

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 18 October 2018
Time:	4.00pm
Venue:	Dragon Room, Georges River Civic Centre, corner MacMahon and Dora Streets, Hurstville
Panel Members:	Paul Vergotis (Chairperson) Helen Deegan (Expert Panel Member) John Brockhoff (Expert Panel Member) Annette Ruhotas (Community Representative)
Council Staff:	Meryl Bishop (Director Environment and Planning) Ryan Cole (Manager Development and Building) Nicole Askew (Coordinator Development Assessment) Cathy Mercer (Team Leader DA Administration) Monica Wernej (DA Admin Assistant)

1. On Site Inspections - 1.00pm –3.30pm

- a) 29 Barry Avenue Mortdale
- b) 64 Algernon Street Oatley
- c) 8 Park Road Hurstville

Break - 3.30pm

2. Public Meeting – Consideration of Items 4.00pm–6.00pm

Public Meeting Session Closed - 6.00pm

(Break – Light Supper served to Panel Members)

3. Reports and LPP Deliberations in Closed Session - 6.30pm

- LPP049-18 29 Barry Avenue Mortdale – DA2017/0567**
(Report by Development Assessment Planner)
- LPP050-18 64 Algernon Street Oatley – DA2017/0528**
(Report by Team Leader Development Assessment)
- LPP051-18 8 Park Road Hurstville – DA2017/0660**
(Report by Senior Development Assessment Planner)

4. Confirmation of Minutes by Chair

REPORT TO GEORGES RIVER COUNCIL

LPP MEETING OF THURSDAY, 18 OCTOBER 2018

LPP Report No	LPP049-18	Development Application No	DA2017/0567
Site Address & Ward Locality	29 Barry Avenue Mortdale Mortdale Ward		
Proposed Development	Use of existing warehouse as a place of public worship - church		
Owners	Athos Building and Consulting		
Applicant	The Town Planner		
Planner/Architect	The Town Planner		
Date Of Lodgement	20/11/2017		
Submissions	Twenty seven (27)		
Cost of Works	Nil		
Local Planning Panel Criteria	Contentious development that is the subject of 10 or more unique submissions by way of objection		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No. 55–Remediation of Land, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1 - LGA Wide		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Acoustic Report, Plan of Management, Traffic and Parking Assessment, Preliminary Site Investigation, Architectural Plans, Waste Management, Fire Safety Measures		
Report prepared by	Development Assessment Planner		

Recommendation	THAT the application be approved in accordance with the conditions included in the report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for	Yes – the draft report has

comment?

**been placed on the public
agenda for the applicant
to review**

Site Plan



Figure 1: Site Plan, Source: Nearmaps September 2018

Executive Summary

Proposal

1. The proposal is for a change of use of the existing warehouse (warehouse 1) to a place of public worship – church, at 29 Barry Avenue Mortdale.
2. According to the applicant's DA submission - the usage will involve the following:
 - Bible Study on Wednesdays, between 8.00pm – 9.30pm, with a capacity of 8 – 15 people;
 - Church on Sunday between 9.00am – 2.00pm, with a capacity of 25 – 80 people.
3. The development proposes to provide a total of 8 parking spaces – consisting of 5 spaces in a parking area at the rear of the site, 2 spaces in a tandem arrangement at the front of the site, and a space in the loading area of either warehouse 1 or 2.

Site and Locality

4. The subject site is identified as 29 Barry Ave, Mortdale and is legally described as Lot 129 DP 7148. The site is a regular-shaped allotment located on the southern side of Barry Avenue. The site has an area of 682.9sqm, and a frontage of 15.24m.
5. Existing on the site are two industrial buildings – a larger building towards the northern/front of the site (to be used for the subject proposal), and a smaller building towards the southern/rear of the site.
6. The surrounding area includes a mixture of residential, commercial and industrial uses. In particular, the site is at the eastern end of an industrial area of Mortdale, and immediately

to the east the land is used for residential purposes with a mix of single dwelling houses and dual occupancy developments.

Zoning and Compliance with LEP Standards

7. The subject site is zoned IN2 Light Industrial, and the use as a “Place of Public Worship” is permissible with Council’s consent. The use also generally complies with the relevant planning instruments, including the Hurstville LEP and DCP, subject to conditions to protect the surrounding amenity.

Submissions

8. Twenty seven (27) submissions were received during the notification period regarding parking and traffic (ie lack of on-site parking and potential for on-street parking), noise, and the nature of the use. The amount on-site parking is considered to be acceptable as there is capacity for further street parking on the surrounding streets which can accommodate the proposed development.

Referrals

9. The DA has been referred to Council’s Environmental Health Officer for consideration in terms of noise and potential site contamination issues, and also to Council’s Traffic Engineers in terms of traffic and parking generation. The internal referrals for this DA are generally supportive, subject to the imposition of appropriate conditions of consent.

Level of Determination

10. The application is referred to the Local Planning Panel for determination because more than ten (10) submissions have been received.

Conclusion

11. Having regard to the Heads of Consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979, Development Application No. DA2017/0567 is recommended for approval subject to suitable conditions.
12. The main issue of concern regarding this development proposal is provision of on-site parking. Hurstville DCP No 1 contains a parking requirement of 1 space per 10 seats or 1 space per 10sqm GFA, whichever is the greater. The development proposes a maximum of 80 seats (ie 8 spaces required based on number of seats) and 136m² GFA (ie 13.6 say 14 spaces required based on GFA).
13. As mentioned, the development proposes 8 parking spaces which complies with the DCP requirement if based on number of seats, but not if based on GFA. It is considered that the proposal is acceptable in terms of on-site parking – given the nature of the use which proposes to operate outside the opening hours of adjoining developments with very limited use of the premises (ie 1.5 hours on Wednesday nights and 5 hours on Sunday), and also that the premises can be readily limited in terms of maximum number of persons attending (for Church Services). Both the hours/days of operation and the maximum number of persons attending are addressed via conditions of consent.
14. Accordingly, the application is recommended for approval subject to conditions.

REPORT IN FULL

Proposal

15. The proposal is a change of use of the existing warehouse (warehouse 1) to a place of public worship - church. As part of their DA documentation, the applicant has identified that

the premises will be used as a Christian Church known as the Hope Alive Church, which has a small congregation.

16. The proposed hours of operation – as stated in the DA documentation, are as follows:

Activity	Time	Patronage
Bible Study	Wednesday 8.00pm – 9.30pm	8 – 15 people
Church	Sunday 9.00am – 2.00pm	25 – 80 people

17. There will be a microphone, live music and singing during the church service. No microphones will be used during bible study.
18. The following amenity mitigation measures are proposed:
- All activities will be held indoors, and staff will be responsible for the behaviour of parishioners to ensure they leave the premises in a quiet and orderly manner. There will also be signage to the same effect.
 - Music to be played shall be noise limited at a volume that is barely audible on the eastern boundary.
 - Internal lighting shall be shut off by staff at close of services.
 - Windows and external doors will be closed during services.
 - Parishioners will not be allowed to gather outside the building before or after services. There will also be signage to the same effect.
 - There will be a complaints register and management.
 - Staff will be responsible for waste management and will be serviced by a commercial contractor.
19. The congregation area of the church is 109sqm, and the building also contains a kitchen, and three (3) WCs, with the total GFA of the building being 136sqm. The existing warehouse at the rear of the site (warehouse 2) is being retained. The kitchen will not be used by the church as it does not propose a meal or food preparation service.
20. The development proposes a total of eight (8) parking spaces – four (4) in a parking area at the rear of the site, and two (2) in front of the existing building. Another two (2) spaces are to be made available in the loading areas of the existing buildings on the site. The proposed church will operate outside the trading hours of warehouse 2 so that the parking can be shared. The applicant has proposed an additional parking space which brings the total to seven (7).
21. No work is proposed apart from fire upgrades.
22. There will be one (1) caretaker who will manage cleaning and gate keeping, and volunteers who will assist with the services.

Background

23. On 23 November 2015 consent DA2015/0061 was granted for the construction of a warehouse building to the rear of existing industrial building.
24. Condition 20(a) of this consent requires the use of the loading / unloading area behind the roller door of warehouse 2. Condition 20(b) requires car space 5 to be deleted and to be

used as a turning area for parking space 1, which is inside warehouse 2. Condition 40 states that there are four (4) parking spaces, and loading area behind the roller door. This condition does not affect the operation of the proposed parking for the subject DA.

25. There are no hours of operation. The DCP hours for light industrial are between 7.00am and 7.00pm Monday to Saturday, with no trade permitted on Sunday or public holidays.
26. The subject DA was lodged on 20 November 2017.
27. On 22 November 2017 further information was requested including a preliminary site investigation in accordance with SEPP 55, fire safety measures, and an acoustic report.
28. This information was provided on 28 December 2018.
29. The DA was notified between 11 January 2018 and 8 February 2018.
30. A site inspection was carried out on 7 May 2018.
31. Further information was requested on 18 May 2018 regarding parking, use and manoeuvrability, which was provided on 31 May 2018.
32. On 21 September 2018 further information was requested regarding additional parking which was provided on the same day.

Site and Locality

33. The subject site is identified as 29 Barry Ave, Mortdale and is legally described as Lot 129 DP 7148. The site is a regular-shaped allotment located on the southern side of Barry Avenue. The site has an area of 682.9sqm, and a frontage of 15.24m. Photos of the subject site are provided as follows:

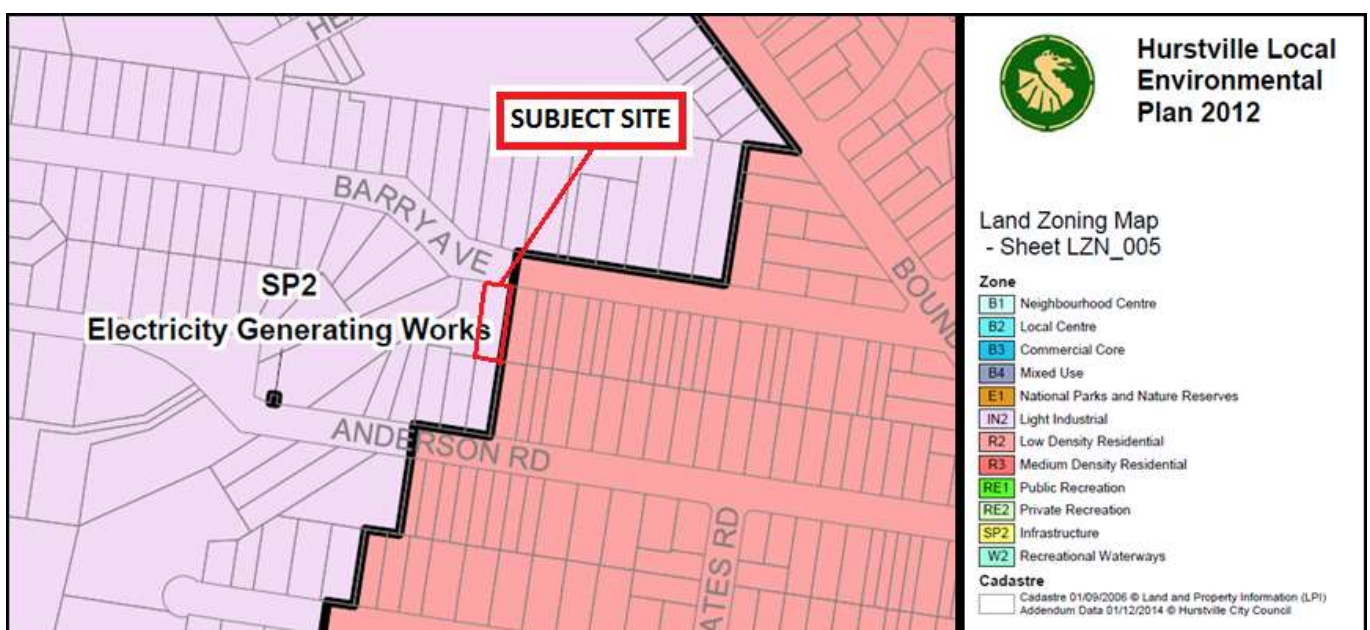




34. Existing on the site are two industrial buildings – a larger building towards the northern/front of the site (to be used for the subject proposal), and a smaller building towards the southern/rear of the site.
35. The surrounding area includes a mixture of residential, commercial and industrial uses. In particular, the site is at the eastern end of an industrial area of Mortdale, and immediately to the east the land is used for residential purposes with a mix of single dwelling houses and dual occupancy developments.

Zoning and Permissibility

36. The subject site is zoned IN2 – Light Industrial, and the immediately adjoining land (to the east) is zoned R2 Low Density Residential. See Zoning Map below.



Zoning Map – Hurstville LEP 2012

37. A 'Place of Public Worship' is a land use permissible with consent within the IN2 zoning of the property.

APPLICABLE PLANNING CONTROLS

- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Hurstville Local Environmental Plan 2012
- Hurstville Development Control Plan No 1

PLANNING ASSESSMENT

38. The proposed development has been assessed under the relevant Section 4.15(1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

Environmental Planning Instruments

Hurstville Local Environmental Plan

39. The subject site is subject to the Hurstville Local Environmental Plan 2012.
40. The development is subject to a range of clauses in Hurstville LEP 2012 which are summarised in the following table.

Clause	Standard	Proposed	Complies
1.2 – Aims of the Plan	In accordance with Clause 1.2(2)	The development meets the relevant aims of the LEP.	Yes
1.4 – Definitions	"Place of Public Worship"	The proposed development is consistent with the definition of a "Place of Public Worship"	Yes
2.3 – Zone objectives and Land Use Table	<p>There are a range of zone objectives applicable to the IN2 – Light Industrial zone:</p> <ul style="list-style-type: none"> • To provide a wide range of light industrial, warehouse and related land uses. • To encourage employment opportunities and to support the viability of centres. • To minimise any adverse effect of industry on other land uses. • To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area. • To support and protect industrial land for industrial uses. 	The proposal is generally considered to be compatible with these zone objectives, and is supported as it is a permissible use within the IN2 – Light Industrial zone.	Yes

	<ul style="list-style-type: none"> To enable industrial development which does not pollute or adversely affect adjoining land, air or water. To ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution. 		
4.3 – Height of Buildings	IN2 Zone 10m As identified on Height of Buildings Map	Unchanged (change of use only)	Yes
4.4 – Floor Space Ratio	IN2 zone – 1:1 As shown on Floor Space Ratio map	Unchanged (change of use only)	Yes
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Hurstville, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,	The proposal is not within the visual catchment of any Heritage Items listed in Hurstville LEP 2012, and thus is not inconsistent with the provisions of this clause.	Yes

41. It is considered that the development is consistent with the LEP development standards and objectives of the IN2 Light Industrial zone.
42. The use can function within the existing warehouse building, and will be used outside of normal business hours, which makes it a compatible land use in the industrial area. In addition, the proposed trading hours which are outside of normal business hours assist with the availability of on street parking spaces.

State Environmental Planning Policies

43. Compliance with the relevant State Environmental Planning Policies is discussed as follows:

State Environmental Planning Policy No. 55 – Remediation of Land

44. Clause 7 requires contamination to be considered as part of a Development Application for a change of use. The applicant has provided a Preliminary Environmental Site Investigation Report, dated 21 December 2017. The report concludes that as there is a low potential for significant or gross contamination the site is suitable for the proposed church. In relation to potential site contamination issues, comments have been received from Council's Environmental Health Officer which state: based on the limitations stated within the Preliminary Environmental Site Investigation, dated 21 December 2017, there isn't any justifiable reason for the proponents to undertake any further site investigation.

Draft Environmental Planning Instruments

45. No Draft Environmental Planning instruments affect the proposed development.

Development Control Plans

HURSTVILLE DEVELOPMENT CONTROL PLAN NO 1 - LGA WIDE

46. The relevant sections of the DCP have been considered below.

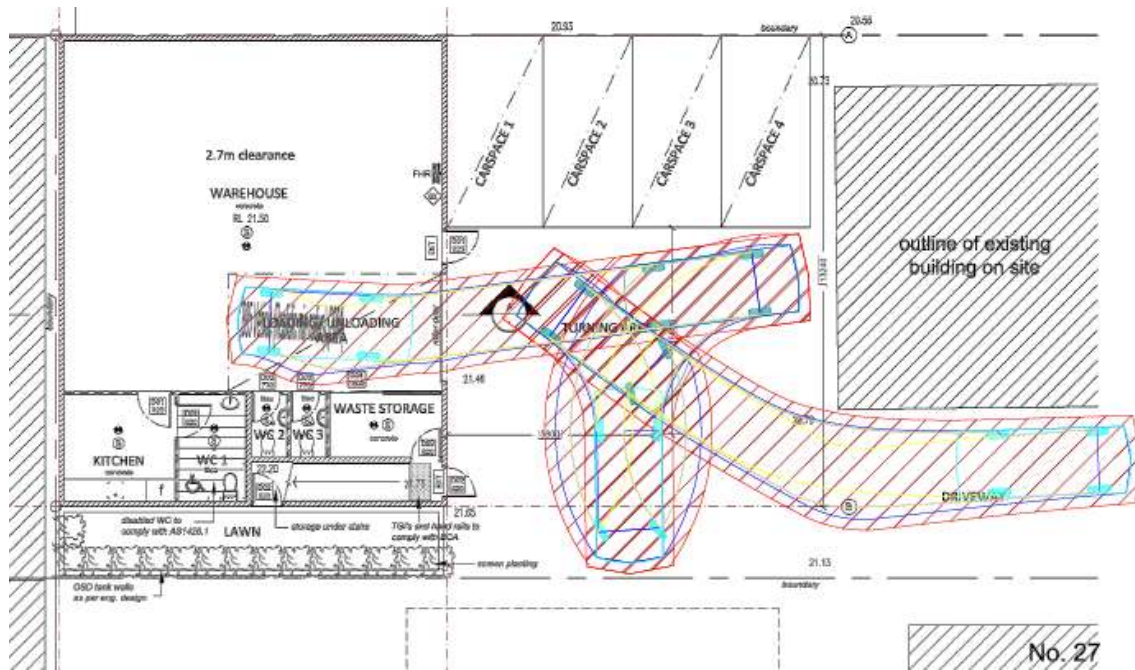
Vehicular Parking and Access

47. The DCP requires 1 space per 10 seats, or 1 space per 10sqm of GFA, whichever is greater. The proposed church has a maximum capacity of 80 people (ie 8 spaces required if based on seating) and GFA of 136sqm (ie 13.6 say 14 spaces required based on GFA). Therefore the proposal requires of minimum of 14 spaces. The development can provide a total of eight (8) parking spaces, which is does not comply with the DCP control.

48. The development proposes to provide a total of 8 parking spaces – consisting of 5 spaces in a parking area at the rear of the site, 2 spaces in a tandem arrangement at the front of the site, and a space in the loading area of either warehouse 1 or 2.



Site Plan showing the proposed on-site parking arrangements, including the loading bay at the rear of the existing building.



Proposed additional car parking space in the loading area of the existing building at the rear of the site.

49. The applicant has submitted a Traffic Report from Traffix Traffic and Transport Planners dated 10 November 2017. In summary, the Traffix report states that the development is satisfactory in terms of car parking provision because it will provide sufficient parking with the provision of six (6) off-street parking spaces and utilising the on-street free capacity as demonstrated in the road occupancy survey.
50. In this regard, as part of the preparation of the Traffic Report, Traffix have undertaken a road occupancy survey which indicates that at the time when the Church will be operating (ie Sunday 9am to 2pm), there will be capacity for on-street parking given that the most of the surrounding businesses are mostly closed.
51. It should also be noted that the Traffix Traffic Report states that the development will provide 6 parking spaces. Since the Traffic Report was submitted, the applicant has indicated that the loading areas of the existing buildings on the site are also able to be used for parking – given that they will otherwise be vacant (because the premises are closed at the time), and also because the applicant owns both buildings on the site and is willing to make the loading areas available for parking. There will be a total of 8 parking spaces available for the proposal.
52. The proposal is considered to be acceptable in terms of on-site parking for the following reasons:
 - The proposal complies with the component of the DCP control for parking based on number of seats (ie 80 seats requires 8 spaces @ 1 space per 10 seats). The non-compliance is only caused by the control stating it is whichever is the greater between car parking based on GFA (ie 136sqm) or number of seats (80 seats).
 - Given this nature of the use, the maximum number of persons (80) can be limited by condition of consent.
 - The applicant has indicated that the congregation ranges from 25-80 persons. It is reasonable to expect that 80 persons is the maximum, with the congregation mostly being around 40-50 persons, thus reducing the car parking demand.

- The development will be operating at times when most other surrounding businesses are closed.
 - The business is only proposed to be open 2 days per week for a total of 7 hours (ie 2 hours on Wednesday night and 5 hours on Sunday morning). Therefore the demand for car parking will be much less than if the development was operating 5-days or 7-days per week.
 - This location has on-street parking capacity as supported by the road occupancy survey in the Traffix Traffic report submitted with the DA.
53. Therefore the proposed amount of parking is supported as the site and surrounding street system have an adequate capacity to support the proposal.
54. The operational functioning of the proposed place of public worship warrants the preparation of a Plan of Management, particularly to ensure that all of the spaces indicated in the application as being used for car parking are available at all times when the premises are in use. A suitable condition for a Plan of Management is included in the Draft Conditions below.

Privacy and Noise Impacts

55. The following amenity mitigation measures are proposed:

- There will be a microphone, live music and singing during the church service. No microphones will be used during bible study.
 - All activities will be held indoors, and staff will be responsible for the behaviour of parishioners to ensure they leave the premises in a quiet and orderly manner. There will also be signage to the same effect.
 - Music to be played shall be noise limited at a volume that is barely audible on the eastern boundary.
 - Internal lighting shall be shut off by staff at close of services.
 - Windows and external doors will be closed during services.
 - Parishioners will not be allowed to gather outside the building before or after services. There will also be signage to the same effect.
 - There will be a complaints register and management.
 - Staff will be responsible for waste management and will be serviced by a commercial contractor.
56. The proposed mitigation measures are considered to be acceptable and will be imposed as a condition of consent.

Waste Management

57. Staff will be responsible for waste management and will be serviced by a commercial contractor, which is acceptable.

IMPACTS

Natural and Built Environment, Social and Economic Impacts

58. The proposed development is of a scale and character that is in keeping with the locality and the developments likely to be constructed within the immediate context and zoning. The proposal requires minimal excavation and will not alter the topography of the site, with the majority of works being internal. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality. The proposal is unlikely to cause any unreasonable social and/or economic impacts.

Suitability of the site

59. It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

SUBMISSIONS AND THE PUBLIC INTEREST

60. The proposal was notified to adjoining neighbours for a period 11 January to 8 February 2018. A total of twenty seven (27) submissions were received. The issues of concern are summarised and discussed as follows.

61. Car Parking

There will be increased traffic on the street and parking issues. It is a daily struggle to find parking. The use will conflict with the Rogerson Dance Studio and the Kids Adventure Play and Party Place. There will be a safety problem with so many cars and kids in the area.

Comment: Issues relating to car parking provision are discussed in detail in the DCP compliance section of this report above. It is considered that the development is acceptable in terms of car parking arrangements.

62. Traffic

Concern is raised that the development will generate additional traffic.

Comment: As noted throughout this report, the DA has been supported by a Traffic Assessment report (which is Attached to this report). In relation to traffic generation, the Traffic report states:

To calculate the traffic generation of the site the parking requirement for a maximum capacity of 80 seats is equivalent to a car occupancy of 5.3. However, it is considered that approximately 80% of people will travel to the site via private vehicle equates to a car occupancy of 4.3, this directly translates into a parking demand of 1 spaces per 4.3 seats under the parking requirements of Council's DCP. Noting that visitors to the site are expected to stay for more than one (1) hour, the trip generation of the proposed Place of Public Worships is expected to be: 15 vehicle trips (15 in; 0 out) during the weekend peak period This is considered to be a negligible amount of traffic in an industrial precinct which on a standard weekday accommodates significantly more traffic, including heavy vehicles. Therefore the proposed traffic impacts are considered to be acceptable and proposed development supportable.

63. Noise

Concern is raised regarding potential noise impacts from the proposed development.

Comment: The potential for noise issues has been considered by Council's Environmental Health Officer, including a review of the Acoustic Report submitted with the DA. Subject to the recommendations of the Acoustic Report (which are included earlier in this report), Council's Environmental Health Officer raises no objection to the proposal, subject to noise mitigation measures being imposed as conditions of consent .

64. Mosque

Many of the objections have raised concern regarding potential use of the premises as a mosque, in particular the Islamic call to prayer which occurs on Fridays is not mentioned in the DA documentation.

Comment: The DA is for the use of the premises as a Christian Church known as the Hope Alive Church. The days and times of operation, as listed in the DA documentation, is outlined throughout this report. The premises are not proposed to be used as a Mosque.

REFERRALS

Council Referrals

65. Environmental Health Officer

The DA was referred to Council Health Unit who advised that the proposal is acceptable subject to conditions regarding noise, lighting, amenity of the neighbourhood, food preparation, and storage of goods.

