found to be satisfactory.

The application proposes change of use from a commercial office to a retail shop (shoe shop) that is a permissible form of development in the B4 Mixed Use zone.

Council received no submissions during the notification period and the proposal is unlikely to create an adverse impact on residential dwellings in the vicinity of the subject site.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate conditions for the reasons provided below.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Holtermann Precinct for 14 days whereby no submissions were received during the notification period, and where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No.249/22 for the change of use of commercial tenancy to Retail Premises (shoe shop) and extension of operating hours on land at No.11 Ernest Street, Crows Nest subject to the site specific and standard conditions.

RACHEL WU
GRADUATE ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER (ASSESSMENTS)

DAVID HOY
A/MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
11 ERNEST STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 249/22

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Rev	Description	Prepared by	Dated
1012.1	-	Proposed Shoe Shop – Site Plan	Linklater Associates P/L	08/08/2022
1012.2	-	Proposed Shoe Shop – Floor Plans	Linklater Associates P/L	08/08/2022
1012.3	-	Proposed Shoe Shop - Section	Linklater Associates P/L	08/08/2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Hours of Operation

- I1. The hours of operation are restricted to:

Mon-Fri **8am – 9pm**
Saturday **8am – 9pm**
Sunday **8am – 9pm**

Upon expiry of the permitted hours:

- (a) all service must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers on the premises must be required to leave within the following half hour.

(Reason: to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

**11 ERNEST STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 249/22**

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Noise and Vibration Impact

12. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Commercial Waste and Recycling Storage

13. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Waste Collection

14. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Trade Waste Collection (Crows Nest Trade Waste Policy)

15. All trade waste and recycling generated from the premises must be managed and disposed of in accordance with the Crows Nest Trade Waste Policy available on Council's website at www.northsydney.nsw.gov.au.

Arrangements for the collection and storage of trade waste bins must comply with the following:

- (a) Bins must be placed out for collection no earlier than 5.00 pm and no later than 10.00 pm on the day before collection.
- (b) All trade waste must be collected between the hours of 6.00 am and 10.00 am.
- (c) Waste and recycling bins are not to be stored permanently in streets and laneways unless specifically prescribed by Council in writing.

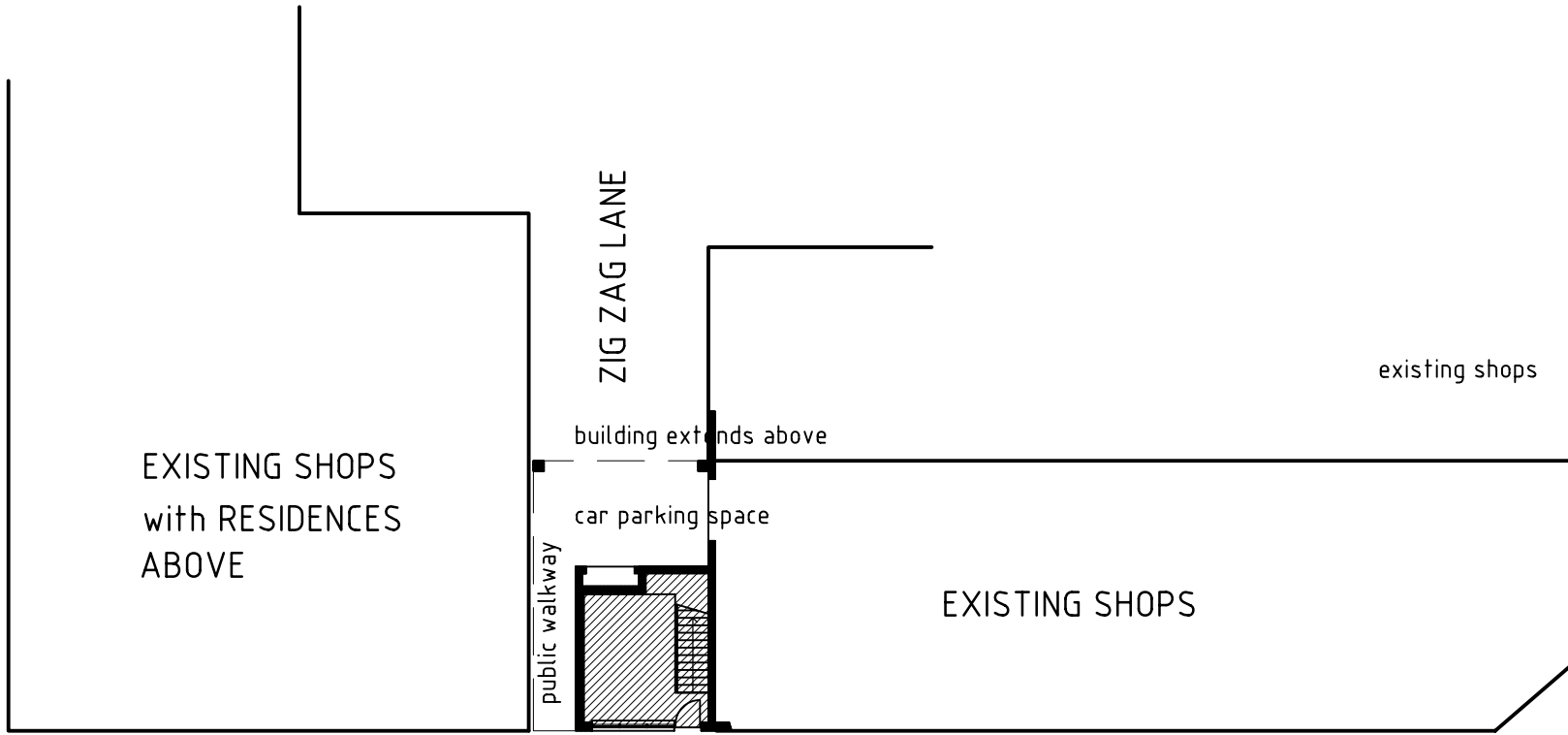
(Reason: To ensure compliance with Council's waste controls for the Crows Nest commercial area)