66. The Environmental Health Officer has provided additional comment regarding potential site contamination issues

67. Traffic -

The DA was referred to Council's Traffic Engineer who advised that the proposal swept paths of the parking spaces is acceptable. However the proposal does not comply with the on-site parking requirements. This issue has been discussed above under the assessment of the Hurstville DCP – car parking.

CONCLUSION

68. The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relative State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The proposed development achieves an acceptable level of compliance with those requirements and does not cause any unreasonable impacts upon neighbouring properties and/or the streetscape.

69. The application was notified in accordance with the Development Control Plan. Although a large number of submissions were received (27 submissions), these can be summarised down to 4 key issues – namely parking requirements, traffic generation, noise and the potential use of the premises as a Mosque. These issues of concern do not warrant refusal of the application and the proposal is acceptable in terms of these issues as discussed throughout this report.

70. The main issue of concern relates to car parking provision. However the development is considered to be satisfactory in this regard as discussed in the body of this report.

DETERMINATION AND STATEMENT OF REASONS

71.

Statement of Reasons

1. The proposed development is permissible within the zoning of the site under the Hurstville LEP 2012.
2. The proposal is consistent with the objectives of the applicable environmental planning instruments, being Hurstville Local Environmental Plan 2012.
3. The proposed development is considered to be of an appropriate scale for the site and character of the locality, subject to conditions to protect the surrounding amenity.

4. In consideration of the aforementioned reasons, the proposed development is a suitable response to the site and its approval is in the public interest.
72. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Council approves Development Application DA2017/0567 for use of existing warehouse as a place of public worship - church at Lot 129 DP 7148 and known as 29 Barry Avenue, Mortdale, in accordance with the following conditions:

Section A Development Details

1. **Approved Plans** - The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Revision	Prepared by
Site Plan	Sheet 1	October 2017	-	-
Ground Floor Plan	Sheet 2	October 2017	-	-

Section B Prior to the Issue of a Construction Certificate

2. **Fire Safety Measures prior to Construction Certificate** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a Certifying Authority. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or Certifying Authority will then issue a Fire Safety Schedule for the building.
3. **Acoustic Requirements - Compliance with submitted Acoustic Report** - The Construction Certificate plans shall demonstrate compliance with the Acoustic Report submitted and approved by Council, titled 'Environmental Noise Impact Assessment Proposed Church 29 Barry Avenue, Mortdale, Ref: 171129, dated 21 December 2017 and prepared by DK Acoustics Pty Ltd.
4. **Design Changes** - The following design changes are required and are to be incorporated into the plans to be lodged with the Construction Certificate application.

Car Parking	The loading area of warehouse 2 shall be used a car parking for the subject church.
Encroachment of structures	No part of any structure (including gutters and eaves) may encroach or overhang any property boundary.
Landscaping	Landscaping shall be provided between car parking spaces 5 and 6 and the front boundary.
Front Fencing	Fencing have a height of 1m shall be installed between the front boundary and car parking spaces 5 and 6, and is to avoid the swept path of these parking spaces. The fencing is to be of a style and colour which is compatible with the existing building.

5. **Plan of Management – Car Parking** - A Plan of Management in relation to car parking, shall be submitted to Council for consideration and approval prior to the issue of any **Construction Certificate**. The Plan of Management shall include full details in relation to the following matters:
- A minimum of eight (8) car spaces are to be provided on-site for the proposed development.
 - Details on how it is intended to ensure that all required car spaces are to be made available for the proposed development. In particular in relation to the spaces to be located in the loading areas of existing buildings.
 - Details on how arrangements are to be made for access to be provided to any car space that may from time to time be blocked by another car space (such as use of loading area car spaces that may block external car spaces).
 - Any other relevant matter related to the provision of on-site car parking.

Section C During Construction

6. **Hours of construction, demolition and building related work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity shall be permitted to be performed on any Sunday, Good Friday, Christmas Day or any Public Holiday. A penalty infringement notice may be issued for any offence.

In addition to the foregoing requirements, construction work on all buildings (except that on single dwelling houses and associated structures on the site of a single dwelling house) shall be prohibited on Saturdays and Sundays on weekends adjacent to a public holiday.

7. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act and/or under Section 68 of the Local Government Act 1993. Penalty Infringement Notices may be issued for any offences and severe penalties apply.
8. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the Principal Certifying Authority and a copy provided to the Manager Environmental Services, Hurstville City Council.

Section D Prior to the Issue of the Occupation Certificate

9. **Acoustic Compliance** - Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled "Environmental Noise Impact Assessment Proposed Church 29 Barry Avenue, Mortdale Ref: 171129", dated 21 December 2017 and prepared by DK Acoustics Pty Ltd.

10. **Car Park Compliance** - Prior to the issue of any Occupation Certificate, a report shall be prepared and submitted by a suitably qualified and practising Traffic Engineer stipulating that all on-site car parking spaces, manoeuvrability of vehicles, pedestrian access, and access to and from the site complies with AS2890: Parking Facilities. Details shall be submitted to the satisfaction of the Principal Certifying Authority.
11. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the Regulation. The Fire Safety Certificate must be in the form required by Clause 174 of the Regulation. In addition, each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate must state:
 - (a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.
 - (b) That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the attached Schedule.

A copy of the certificate is to be given (by the owner) to the Commissioner of Fire and Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.
12. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate.

Section E Operational Conditions (Ongoing)

13. **Hours of operation** - The approved hours of operation shall be restricted to the following:

Sunday	Church service between 9.00am and 2.00pm (maximum eighty (80) persons attending)
Wednesday:	Bible Study between 8.00pm and 9.30pm (maximum fifteen (15) persons attending)
14. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the [Protection of the Environment Operations Act 1997](#) (as amended).
15. **Final Acoustic Report – Verification of Noise report** - Within three months from the issue of an Occupation Certificate, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the [EPA's Industrial Noise Policy](#) and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report (submitted by Day Design Pty Ltd, titled "Environmental Noise Impact Assessment Proposed Church 29 Barry Avenue, Mortdale Ref: 171129", and dated 21 December 2017 and prepared by DK ACOUSTICS PTY LTD are effective in attenuating noise to an acceptable noise level and that the use is not calculated to give rise to 'offensive noise' as defined under the provision of the [Protection of the Environment](#)

[Operation Act 1997](#) (as amended).

16. **Lighting - General Nuisance** - Any lighting on the site shall be designed in accordance with AS4282 – Control of Obtrusive Effects of Outdoor Lighting and not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill.
17. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
18. **Storage of goods outside buildings** - There shall be no storage of any goods external to the building with the exception of waste receptacles.
19. **Noise Control** - The use of the premises must not give rise to the transmission of 'offensive noise' to any place of different occupancy. 'Offensive noise' is defined in the Protection of the Environment Operations Act 1997 (as amended).
20. **Food** – No food is permitted to be prepared or offered for sale on the subject site.
21. **Annual Fire Safety Statement** - In accordance with Clause 177 of the Environmental Planning and Assessment Regulation, 2000 the owner of the building premises must cause the Council to be given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
 - (a) Within twelve (12) months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within twelve (12) months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation, 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire and Rescue NSW, and a further copy is to be prominently displayed in the building.
22. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained on an ongoing basis. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control and any other operations required to maintain healthy trees, plants and turfed areas.
23. **Waste Storage Containers – Commercial/Industrial** - Appropriate waste and recycling containers and facilities will need to be provided for all specific end use businesses in accordance with the following waste generation rates:
 - (a) Retail Trading – shops, to 100 square metres - 0.1-0.2 cubic metres per 100 square metres of floor area per day;
 - (b) Restaurants and Food Shops – 0.3-0.6 square metres per 100 meals, plus up to 0.15 cubic metres of beverage containers per 100 meals; and,
 - (c) Office – 0.01-0.03 cubic metres per 100 square metres of floor area per day.

All waste and recycling containers shall be stored in an approved waste storage area that is large enough to store the required number of bins, appropriate for the number of units and intended uses of the building, and is to be located in an area of the building that can be adequately serviced by waste collection vehicles.

If the Waste Storage Area is located in a part of the building that cannot be easily accessed by service providers, it will be the responsibility of the Building Operator to present the bins for collection to the kerb-side.

Details of the Waste Storage Area must be illustrated on the plans submitted with the application for the Construction Certificate.

Section F Operational Requirements Under the Environmental Planning and Assessment Act 1979

24. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

An application form for a **Construction Certificate** is attached for your convenience.

25. **Appointment of a Principal Certifying Authority** - The erection of a building must not commence until the beneficiary of the development consent has:

- (a) appointed a Principal Certifying Authority (PCA) for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner-Builder.

If the work is not going to be undertaken by an Owner-Builder, then the beneficiary of the consent must:

- (a) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the Home Building Act 1989) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (b) notify the PCA of the details of any such appointment; and
- (c) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

An **Information Pack** is attached for your convenience should you wish to appoint Georges River Council as the Principal Certifying Authority for your development.

26. **Notification of Critical Stage Inspections** - No later than two (2) days before the building work commences, the PCA must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

27. **Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days' notice to the Council and the PCA of their intention to commence the erection of a building.

A **Notice of Commencement Form** is attached for your convenience.

28. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.
29. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.

Where Hurstville City Council has been appointed PCA, forty eight (48) hours' notice in writing, or alternatively twenty four (24) hours' notice by facsimile or telephone, must be given to when specified work requiring inspection has been completed.

30. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

Only the Principal Certifying Authority appointed for the building work can issue the Occupation Certificate.

An **Occupation Certificate** Application Form is attached for your convenience.

Section G Prescribed Conditions

31. **Clause 98 – Building Code of Australia** - Requires all building work to be carried out in accordance with the Building Code of Australia.
32. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifying Authority and the Principal Contractor.
33. **Clause 98B – Home Building Act 1989** - If the development involves residential building work under the Home Building Act 1989, no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the Home Building Act 1989.
34. **Clause 98E – Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

END OF CONDITIONS

NOTES/ADVISES

35. **Review of Determination** - Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should

a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

36. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
37. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended
38. **Health - Acoustical Engineer Contacts and Reference Material** - Further information including lists of Acoustic Engineers can be obtained from:

- **Australian Acoustical Society**-professional society of noise-related professionals: www.acoustics.asn.au
- **Association of Australian Acoustical Consultants**-professional society of noise related professionals: www.aaac.org.au
- NSW Industrial Noise Policy - Office of Environment & Heritage: www.environment.nsw.gov.au

39. **Health - Noise - Advice**

Noise related conditions - Council will generally enforce noise related conditions in accordance with the *Noise Guide for Local Government* (www.environment.nsw.gov.au/noise/nglg.htm) and the *Industrial Noise Guidelines* (www.environment.nsw.gov.au/noise/industrial.htm) publish by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links relating to Noise:

- **Community Justice Centres** - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- **Department of Environment and Conservation NSW**, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- **New South Wales Government Legislation** home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).
- **Australian Acoustical Society** - professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
- **Association of Australian Acoustical Consultants** - professional society of noise related professionals (www.aaac.org.au).
- **Department of Gaming and Racing** - (www.dgr.nsw.gov.au).

40. **Building - Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction

Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justify the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

ATTACHMENTS

Attachment [↓](#)1 Site Plan - 29 Barry Avenue Mortdale

Attachment [↓](#)2 Proposed floor plan - 29 Barry Avenue Mortdale



REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 18 OCTOBER 2018

LPP Report No	LPP050-18	Development Application No	DA2017/0528
Site Address & Ward Locality	64 Algernon Street Oatley Blakehurst Ward		
Proposed Development	Alterations and additions to dwelling house		
Owners	Mr Z Younes		
Applicant	Scope Building Design		
Planner/Architect	Scope Building Design		
Date Of Lodgement	1/11/2017		
Submissions	Five (5) in total. Four (4) to the original DA lodgement, one (1) further submission to the amended plans		
Cost of Works	\$750,000		
Local Planning Panel Criteria	Conflict of interest provisions		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013 State Environmental Planning Policy (BASIX) 2004; SEPP 55 – Remediation of Land; SEPP (Vegetation in Non-Rural Areas) 2017 Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment		
List all documents submitted with this report for the Panel's consideration	Architectural Plans		
Report prepared by	Team Leader Development Assessment and Independent Assessment		

Recommendation	That the application be refused in accordance with the reasons included in the report
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - proposal involves variation to the height and floor space ratio controls listed in Kogarah LEP

	2012
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, the recommendation of this report is refusal

Stie Photo**Executive Summary****Proposal**

1. The Development Application (DA) proposes alterations and additions to the existing dwelling house at 64 Algernon Street, Oatley.
2. Originally, the DA proposed an extension to the existing first floor, as well as balcony extensions to the ground floor and lower ground floor and construction of a Balinese Retreat and new swimming pool within the rear setback area. However, the DA has been amended to delete the Balinese retreat and swimming pool from the amended plans.

Site and Locality

3. The site has a street address of 64 Algernon Street, Oatley, and is legally described as Lot 6, Section 37 in Deposited Plan 4868. The property is located on the southern side of Algernon Street, and has a rear waterfront boundary to the Georges River.
4. The site is slightly irregular in shape, with a northern boundary width to Algernon Street of 15.445m, an eastern side boundary length of 70.95m, a western side boundary length of 69.20m, and a site area of 1,097sqm.

5. The site experiences a steep fall of approximately 35m from the front boundary to the rear, which equates to an average gradient of 1:2.
6. The site currently contains a rendered brick three (3) storey dwelling house with a metal roof and a detached brick boat shed with a metal roof located within the foreshore area to the rear of the site. Connected to the boat shed is a stone boat ramp and a timber walkway to a pontoon within the Georges River.
7. As demonstrated in the photographs captured during the site inspection (contained in the body of the report), surrounding development in the immediate locality consists of a mix of detached dwelling houses in a predominantly low density residential setting.

Zoning and Permissibility

8. The subject site is zoned R2 Low Density Residential under Kogarah LEP 2012, and the proposed development is permissible with development consent.

Submissions

9. A total of five (5) submissions were received regarding this DA.
10. The original DA plans were notified as per Kogarah DCP 2013, and four (4) submissions of objection were received.
11. Amended plans were received and re-notified to neighbours. One (1) further submission was received in relation to the amended plans.
12. The following is a summary of the objections raised in the submissions:
 - Insufficient levels of information provided on the submitted plans;
 - Non-compliant building height;
 - Excessive bulk and scale of the development as a result of the proposed Balinese Retreat and swimming pool;
 - Solar access impacts to the adjoining property at 62A Algernon Street;
 - Elevated Balinese Retreat and swimming pool area resulting in a loss of privacy.
 - Loss of privacy as a result of the excessive width of balconies;
 - Inconsistency of the new roof structure with the established streetscape character;
 - Visual impacts to the waterway as a result of the excessive use of retaining walls, Balinese Retreat and swimming pool area.
 - Proposed inclinator located significantly above natural ground level with a height of up to 6m resulting in privacy issues to adjoining dwellings.

Reason for Referral to the Local Planning Panel

13. The DA is referred to the Local Planning Panel for consideration, as one of the neighbours to the site is an employee of Council and an objection has been submitted on behalf of this owner. The assessment of this DA and preparation of this report has been undertaken by an Independent Planning Consultant on behalf of Council for probity reasons.

Issues of Concern

14. The main issues of concern in relation to the proposal are non-compliances with Kogarah LEP 2012 in relation to height and floor space ratio. Although amended plans have been submitted by the applicant after being advised of these issues of concern,

the issues have not been satisfied and remain as areas of non-compliance in the amended plans.

15. In particular, the height and floor space ratio would result in related issues of concern in relation to neighbouring properties, such as overshadowing onto properties to the south (62A and 66 Algernon), bulk and scale, and loss of privacy.
16. The proposal also has extensive balcony areas which significantly exceed the maximum sizes prescribed under the DCP provisions, and which will result in adverse privacy impacts upon neighbouring properties.

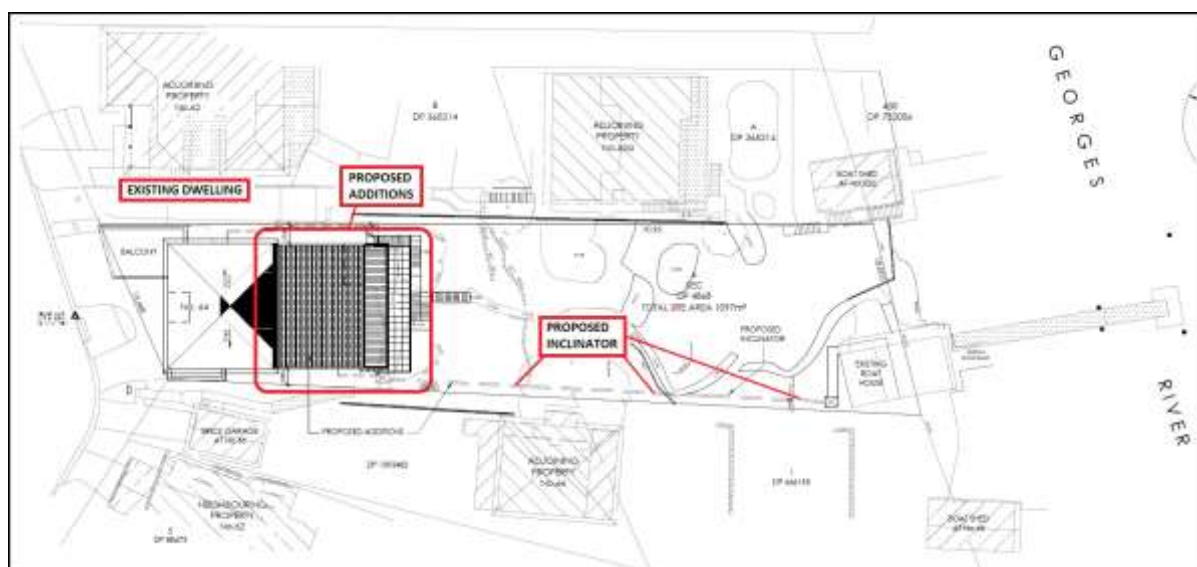
Conclusion

17. Having regard to the Heads of Consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979, Development Application No. DA2017/0528 is not supported for the reasons contained within this report and the recommendation is refusal.

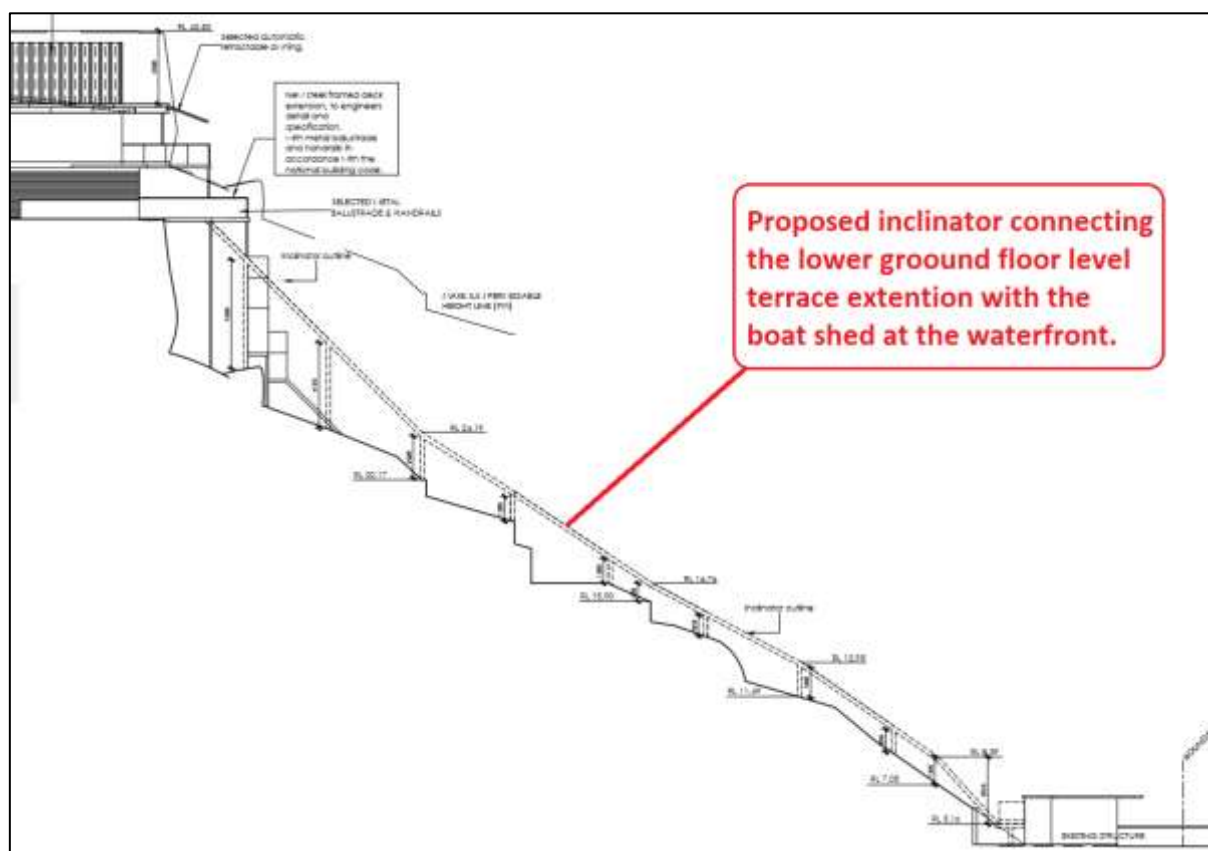
Report in Full

Proposal

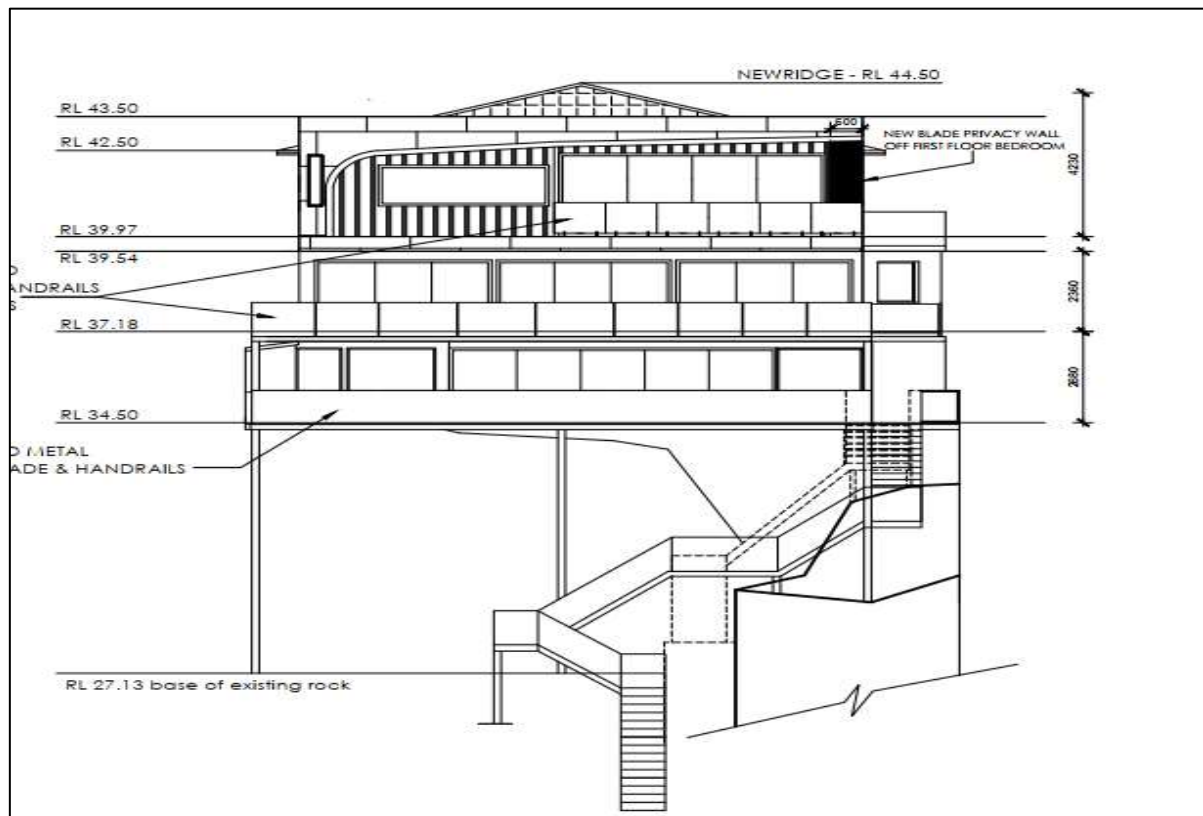
18. The DA proposes alterations and additions to the existing dwelling house, including an extension to the existing first floor as well as balcony extensions to the ground floor and lower ground floor levels. The following is a more detailed description of the proposed development:
 - **First Floor Level:** The extension to the existing first floor is to contain a master bedroom with a walk-in-wardrobe, en-suite bathroom and a new balcony (2.21m x 5.505m) adjacent to the Master Bedroom on the southern elevation of the building.
 - **Ground Floor Level:** The proposal includes an approximate 2.5m southern extension to the balcony on the ground floor which is accessed via the existing living and dining area.
 - **Lower Ground Floor Level:** The proposal also includes an approximate 3.4m extension to the lower ground floor balcony adjacent to the rumpus room. The lower ground floor balcony extension is set to become an outdoor terrace area which includes synthetic grass and stairs facilitating access to an existing stone pathway which leads down to the rear of the subject site.
 - **External:** The proposal seeks consent for installation of an inclinor connecting the proposed lower ground floor level terrace extension with the boat shed adjacent to the waterway boundary.
19. The changes are shown in the following drawings (site plan and elevations of proposal). Floor plans are not included in this report due to privacy reasons, but are included in the document bundle provided to the Panel members.



Site Plan of Proposed Alterations and Additions to Dwelling House
Source: applicant amended DA plans, marked up.



Proposed inclinator that will connect the lower ground floor level to the boat shed located at the rear of the site adjacent to the Georges River waterway.
Source: Applicant DA plans, marked up



Southern elevation drawing of the proposed development when viewed from the rear/Georges River waterway.

Source: Applicant amended DA plans

The Site and Locality

20. The site has a street address of 64 Algernon Street, Oatley, and is legally described as Lot 6, Section 37 in Deposited Plan 4868. The property is located on the southern side of Algernon Street, and has a rear waterfront boundary to the Georges River.
21. The site is slightly irregular in shape, with a northern boundary width to Algernon Street of 15.445m, an eastern side boundary length of 70.95m, a western side boundary length of 69.20m, and a southern rear boundary width to the Georges River of 18.005m. The site area of the allotment is 1,097sqm.
22. The site experiences a steep fall of approximately 35m from the front boundary to the rear, which equates to an average gradient of 1:2.
23. The site currently contains a rendered brick three (3) storey dwelling house with a metal roof. The site also contains a network of steps leading down to a detached brick boat shed with a metal roof that is located within the foreshore area to the rear of the site. Connected to the boat shed is a stone boat ramp and a timber walkway to a pontoon within the Georges River.
24. As demonstrated in the photographs below, surrounding development in the immediate locality consists of a mix of detached dwelling houses in a predominantly low density residential setting located on the Georges River waterfront.



**Subject Site: 64 Algernon Street, Oatley located to the centre-left of frame.
Source: Site Inspection Photo, April 2018.**



**Subject Site: 64 Algernon Street, Oatley. View to the south from the lower ground floor balcony. Noted is the steeply sloping rear setback to the Georges River waterway.
Source: Site Inspection Photo, April 2018.**



Subject Site: 64 Algernon Street, Oatley. View to the north from the boat shed at the rear of the site. This image also shows the steeply sloping rear setback, along with the existing dwelling house
Source: Site Inspection Photo, April 2018.



Adjoining Property - 62 Algernon Street, Oatley. Photograph captured from Algernon Street looking toward the adjoining property to the east of the subject site in the centre-left of frame. Garage of the subject site to the right of frame.
Source: Site Inspection Photo, April 2018.



**View from the rear setback of the subject site toward the north-east. In the centre-right of frame is the southern elevation of the adjoining battle-axe property at: 62A Algernon Street, Oatley. To the upper left corner of the frame is the existing dwelling house on the subject site.
Source: Site Inspection Photo, April 2018.**



**Adjoining property 68 Algernon Street, Oatley. Photograph captured from Algernon Street looking south toward the adjoining dwelling house.
Source: Site Inspection Photo, April 2018.**



View to the south west from the lower ground floor level balcony on the subject site. In the centre of frame is the adjoining dwelling house at 66 Algernon Street.

Source: Site Inspection Photo, April 2018.



View from the rear setback of the subject site to the north. To the centre left of frame is the adjoining dwelling house at 66 Algernon Street, Oatley. To the centre right of frame is the dwelling house on the subject site.

Source: Site Inspection Photo, April 2018.

Background

25. The following is a brief summary of the processing of this DA.
26. 1 November 2017 – The subject DA was submitted with Council. Shortly after, neighbour notification and referral to internal officers was undertaken.
27. 15 November 2017 to 29 November 2017 – The application was placed on neighbour notification in accordance with KDCP2013. In response, four (4) submissions objecting to the development were received from the neighbouring properties.
28. April 2018 – Due to an adjoining property being in the ownership of a Council staff member, for probity reasons the assessment of the DA was assigned to an Independent Planning Consultant for assessment on behalf of Council.
29. 11 April 2018 – Site inspection undertaken with land owner. Site photographs captured for the purposes of the DA assessment.
30. 26 April 2018 – Following an assessment of the DA, an additional information letter was sent to the applicant with a request for amended plans to address the following matters:
- Insufficient finished and existing levels were provided on the drawings to enable a proper assessment of the proposal's building height.
 - From the information provided, it was apparent that the proposal exceeded the building height development standard of 9m under clause 4.3 KLEP2012.
 - Although a written request to vary the building height development standard under clause 4.6 of the KLEP2012 had been submitted, the written request failed to demonstrate that compliance was unreasonable or unnecessary, and that there were sufficient environmental planning grounds to justify the variation.
 - The proposal was non-compliant with the maximum floor space ratio (FSR) when having regard to clause 4.4A 'Exceptions to floor space ratio for residential accommodation in Zone R2'
 - There was no written request received by Council to vary the FSR development standard under clause 4.6 of the KLEP2012.
 - The proposal included works within the foreshore area that were considered excessive – ie planter boxes, stairs and retaining walls associated with the elevated pool, Balinese retreat and associated terrace area. The appearance of the Balinese retreat and swimming pool structure from the waterway was not supported when having regard to clause 6.4 of the KLEP2012.
 - The proposal was non-compliant with the maximum 9m ridge and 7.2m ceiling height controls within Part C1, Clause 1.2 of the KDCP 2013.
 - Clarification was sought to confirm the extent of the ground floor area that was not accurately depicted on the plans submitted in order to confirm the existing area did not include additional areas that may constitute gross floor area.
 - The applicant was advised that any amended proposal must accurately detail the gross floor area of the portion of the boatshed situated above MHWL.

- At 119.14sqm, the dimensions and cumulative area of the proposed balconies/terraces exceeds the 40sqm control contained within Part C1, Clause 1.5.1 KDCP2013.
- The proposal contravened the objectives of the foreshore and waterfront development controls within the KDCP2013 which seek to minimize the visual impact of development from adjoining land and the waterway.
- The proposed inclinor and stairs did not appear to be as close as practical to natural ground level, and were non-compliant with the maximum width covered under Part C4, Clause 6.9 of KDCP2013.
- At three storeys, the proposal was non-compliant with the two (2) storey maximum for a dwelling house covered under Part C4, Clause 10.9 KDCP 2013.
- The proposed swimming pool had not been situated as close to natural ground levels as possible, and the height of the terrace area surrounding the pool was significantly greater than the maximum 1m height above the existing ground level under Part C1, Clause 4.6 DCP 2013.
- Insufficient information was included on the plans to confirm whether or not the proposal exceeds the 500mm maximum height for coping levels above natural or existing ground level, Part C3, clause 6.6 of KDCP2013.
- Non-compliances were identified with the controls for retaining walls, namely the 600mm maximum height control under Part C2, Clause 3.2 and Part C4 Clause 10.7 KDCP2013.
- Concerns regarding the visual impact of the development given the height, bulk and scale of the proposal, as per Part C3 and C4 KDCP 2013.
- The impact of the development on the privacy, amenity, outlook and levels of solar access received by adjoining properties was raised as a concern that needed to be addressed in any amended plans.
- The artist's impression was grossly inaccurate, namely in terms of the location of existing buildings and the relationship of the proposal to adjoining development.

The applicant was given twenty one (21) days in which to undertake the relevant design changes and resubmit amended plans to Council.

31. 11 May 2018 – The consultant town planner conducted a meeting with the applicant on site in order to discuss the design changes that would need to occur in order to achieve better compliance with the relevant standards and controls outlined within KLEP2012 and KDCP2013.
32. 22 May 2018 - The applicant submitted amended plans which included the deletion of the Balinese Retreat, swimming pool and retaining walls within the rear setback area. The amended plans failed to address the other items raised in the additional information letter.
33. 2 July 2018 - A meeting was held at Council chambers between Council's assessment officers, the consultant town planner, the applicant and the applicant's architect. In the

meeting the applicant was advised of the outstanding issues with the proposed DA, as well as suggested amendments to the plans to better achieve compliance with the relevant development standards and controls.

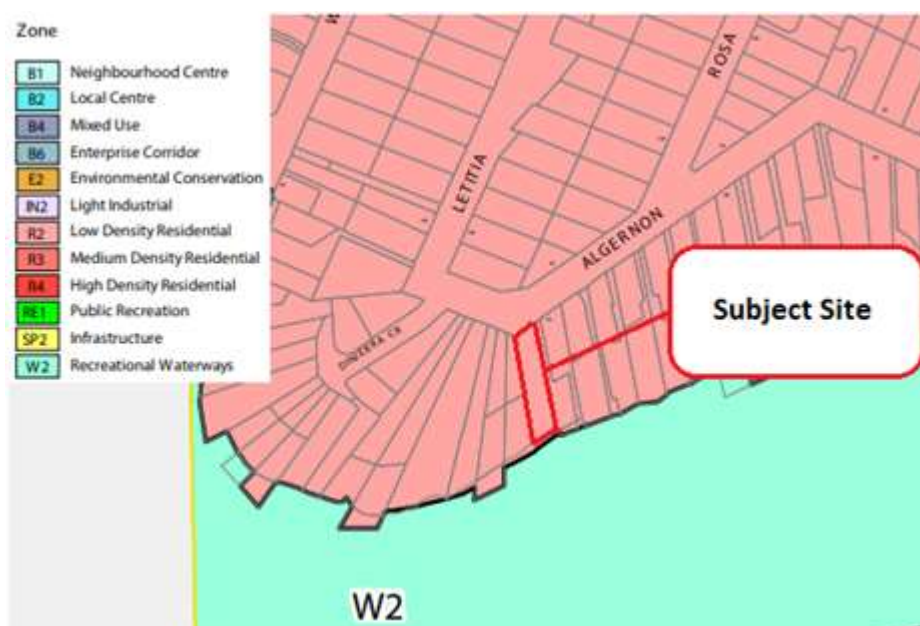
34. 23 August 2018 - The applicant submitted amended plans. These were re-notified for a period from 3 to 17 September 2018. One (1) submission was received in relation to the amended plans. This submission was however a copy of the submission made in relation to the notification of the originally lodged DA in November 2017.
35. 26 September 2018 - Correspondence was provided to Council from the consultant town planner that the amended plans had failed to satisfactorily address the matter raised in the additional information letter, and as discussed with the applicant at the site inspection (April 2018) and subsequent meetings (July 2018).
36. This assessment report herein is based on the amended plans submitted by the applicant on the 23 August 2018.

PLANNING ASSESSMENT

37. The site has been inspected and the proposed development has been assessed under the relevant Section 4.15(1) Matters for Consideration under the Environmental Planning & Assessment Act 1979.

Zoning and Permissibility

38. The site is zoned R2 – Low Density Residential under *Kogarah Local Environmental Plan 2012* (KLEP2012). This is shown graphically in the following drawing:



Kogarah LEP 2012 Zoning Map. Source: legislation.nsw.gov.au

Relevant Planning Controls in Kogarah LEP 2012

39. The extent to which the proposal complies with the relevant standards of Kogarah LEP 2012 is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 2 - Permitted or Prohibited	R2 Low Density Residential	The proposed alterations and additions to the existing dwelling house	Yes

Development		are permitted in the zone.	
	Objectives of the Zone	The proposal is not consistent with the objectives of the zone.	No – see discussion below.
4.3 - Height of Buildings	9m as identified on Height of Buildings Map	Building height of first floor addition at least 9.05m . Height of balustrade on the ground floor balcony 10.07m .	No – see discussion below.
4.4A(2) Exceptions to floor space ratio for residential development in the zone R2.	(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause. less than 1,500 square metres but not less than 1,000 square metres – (site area – 1000) x 0.15 + 442.5.	The proposed development is for the purposes of residential development, and the subject site is located within the R2 zone. Therefore clause 4.4A applies to the subject DA. $1,097 - 1,000 \times 0.15 + 442.5 = 457.05\text{sqm}$ FSR applicable for subject site – 0.417:1 Maximum GFA – 474.75sqm. Proposed FSR – 0.43:1 which is a 3.12% variation to the standard.	No – see discussion below.
5.10 – Heritage Conservation	Heritage impact statement required if site involves heritage item	Site does not contain or adjoin a heritage item	N/A
6.1 – Acid Sulfate Soils	Acid Sulfate Soils Management Plan must be prepared	Site not affected by acid sulphate soils	N/A
6.2 – Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land	The proposal does not necessitate the need for any significant excavation works to take place.	Yes

6.4 – Limited Development on foreshore area.	(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.	The amended DA will not impact on the foreshore area. An inclinator is proposed from the lower ground floor balcony to the existing boat shed. However this is not anticipated to impact on natural foreshore processes or the significance/amenity of the area.	Yes
	(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes: (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,	The proposed inclinator will replace an existing inclinator, and as such would constitute the rebuilding of an existing building. The inclinator is however proposed to connect with the lower ground level terrace that is approximately 7.5m above the existing ground level and as such is considered excessive.	No – see comment below.
	b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,	The proposed inclinator will replace an existing inclinator, however the excessive height where the inclinator connects to the dwelling house is not supported.	No
	(c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.	It is noted, a new concrete path from the inclinator landing to the boat shed at floor level is proposed at the rear of the site within the foreshore area. These minor works are considered to provide access to the existing brick boat shed within the foreshore area.	Yes
	(3) Development		

	consent must not be granted under this clause unless the consent authority is satisfied that: (a) the development will contribute to achieving the objectives for the zone in which the land is located, and;	Excessive height of inclinators where it connects to the lower level terrace is not supported.	No
	(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and (iii) an adverse effect on drainage patterns, and	See comment above.	No
	(c) the development will not cause environmental harm such as: (i) pollution or siltation of the waterway, or (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or (iii) an adverse effect on drainage patterns,	The proposed alterations and additions will not cause pollution. Building works partly located within the foreshore building area. Considered not to affect drainage patterns.	N/A N/A N/A
	(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and	The development does not result in congestion.	Yes
	(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and	No extensive building works are located within the foreshore building area that will compromise access to the waterway.	Yes
	(f) any historic, scientific, cultural, social, archaeological,	The subject land does not contain any historic, cultural, social,	N/A

	architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and	archaeological significance.	
	(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and	Excessive height of proposed inclinators where it connects to the lower level terrace is not supported.	No
	(h) sea level rise or change of flooding patterns as a result of climate change has been considered.	Refer above.	N/A

Summary of Non-Compliances with KLEP2012

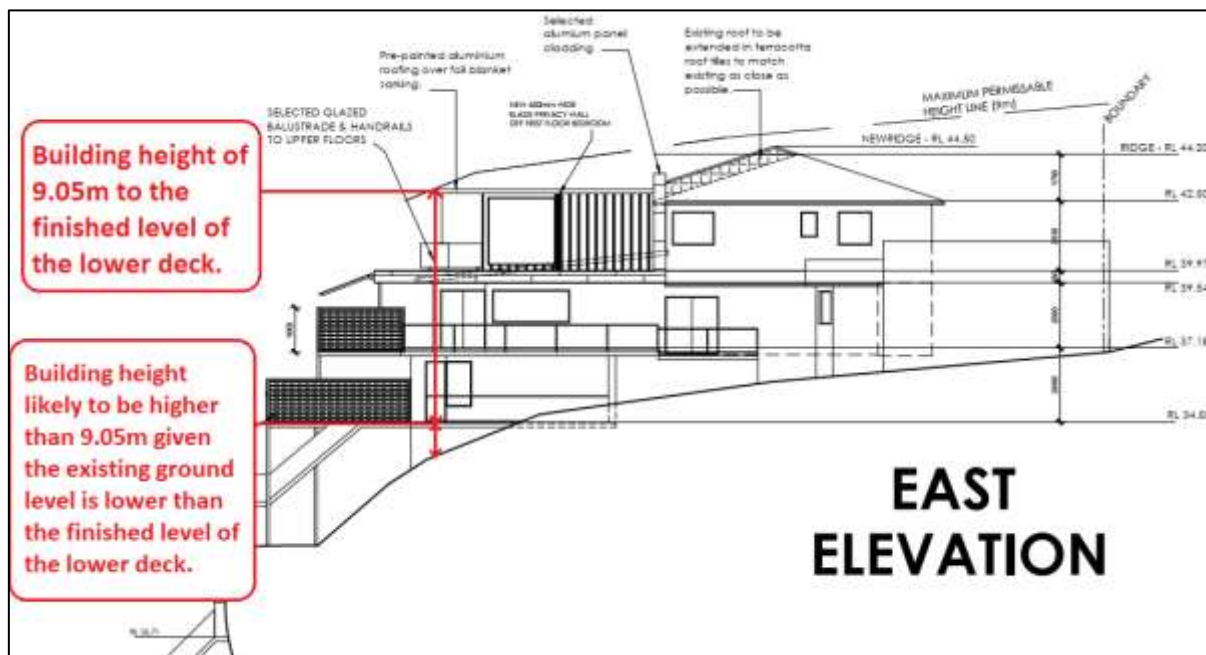
Clause 2.3 Zone objectives and Land Use Table

40. Clause 2.3(2) states that the consent authority must have regard to the objectives for development in a zone when determining a DA in respect of land within the zone.
41. The site is located within Zone R2 Low Density Residential. The objectives of this zone under the KLEP2012 are:
- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of resident
42. As demonstrated within the table above, the proposed development fails to achieve compliance with clause 4.3 'height of buildings' and clause 4.4A 'exceptions to floor space ratio for residential accommodation in Zone R2'. Both of these development standards essentially seek to control the bulk and scale of buildings to ensure development remains sympathetic to the character of the local area. As such, it is contended the proposal fails to provide for the housing needs of the community within a *low density* residential environment.

Clause 4.3 Height of Buildings

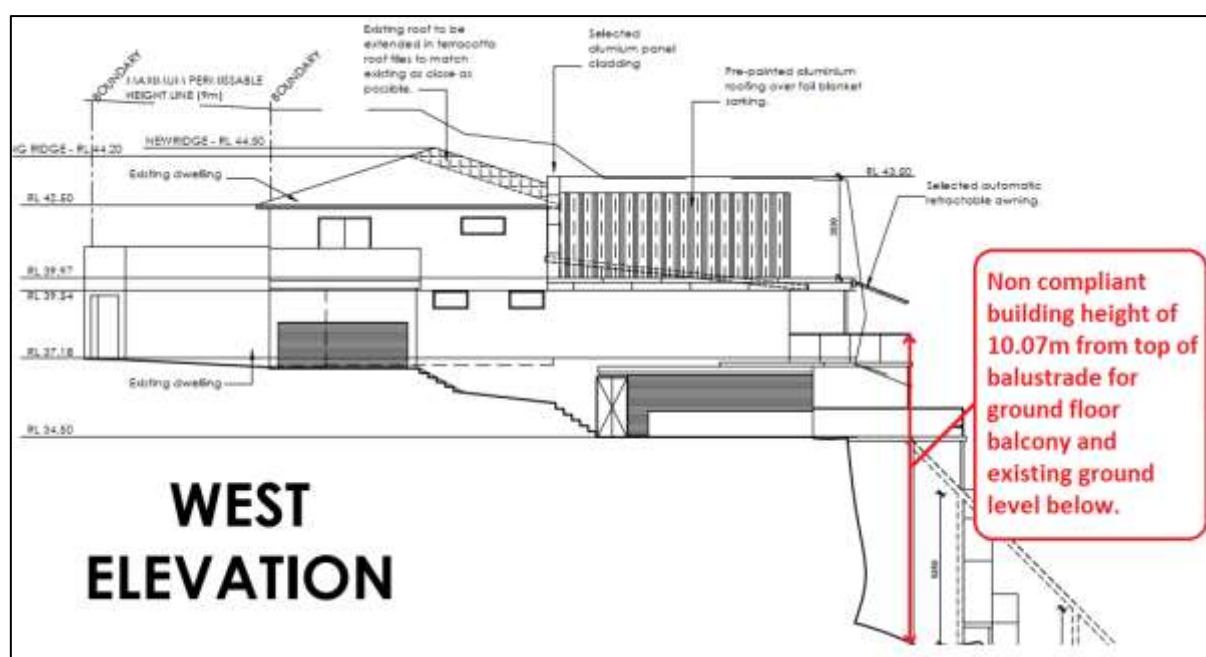
43. Clause 4.3 of KLEP2012 states that the height of a building is not to exceed the maximum height shown for the land on the *Height of Buildings Map*, which prescribes 9m height limit for the subject site.

44. On the eastern elevation, the roof over the balcony adjacent to the master bedroom is at RL43.50. The floor level of the lower ground balcony below is shown on the survey at RL34.45, resulting in a height of **9.05m**, which is non-compliant. However as per the eastern elevation of the submitted drawings this balcony is raised above existing ground level, and as such the building height at this point would exceed **9.05m**.
45. Also, that the top of the balustrade on the ground floor balcony (RL38.18) has been located **10.07m** above existing ground level (RL28.11) and is also non-compliant with the maximum 9m height control specified within KLEP2012.
46. These are illustrated on the following drawings.



Extract of the eastern elevation showing the non-compliant building height.

Source: Applicant DA plans, marked up.



Extract of the western elevation showing the non-compliant building height associated with the balustrade of the ground floor balcony extension.

Source: Applicant DA plans, marked up.**Clause 4.6 – Exceptions to development standards**

47. Clause 4.6(2) of KLEP 2012 states:

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

49. Comment: Clause 4.3 is not a development standard that is expressly excluded, and as such clause 4.6 applies.

50. Clause 4.6(3) of KLEP 2012 covers:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

51. Comment: The applicant submitted at clause 4.6 written request with the original submitted plans. However, no such clause 4.6 written request has been included as part of the applicant's amended plans. Instead, a written response letter has been issued to Council from the applicant's consultant town planner indicating that the proposal has been amended to fully comply with the height standard.

52. In the absence of a written request to consider in relation to the contravention of the development standard, consent must not be granted to the DA per clause 4.6(3) of the KLEP2012.

53. It is noted the matter of the proposal's building height non-compliance has been raised with the applicant throughout the assessment of this DA – refer to History section earlier in this assessment report.

54. Irrespective of the absence of a written request, the assessment has determined that the proposal generally fails to exhibit anything that would suggest compliance with the development standard was unreasonable or unnecessary, or that there were sufficient environmental planning grounds to justify the variation. The proposal will result in a visual impact, overshadowing and loss of privacy to adjoining dwellings and therefore is not considered to be in the public interest.

Clause 4.4A (2) Exceptions to floor space ratio for residential accommodation in Zone R2

55. The applicant's written response to Council's additional information letter indicates that the amended development has an FSR of 0.45:1 and complies with the development standard of 0.55:1. As covered within the compliance table above, the correct application of the formulae under clause 4.4A of KLEP2012 means a FSR control of 0.417:1 applies to the subject site.

56. The assessment has calculated the FSR of the proposal to be 0.43:1, and therefore a 3.2% variation to the FSR development standard contained under clause 4.4A of the KLEP2012.
57. In the absence of a written request to consider in relation to the contravention of the development standard, consent must not be granted to the DA per clause 4.6(3) of the KLEP2012.
58. It is noted the matter of the proposal's FSR non-compliance has been raised with the applicant throughout the assessment of this DA – refer to History section earlier in this assessment report.

State Environmental Planning Policies

59. Compliance with the relevant state environmental planning policies is summarised in the table, and discussed in more detail below.

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes

Deemed State Environmental Planning Policy – Georges River Catchment

60. All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

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

61. A BASIX Certificate has been issued for the proposed development and the commitments required under the certificate have been satisfied.

State Environmental Planning Policy No 55 - Remediation of Land

62. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
63. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
64. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regards to site contamination.

Remediation of Land SEPP

65. The Department of Planning and Environment ('DPE') has announced a Draft Remediation of Land SEPP ('Draft SEPP') which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land ('SEPP 55').

66. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
67. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land.
68. The subject site has a history of residential use and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regards to site contamination.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

69. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
70. The Vegetation SEPP applies to clearing of:
 - a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
71. The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.
72. The proposed development does not involve the removal of any significant trees or vegetation. In this regard, the provisions of this SEPP are considered to be met.