Delivery Hours

16. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

PROPOSED SHOE SHOP



existing shops

EXISTING SHOPS
with RESIDENCES
ABOVE

ZIG ZAG LANE

building extends above

car parking space

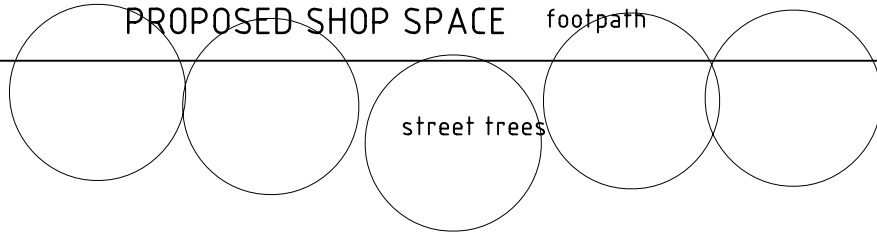
public walkway

EXISTING SHOPS

WILLOUGHBY ROAD

PROPOSED SHOE SPACE

footpath



paved outdoor space

street trees

CROWS NEST CENTRE

ERNEST PLACE
landscaped outdoor meeting
& recreation area



PROPOSED SHOE SHOP
11 Ernest Street Crows Nest

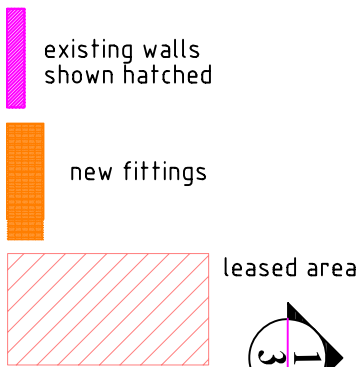
Linklater Associates Pty Ltd building design consultants
abn 60 003 778 738

160 Chandos Street Crows nest 2065 phone 0414.466.442

SCALE: 1:250 DATE 8.8.2022

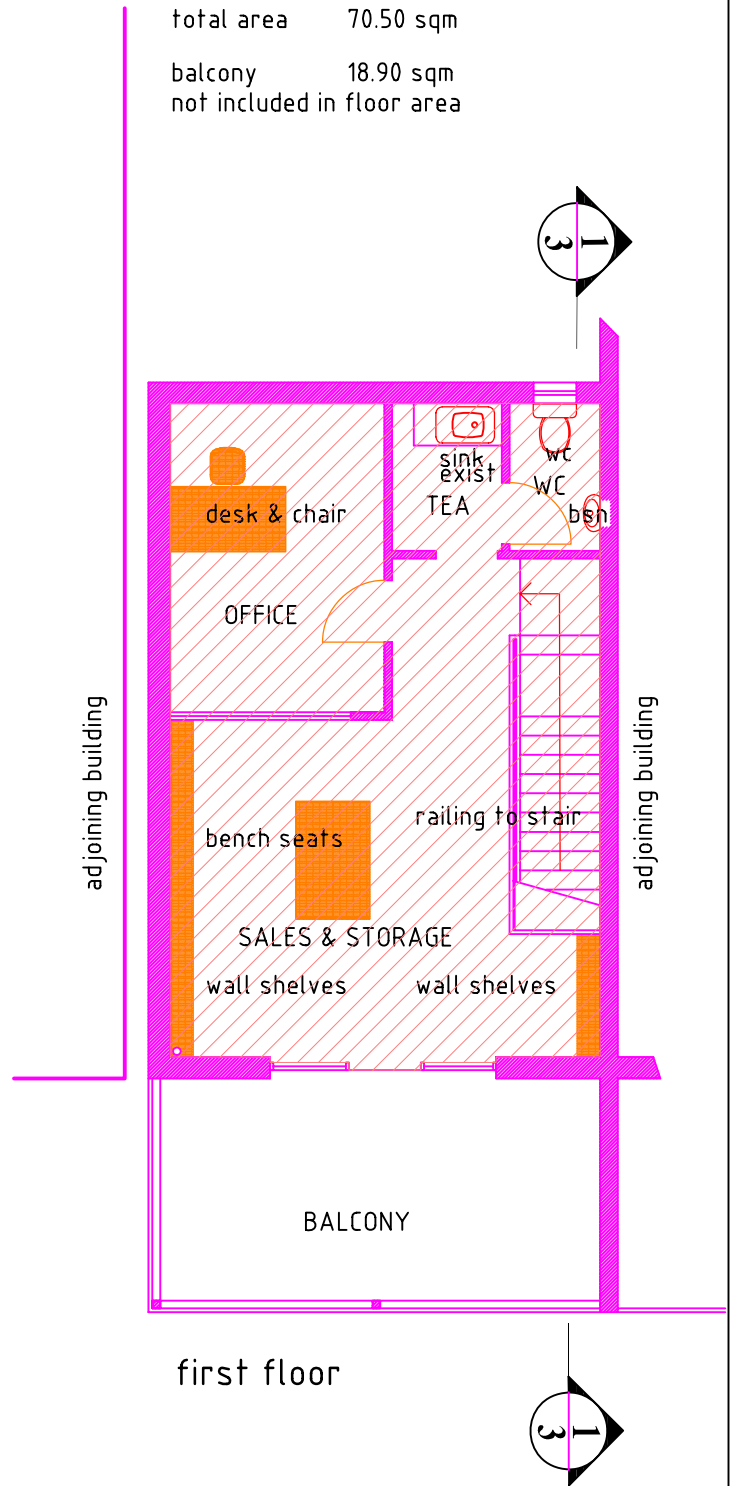
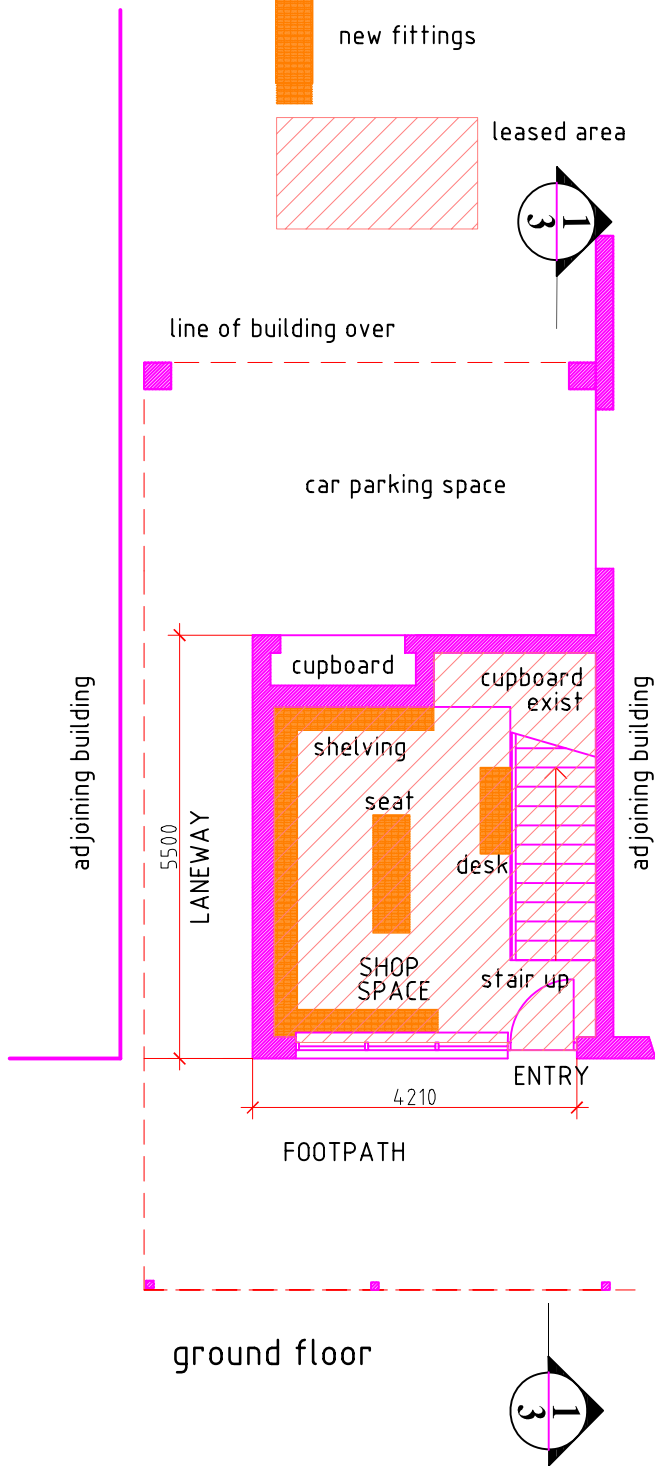
DRAWING 1012.1