Draft Environmental Planning Instruments

Draft Environment SEPP

73. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
74. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
 - Changes proposed include consolidating the following seven existing SEPPs:
 - State Environmental Planning Policy No. 19 – Bushland in Urban Areas
 - State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
 - State Environmental Planning Policy No. 50 – Canal Estate Development
 - Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
 - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
 - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

75. The proposal is not inconsistent with the provisions of this Draft Instrument.

Development Control Plans

Kogarah Development Control Plan 2013

76. Applies to land within the Blakehurst and Kogarah Bay Wards.

77. The development has been assessed against the requirements of Part C1 – Low Density Housing in Kogarah DCP 2013, as indicated in the following table.

Clause	Standard	Proposed	Complies
Part C1 – Low Density Housing			
1.1 Streetscape Character			
1.1 Streetscape Character	1. A Streetscape Character Analysis (SCA) must be submitted as part of any Development Advisory Service (DAS) application for the following: - New dwellings - Alterations to the front elevation and or two level additions to an existing dwelling - Attached dual occupancy - Detached dual occupancy	The front elevation remains unchanged. However, it is noted that the proposed development includes a new roof ridge extension which is partially viewable from the street. However, the pitched roof design proposed is consistent with adjoining development.	Yes
1.2.1 Floor space Requirements	Less than or equal to 650sqm – 0.55:1	The subject site has an area of 1097sqm according to the site survey.	N/A
	Greater than 1000sqm Less or equal to 1500sqm – (Site Area – 1000) x 0.15 + 442.5	1097-1000 X 0.15 + 442.5 = 457.05sqm Subject Site FSR – (0.417:1) Gross Floor Area – 474.75sqm. Proposed FSR – (0.43:1) which is non-compliant as it exceeds the minimum (0.417:1).	No

	(2) Where a secondary dwelling is proposed, the maximum FSR/floor area includes the dwelling and the attached or detached secondary dwelling. In this regard, the overall development is not to exceed the maximum floor space ratio.	No secondary dwelling is proposed as part of the alterations and additions.	N/A
	(3) Bulk and relative mass is required to be acceptable in terms of the following impacts: (i) streetscape considerations (bulk and scale); (ii) building setbacks; (iii) landscape requirements; (iv) the existence of significant trees/vegetation on site; (v) the size and shape of the allotment; and (vi) topography of the site.	The proposal is considered to be unacceptable in terms of its height and bulk when viewed from adjoining properties.	No
	(4) Where alterations and additions are proposed, and the existing floor space and/or floor space ratio of the development exceeds the maximum requirements, the application will be considered on merit. In these circumstances, Council will not support any increase in the floor area of the development unless it is satisfied that the development will meet the overall objectives of this Part.	The floor space ratio of the proposed development as a result of the alterations and additions has an FSR of 0.43:1 which is non-compliant with the maximum 0.417:1.	No
	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	No blank walls or flat facades proposed. No walls longer than 10m are proposed.	Yes

	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.	The overall building does not present a building mass that is in proportion with allotment size, but rather an over development of the site with a non-compliant FSR of 0.43:1 and also building height.	No
	(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.	The proposed development includes a two/three level residential element, with the second level located within 60% of the depth of the allotment.	Yes
1.2.2 Building Height	The maximum building height must comply with the requirements specified in the table below: Single dwelling – 7.2m to the underside of the upper ceiling	Maximum building height to the underside of the upper ceiling calculated at 8.6m. On the eastern elevation, the underside of the upper ceiling to the master bedroom is at RL43.05. The floor level of the lower level balcony below is shown on the survey at RL34.45. This means the height of the ceiling to the underside of the balcony is 8.6m. However as per the eastern elevation, this balcony is raised above existing ground level, and as such the building height to the underside of the upper ceiling would further	No

	<p>7.8m to the top of the parapet 9m to the top of the ridge (pitched roof)</p> <p>(2) The maximum number of residential levels is two (2), except where the site has a slope exceeding 1:8 (12.5%), where the maximum number of residential levels is three (3).</p>	<p>exceed 8.6m.</p> <p>No parapet proposed. The maximum height of the building from the first-floor addition is at least 9.05m. This has been calculated between the roof ridge height RL 43.50 and finished floor level of the ground floor balcony of RL 34.45. When taking into consideration the existing ground level below this balcony (as shown on the eastern elevation drawings) this building height would be even greater.</p> <p>The proposed development includes the addition of the master bedroom, ensuite, walk in robe and balcony to the first floor which presents a three (3) storey element when viewed from the waterway (southern elevation). However, the sloping nature of the subject site exceeds 1:8.</p>	<p>N/A</p> <p>No</p> <p>N/A</p>
	(3) Regardless of the number of levels, the maximum height of the building must be consistent with the maximum height requirements.	The maximum height of the building is not consistent with the maximum height requirements of 9m.	No
	(4) Foundation areas, garages, basements, storage rooms or the like must not have an external wall height greater than 1m above ground level(existing) at any point on the building.	No new foundation areas, garages, basements or storage areas are proposed as part of the alterations and additions.	N/A
	(5) Where the dominant	The dominant built	N/A

	built form in the streetscape is single level, new buildings and alterations and additions should present as a single level building to the street. Any second level element is to be setback a minimum of 10m from the street boundary.	form in the street is two storeys, however it is acknowledged there are also dwellings with some three storey components.	
	(6) Council may, at its discretion, approve an attic within dwelling houses provided that such development meets the overall height requirements. In this regard, the attic has the same meaning as Kogarah LEP 2012.	No attic is proposed as part of the alterations and additions to the existing dwelling house.	N/A
	(7) The habitable area in an attic is included as gross floor area for the purposes of determining the floor space ratio.	Refer above.	N/A
	(8) Where an attic is proposed, the roof must have a pitch of between 30 degrees and 40 degrees and the attic space: (i) must be wholly within the roof space; (ii) must be designed to comply fully with the building height; and (iii) may only project beyond the roof plane in the form of a traditional or non-traditional dormer, depending on the streetscape, and are not to incorporate balconies.	Refer above.	N/A
	(9) Attics are prohibited in flat roofed developments.	No attic is proposed as part of the alterations and additions to the existing dwelling house.	N/A
	(10) Rooftop terraces are prohibited in dwelling houses, dual occupancy development and	No rooftop terraces are proposed.	N/A

	secondary dwellings.		
1.2.3 Rhythm of the Built Elements in the Streetscape	(1) The primary building façade should not exceed 40% of the overall width of the total frontage	No changes to the existing primary building façade are proposed as part of the alterations and additions.	N/A
	(2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade	No changes to the primary and secondary façade proposed as part of the alterations and additions to the existing dwelling house.	N/A
	(3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	The extension of the roof above the second floor of the building is considered satisfactorily consistent with roof form in the broader streetscape.	Yes
1.2.4.2 Front Setbacks	1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back: (i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m.	The proposed development is for alterations and additions to an existing dwelling house and does not seek to alter the front setbacks.	N/A
	(2) Where the setbacks of the adjacent buildings are 0m-5.0m, an appropriate setback may be achieved by ensuring development is set back the same distance as one or the other of the two adjoining dwellings.	Refer above.	N/A
	(3) Where a development has a frontage to two (2) streets, then the setback to the secondary street shall be 1.2m, with the exception of dual occupancy (detached),	The proposed development is not located on a corner allotment and does not have two street frontages.	N/A

	where the setback to the secondary street shall be 4.5m.		
1.2.4.3 Side and Rear Setbacks	<p>Single dwelling, dual occupancy, development and secondary dwellings (attached to primary dwellings)</p> <p>Rear Setbacks Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p>Where the existing pattern of development displays an established rear setback, development should recognise and respond to site features and cross views of neighbouring amenity.</p>	<p>The subject site has a maximum length of 70.95m on the eastern side boundary. A minimum rear setback of 10.65m is to be provided which is 15% of the site length. The proposed additions to the rear of the existing dwelling provides a rear setback of 43m which is compliant. There is no current established rear setback.</p>	<p>Yes</p> <p>N/A</p>
	<p>Side Setbacks For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm. For buildings having a wall height of greater than 3.5m the minimum side boundary setback is 1200mm.</p> <p>Secondary dwelling Rear Setback - 3m Side Setback - 900mm or existing dwelling setback, whichever is the</p>	<p>The addition to the second floor results in a total wall height greater than 3.5m</p> <p>The addition to the second floor results in wall heights on the eastern and western side boundaries in excess of 3.5m which would require a minimum side setback of 1.2m. Proposed eastern side setback – 1.750m. Proposed western side setback – 1.4m</p> <p>No secondary dwelling is proposed.</p>	<p>N/A</p> <p>Yes</p> <p>N/A</p>

	greater of both.		
1.2.5 Fenestration and External Materials	(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.	Alterations and additions do not include a new building façade. The existing roof to be extended in terracotta roof tiles and the new aluminium roofing proposed over the first floor addition is complementary to the existing character of buildings within the streetscape.	Yes
	(2) Garage doors should not dominate the street front elevation	No changes to the garage doors proposed.	N/A
	(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape	The new proposed aluminium roof over the first floor addition is in keeping with the materials and colours of roofs within the broader streetscape.	Yes
	(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.	Considered to comply.	Yes
	(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays.	No new glazing is proposed within the front setback as part of the alterations and additions to the proposed development.	N/A
	(6) Where garaging is in the front façade it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.	No change to the garages are proposed as part of the alterations and additions to the existing dwelling house.	N/A
1.2.6 Street Edge	(1) New developments should provide front fencing that complements fencing within the streetscape.	The proposed development is for alterations and additions to an existing dwelling house.	N/A

	(2) Fencing is to be consistent with the requirements of Section 4.2.	No new fencing is proposed.	N/A
	(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.	The proposed alterations and additions are not considered to have an impact on existing vegetation within the front setback.	N/A
	(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.	No change to existing driveway location proposed as part of the alterations and additions to the existing dwelling house	N/A
1.3 Open Space	(1) 15% of the site area must be deep soil landscaped area.	No significant changes to landscaping are proposed as part of the alteration and additions.	N/A
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	The rear private open space is located adjacent to the main living area with the extension of the rear balcony on the first floor overlooking the rear private open space.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year-round use.	No changes to the current private open space.	N/A
	(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.	No significant changes to landscaping are proposed as part of the alterations and additions to the existing dwelling.	N/A
	(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.	Existing and significant trees and exotic vegetation has been incorporated into the landscape treatment	Yes

		within the rear private open space.	
1.4 Vehicular access, parking and circulation	(1) Car parking is to be provided in accordance with the requirements in Section B4. Two (2) car parking spaces provided.	Two (2) car parking spaces required in accordance with the requirements in Section B4. It is noted, no change to car parking is proposed as part of the alterations and additions to the existing dwelling.	Yes
	(2) On corner sites with two street frontages vehicular access should be provided to the secondary frontage.	The subject site is not located on a corner allotment.	N/A
	(3) Garages should be accessed from a rear lane where this is available.	Access to the garage is provided via a driveway and crossover to Algernon Street.	N/A
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	Refer above.	N/A
	(5) Garaging should be setback behind the primary façade.	Refer above.	N/A
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m	Refer above.	N/A
	(7) Where the dominant provision of garaging within the streetscape is provided to the rear or side of developments, new developments and additions to existing Development should provide for a side driveway or garaging behind the main street front elevation of the	Refer above.	N/A

	building.		
	(8) Basement parking is not encouraged on flat sites. Garaging should be provided at ground level unless the slope of the site exceeds 1:8 (12.5%) in which case a basement or suspended garage may be acceptable.	No basement parking is proposed.	N/A
	(9) Where a basement garage is proposed, the maximum height of the basement above ground level (existing) is 1m measured to the underside of the basement ceiling. Where the basement exceeds 1m above ground level (existing), the basement will be considered to be a floor.	Refer above.	N/A
	(10) For basement garages the maximum amount of excavation is to be limited to required car parking and any manoeuvring areas, access stairwells, lift wells and storage areas.	Refer above.	N/A
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	No new active use rooms proposed as part of the alterations and additions to the proposed development.	N/A
	(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.	The addition of the proposed balcony to the ground floor and lower ground floor area is elevated more than 1.5m above ground level (finished). Ground Floor Balcony width – 4m Lower Ground Floor Balcony width – 4.66m. Both balcony additions to the ground floor and lower ground floor are	No – see further discussion following table.

		not setback a minimum of 3m from the adjoining property boundary.	
	(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40sqm per dwelling.	<p>Lower Ground Floor Balcony – 57.89sqm Ground Floor Balcony – 50.46sqm First Floor Balcony – 11.88sqm</p> <p>The proposed addition of the lower ground floor, ground floor and first floor balconies are all located 1.5m above existing ground level and are in excess of the maximum cumulative total of 40sqm.</p> <p>Cumulatively the total area of the balconies proposed equates to 120.23sqm.</p>	No – see further discussion following table.
	(4) Council may consider a variation to the above requirements where it is considered that the terrace or balcony will not result in a loss of privacy to neighbouring properties.	The excessive total area of the balconies will give rise to overlooking and subsequent loss of privacy to the adjoining dwellings.	No – see further discussion following table.
	(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.	Placement of the floor to ceiling height window to the master bedroom on the first floor addition is considered to give rise to overlooking and subsequent loss of privacy. While the addition of the new 600mm blade privacy wall may protect some privacy to aspects of the adjoining building, it does not serve to reduce overlooking to the neighbouring private open space area.	No – see further discussion following table.
	(6) Loss of privacy to	No formal variations to	No

	neighbouring properties, as a result of a proposed development, will only be considered where a variation is sought to the objective or the design solution for floor space ratio, building height, building envelope, side boundary setbacks, extent of second level development or size of balcony/terrace.	vary the controls has been submitted.	
	In these circumstances, Council will undertake an assessment of the impact of the proposed development on the neighbouring properties having regard to: (i) The types of rooms that are located on the upper levels; (ii) Whether the rooms are “active” or “non-active” (iii) The size and location of proposed upper level windows, balconies, terraces and any other area (elevated more than 1500mm above ground level). (iv) The extent of overlooking onto neighbouring properties. (v) Notwithstanding the above, where rooms on the upper levels are “non-active”, no consideration will be given with respect to privacy issues.	Noted.	No – see further discussion following table.
1.5.2 Acoustic Privacy	Residential development adjacent to a rail corridor or a busy road should be designed and sited to minimise noise impacts Refer to requirements in State Environmental Planning Policy – Infrastructure and the NSW Department of	The proposed development is not located adjacent to a rail corridor or busy road and therefore there is considered to be no impact on acoustic privacy.	N/A

	Planning's Development near Rail Corridors and Busy Roads – Interim Guidelines.		
1.6 Solar Access	(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.	Amended shadow diagrams have not been submitted demonstrating the impact of the proposed first floor addition and the deletion of the Balinese retreat and swimming pool area. The southern orientation of the site and steeply sloping topography combine to limit solar access to the site. Given the deletion of these items parts of the shadows cast by the proposed development will have been reduced. It is however noted that the proposal still includes a non-compliant building height and FSR for the dwelling house, which could be argued as creating a level of shadow greater than that expected by the planning controls.	No
	(2) Where private open space is proposed on the southern side of the building the distance from the southern boundary of the open space to the nearest wall to the north must be a minimum of 3m + h, where h is the height of the wall.	The private open space of the proposed development is located on the southern side of the building. The distance from the southern boundary of the private open space to the lower ground floor office room wall is 47.4m.	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least	It is to be noted that amended shadow diagrams have not been submitted which	No

	50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June.	include the deletion of the Balinese Retreat and swimming pool area. However, given the existing lack of solar access afforded to the principal private open space of the adjoining property at 66 Algernon Street, the proposed new balcony extensions to the rear of the building are considered to exacerbate this non-compliance further.	
	(4) Shadow diagrams are to be submitted for the winter solstice (21 June) and the spring equinox (22 September).	Shadow diagrams have been submitted for the winter solstice and the spring equinox. However, amended shadow diagrams which include the deletion of the Balinese retreat and swimming pool have not been submitted.	No
	(5) Shadow diagrams are required to show the impact of the proposal on solar access to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams.	The original submitted shadow diagrams accurately depict the impact the proposal will have on solar access to the open space of neighbouring properties to the east at 62 and 62A Algernon Street and to the west at 66 Algernon Street. However no new shadow diagrams have been submitted to reflect the amended proposal.	No
1.7 Views and View Sharing	(1) Development shall provide for the reasonable sharing of views.	Given the context of the site, and positioning of adjoining dwelling houses, the proposed alterations and additions are	Yes

		considered to provide reasonable view sharing to the Georges River.	
Part C3 Foreshore and Waterfront Development This part provides performance standards and controls for ancillary development that is below the Foreshore Building Line (FBL) and/or along the waterfront, above, on, or below Mean High Water Mark (MHW). The objectives of these controls must read in conjunction with the specific Foreshore Locality controls contained in Section C4. Some Locality controls may override what is generally permitted under this part.			
6.1 General Objectives and Controls	(1) Council will not grant consent for residential waterfront structures to land which does not have frontage to the waterway. This includes allotments which only have a right of way to the waterway.	The proposed development has a frontage to the Georges River waterway.	N/A
	(2) Where an existing allotment has a water frontage of less than 9 metres, Council will not permit waterfront structures unless they are shared.	No water front structures are proposed as part of the alterations and additions to the existing dwelling house. A new inclinor to replace the existing inclinor is however proposed.	N/A
6.6 Swimming Pools/Spa Pools – apply to swimming pools between MHW and the foreshore building line. Swimming pools and spa pools will not be permitted below MHW.	(1) Any swimming pool or spa pool is to be sited as close to natural or existing ground level as possible. In this regard, the coping level of swimming pools and spa pools is not to be elevated more than 500mm above natural or existing ground level.	No swimming pool is proposed as part of the amended alteration and additions to the existing dwelling house.	N/A
	(2) Any exposed edge is to have the natural or existing ground level reinstated and be suitably landscaped with mature trees and landscaping so as to reduce the visual impact from the waterway	No exposed edges are proposed.	N/A
	(3) The construction of swimming pools and spa pools below the FBL and above MHW should	Refer above.	N/A

	avoid reshaping of the landform and removal of native vegetation and significant trees. In areas where the construction of a pool will necessitate excessive excavation or the removal of significant vegetation, the siting of the pool may be restricted to above the FBL. The Foreshore Locality Controls specify areas where this may be required.		
	(4) Pool/spa fencing that is visible from the foreshore/water must be open or transparent and must be of a colour that blends into the landscape character of the waterway.	Refer above.	N/A
	(5) With respect to existing swimming pools/spa pools below MHWL, Council is unlikely to request that the pool be removed or filled, unless it is considered that its economic life has been reached.	The subject site does not contain an existing swimming pool below the mean high water mark.	N/A
	(6) In circumstances where it is considered that the economic life of the pool has been reached, and the Department of Lands is in agreement, then Council may require, upon substantial redevelopment, that the pool be removed.	Refer above.	N/A
6.9 Inclinator and Stairs	(1) Inclinator and stairs to enable pedestrian access to the waterfront are permitted between the FBL and MHWL.	A new inclinator is proposed from the lower ground floor level to provide pedestrian access to the waterfront area.	Yes
	(2) Inclinator and stairs shall generally be	Inclinator has been located as close to	No

	constructed as close as practical to natural ground level. However, natural features along the foreshore are to be retained and the removal of natural rock, trees and vegetation to enable the construction of an inclinator and stairs will not be supported.	natural ground level as possible for the majority of the alignment, however the proposed connection to the lower ground floor level balcony is not supported. This is because it would see the height of the inclinator reach up to 7.5m above the existing ground level.	
	(3) Stairs should be a maximum of 1.2m wide and constructed in timber, masonry or stone.	Stairs leading down from the lower ground floor level to the stone pathway which leads down through the sloping rear private open space are 900mm wide. It is noted details have not been provided as to what material the stairs will be constructed from.	Yes
6.10 Landscaping	(1) Natural features along the foreshore are to be retained and the removal of natural rock, trees and vegetation to enable the construction of landscaping will not be supported.	No removal of natural features such as trees, native vegetation or natural rock is being removed to facilitate landscaping along the foreshore.	Yes
	(2) Natural ground levels are to be retained with minimal use of retaining walls.	No retaining walls proposed as part of the amended plans.	N/A
	(3) Endemic native species should be used in areas where native vegetation is present or has the potential to be regenerated.		N/A
	(4) Exotic species that have the potential to spread into surrounding bushland should be avoided.	No bushland surrounding the subject site.	N/A
	(5) Existing mature trees	The existing mature	Yes

	should be retained where possible and incorporated into the design of new developments.	tree on the western side boundary adjacent to the native planters and is proposed to be retained.	
	(6) Vegetation along ridgelines and on hillsides should be retained and supplemented with additional planting to provide a backdrop to the waterway.		N/A
	(7) A landscape plan is to be submitted for any development between FBL and MHWM. The level of detail required will depend on the level of works being undertaken. Where a landscape plan is submitted it should indicate the existing and proposed changes in contours, existing trees/vegetation to be retained and removed, measures to protect vegetation during construction and proposed planting including species and common names.	No development is proposed between the FBL and MHWM other than replacement of the existing inclinators and associated access works near the boat shed.	N/A
Part C4 Foreshore Locality Controls 10.0 Oatley Bay Oatley Point Reserve to Neverfail Bay			

10.6 Mapping Areas – Subject site located within Mapping Area (10b)



10.7 Water and Land Interface Development

- (a) Improve the scenic quality of the foreshore by:
- (b) Maintaining and protecting existing native vegetation close to the waters edge and below the foreshore building line.
- (c) Retaining and protecting the natural landform, particularly the sandstone foreshore and rock formations.
- (d) Encouraging suitable landscaping below the foreshore building line.
- (e) Ensuring that any development close to the waters edge is suitably designed and treated to minimise its impact when viewed from the water.

(1) The following table indicates the type of development “permitted”, “restricted” and “permitted, subject to specific controls” between Mean High Water Mark (MHWM) and the Foreshore Building Line (FBL)

	<p>Inclinators - permitted subject to specific controls</p> <p>In addition to controls contained in Part C3 Section 6.9, the following controls apply in this Locality:</p> <ul style="list-style-type: none"> - Council will only consider the construction of an inclinator where it does not necessitate the removal of natural rock, trees and vegetation. - Inclinators should not obscure or break a view line of the rock or cliff face 	<p>The proposed Inclinator is unlikely to result in the removal of any significant natural rock, trees or vegetation.</p> <p>The proposed inclinator will largely be located in the position of the existing inclinator and as such not obscure or break a view line of the rock or</p>	<p>Yes</p> <p>Yes</p>
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		cliff face.	
	Landscaping – Permitted This locality is within the habitat reinforcement corridor area of the Green Web. In this regard, the provisions of Part B2 Section 2.0 apply.	The subject site is located within the habitat reinforcement area of the Green Web.	Yes
Green Web Requirements The following guidelines are to be considered for land situated within the Green Web Corridor:	(a) design open space to reflect and integrate the natural heritage and underlying ecological processes of the landscape through site layout, grading, planting, landscape material, access and view lines.	No change to open space proposed as part of the alterations and additions to the existing dwelling.	N/A
	(b) wherever possible, design open space to conserve indigenous vegetation and habitat on site and retain indigenous trees, understorey and groundcovers as a priority in the site layout. Select bushland area to preserve the most intact and sustainable areas of vegetation and prevent fragmentation of habitat.	Native vegetation conserved within the rear private open space.	Yes
	(c) design vegetation to enhance and link existing vegetation and habitat within the site and adjacent sites.		N/A
	(d) design access to reduce pressures that have potential to cause degradation of vegetation, habitat, water quality and soil.		N/A
	(e) use indigenous plant stock and, preferably, locally sourced plant material to preserve local genetic diversity.		N/A
	(f) maximise use of indigenous plant material and preferably use exclusively indigenous plants adjacent to		N/A

	remnants. Arrange plants to form plant associations based on the structure and distribution of indigenous plant communities using a diverse range of plants, including understorey and groundcovers, to form a viable habitat for flora and fauna.		
	(g) In addition, the following criteria need to be applied to create a sustainable and diverse habitat: (i) maintain and enhance diversity in plant communities and sub communities, species, habitat niches and structure of the plant community. Most importantly, maintain and/or restore understorey species.		N/A
	(ii) include and retain water holes, ponds, dams, creeks and damp spots in habitat areas. In some cases there will be numerous benefits in creating artificial dams or ponds which may include stormwater control facilities. Artificial water bodies should not involve in-stream works but should be additional to natural watercourses.		N/A
	(iii) retain old or dead trees as these provide (or will in the future) nesting holes, hollows and perches. If there is a lack of tree holes, install nesting boxes for a range of native species. Hollow logs or old pipes can provide shelter for ground dwelling animals and can be mounted in trees to	Significant tree located on the western side to be retained on the subject site.	Yes

	assist arboreal species and birds.		
	(iv) create dense plantings of shrubs, including prickly or spiky species in areas of little use (eg. corner back areas), to provide safe nesting sites for small birds and protect them from cats and larger predatory birds such as currawongs and ravens.		N/A
	(v) arrange tree plantings so their canopies touch to allow smaller birds and mammals, such as possums and sugar gliders, to cross roads and areas of open grass without having to move across open ground where they are vulnerable to attacks by predators. Ropes and wires can be used as bridges for animals where tree canopies do not touch eg. possums have frequently been observed using electricity supply wires for travelling in urban areas.		N/A
	(vi) clear weed infested areas in stages rather than all at once to maintain shelter and nesting sites provided by existing invasive plants. Observe whether nesting activities are taking place or other resident fauna is present in the understorey and take care not to disturb these areas when nesting is occurring. As a general rule, never clear more than one third of the site for replanting to ensure that resident animals are not left without food and shelter. Some		N/A

	<p>rubbish, such as car bodies, sheets of corrugated iron and timber can provide habitat and refuges from predators for reptiles, such as blue tongue lizards, and small mammals, such as bandicoots and bush rats.</p>		
	<p>(vii) install artificial shelter structures, where stable populations of birds or reptiles reside, as part of your landscape design. They can be piles of timber logs or rocks, wire mesh structures imitating densely branched shrubs or of pipes imitating hollow logs. These shelters may also act as nesting sites.</p>		N/A
	<p>(viii) retain leaf litter and fallen branches. They provide an important habitat for reptiles and insects, foraging grounds and shelter against heat and predators.</p>		N/A
	<p>(ix) plant a range of indigenous flowering trees and shrubs to provide flowers and nectar throughout the seasons to maintain bird diversity and populations. During certain seasons, some birds rely on particular insect types that are dependent on particular plant species, thereby controlling insect populations, including those which are responsible for dieback in trees.</p>		N/A
	<p>(x) select plants with thick and furrowed bark, high foliage nutrient and different flowering and fruiting seasons to</p>		N/A

	provide food throughout the whole year.		
	(xi) minimise use of fertilisers and irrigation to prevent nitrification and invasive exotic plants destroying native bushland.		N/A

DEVELOPMENT CONTROL PLAN PART C1 – Low Density Housing

78. As demonstrated in the table above, the proposal has been comprehensively assessed against the relevant requirements of Part C1 of Kogarah Development Control Plan 2013 – Low Density Housing. Key non-compliances with these controls are discussed in further detail below.