symbols



calculations

ground floor	17.80 sqm
first floor	52.70 sqm
total area	70.50 sqm
balcony	18.90 sqm
not included in floor area	



PROPOSED SHOE SHOP

11 Ernest Street Crows Nest

Linklater Associates Pty Ltd building design consultants
 abn 60 003 778 738

160 Chandos Street Crows nest 2065 phone 0414.466.442

SCALE: 1:100 DATE 8.8.2022

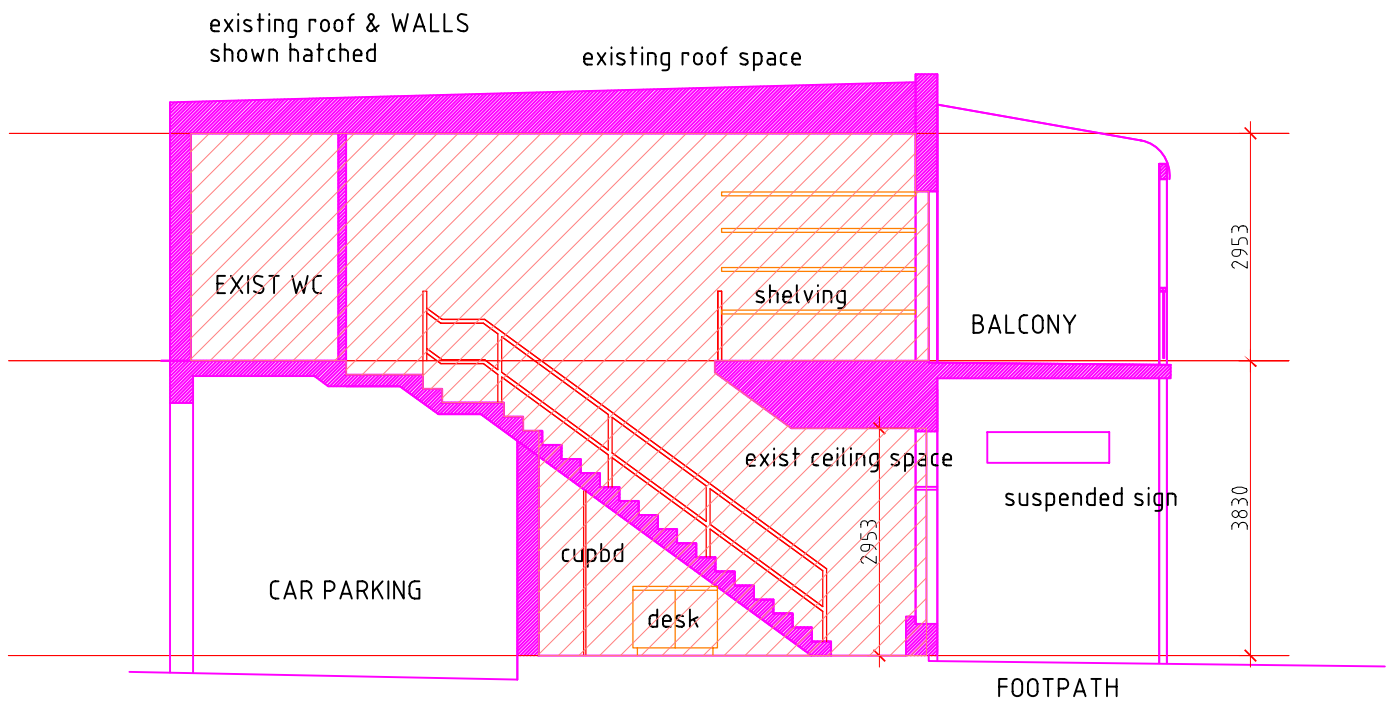
DRAWING 1012.2

symbols

existing walls
shown hatched

new fittings

leased area



section 1-1



PROPOSED SHOE SHOP
11 Ernest Street Crows Nest

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160 Chandos Street Crows nest 2065 phone 0414.466.442

SCALE: 1:100 DATE 8.8.2022

DRAWING 1012.3