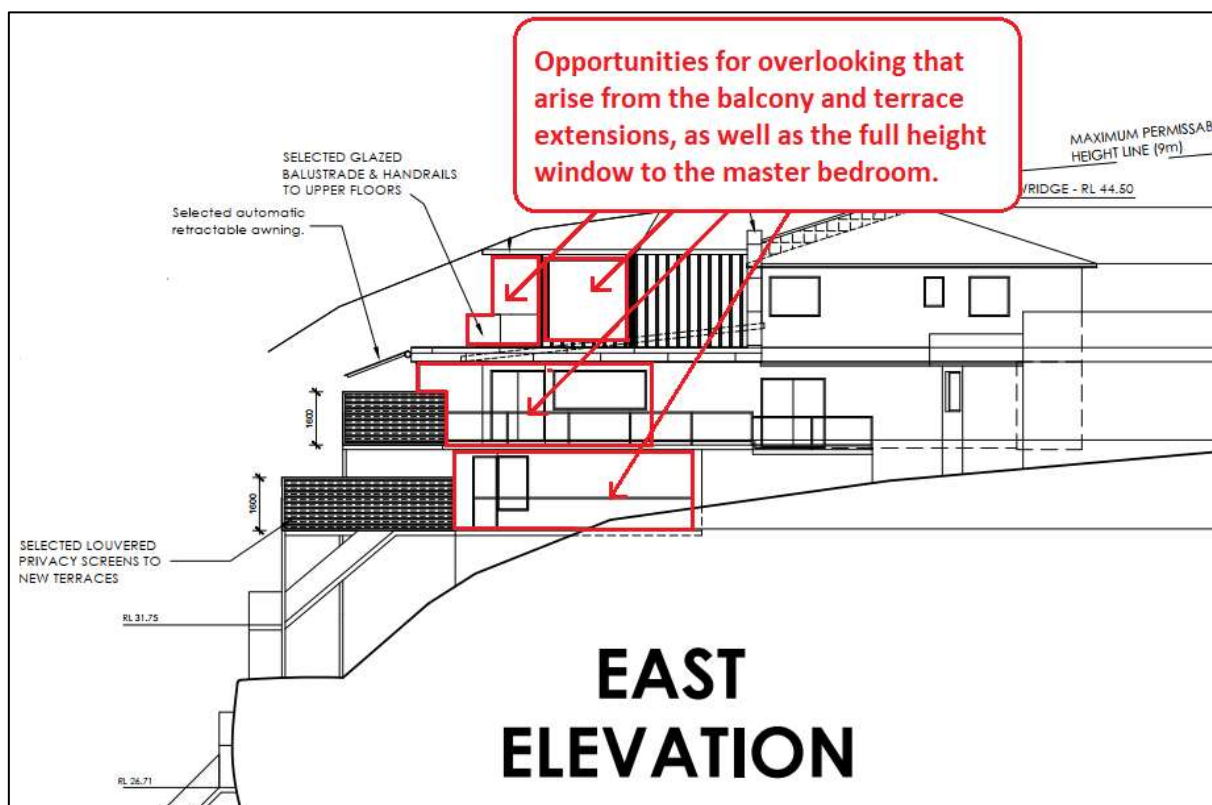
1.2.2 Building Heights

79. The maximum building height must comply with 7.2m to the underside of the upper ceiling for a single dwelling house.
80. A review of the submitted plans has revealed that the maximum building height of the proposed development to the underside of the proposed first floor ceiling is 8.6m, which is non-compliant with the maximum 7.2m specified within KDCP2013.
81. Given the non-compliance associated with the maximum overall height of the proposed first floor addition of 9.05m as well as 8.6m to the underside of the ceiling, the addition to the existing first floor of the dwelling has not been appropriately designed to respond to the topography of the site and is inconsistent with the building heights of surrounding development within the immediate vicinity.

1.5.1 Visual Privacy

82. This part of the DCP contains the following sections:
- Section 1.5.1(2) states - *Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.*
 - Section 1.5.1(3) states - *The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40m² per dwelling.*
 - Section 1.5.1(5) states - *For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.*
83. The ground floor balcony has been measured with a width of 4m and the lower ground floor balcony contains a width of 4.6m which exceeds the maximum width of 2.5m specified within KDCP2013. The balcony additions include setbacks between 1.5m and 2m, and as such do not meet the minimum 3m control.

84. The lower ground floor, ground floor and first floor balconies are all located greater than 1.5m above existing ground level, and all are in excess of the maximum cumulative total of 40sqm, as demonstrated below:
- Lower ground floor balcony – 57.89sqm.
Ground floor balcony – 50.46sqm.
First floor balcony – 11.88sqm.
Cumulative Total: 120.23sqm.
85. The siting and design of the balconies on the lower ground floor, ground floor and first floor of the building will give rise to overlooking opportunities and subsequent loss of privacy to the neighbouring rear private open space at 62 Algernon Street.
86. The excessive use of balconies will also result in visual privacy impacts for residents located in the adjoining property to the west at 66 Algernon Street, and also the adjoining property to the east at 62A Algernon Street. The non-compliant balcony setbacks, cumulative balcony areas, non-compliant building heights, and FSR, result in a visually imposing building which accentuates the visual impact of the proposed development.
87. The placement of a floor to ceiling height window on the eastern side elevation of the master bedroom will give rise to overlooking as it allows for direct views into the adjoining dwelling's rear private open space at 62 Algernon Street. Although the applicant's amended plans now include a 600mm blade wall adjacent to the window, this will have little effect in mitigating views to the private open space area of 62 Algernon Street. The blade wall will only provide some visual screening to the dwelling house itself at 62 Algernon Street.



Extract of the eastern elevation showing the opportunities for overlooking that arise from the balcony extensions/additions across three levels of the building, as well as from the

full height window to the master bedroom. Source: applicant amended DA plans, marked up.

Section 7.12 Contributions

88. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. An appropriate condition of consent would be required in the event of approval of this application.

IMPACTS

Natural and Built Environment, Social and Economic Impacts

89. It is considered that the proposal will have an adverse impact on the character of the locality, and also the amenity of neighbouring residential properties as a result of reduced visual privacy, and increased visual impact from the bulk and scale of the dwelling additions. Accordingly, the environmental impacts on the built environment are considered to be unreasonable and the application is not supported.

Suitability of the site

90. The site is zoned R2 – Low Density Residential. Whilst the proposal is a permissible form of development in this zone, the proposal will have an adverse impact on the adjoining properties and views from the waterway. The proposal constitutes an overdevelopment and ultimately, the site is unsuitable for the proposal.

SUBMISSIONS AND THE PUBLIC INTEREST

91. The owners of surrounding properties were notified of the DA for a period from 15 to 29 November 2017. In response to the DA notification, four (4) submissions objecting to the development were received.
92. Following the submission of amended plans by the applicant, the owners of surrounding properties were re-notified of the amended DA from 3 to 17 September 2018. One (1) submission was received from the adjoining property at 66 Algernon Street, Oatley as part of the re-notification. This submission was however a copy of the earlier submission made in relation to the notification of the originally lodged DA in November 2017.
93. Therefore a total of five (5) submissions were received in relation to this DA. A summary of the primary issues raised within the submissions is detailed below.
94. Insufficient levels of information provided on the submitted plans
Comment: The insufficient information included on the submitted plans, particularly in relation to finished levels, ridge heights etc. was an issue identified with the assessment of the originally submitted plans. This issue was raised within the additional information letter, and has largely been resolved by the applicant in the latest set of amended plans. Sufficient information is now included to carry out the assessment of the DA.
95. Non-compliant building height
Comment: As demonstrated earlier in this report, the proposal includes a non-compliant building height when having regard to the 9m development standard contained within clause 4.3 of the KLEP2012. While a written request to vary this development standard accompanied the originally submitted DA, the amended plans were accompanied by a statement from the applicant's town planner that the proposal now fully complies with the height standard. Given it has been assessed that compliance is not achieved with the amended plans, and in the absence of a written request to vary the development standard, consent cannot be granted to the DA per clause 4.6(3) of the KLEP2012.

96. Excessive bulk and scale of the development as a result of the proposed Balinese Retreat and swimming pool
Comment: The assessment of the originally submitted plans agreed that the bulk and scale of the development was excessive, particularly when having regard to the proposed Balinese Retreat and swimming pool. This issue was raised with the applicant as part of the additional information request, and in response the applicant's amended plans have deleted the Balinese Retreat and swimming pool.
97. Solar access impacts to the adjoining property at 62A Algernon Street
Comment: The unfavourable orientation of the subject site, combined with the site's steeply sloping topography combine to limit solar access to land positioned south of the dwelling house at 64 Algernon Street. As such, any alterations and additions to the dwelling house have the potential to increase overshadowing of adjoining property. Given the proposal includes a non-compliant building height, FSR, and combined balcony/terrace area, it is difficult to argue the level of overshadowing experienced by adjoining property is a circumstance of site orientation only. A compliant building envelope would have a reduced shadow, and therefore be more supportable.
98. Elevated Balinese Retreat and swimming pool area resulting in a loss of privacy.
Comment: As outlined above, the applicant's amended plans have deleted the Balinese Retreat and swimming pool.
99. Loss of privacy as a result of the excessive width of balconies
Comment: The lower ground floor balcony includes a width up to 4.7m. The ground floor balcony has a width of 4m, and the first floor balcony has a width of 2.21m. Two of these balconies exceed the 2.5m maximum prescribed by KDCP2013. Notably, at 120.23sqm, the combined balconies and terraces are three times greater than the 40sqm maximum permitted by Council's development control plan. Furthermore, all balconies encroach upon the minimum 3m side setback requirement under the KDCP2013. As such, it is considered that the proposal would result in overlooking potential of adjoining property, and subsequent loss of visual privacy.
100. Inconsistency of the new roof structure with the established streetscape character
Comment: The alterations and additions to the dwelling house are confined to the rear southern elevation only, and will be largely indiscernible from the street. As such, it is not agreed that the proposed roof structure will impact on the established streetscape character.
101. Visual impacts to the waterway as a result of the excessive use of retaining walls, Balinese Retreat and swimming pool area.
Comment: As outlined above, the applicant's amended plans have deleted the Balinese Retreat and swimming pool.
102. Proposed inclinor located significantly above natural ground level with a height of up to 6m resulting in privacy issues to adjoining dwellings.
Comment: The inclinor, as originally proposed with the DA submission, was significantly raised above existing ground level. As such it was considerably non-compliant with KDCP2013 which aims to ensure inclinors are positioned as close to existing ground level as practicable. The excessive height of the inclinor was raised with the applicant as part of the additional information request. The applicant's amended plans have reduced the overall height of the inclinor, however the inclinor still

connects with the lower ground level terrace at a height that is 7.5m above the existing ground level. The height at this point is still considered excessive, and is unsupportable.

REFERRALS

Council Referrals

103. Development Engineer

As part of the assessment of the DA, the proposal was referred to Council's Development Engineer. In their referral response dated 20 February 2018, support for the proposed development was granted subject to consent conditions.

104. Trees/Landscaping:

As part of the assessment of the subject DA, the proposal was referred to Council's consultant arborist. In their response dated 15 November 2018, support for the proposed development was granted subject to consent conditions.

CONCLUSION

105. The proposal has been assessed using the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979. The proposal is considered to be unsatisfactory for a range of reasons as discussed throughout this report.
106. Notably, the proposed development does not comply with the prescribed building height and FSR development standards under KLEP2012 that apply to residential development on the subject site. Further, no clause 4.6 written requests to vary the aforementioned development standards have been submitted to Council for assessment.
107. The proposal will impact on the amenity of adjoining property, particularly through the loss of visual privacy as a result of overlooking from the extensive balcony and terrace extensions to the rear of the dwelling house.
108. The DA has attracted five (5) submissions objecting to the proposed development. Many of the issues raised in the submission are considered to be valid and are supported.
109. Accordingly, the proposal is recommended for refusal for the reasons listed in the determination below.

DETERMINATION AND STATEMENT OF REASONS

110.

Statement of Reasons

1. The proposed development is not considered to be an appropriate scale and form for the site and the character of the locality.
2. The proposed development will have unacceptable adverse impacts upon the natural or built environments.
3. In consideration of the aforementioned reasons, the proposed development is not a suitable built form outcome for the site and its approval is not in the public interest.

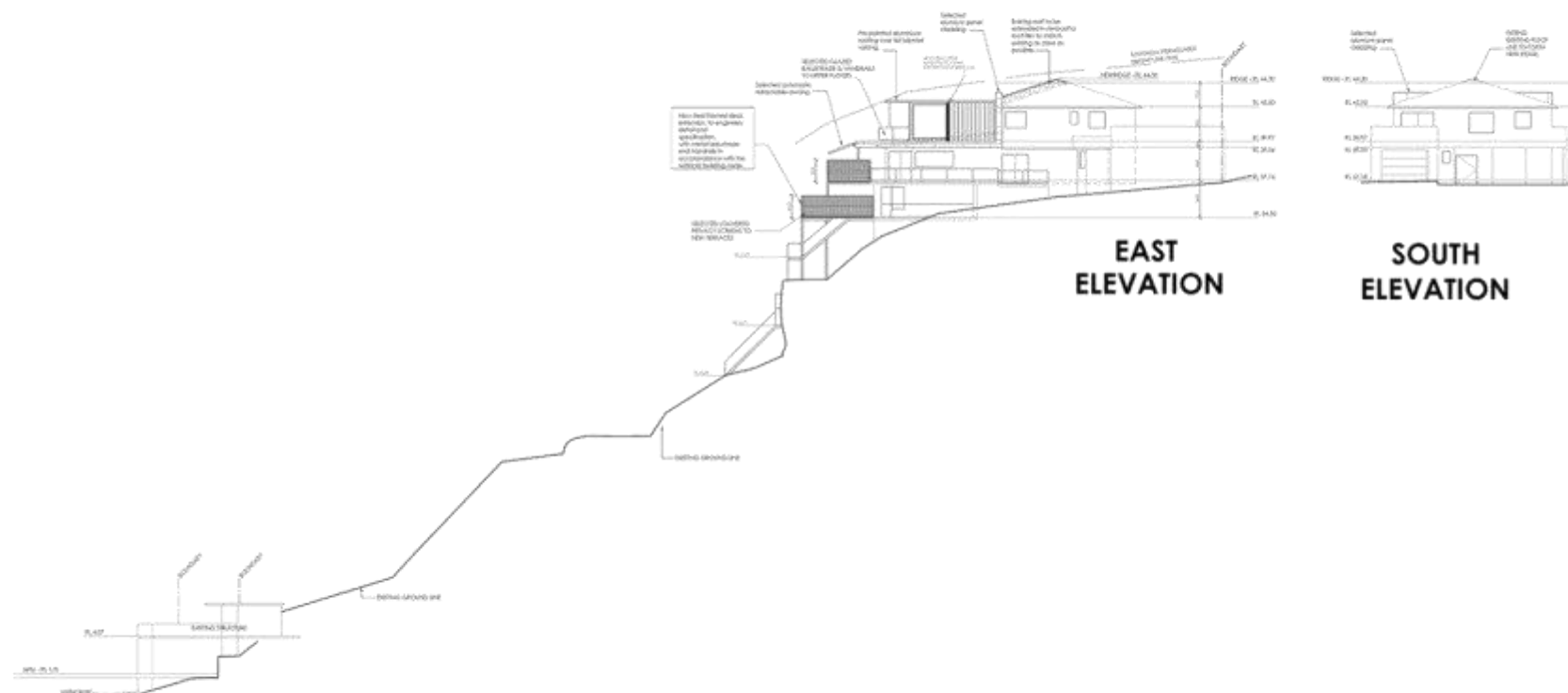
DETERMINATION

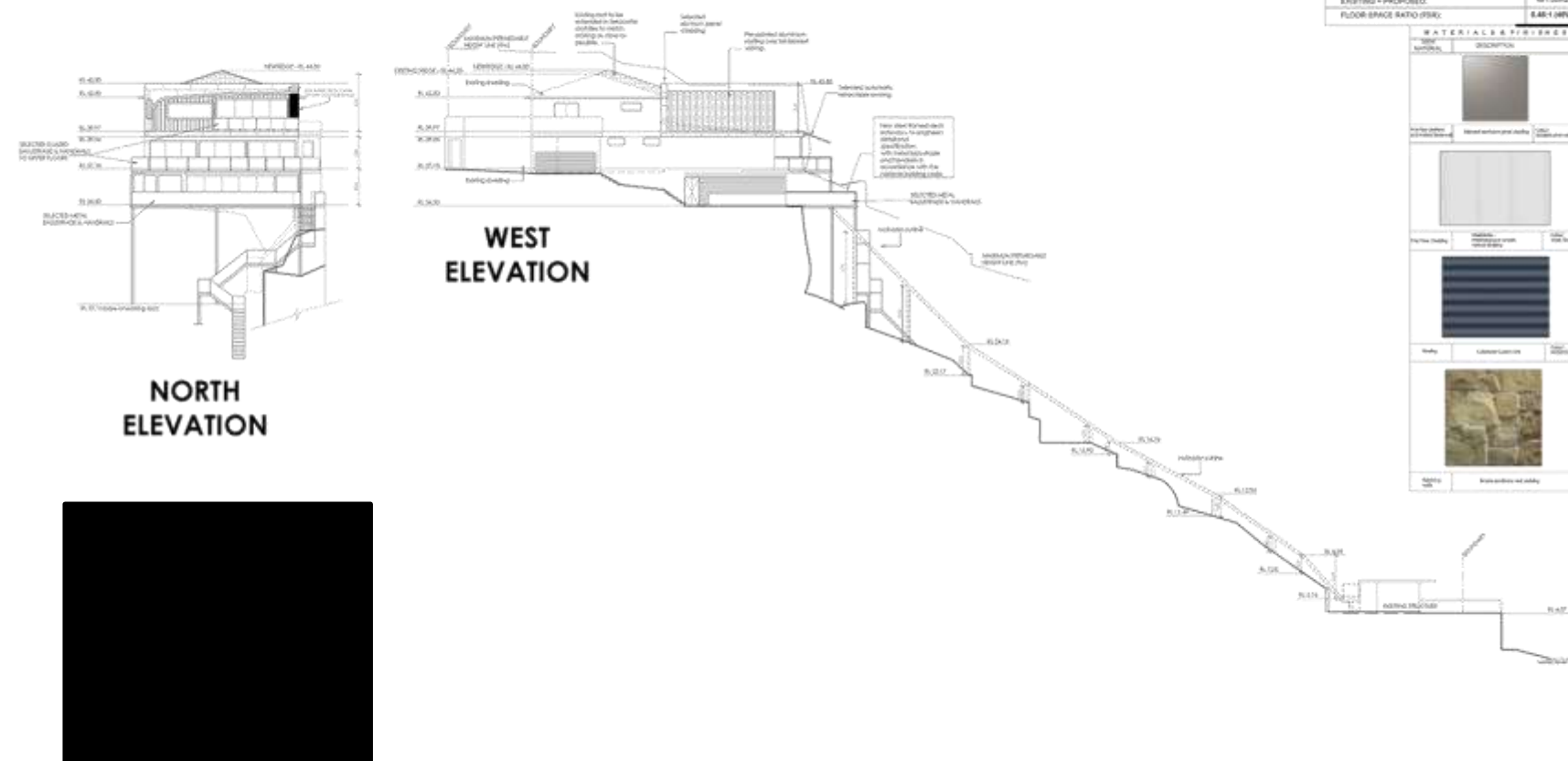
111. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Council refuse Development Application DA2017/0528 for alterations and additions to the existing dwelling house at Lot 6 Sec 37 DP 4868 and known as 64 Algernon Street, Oatley, for the following reasons:
- A. Clause 2.3 Zone objectives and Land Use Table – the proposed development is not consistent with the objectives for the R2 Low Density Residential Zone in which the development is proposed to be carried out.
 - B. Clause 4.3 Height of buildings – the building height of the proposed development exceeds the 9m maximum shown for the land on the Height of Buildings Map.
 - C. Clause 4.4A Floor space ratio – the floor space ratio of the proposed development exceeds the maximum floor space ratio permitted for residential development within the Zone R2 Low Density Residential.
 - D. Clause 4.6 – The applicant has not provided written requests that seek to justify the contraventions of the development standards under Clause 4.3 and Clause 4.4A of the Kogarah Local Environmental Plan 2012. Pursuant to Clause 4.6(3) of the Kogarah Local Environmental Plan 2012 development consent must not be granted for the development.
 - E. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the following objectives and provisions of Part C1 – Low Density Housing of the Kogarah Development Control Plan 2012:
 - i) Section 1.2.1(4) and (6) 'Floor space requirements';
 - ii) Section 1.2.2(1) and (3) 'Building Height';
 - iii) Section 1.5.1(2), (3), (4), (5) and (6) 'Visual Privacy'
 - iv) Section 1.6(1), (3), (4) and (5) 'Solar Access'
 - F. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the following objectives and provisions of Part C3 – Foreshore and Waterfront Development of the Kogarah Development Control Plan 2012:
 - i) Section 6.9(2) 'Inclinators and stairs'
 - G. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the site is not suitable for the development.
 - H. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

- Attachment [1](#) East and South Elevation Plan - 64 Algernon St Oatley
Attachment [2](#) Elevations and section plan - 64 Algernon St Oatley

AREA CHART	
TOTAL SITE AREA:	1287 m2
EXISTING LOWER GROUND FLOOR FLOOR AREA:	116.37 m2
EXISTING SECOND FLOOR AREA:	188.37 m2
EXISTING FIRST FLOOR AREA:	116.4 m2
TOTAL EXISTING FLOOR AREA:	421.14 m2
PROPOSED FLOOR AREA TO GROUND FLOOR:	8.0 m2
PROPOSED FLOOR AREA TO FIRST FLOOR:	71.2 m2
TOTAL COMBINED FLOOR AREA (EXISTING + PROPOSED):	499.34 m2
FLOOR SPACE RATIO (FSR):	0.46 (1:2.17)

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REPORT TO GEORGES RIVER COUNCIL

LPP MEETING OF THURSDAY, 18 OCTOBER 2018

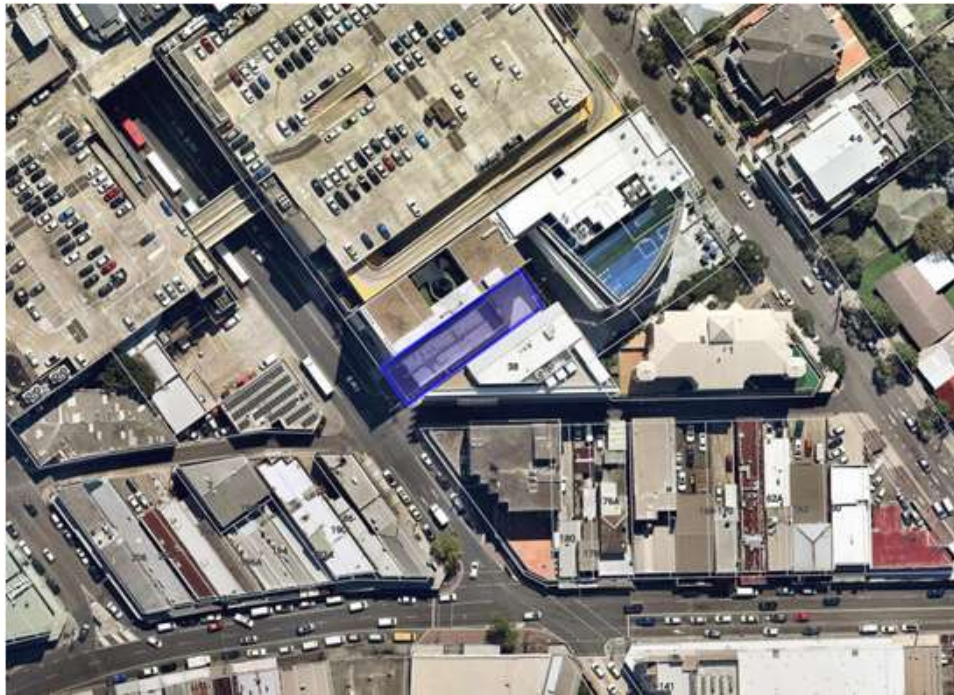
LPP Report No	LPP051-18	Development Application No	DA2017/0660
Site Address & Ward Locality	8 Park Road Hurstville Hurstville Ward		
Proposed Development	Demolition and construction of an 8 storey mixed use development comprising 19 apartments, 2 commercial tenancies and basement parking for 18 vehicles		
Owners	Michael Kam Wing		
Applicant	C&K Development (Australia)		
Planner/Architect	Brett Daintry/Town Planner and Russell Olsson/Architect		
Date Of Lodgement	22/12/2017		
Submissions	2 submissions in response to the original proposal, no submissions received in respect to the amended plans		
Cost of Works	\$6,504,423		
Local Planning Panel Criteria	Proposal exceeds the standard height control with a non-compliance of over 10%		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment , State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 2 - Hurstville City Centre		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Statement of Environmental Effects, Traffic and Parking Assessment, Access and BCA Reports		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be granted a deferred commencement approval in accordance with the conditions included in the report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - the proposed development exceeds the Height Control (Clause

	4.3) of the Hurstville Local Environmental Plan 2012
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, standard conditions have been attached with no design changes

Site Plan



Courtesy: Google maps

Executive Summary

1. Council is in receipt of an application proposing the demolition of the existing free standing two (2) storey, rendered building on-site and construction of a nine (9) storey mixed use development comprising of nineteen (19) apartments, two (2) commercial tenancies and basement parking consisting of eighteen (18) off street car parking spaces. The development includes the provision of two (2) elevated landscaped podium areas, associated amenities and general site works.
2. The original application was submitted on 22 December 2017. A letter prepared by Council outlining a number of parking and accessibility issues and design issues that were raised at the Design Review Panel (DRP) allowing the Applicant some time to consider the issues raised. Formal amended plans were lodged on 14 August 2018 and these plans were renotified. The amendments including reconfiguring the basement car parking area and increasing the amount of parking from 17 spaces to 18 spaces and design changes were made to the front façade treatment and the entry lobbies to the building from Park Road and the rear laneway.
3. This report recommends approval subject to satisfaction of the deferred commencement condition which requires the creation of an easement or “right of way” being formally

established and created over the rear laneway. The proposal has been designed to rely on direct access from the rear laneway to Commercial Tenancy No.2. The rear laneway is a pedestrianised courtyard space that has direct linkages through to adjoining streets via existing buildings. It is understood that Council has an easement over this podium which requires unfettered public access. The commercial tenancy can be accessed from the front of the property but its formal ground floor access from the rear is beneficial in keeping this courtyard activated and improves the visual appearance and functionality of the building when viewed from the rear. If a “right of way” or easement cannot be negotiated then a very minor aesthetic change to the design will need to occur and access will come off Park Road.

4. The deferred commencement also requires the reduction in the height of the ancillary structures on the front of the roof space (staircase, lift and balustrade). This section of the roof is not designed to be utilised and only requires access for maintenance purposes. Some concern was raised regarding the height and bulk of the staircase and lift overrun structure and discussions with the Applicant confirmed that these elements can be reduced in height and appropriate conditions have been imposed.
5. The site is zoned B4 Mixed Use under Hurstville Local Environmental Plan 2012 (HLEP). The proposal is defined as “*shop top housing*” which means “*one or more dwellings located above ground floor retail premises or business premises*”. The use is a permissible form of development subject to Council’s consent. The proposed development satisfies the relevant objectives contained within the LEP and complies with the relevant requirements however seeks a variation to the development standard relating to height (Clause 4.3). This variation is discussed in the report and is supported due to the context of the Site and immediate locality, the currently active development approval on the site (DA2014/1157) which provides consent to a similar height and built form, as proposed and the fact the Site is constrained and the proposed design of this infill development is a reasonable, appropriate and positive design and planning outcome for this site. A condition is also included which reduces the height of structures on the roof further to ensure heights are more consistent with the existing consent. The Applicant is able to include the reduction in the height.
6. The application was notified/advertised to residents/owners in accordance with Council’s requirements on two occasions. Two (2) submissions were received in reply to the original proposal and no submissions were received in respect to the amended design. The issues raised in the submissions are discussed in the report.
7. The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans.
8. Following a detailed assessment of the proposal, Development Application No. DA2017/0660 is recommended for approval subject to a deferred commencement.

Figure 1: Photomontage of the front elevation of the proposed building



Report in Full

DESCRIPTION OF THE PROPOSAL

9. The application is for the demolition of the existing two (2) storey building on site and associated structures and the construction of a shop top housing development containing ground and first floor commercial areas, 19 apartments, and basement car parking area consisting of 18 car spaces and associated storage areas and amenities with vehicular access off Park Road.
10. In detail, the development will comprise the following:

Basement level

- Access to the basement area via a ramp from the ground floor which will be accessed from Park Road.
- 9 residential parking spaces (including 1 accessible space).
- A separate residential waste storage room which includes an area for bulk waste.
- A separate commercial waste storage room.
- 19 storage cages.
- Lift and stair access.

Ground floor (Park Road)

- 12sqm of commercial space (main lobby to the front Commercial Tenancy No.1) with direct access off Park Road.
- 7sqm of commercial area (main lobby of the rear Commercial Tenancy No.2) with access from 7-11 The Avenue laneway.
- 3 residential car spaces (including 1 accessible space).
- 3 commercial spaces.
- 3 visitor car spaces.
- The car wash bay which doubles as a visitor space.
- A turntable provided to assist with manoeuvring into and out of spaces.
- Main entry to the residential levels, lift, stairs from Park Road.
- Formal residential lobby with access from the parking area.

Level 1

- Commercial Tenancy No.1 facing Park Road having an GFA of 110sqm.
- Commercial Tenancy No.2 facing 7-11 The Avenue laneway having a GFA of 104sqm.

- General amenities and facilities for both commercial tenancies.
- Central landscaped courtyard designated to the commercial uses with a total area of some 100sqm.
- Stair and lift access.

Level 2

- 1 x 1 bedroom apartment
- 2 x 2 bedroom apartment
- Lift, fire stairs and services area
- Large landscaped roof top area above the Commercial Tenancy No.2 at the rear.

Level 3-6

- 1 x 1 bedroom apartment
- 2 x 2 bedroom apartment
- Lift, fire stairs and services area

Level 7

- 1 x 1 bedroom apartment
- 2 x 2 bedroom apartment (bedroom and living areas for Unit 701)
- Lift, fire stairs and services area
- Large landscaped roof top area above the Commercial Tenancy No.2 at the rear.

Level 8

- 1 x 3 bedroom apartment
- Second bedroom and WC associated with Unit 701
- Lift and stairs
- Roof top landscaped area dedicated to the residential component comprising of 90sqm including general amenities.

11. The design of the building was modified in response to DRP comments and issues Council raised in July 2018. The following changes were made;
- The number of car parking spaces increased from 17 to 18 and the ground floor parking area includes the provision of a car turntable.
 - The previously shared car wash/turning bay has become a shared visitor space/ car wash bay.
 - The Level 1 courtyard has become a fully dedicated space to the commercial tenancies as per the DRP recommendation.
 - New larger and legible entry openings to the two roadways.
 - The rooftop has been redesigned to include a new WC and kitchenette facilities to make this space more functional.
 - The rooftop terrace at Level 2 above the commercial tenancy at the rear has been dedicated to Unit A-203 which will improve the green space for this apartment.
 - The rear façade has been reconfigured slightly to include planters at the ground, first and second level to create a green wall and further articulate the built form.
 - Planters along each balcony have been specified and privacy screens constructed of steel rods have been integrated to allow for plants to climb up these structures.
 - Increased soil depth has been provided to planter boxes to allow for about 1m of deep soil in these areas which will allow for denser planting.
 - The front façade has been revised bringing the brick volume further to the right. This creates a clearer distinction between the two vertical bays.
 - The amended plans provide a clearer distinction between the commercial tenancies and the residential components above.

12. Further to this Council Officers have requested the reduction in the height and scale of the rooftop structures which the Applicant confirmed can be satisfied. Deferred commencement conditions are included which reduce the ancillary structures (staircase, lift overrun and balustrade) which now achieve a better alignment with the height of the lift overrun at 10 Park Road and will be more consistent with the overall approved height pursuant to DA2014/1157. The Applicant has confirmed by way of an email that the height changes can be easily accommodated. Details are included in the report.

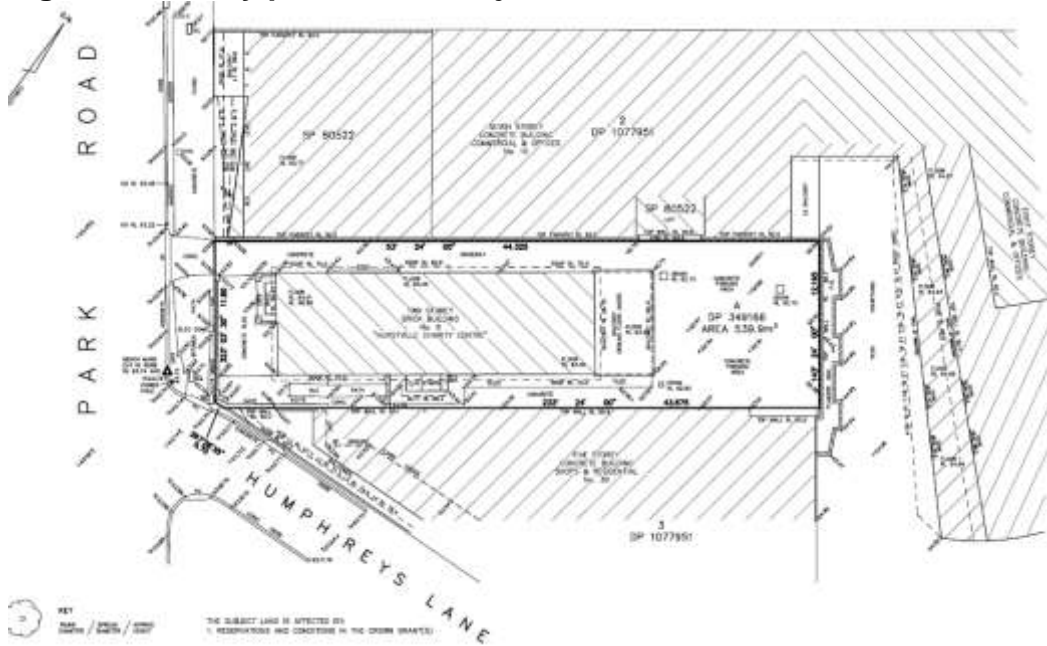
Figure 2: Photomontages of the front (south eastern view) and rear elevation



Courtesy: Olssen and associates Architects

DESCRIPTION OF THE SITE AND LOCALITY

13. The subject site is located at 8 Park Road, Hurstville and the site's legal description is known as Lot A, DP 349166. The site is located on the eastern side of Park Road near its intersection with Humphreys Lane. It is located just outside the Hurstville Commercial area.
14. The site is a regular shaped allotment with a frontage of 11.8m to Park Road, 12.195m to 7-11 The Avenue laneway at the rear and depths of 44.32m and 43.65m. The total site area of the allotment is 539.9sqm. A survey plan depicting the characteristics of the site is provided below.

Figure 3: Survey plan of the subject Site

Courtesy: Ballenden Surveyors

15. Existing on site is a freestanding two storey rendered building with a driveway along the northern side. The building contains five (5) separate commercial tenancies. There is a driveway along the northern side one hard stand car space could be accommodated in this area however there is no formal designated on site car parking.
16. The immediate locality comprises of a series of mixed use developments. The existing building is out of scale and looks uncomfortable in the streetscape. Immediately to the north is 10 Park Road which is an 8 storey commercial development, further north is the car parking area and the commencement of the large Westfield Shopping Centre. The car parking entry on the ground floor and an upper level access bridge linking the two buildings are located on Park Road.
17. Immediately to the south is 38 Humphreys Lane which is a 5 storey mixed use development with retail uses on the ground floor and residential apartments above. To the east, (rear of the site) is a large 8 storey commercial development known as 7-11 The Avenue. There is a laneway at the rear of the subject site which is pedestrianised and can only be accessed via a formal communal accessway from Humphreys Lane (through the development at 38 Humphreys Lane) and other linkages via The Avenue. This rear laneway is an attractive space but its general utilisation is low given it is wedged between a series of commercial buildings and not visible from the general public domain. The rear courtyard is elevated above the subject site and therefore currently is not able to be directly accessed or utilised. The proposal will improve this relationship.
18. The site is located within walking distance to the Hurstville Commercial Centre, Hurstville Railway Station and other amenities including Woodville Park and Hurstville Public School.

Figure 4: The subject Site when viewed from Park Road



Courtesy: Statement of Environmental Effects

Figure 5: The subject Site looking east



HISTORY

19. On 18 March 2015 Council granted approval for Development Application DA2014/1157 which proposed the “*demolition of existing structures and construction of a mixed commercial/residential development containing basement and ground floor car parking, ground floor and first floor commercial suite and 13 x 2 bedroom and 1 x 3 bedroom residential units*”. This development consent is still valid and approved a built form which reached an overall height of some 30m (RL91.6). The front and rear elevation of the approved building is shown below.

Figure 5: The approved front and rear elevation of DA2014/1157

Brief comparison of the proposed development against the approved and currently active development consent (DA2014/1157)

Development Standard	Approved (in accordance with DA Consent DA2014/1157)	Proposed
Building Height Permissible – 19m	27.8m – 28.2m RL 91.00 (main roof) RL 92.00 (top of front parapet)	30.4m (reduced to 29.65m by way of conditions) RL93.00 (to the balustrade) It is proposed to reduce this to RL92.8 (as amended by the condition of consent) RL94.05 (to the lift overrun) It is proposed to reduce this to RL93.30 by way of a condition on the consent and the staircase structure is to be removed and replaced with an access hatch from the level below. RL92.00 (top of front parapet) RL90.4 (rear wing) Deferred commencement conditions are imposed to reduce the height of structures on the roof to reduce their prominence. The staircase structure is requested to be removed and replaced with an access hatch as

		<p>this part of the roof is only accessible for maintenance purposes.</p> <p>The lift overrun can be further reduced and can achieve an overall RL93.30 which is lower than the lift overrun at No.10 Park Road. The balustrade is to be setback further and reduced to achieve an over height of RL92.80.</p> <p>The currently active DA approval 2014/1157 did not include a lift overrun and that is in partly why the subject development is slightly higher than the approved building.</p>
Floor Space Ratio Permissible – 3.5:1	3.16:1	3.49:1

APPLICABLE PLANNING CONTROLS

- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Hurstville Local Environmental Plan 2012
- Hurstville Development Control Plan No.2 (Amendment No.7)
- Apartment Design Guide

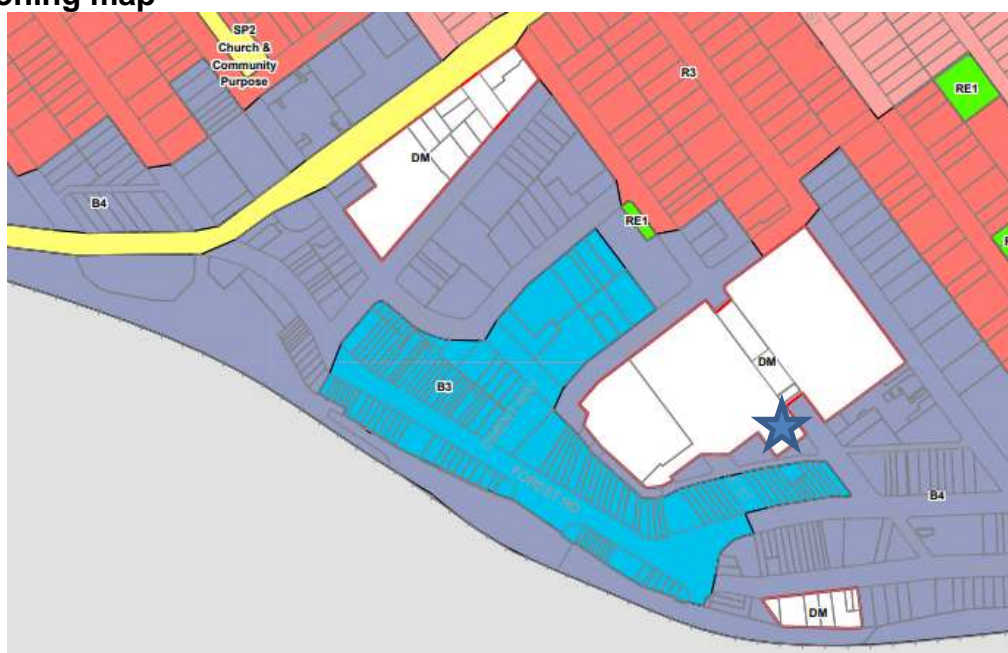
PLANNING ASSESSMENT

Environmental Planning Instruments

Hurstville Local Environmental Plan 2012

Zoning


20. The subject site is zoned B4 – Mixed Use under the Hurstville Local Environmental Plan 2012 and the proposed development is permissible in the zone with the consent of Council. The zone objectives are:
- *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 allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*
21. The proposed development complies with the zone objectives. The narrow frontage width restricts the ability to create a functional retail or other non-residential use at street level however the provision of a clearly identified, sizable commercial lobby and a separate recessed residential lobby area at the front generally satisfies the intent and purpose of the objective.


Figure 6: Zoning map

Extract Hurstville LEP (Land Zoning Map-Sheet LZN_008A)

22. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 (HLEP 2012) is detailed and discussed in the table below.

Clause	Standard	Proposed	Complies
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the plan	Yes
1.4 - Definitions	“Shop top housing”	The proposed development meets the definition.	Yes
2.3 - Zone objectives and Land Use Table	Meets objectives of B4 Mixed Use zone Development must be permissible with consent	Development meets objectives Is permissible development with consent	Yes
2.7 - Demolition	Demolition is permissible with consent	Demolition is proposed with this application	Yes
4.3 – Height of Buildings	19m as identified on Height of Buildings Map	30.4m maximum (refer to above for breakdown in the height) 29.65m after reducing the height of the lift and staircase. The applicant has submitted a Clause 4.6 Statement for the variation in the height. This is discussed in further detail in the assessment report.	No
4.4 – Floor	3.5:1 as identified on	3.49:1	Yes

Space Ratio	Floor Space Ratio Map	GFA calculations that have been provided have been confirmed to be accurate.	
6.6 – Active street frontage	<p>The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre, Zone B3 Commercial Core and Zone B4 Mixed Use. A recent amendment to the LEP to amend Clause 6.6 by adding “medical centre” to the definition of “active frontage”. This change was adopted by Council at its meeting 7 August 2017. The change does not directly impact this proposal.</p>	<p>The site is identified on the Active Street Frontages Map</p>  <p>Subclause 3 requires the consent authority to consider the design of any change of use or erection of a new building to ensure the development will have an active street frontage.</p> <p>Subclause 4 stipulates that an active street frontage is not required for any part of the building that faces a service lane or is used for the following;</p> <ul style="list-style-type: none"> - Entrances and lobbies (including as part of a mixed use, development) - Access for fire services, - Vehicular access <p>In this case the development satisfies the provisions of subclause 4 as the front of the building comprises of the vehicular accessway and a spacious commercial lobby area and a recessed residential lobby located off both roadways. The proposal will substantially improve accessibility to the pedestrianised courtyard at the rear (The Avenue Laneway).</p>	Yes
Clause 5.10 Heritage	(4) Effect of proposed development on	The subject site is located	Yes

	<p>heritage significance</p> <p>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 area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p>	<p>within the close proximity of a number of Heritage Items. The items designated along Forest Road (Items 123,124,127,128) are shops and residences facing Forest Road and are not visible from the subject Site.</p> <p>Item 130 is the closest property and the heritage significance relates to the “<i>front façade of the building</i>”. The front façade of the building is not visible from Park Road</p>  <p>The heritage items along The Avenue are removed from the subject site and not within its visual catchment so the proposal will not affect these properties.</p>	<p>The proposal will not adversely affect the setting, location, integrity and significance of the adjoining heritage items.</p>
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Clause 4.6 Exemptions to development standards - Height

23. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The LEP identifies a maximum height of 19m whereas the proposed development will have a maximum height of 30.4m. A variation to the height can be considered under Clause 4.6 – Exceptions to Development Standards of the LEP. Although the non-compliance is quite substantial in nature and exceeds the control by some 60% the circumstances of this case are unique given the physically constrained and isolated nature of the Site, the context and the character of the locality and also the fact that there is an active consent which allows for the construction of a building of a similar height however the design quality and aesthetics of this approved built form is of a poorer quality than what is currently proposed.
24. The lift overrun and staircase structure are quite large and prominent features and it is requested by way of deferred conditions to remove the staircase structure and replace it with an access hatch with access from Level 8 and to reduce the lift overrun by a further 750mm to a maximum RL93.30 rather than RL94.05 which is more consistent with the height of the lift overrun at 10 Park Road (which reaches a height of RL93.60). The balustrade at the roof top has also been requested to be setback further from the front and eastern side to reduce its visibility. This part of the roof includes plant and equipment so it

will only be accessed only for maintenance purposes. These changes have been discussed with the Applicant and they have confirmed that they can be easily achieved.

25. Clause 4.6 of the LEP permits a consent authority to grant development consent for development that would contravene a development standard where the consent authority is satisfied that:
- cl4.6(4)(a)(i): a written request from the applicant adequately demonstrates that compliance with the development standard is unreasonable or unnecessary (cl4.6(3)(a)), and that there are sufficient environmental planning grounds to justify the contravention (cl4.6(3)(b)), and
 - cl4.6(4)(a)(ii): the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the relevant zone.
26. The objectives of Clause 4.6 are;
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Figure 6: Height Map



Courtesy: Hurstville LEP 2012 (height map extract 008)

27. The applicant has lodged a Clause 4.6 Statement to justify that the degree of non-compliance is considered to be reasonable and acceptable in this case. A summary of the applicant's written justification is provided below.

Submission

1. *A better outcome for and from the development (clause 4.6(1)(b)) in that:*
 - a. *Compliant GFA is redistributed to create a far superior internal amenity outcome for future occupants of the building.*
 - b. *The proposal matching the HOB of the northern neighbouring property achieves a contextually appropriate and better streetscape outcome.*
 - c. *The desired future character objectives are achieved for the site.*
 - d. *The proposal delivers excellent CPTED outcomes both internally and externally.*
2. *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) on the following basis:*

a. A strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act

i. the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

ii. the promotion and co-ordination of the orderly and economic use and development of land,

b. Applying [Wehbe v Pittwater Council \[2007\] NSWLEC 827](#), one or more of the following tests adequately justify why it is unreasonable and unnecessary to strictly comply with FSR development standards:

i. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Submission: A better environmental outcome is achieved in terms of ESD, architectural form and appearance and in terms of internal amenity with no adverse environmental effects upon any neighbours.

ii. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Submission: the objectives are relevant and are **achieved** notwithstanding the numeric non-compliance with clause 4.3 of the LEP because the HOB is a contextual fit with the neighbouring buildings that isolated the subject site and the SEPP 65 and ADG objectives are better achieved by the redistribution of GFA at the proposed HOB allowing a smaller footprint and the common open space internally.

iii. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Submission: Clause 2.1 objectives are to ensure buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality. The proposal is wholly consistent with the HOB of its northern neighbours and demonstrably lower than the large majority of recent developments in the vicinity of the site and also will be demonstrably lower than the building proposed under 6 current planning proposals as detailed by Hurstville City Centre Urban Design Strategy 2017 dated 7 September 2017

The objectives would be defeated and thwarted by requiring compliance as the most desirable outcome is a HOB outcome commensurate with the existing HOB to the north and consistent with the development consent under DA2014/1157 (an approved parapet HOB of 92m AHD), therefore compliance is unreasonable.

iv. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Submission: The Council, NSW PAC and Court applying this principle have observed in relation to developments in this precinct that development standards and controls for HOB in particular have been

abandoned, this was noted bluntly in the determination DA 2014/1083 (Figure 24 - JRPP Determination DA2014/1083). Determinative weight has been given to the contextual outcomes.

- v. compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Submission: *The previously avoidable isolation of this site by the development of No.7-11 The Avenue which has had a major and negative impact upon the site in terms of its environmental character (isolation) requires special consideration to be given to the most skilful design to provide acceptable internal amenity outcome for future occupants. The compliance with the HOB would see all new apartments over looked and over shadowed by 7-11 the Avenue and this would be unreasonable and inappropriate.*

3. Sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)) are found on the following basis:

- a. The proposal does not seek more FSR and GFA, that is the final bulk and scale addresses the desired future character for this precinct.*
- b. DA2014/1157 granted consent to a HOB of 92m AHD and this proposal is consistent with that development consent.*
- c. Contextually the proposal is a better streetscape outcome than that approved under DA2014/1157.*
- d. The internal amenity for future occupants is demonstrably better than that approved under DA2014/1157.*
- e. The internal amenity outcome is demonstrably better as the complying GFA has been redistributed vertically allow better cross ventilation and solar access, offsetting to some extent the unavoidable impacts caused by the isolation of this site by the development of No.7-11 The Avenue, Hurstville.*
- f. Applying [Wehbe v Pittwater Council \[2007\] NSWLEC 827](#) as above there are many grounds upon which the exception is justified on environmental planning grounds.”*

- 28. The recent Court decision *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.
- 29. As held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) *does not* require the consent authority to *directly* form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only *indirectly* in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.
- 30. By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the development will be in the

public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

31. After careful consideration of the Clause 4.6 request it is considered that the non-compliance in this case is acceptable and the request is well founded and the variation will satisfy the objectives of both the zone and development standard and will produce a better planning and design outcome than what is existing on the Site and what has been approved by DA2014/1157. Further analysis is provided below.

Consistency with Zone Objectives – clause 4.6(4)(a)(ii)

The proposal is consistent with the objectives of the B4 Mixed Use zone as follows:

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

Comment: The proposal has been designed to include commercial and residential land uses within the building. This design intent satisfies the zone objective and promotes a mix and diversity of uses in the zone in which it is located. The non-compliant height does not directly affect the attainment of this objective.

- *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.*

Comment: Like the first objective of the B4 zone, the intent is to provide a mix of uses which is achieved through the design. Again the non-compliance with the height control does not obstruct the achievement of this objective.

- *To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*

Comment: The site is not located within the commercial core of the Hurstville City Centre so this objective is not applicable. However it is located on the immediate periphery and does satisfy the objective through the design.

Consistency with the Development Standard Objectives – clause 4.6(4)(a)(ii)

The objectives of the development standard for height include the following;

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

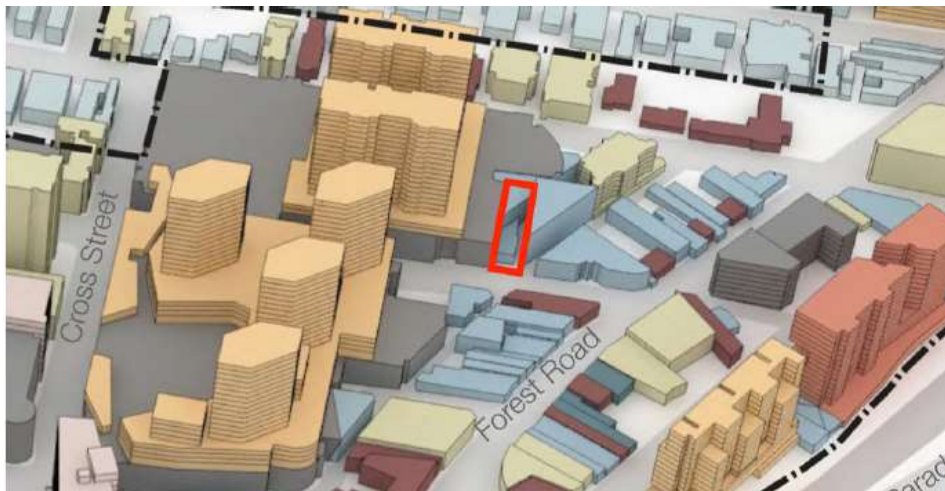
Comment: The proposed built form satisfies the density and complies with the maximum FSR permitted for this site. The height map shows that there are varying heights for sites within the B4 zone with heights transitioning down from the commercial core

The subject site is designated as “Q” which translates to a maximum height limit of 19m. Immediately adjoining sites to the north and rear are designated as “U” which permit a maximum height of 30m. In line with this control 10 Park Road is approximately 30m in height. To the east and south of the site are smaller, infill sites and corner sites which are designated as “Q” and “S” which establish a 19m and 23m height limits respectively. The differing height limits encourage a transition in scale from the commercial core. The proposed 30.4m height (reduced to 29.65m after reducing the height of the lift overrun and

staircase on the roof) is consistent with the height of 10 Park Road and the design will align with the general scale and proportions of this building.

When considering the “*desired future character*” for development in this precinct, the form, scale and height as proposed is consistent with adjoining buildings. Furthermore, Council has prepared the Hurstville City Centre Urban Design Strategy 2017 which aims to inform future development in the area. The strategy provides some general massing and built form modelling to show the intended scale and form for future redevelopment. Given this Site is an infill development it will sit comfortably within the streetscape and will create a transition in height towards Forest Road as anticipated by the Strategy.

Figure 7: Extract from the Hurstville City Centre Urban Design Strategy 2017 showing the subject site.



- b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*

Comment: The building has been sensitively designed so that the commercial component and apartments are orientated to face the front of the site (Park Road), north and internally as there is a proposed landscaped commercial courtyard which adds visual interest and amenity to the development. The orientation of the apartments and commercial component reduces the potential for any undue overlooking to immediately adjoining premises. There is no loss of views or outlook created by the proposal.

In terms of overshadowing, the subject site is located within a dense commercial/retail area with larger scale developments flanking the site. At 9am and 12noon in midwinter the shadows cast by the development are predominantly cast along Park Road and by 3pm shadows are cast over properties facing Forest Road. The main impact is to the south east at 3pm which is a solid wall to the building located at 38 Humphreys Lane. The development does not overshadow any key habitable areas or areas of open space and mainly affect the rooves of commercial properties. All immediately adjoining properties will receive a minimum of 3hs of solar access during the day in midwinter. The shadowing is considered acceptable and compliant.

- c) to minimise the adverse impact of development on heritage items,*

Comment: The closest heritage item is No.1130 which is 184 Forest Road. The heritage significance of this property is its façade as it is a shop and residence facing Forest Road.

This building is physically separated from the subject site as it is located across the road. The proposed development will not adversely affect the integrity and significance of this item.

d) to nominate heights that will provide a transition in built form and land use intensity,

Comment: As previously mentioned the non-compliance with the height control will not affect the achievement of the objective as the proposed building will maintain a transition from the intended larger, intensive development at the commercial core stepping down to development to Forest Road and beyond.

This site is unique due to its isolation and the development should not establish an undesirable precedent for future non-compliances as there are no other sites with similar characteristics in the immediate locality. The applicant in their Clause 4.6 request submission also alluded to the fact that the Former Sydney East Joint Regional Planning Panel has approved a number of applications including 1-5 Treacy Street and 1 Hill Street (DA2014/1083) in April 2015 which exceeded the FSR and Height controls. The Panel concluded in that instance that *“the strict imposition of the height and FSR planning controls in DCP 2 Hurstville City Centre was unreasonable and unnecessary by virtue of the fact that these controls have been virtually abandoned by approvals by Council, the Land and Environment Court and the Planning and Assessment Commission in the vicinity of the Site under the same DCP controls.”*

e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre.

Comment: The Hurstville City Centre Urban Design Strategy 2017 considers the broader form and potential massing of development within the Core and sites expanding out from the Centre. The proposed development will align with the existing building at 10 Park Road and will therefore create a consistent and balanced scale of development along this side of the roadway. A smaller more compliant height will create an awkward looking building which will relate to the lower scale of 38 Humphreys Lane however this building does not address Park Road and therefore its relationship to the subject site is removed and should not be closely associated with it. The proposed design clearly addresses Park Road and harmonises with its northern neighbour and creates a visually integrated development.

f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,

Comment: The site adjoins the Hurstville commercial core which is in the process of undergoing change and transition. This objective is therefore not applicable as it relates to development in more established areas that are not subject to much change and redevelopment.

g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

Comment: The current two storey building on site significantly detracts from the character of development in the streetscape and immediate locality. The outdated design and siting of this building prohibits its direct relationship to either Park Road or the laneway at the rear. The proposed development intends on improving site linkages through and around the site and has been designed to address both the roadway and rear lane. The proposal

is a better urban design outcome than the active DA (DA2014/1157) and is well articulated and sensitively considered to create a more appropriate streetscape fit and will be a superior quality of development.

There was some concern raised in regards to the bulk, mass and visibility of the staircase and lift overrun and given their location along the southern edge of the building they will protrude above 38 Humphreys Lane. There is some scope to reduce the dominance and scale of these structures which should benefit the overall visual appearance of the building when viewed from the south. The staircase structure is to be removed and the lift overrun will be reduced in height a further 750mm (refer to deferred commencement conditions).

32. It is for these reasons that the Clause 4.6 Statement is considered to be well founded and the variation in the height in this instance should be supported.

Environmental Planning and Assessment Regulations 2000

33. The proposed development satisfies the relevant matters for consideration for development under the Regulations.

State Environmental Planning Policies

34. Compliance with the relevant state environmental planning policies is detailed and discussed in the table below.

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy 55 – Remediation of Land	Yes
State Environmental Planning Policy (Building Sustainability Index BASIX) 2004	Yes

35. Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment
This REP is applicable to the subject site and the aims of the plan are;

- (a) to maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
- (b) to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
- (c) to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
- (d) to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*
- (e) (Repealed)*
- (f) to provide a mechanism that assists in achieving the water quality objectives and river flow objectives agreed under the Water Reform Package.*

The proposal generally satisfies the objectives and provisions of the REP.

36. State Environmental Planning Policy 55 – Remediation of Land

SEPP 55 identifies that the following is to be considered in determining a development application.

Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital-land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

37. The provisions of SEPP 55 require the consent authority to determine if the land the subject of the application is contaminated, and whether it is appropriate for the proposed development having regard to subclause (4).

38. The subject site contains an older style two storey building which has been used for commercial and residential purposes for decades. A search of Council's records has been undertaken and the recorded uses of the site relate to commercial and residential uses.

39. Table 1 of the Contaminated Land Planning Guidelines identifies contaminating uses that would trigger the preparation of a preliminary site investigation plan to determine if and the extent of any contamination. The recorded uses of the site shown in Council's records do

not show any uses identified in Table 1. Council's records also do not show any action or information relating to contamination being identified on the site.

40. Based on this information it is considered that contamination and remediation has been considered in the assessment of the development application such that it has been concluded that a physical investigation of the site for contamination is not required at the development assessment stage.
41. A condition has been provided in the recommendation which requires that the Principal Certifying Authority is satisfied that the site is suitable with regards to contamination prior to a construction certificate being issued. This captures the requirement for remediation in the event that contamination is identified on the site.

STATE ENVIRONMENTAL PLANNING POLICY NO 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

42. The extent to which the proposed development complies with the controls and principles in the State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) is detailed and discussed in the tables below.

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	Erection of a "shop top housing" development which satisfies the SEPP's definition of RFB.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Mr Russell Olssen (Registration No 7079)	Yes

Part 2 Design Quality Principles under the SEPP

Clause	Standard	Proposal	Complies
1 – Context and neighbourhood character	Good design responds and contributes to its context (e.g. natural and built features of an area)	Proposed development has been designed to respond to its context and the topography of the site. It is located adjacent to the Hurstville Town Centre which is an area that is changing and evolving. The proposed	Yes

		infill development addresses the context of the Site and is sympathetic to the immediately adjoining larger scale buildings. It is consistent with the desired future character for the area.	
2 – Built form and scale	Good design provides an appropriate scale in terms of the existing and desired future character and built form that suits the scale of the street and surrounding buildings	The proposal complies with the maximum FSR so the bulk of the development reflects the anticipated outcome in terms of built form. The scale of the building aligns itself to No.10 Park Street and is similar in form to immediately adjoining developments at the rear and is consistent with the desired future character and key principles of DCP No.2 Hurstville City Centre desired future character objectives and principles.	Yes
3 - Density	Good design has a density appropriate for a site and its context, in terms of projected population and can be sustained by existing and proposed infrastructure	Proposed development complies with the floor space ratio requirements. The bulk and scale is consistent with the anticipated density outcomes for this Site.	Yes
4 – Sustainability	Good design combines positive environmental, social and economic outcomes. Includes use of natural cross ventilation and sunlight, recycling and reuse of materials and waste, use of sustainable materials and deep soil zones	Proposed development provides appropriate outcomes for sustainability, through energy efficiency measures, landscape open space areas providing good cross ventilation and solar access outcomes for the commercial component and residential apartments. The proposed design in its current form is a better planning and streetscape outcome for this constrained, isolated Site when compared to the approved built form under DA2015/1157.	Yes
5 - Landscape	Good design recognises that together landscape and buildings operate as an integrated and	Landscaping to the site will be in the form of a courtyard at the first floor level designated to the commercial	Yes

	sustainable system, resulting in attractive developments with good amenity, enhances the development's environmental performance, optimises useability, privacy and opportunities for social interaction, equitable access, and practical management	tenancies and a private area of communal open space area for the residential apartments at Leve 8. This roof top garden is extensive in area and is well designed and provides for an attractive green space for all occupants to use and enjoy. The design also incorporates planting on balconies which further visually softens these elements and articulates the façade.	
6 - Amenity	Good design influences internal and external amenity for residents and neighbours	The proposed development mitigates privacy impacts by orientating openings and balconies away from adjoining properties and to face the street, rear lane but mainly face internally as the building is "L" shaped in its design. The internal amenity of the apartments is considered to be of a high standard and quality and given the constrained nature of the site, many apartments do not meet the minimum solar access requirements however this is made up by most apartments having dual access and orientation	Yes
7 – Safety	Good design optimises safety and security, both internal to the development and for the public domain	Proposed development is consistent with crime prevention principles	Yes
8 –Housing diversity and social interaction	Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Includes different types of communal spaces for social interaction	Proposed development provides one, two and three bedroom dwellings in a variety of layouts including adaptable housing.	Yes
9 - Aesthetics	Good design achieves a built form that has a balanced composition of elements, a variety of materials, colours and	Design of development and proposed external materials and finishes are appropriate. The proposed development results in a good architectural	Yes

	textures and responds to the future local context	outcome. The façade is well articulated and considered. There is an interesting use of varied materials and finishes to break up the form and mass and create two distinct bays vertical bays to the building. This is considered to be an attractive high quality building that will have a positive contribution to the streetscape and general locality.	
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Clause 30 – Consideration of Residential Flat Design Code Design Controls

Clause	Standard	Proposal	Complies
Objective 3D-1	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm</p>	<p>189sqm (35% of site) of communal open space is provided by way of an elevated central courtyard on Level 1 with exclusive use for the commercial tenancies and a landscaped courtyard located on the roof of the Commercial Tenancy No.2. A roof top terrace on Level 8 is also included which provides an area of communal open space for the residential occupants.</p> <p>The site is considered to be constrained, isolated and located within business zone, which allows for some greater flexibility in the design and provision of communal open space. The current property has no deep soil or landscaped area so the proposal is a vast improvement in relation to the existing environmental conditions.</p> <p>The communal open space areas have good amenity in that they are attractive, functional areas with seating provided and dense landscaping proposed</p>	Yes

	on 21 June (mid winter)	<p>around their periphery. The rooftop terrace has better amenity than the landscaped courtyard on Level 1 and receives over 2hs of solar access throughout the day. This space comprises of 50% of the total communal area of open space and therefore complies with the ADG provision.</p> <p>The width of both areas exceeds 3m as stipulated by the ADG.</p> <p>Additional landscaping is provided in the form of planter boxes on the balconies which breaks up the bulk and mass of the façade and adds visual interest and softens the elevations.</p>	
Objective 3E-1	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>-Where the site is less than 650sqm = no minimum dimension</p>	<p>There is no minimum requirement for deep soil area due to the size of the site.</p> <p>The communal areas of open space provide a substantial amount of landscaped elements. They include planter boxes where more mature trees and shrubs can be planted to create a private green space as a soil depth of 1m in the planter boxes is proposed. It should be acknowledged that the site currently offers no landscaped area and the development will significantly improve this situation.</p>	Yes
Objective 3F-1	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and</p>	<p>The north eastern facing residential apartments are setback over 12m from the rear property, 7-11 The Avenue. The building at the rear is a commercial development and consists of offices rather than any</p>	Yes

	<p>rear boundaries are as follows:</p> <p>Over 25m (9+ storeys) Habitable rooms and balconies = 12m Non-habitable rooms = 6m</p>	<p>habitable spaces.</p> <p>The commercial tenancy has been recessed from the rear and includes a planter box which will soften the rear elevation when viewed from the laneway. The tenancy is setback 2m from the rear boundary but the separation distance between the subject development and the rear commercial neighbour is over 6m from the laneway. The distance from the residential level at the rear is 5.44m from the rear boundary and combined with the rear laneway width of some 7m the total separation between buildings will be some 12m which satisfies the ADG requirements.</p> <p>The physical separation distances from the rear are sufficient and satisfy the ADG requirements. The built form when viewed from the rear is stepped breaking up the bulk and form (9 storeys at the front stepping down to 8 storeys to the roof top terrace and then stepping down to 2 storeys for the Commercial Tenancy (No.2). This provides a transition in scale from the front creating a more human scale at the rear where the development meets the pedestrianised courtyard.</p> <p>Apartments at the rear are orientated towards the north, centre of the site and the apartments that directly face the laneway are setback over 26m from the laneway.</p>	
Objective 3G-1	Building entries and pedestrian access connects to and addresses the public	Both the front and rear of the building provides direct access to the laneway and roadway via the provision of	Yes

	<p>domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>spacious lobby areas.</p> <p>The residential lobby is separated from the commercial lobby to provide clearly defined access points for both uses.</p> <p>Access to and from the building is easily recognisable.</p> <p>The proposal is also providing access to the rear elevated public podium/courtyard as currently there is no relationship to this rear courtyard as this space is elevated above the subject site. The development will improve linkages through and around the site and improve the Site's relationship to adjoining properties and the public domain.</p>	
Objective 3H-1	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>The proposed development incorporates a double driveway which although takes up quite a bit of the site's frontage, provides greater safety for both vehicles entering and exiting the Site and for pedestrians as this part of Park Road is highly pedestrianised due to its close proximity to Westfield Shopping Centre.</p>	
Objective 3J-1	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; - The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement 	<p>Subject site is located within 800m of Hurstville railway station. The site is conveniently located with excellent accessibility to many transport services.</p> <p>The proposal complies with the parking requirements of the ADG. A detailed traffic and parking assessment prepared by McLaren Transport supports the scheme and confirms</p>	Yes

	<p>prescribed by the relevant council, whichever is less</p> <p>The car parking needs for a development must be provided off street</p>	<p>compliance.</p> <p>The plan does not include a designated area for bicycle parking and a condition will require some bicycle parking to be provided.</p>	
Objective 4A-1	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter</p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>21% of apartments facing north east allow for 2hrs or more of direct sunlight between 9am and 3pm in midwinter.</p> <p>52% of apartments receive direct sunlight to their living room windows between 9am to 3pm.</p> <p>The site is constrained, small and isolated so achieving this numerical standard is impossible as it is bounded by larger scale developments and the existing dense environmental conditions provide design restrictions.</p> <p>The design has sought to optimise the provision of light into all spaces by the introduction of reflective white materials which promotes indirect diffused light to enter internal spaces. The southern rendered wall of 10 Park Road is a light cream colour which will enhance light to reflect off this wall into living spaces.</p> <p>Level 9 includes skylights which provide additional light through to the apartments in Level 8.</p>	No – considered acceptable given the location and the proposed design and orientation of apartments.
Objective 4B-3	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through</p>	<p>74% of units are appropriately cross ventilated.</p> <p>Maximum depth is less than 18m</p> <p>Most apartments are dual</p>	Yes

	<p>apartment does not exceed 18m, measured glass line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	<p>aspect apartments, there are no corner apartments.</p>	
Objective 4C-1	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>If located in mixed use areas = 3.3m for ground and first floor to promote future flexibility of use. Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p>	<p>The height of the ground floor entry area off Park Road has a floor to ceiling height of some 3.5m which complies with the ADG. Planter boxes on the balcony to the commercial tenancies reduce the floor to ceiling heights at the entry to about 3m. The planter boxes do not affect internal heights which is of more importance to maintain and the planter box design is an attractive feature that will add interest and soften the entry so this element should be maintained.</p> <p>The entry lobby off the laneway has a height of approximately 2.46m which is less than the 3.3m requirement. The fact the entry at the rear is only to a lobby area and the access is off a small public courtyard space having a higher floor to ceiling height is not essential however a condition will require the height of the entry to have a minimum floor to ceiling height of 2.6m. A further 200mm is considered to be minimal and can be accommodated within the development and may just require some additional excavation at the basement level to cater for this additional height.</p> <p>The remaining levels have minimum floor to ceiling</p>	Yes/No

		heights of 2.7m and comply with the ADG requirements.	
Objective 4D-1	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>Every apartment complies with the minimum internal area requirements.</p> <p>All windows to habitable spaces comply with the minimum requirements.</p>	Yes
Objective 4D-2	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Complies and addressed as part of the design.</p> <p>The rear of kitchens is a maximum 8m from a window.</p>	Yes
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p>	<p>Complies with minimum room sizes</p> <p>Bedrooms have a minimum dimension of 3m - complies</p> <p>All apartments have a width of 4m except for the 2 adaptable apartments that have widths of 3.7m. This is considered acceptable given that the overall area of the apartments exceed the minimum areas.</p> <p>The rear apartments have a</p>	Yes

	<p>-3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>minimum width of 4.9m. Although narrower than traditional apartments they are long and broken up by the provision of an internal balcony plus living spaces are generous in size (27sqm excluding the kitchen area).</p>	
Objective 4E-1	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth -3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>All balcony areas comply with the minimum requirements of the ADG.</p> <p>All balconies have a minimum depth of 2m.</p> <p>No ground floor units are proposed.</p>	Yes
Objective 4F-1	<p>The maximum number of apartments off a circulation core on a single level is 8</p>	<p>Maximum 3 units</p>	Yes
Objective 4G-1	<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>-1 bedroom = 6m³ -2 bedroom – 8m³ 3 bedroom – 10m³</p>	<p>All units have storage areas that comply with the requirements. Independent storage areas for each apartment are provided in the ground floor parking area and additional storage cupboards are provided within each apartment.</p>	Yes
Objective 4M	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human</p>	<p>The design of the façade is interesting, modern and well articulated. The design of the main entries, commercial components and residential</p>	Yes

	scale.	<p>levels are differentiated by differing architectural treatments defining the uses.</p> <p>The building is of a high architectural and design quality and includes a number of visually attractive architectural elements and features that enhance the overall appearance of the development when viewed from the street and public domain.</p>	
Objective 4N	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	The roof design is well considered and integrated with design of the development.	Yes
Objective 4O	Landscape design is viable and sustainable, contributes to the streetscape and amenity	Landscape design is appropriate and provides suitable communal and private open space areas	Yes
Objective 4P	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	<p>Landscaping to the site which includes planting on structures has been design by qualified landscape architect.</p> <p>Planter boxes permit 1m of deep soil which permits larger trees and shrubs to be incorporated into the design. The introduction of planters on balconies softens the visual appearance and scale of the building and provides a green wall type treatment.</p>	Yes
Objective 4Q	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Design of apartments allows for use by different lifestyles. Internal layouts vary and provide flexible layouts.	Yes
Objective 4R	Adaptive reuse as apartment of existing buildings- new additions are contemporary and	N/A to this development. The mix of apartments precludes them being adaptively reused however two	Yes

	complementary, provide residential amenity while not precluding future adaptive reuse.	bedroom apartments could be modified to allow for more versatile design and layout options.	
Objective 4S	Mixed use developments are provided in appropriate locations, provide active street frontages, residential levels of the building are integrated within the development and safety and amenity is maximised for residents	The development substantially improves the site's relationship to the public domain. Although the building does not include any operational retail or commercial area on the ground floor, the site frontage restricts this. However given the close proximity to the Westfield Shopping Centre a retail component will most likely not be utilised so the provision of a large and spacious entry lobby and commercial areas on the first floor will provide greater street activation than the existing building on the site. Also the development will provide a direct link and connection to the laneway at the rear.	Yes
Objective 4T	Awnings and signage – awnings are well located and compliment and integrate with the building design, signage responds to the context and desired streetscape character	No awning is proposed. 10 Park Road does not have an awning and it would be awkward if one would be incorporated in this location as there are no awnings along this side of the street.	Yes
Objective 4U	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	Development incorporates BASIX commitments in the design to provide appropriate energy efficiency features.	Yes
Objective 4V	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into site design	Development incorporates appropriate a detailed stormwater and drainage design which incorporates an onsite detention basin (OSD). The proposed method of stormwater and drainage management has	Yes

43. The proposal was referred to the Design Review Panel (DRP) for comment. The panel felt that the proposal was well designed and they supported the design intent subject to some minor changes being considered and incorporated into the design. The following comments were provided

“Context and Neighbourhood Character

Park Street is dominated by large commercial buildings, predominantly Westfield and its large scale blank street facades. The subject site is narrow, with party walls to both sides of up to nine (9) storeys, a rear lane that is in fact pedestrianised and privatised and currently inaccessible to the site, and a seven (7) storey glazed commercial building dominating its rear boundary. The site receives very little solar access and can only be accessed from Park Road.

The context and site have been well described in the documentation and the proposal is a well considered response to its complex constraints.

Built Form and Scale

This proposal matches the scale of an existing development approval for this site. The proposal comprises three (3) units in an ‘L’ shaped arrangement of eight (8) storeys which is consistent with the building at the rear. With limited vehicular access the Park Road frontage is dominated by a double garage entry door at grade and commercial tenancies are provided at first level. While a shared residential and commercial courtyard is proposed at Level 1 it would be more appropriate for this area not to be considered as a component of residential communal open space, due to the surrounding commercial use.

The commercial component at street level and laneway level do not activate the street. The Panel believes that further investigation should be carried out to explore means of expanding street front commercial usage and connection to the pedestrian lane at the rear.

The building layout is well considered and the units achieve a high level of amenity in a difficult context.

Density

Complies

Sustainability

The proposal achieves high levels of natural ventilation and landscape amenity. While solar access is highly constrained, a roof top terrace manages to achieve good solar access and outlook. Due to its highly constrained setting the provision of deep soil is impossible.

Landscape

Landscape areas are well designed for visual relief and amenity. The inclusion of a toilet and kitchenette on Level 8 would improve amenity. Likewise considering appropriate recreational needs of children and teens in the design development for the Level 8 roof garden.

A street tree should be included at Park Road, of a species consistent with recent existing street tree planting.

The Level 2 roof top garden is awkwardly accessed and appears not to be well considered as proposed. This space immediately north of Unit A-203-2B balcony may be better

utilised as a landscape private open space for that unit, and the whole rear façade dedicated to a landscape buffer between the rear laneway and the development.

The “ownership” and maintenance responsibility for the external balcony planters should be apparent through the design. At present there are some areas where a planter is in front of one unit however would need to be accessed for maintenance via an adjoining unit.

Given the density of planting, all efforts should be made to ensure sufficient soil volume and depth, potentially setting down to increase the soil depth where possible without increasing planter wall height.

Considering the very limited amenity that planting currently provides to an otherwise very hard surfaced lane, the rear facing façade could be reconsidered as a landscape element. Alternatively a fully glazed commercial façade to an expanded commercial activation area should be considered.

Amenity

The units are generally well designed and provided with a good outlook. The courtyard space and communal open space are similarly well designed - see notes in ‘Landscape’ above regarding improvements.

As noted above there is limited street activation to Park Road, it would be desirable to increase retail as far as possible (perhaps with redesign of entry and relocation of basement access ramp).

Safety

Acceptable

Housing Diversity and Social Interaction

Acceptable, however see notes above regarding first floor open space and its inappropriateness as residential communal open space.

Aesthetics

The proposal has been well considered in terms of materials and expression, however the appearance of two (2) similarly sized buildings facing Park Road is slightly confusing on such a constrained frontage. It may be better to extend the extent of brick to the front entry – to increase its emphasis – and allow the corner to take up the paler framed expression. To emphasise the base of the building and its commercial use at Level 1 it is recommended that the bottom two (2) floors share a distinctive and unified expression.

As noted above the rear elevation takes out any landscape quality that currently exists in the lane and replaces it with a bland brick expression – starkly at odds with the commercial/pedestrian character surrounding it. It is recommended this elevation is reconsidered to incorporate a more activated commercial frontage.

Recommendation

The Panel supports the application subject to the issues raised above being resolved.”

44. The Applicant amended the plans in July 2018 in response to the Panel’s comments. The following changes were made to the design.
45. The design of the building has been modified in the following way;

- The number of car parking spaces has been increased from 17 to 18 spaces via the provision of a car turntable.
 - The previously shared car wash/turning bay has become a shared visitor space/ car wash bay.
 - The Level 1 courtyard has become fully dedicated to the commercial tenancies as per the DRP recommendation.
 - More legible entry and openings to the two roadways by creating larger openings.
 - The rooftop has been redesigned to include a new WC and kitchenette facilities to make this space more functional.
 - The rooftop terrace at Level 2 above the commercial tenancy at the rear has been dedicated to Unit A-203 which will improve the green space for this apartment.
 - The rear façade has been reconfigured slightly to include planters at the ground, first and second level to create a green wall and further articulate the built form.
 - Planters along each balcony have been specified and privacy screens constructed of steel rods have been integrated to allow for plants to climb up these structures.
 - Increased soil depth has been provided to planter boxes to allow for about 1m of deep soil in these areas which will allow for denser planting.
 - The front façade has been revised bringing the brick volume further to the right. This creates a clearer distinction between the two vertical bays.
 - The amended plans provide a clearer distinction between the commercial tenancies and the residential components above.
46. The design changes are predominantly aesthetic in nature but should improve the visual relationship and connection of the development to its surrounds. Two requested changes which were not adopted included;

1. Provision of a street tree/s

The Applicant has justified that it is unsafe in this location to provide a street tree. McLaren Traffic Engineers have confirmed that *“The subject site is located in the centre of Hurstville CBD and positioned immediately adjacent to Hurstville Westfield which is considered to generate a significant volume of pedestrian activity. The prevailing verge width accessed by pedestrians along the Park Road frontage of the site is approximately 3m in width. It is considered that restricting the width of this verge further through the provision of a tree could potentially decrease Pedestrian Level of Service performance to unsafe levels during peak periods of pedestrian activity.”*

2. A larger commercial/retail frontage to Park Road

The Applicant has suggested that to increase the commercial frontage, a modification and reduction in the driveway width would need to occur and the driveway width of 6.6m would need to be narrowed which is an adverse traffic and parking outcome. McLaren Traffic Engineers have provided supporting information which confirms the reduction in the access driveway is undesirable. There is currently no retail/commercial frontage provided by the existing building so the development will improve this relationship between the built form and streetscape. It is unlikely that a retail/commercial tenancy on the ground floor will thrive as it will be competing with the large adjoining Westfield Shopping Centre. The Site also adjoins the car park to Westfield so the streetscape isn't a particularly active or attractive one.

Development Control Plans

47. The proposed development is subject to the provisions of the Hurstville Development Control Plan No 2 (Amendment No.7) which was adopted on 18 April 2018. The

application was lodged prior to the adoption of this policy and relied on the previous controls of the DCP No.2 (Amendment 6) which is no longer applicable.

48. Part 4 of the Plan outlines controls pertaining to the six (6) designated city centre precincts within the Hurstville Town Centre. The site is located within the Retail Core Precinct. This section of the DCP outlines the key planning and design principles that are encouraged to be considered and adopted when developing in this area. Much of the focus of development is around the retail precinct along Forest Road and to retain and reinforce this active streetscape. The subject site is physically separated from Forest Road however it has been designed to create an attractive commercial and residential lobby off Park Road which should activate this frontage more than the existing building which has no relationship to either roadway. The proposal has also been designed to directly address the rear laneway. The proposal complies with the purpose and intentions of the DCP.
49. The following table addresses the specific controls contained within the DCP No.2 (Amendment No.7) that are relevant to this development.

DEVELOPMENT CONTROL PLAN NO 2 - HURSTVILLE CITY CENTRE (Amendment 7)

The extent to which the proposed development complies with the car parking provisions is outlined in the table below.

Development	Requirements	Proposed	Complies
5.2 Building Form Character Principles	The DCP outlines a number of design and streetscape principles in relation to establishing an appropriate scale and character for development within the City Centre, activating frontages and promoting visual and physical connections around the Site.	The design of the proposal satisfies these key principles.	Yes
5.3 Built Form Controls 5.3.1 Site amalgamation must achieve:	In the remaining of the City Centre - a general building floor plate of 900 - 1,000sqm; and a minimum 30m street frontage;	The site cannot be amalgamated as it is an isolated site in its own right and the immediately adjoining commercial and mixed use developments are larger scale developments that have recently been redeveloped isolating the subject site. Its redevelopment will	Yes

		create a more appropriate infill development.	
5.3.2 Housing choice and mix	<p>Developments comprising residential uses must provide a variety of residential units mix, sizes, and layouts within each development. The following criteria must be satisfied:</p> <p>Bed-sitter apartments and one bedroom apartments must not be greater than 25% and not less than 10% of the total mix of apartments within each development.</p> <p>Two bedroom apartments are not to be more than 75% of the total mix of apartments within each development.</p> <p>Three bedroom apartments are not to be less than 10% of the total mix of apartments within each development.</p> <p>10% of apartments are to be adaptable</p>	<p>19 Units are proposed Broken down the mix includes: 6 x 1 bedroom units 12 x 2 bedroom units 1 x 3 bedroom unit</p> <p>Proportion = 31% comprise of 1 bedders 63% comprise of 2 bedders 6% comprise of 3 bedders</p> <p>2 adaptable apartments are provided and 4 LHA Silver Level Units are provided to comply with the minimum requirements of the DCP.</p>	<p>Although the mix is not totally in accordance with the requirements of the DCP they are in accordance with SEPP 65 provisions and the non-compliance is considered minor and will not detrimentally affect the character of the development within the context of the area.</p> <p>Yes</p>
5.3.3 Floor Space Ratio	In accordance with the LEP control. Max FSR 3.5:1 applies.	FSR 3.49:1 provided.	Yes
5.3.4 Building Height	<p>Maximum building heights can only be achieved where it can be demonstrated that the building envelope:</p> <ul style="list-style-type: none"> - Enables solar access to private open space and the public domain 	In accordance with the LEP control. Max height of 19m applies. The proposal achieves a height of 30.4m (29.65m as conditioned).	Yes

	<p>in keeping with solar access controls (refer Section 6.1.3);</p> <ul style="list-style-type: none"> - Adequately addresses other amenity issues; - Optimises lot amalgamation; - Provides for satisfactory traffic, parking and servicing outcomes. <p>Floor to ceiling heights, 2.7m for residential and ground floor retail requires min 3.6m</p>	<p>Discussion in relation to the non-compliance is comprehensively discussed earlier in this report.</p> <p>The proposed design and scale satisfies the objectives of the DCP outlined in Section 5.3.4 and the scale and form is considered to be acceptable given the location and context of the site.</p> <p>Residential levels comply with the minimum floor to ceiling levels, the ground floor is slightly short of the 3.6m internal requirement however achieves 3.5m which complies with the ADG. Given the narrow frontage and inability to create a larger active retail/commercial area space the main lobby areas have been designed to have taller and acceptable internal heights.</p>	Yes
5.3.5 Street setbacks	Build to the boundary 30-70% max (active lobbies, foyers)	The main lobby and foyer is built to the boundary and the upper commercial level is setback at the first floor, the upper level residential component complies with the intention of the control and the	Yes

	Balconies are to be integrated into the building design so that they do not dominate the building façade or unreasonably reduce solar access to the public domain or neighbouring private open space.	balconies provide a setback and greater articulation of the built form. Balconies are designed as integrated elements which provide a high degree of modulation and articulation to the building façade.	Yes
5.3.6 Building separation	Comply with SEPP 65 provisions	Complies - Discussed earlier in this report.	Yes
5.3.7 Solar Access	<p>(a) Shadow diagrams shall be submitted in respect of all development proposals indicating the over shadowing impacts on both the public and private domains.</p> <p>(b) Demonstrate access to sunlight is to be substantially maintained so that existing private and public open spaces, first and second order street footpaths and the existing windows of all habitable rooms in adjoining buildings receive at least 3 hours of sunlight between 9am and 3pm on 21 June (winter solstice).</p> <p>(c) Living spaces of at least 70% of apartments in new developments must receive a minimum of 3 hours of sunlight between 9am and 3pm on 21 June (winter solstice).</p> <p>(d) Living spaces and open spaces must be located to maximise access to sunlight.</p>	<p>The proposal satisfies the minimum internal access requirements in accordance with the DCP however the development complies with the ADG and SEPP 65 which overrides the DCP.</p> <p>The proposal will not overshadow any private or public areas of open space or living areas for adjoining developments and will satisfy the DCP objectives and general provisions.</p>	Yes

	<p>(e) Adjustable shading devices for shading and glare control shall be provided where required.</p> <p>(f) Windows are to be of adequate size and proportion.</p>		
5.3.8 Natural Ventilation	Minimum of 60% of residential units must achieve natural cross flow ventilation	The proposal satisfies this control and every apartment achieves a satisfactory degree of cross ventilation.	Yes
5.3.9 Visual Privacy, Acoustic and Vibration Amenity	<p>(a) Adequate separation between habitable windows, private open space and public open space in the proposed residential or mixed use development must be designed in accordance with the building separation guidelines in SEPP 65 and the Residential Flat Design Code 2002 as shown in the table on Building Separation requirements above.</p> <p>(b) Balcony amenity must be managed by providing operable screens / louvers.</p> <p>(c) Adequate screening must be provided between balconies to protect the privacy of residents.</p> <p>(d) Overlooking must be minimised by offsetting the windows from one building to another building and orientating the main living spaces within apartments to the street and/or communal open space.</p>	<p>The building has been well designed so that there is no potential for overlooking within the building and to adjoining developments. Screening has been provided by the inclusion of physical privacy screens but also with the provision of more dense planting and landscaping. Windows and balconies have been offset and carefully located so there are no conflicts visually or acoustically.</p>	Yes
5.3.10 Building entrances and lobbies	All entrances must be clearly visible and identifiable from the street and public areas through	The proposed commercial and residential lobby areas are generous	Yes

	the use of colour, materials and articulation in the building design to assist in entrance visibility.	in size and the commercial and residential entries are separated so that they are safe and clearly defined and distinct. They are designed to promote natural surveillance and the open glazed design will make them inviting and attractive elements.	
5.3.11 Building Facades and Articulation	<p>(a) A balance of horizontal and vertical facade elements that relate to the scale of the building and adjacent facades in terms of cornices, balconies, balustrades, roofs, eaves lines, door/window heads to reinforce the street rhythm must be provided.</p> <p>(b) The existing fine grained character of Forest Road must be conserved / interpreted.</p> <p>(c) Building frontages with long facades must be articulated using shop front separations, attached columns steps in the façade, vertical windows, lighting, changes of texture and colour, and the like.</p> <p>(d) Large expanses of glass curtain walling and blank walls must be avoided.</p> <p>(e) Building facades must be designed to clearly define its address to either the street, public open</p>	<p>The proposal is a well considered design response for this site. It is a superior design scheme in comparison to the currently approved and active consent for a similar built form at the site. The building is well articulated and broken up into differing bays and also the design philosophy differentiates the commercial and residential uses.</p> <p>The proposal is well designed and satisfies the provisions of the DCP.</p> <p>The proposed roller shutter to the basement car park is setback from the street frontage by over 6m which is considered to be an ample degree of</p>	

	<p>space or corner.</p> <p>(f) Vertical and horizontal lines must be used to align shopfronts and signage</p> <p>Awning controls</p> <p>(a) Awnings must be provided along all public streets.</p> <p>(b) Awnings must be continuous along the entire building elevation and to wrap around corners where a building is sited on a street corner, to ensure sufficient weather protection.</p> <p>(c) Awnings must be complementary to other awnings within and adjoining the development site, where appropriate.</p> <p>(d) Awnings must step in response to changes in street level, and may highlight building entrances. Otherwise, awnings should be relatively level and should continue the alignment of adjacent awnings.</p> <p>(e) All awnings must be cantilevered from buildings, with a minimum height from the footpath to its underside of 3.2m.</p>	<p>separation and in compliance with the DCP provisions.</p> <p>The immediately adjoining properties do not include awnings and the provision of an awning to this property will look awkward and out of character with development along this street.</p>	<p>No awning proposed and since 10 Park Road does not include an awning to the street the provision of an awning will look awkward.</p>
5.3.13 Active Street Frontage	<p>Park Road is classified as a “third order street” in accordance with the DCP. These are considered to be transition zones within the City Centre.</p> <p>All frontages adjoining and immediately surrounding important pedestrian connections, such as entrances to and intersections with arcades and second order streets must be highly active at</p>	<p>The very narrow frontage of this property restricts its ability to create a very functional and active retail or commercial ground floor tenancy. 10 Park Road is a commercial building that only includes a lobby at the ground floor and this does not detract from the character of the</p>	<p>Yes improves the current situation</p>

	ground floor level of the building.	street. The provision of a lobby for the commercial and residential development along Park Road will enhance activity in an informal way. Given that the development adjoins Westfield it is unlikely that a ground floor retail tenancy will be viable given the dominance of Westfield and the established retail precinct along Forest Road.	
5.3.14 Permeability and Accessibility		The proposal will provide stronger and more direct and clear linkages through the development to the rear laneway.	Yes
5.3.15 Crime Prevention through Environmental Design (CPTED)		The building has been designed to create a safe and secure environment and includes appropriate cameras and security measures and integrates good lighting.	Yes
5.3.16 Landscaping	<p>(a) All development applications must include a landscape plan prepared by a qualified person. The landscape plan shall focus on common open space areas and/or areas which can be viewed from the street.</p> <p>(b) A survey plan is to accompany a development application indicating the precise</p>	A detailed landscape plan has been submitted with the application and it satisfies the provisions of the DCP.	Yes

	<p>location of existing trees, their condition, species and crown size, and which trees are proposed to be removed.</p> <p>(c) Landscaping is to generally incorporate indigenous and water efficient species to the area, and those which will not cause damage to adjacent buildings and driveways. Plants that have a short life, drop branches, gum or fruit, or which interfere with underground pipes, must be avoided.</p> <p>(d) Landscaped areas must be irrigated with recycled water</p>	<p>Native species have been included in the overall landscape scheme.</p>	<p>Yes</p>
5.3.17 Planting on Structures	<p>(a) Any Development Application must provide a landscape plan identifying species selection, appropriate soil depth and area of landscaping, as well as the ability for structure to accommodate the nominated landscaped area.</p> <p>As a guide the following minimum standards are recommended:</p> <ul style="list-style-type: none"> - Minimum 1000mm depth for tree planting; - Minimum 500mm depth for shrub planting/lawn. 	<p>The two areas of open space that are provided within the development, one communal courtyard to be utilised by the commercial tenancies and a roof top terrace which is the communal open space for the residential development incorporates a series of planter boxes which are substantial in size and allow for a minimum soil depth of 1m. This will permit for larger and more dense trees and shrubs to be planted around the periphery of the areas and will provide for additional screening and greenery.</p>	<p>Yes</p>

5.4 Transport, Traffic, Parking and Access 5.4.2 Transport, Traffic and Parking Studies		<p>The proposal complies with the SEPP 65 requirements in respect to parking requirements and the numerical requirements of DCP No.2 as amended.</p> <p>Numerical calculations of compliance are provided and validated below.</p> <p>A Construction Management Plan has not been submitted with the application but a condition will require for a detailed CMP to be prepared by a qualified Engineer.</p>	Yes
5.4.3.3 Bicycle Facilities	<p>1 bicycle space for every 200sqm of office floor area</p> <p>1 bicycle space is required for every 3 residential units</p>	<p>A requirement of 6 bicycle spaces are required for the residential component and 1 bicycle space is required for the commercial component. A condition will require for this to be accommodated within the development however the parking assessment prepared by McLaren Consultants notes that the residential storage cages can accommodate a bicycle within each space.</p>	
5.4.4.1 Vehicular Parking Rates	B4 Mixed Use Zone – 1 space per 100sqm	The proposal originally provided	No – the proposal

	<p>230sqm = 2 spaces</p> <p>Residential 1 space per 1-2 bedroom dwelling 2 spaces per 3 bedroom dwelling Visitor 1 space per 4 dwellings</p> <p>Required 18 x 1 and 2 bedroom dwelling = 18 spaces 1 x 3 bedroom dwelling = 2 spaces</p> <p>Visitor parking = 5 spaces</p> <p>1 x car wash bay (can double as a visitor space)</p> <p>Total off street car parking spaces required is 27 spaces</p>	<p>for 17 spaces and has been amended to cater for 18 car parking spaces with one visitor space doubling as a car wash bay. The proposal requires the provision of 27 spaces so it is deficient by 9 spaces.</p> <p>The proposal is accompanied by a Traffic and Parking Assessment prepared by McLaren Traffic Engineers and Consultants. The consultants believe that the total number of spaces that are required are 28 however I differ with this calculation as they have included the ground floor commercial lobby areas into the GFA calculations of the commercial component. Given that these areas are entry and circulation areas and are not operational areas they should be excluded and the commercial GFA for the benefit of the parking calculation should be 230sqm.</p> <p>The parking and traffic assessment justifies the non-compliance on the basis that the site is very accessible The site is also constrained and it is</p>	<p>complies numerically with the car parking provisions of the ADG which rely on the RMS Traffic Generating Developments.</p>
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		<p>difficult to provide any additional parking and that numerically the development complies with the parking requirements pursuant to SEPP 65 which are based on RMS guidelines. The site is located within close proximity to the Hurstville Railway Station and numerous bus services operate along Park Road. The assessment states that visitor and commercial parking can be reduced as the site is located next to Westfield which provides for two hours of free parking for patrons so visitors could utilise this facility. Also the commercial parking will not be as intensively utilised as the residential spaces as it is unlikely the spaces will be utilised during the weekends and at night etc.</p> <p>The parking assessment states that the development complies with the SEPP 65 car parking requirements as these rely on RMS guidelines and the RMS Guide to</p>	
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		<p>Traffic Generating Developments provides the following rates for high density residential developments;</p> <p>Metropolitan Regional (CBD) Centres:</p> <p>0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.20 spaces per 3 bedroom unit 1 space per 7 units for visitor parking 1 space per 100sqm of commercial</p> <p>Based on these numeric requirements 12 residential spaces, 3 visitor spaces and 2 commercial spaces are required. A total of 17 spaces are required and 18 spaces are provided so the development complies with these provisions.</p> <p>The proposed number of spaces that is provided is considered to be satisfactory given the location of the Site and the numerical compliance with the SEPP 65 provisions for parking. A condition will require 17 spaces to be designated to the residential units and 1 space will be a visitor/car wash bay.</p>	
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<p>5.4.6 Loading/Unloading facilities and Service Vehicle Manoeuvring</p>	<p>(a) For the development of all new buildings, site design must allocate adequate space for the loading, unloading, parking and manoeuvring of delivery and service vehicles within the subject property. Design of these areas shall comply with AS 2890 or as amended.</p> <p>(b) All loading and unloading activities must take place wholly within the loading bay, at all times. No loading or unloading activity is to take place within any car parking area, landscaping area, pedestrian footway or any public road reserve.</p> <p>(c) All delivery vehicles must be able to enter and leave the site in a forward direction.</p>	<p>Council's Engineers raised concerns regarding the lack of a loading bay within the development. The currently active approval does not cater for a loading bay and this is simply due to the narrow width and depth of the site. It is impossible to accommodate a loading dock within the development. Although this is recognised to be an important component of the development, alternative arrangements will need to be made and these can be accommodated on adjoining streets.</p>	<p>No – considered acceptable given the site constraints</p>
<p>5.4.7 Pedestrian Access and mobility</p>	<p>(a) Access to public areas of buildings and dwellings must follow the principles of universal access, with any development providing continuous paths of travel from all public roads and spaces as well as unimpeded internal access.</p> <p>(b) Access must be direct and without unnecessary barriers. Avoid obstructions, which cause difficulties including:</p> <ul style="list-style-type: none"> - Uneven and slippery surfaces; - Steep stairs and ramps; - Narrow doorways, paths and corridors; and - Devices such as door handles which require two hands to operate. 	<p>Access and circulation spaces provide for easy and direct access to spaces within the development.</p> <p>Complies</p>	<p>Yes</p> <p>Yes</p>

	(c) Ensure that barrier free access is provided to the common areas of all buildings, and not less than 20% of dwellings in each development.	Satisfies this provision.	Yes
	(d) The design of facilities (including car parking requirements) for disabled persons must comply with the relevant Australian Standard (AS 1428 Pt 1 and 2, or as amended) and the Disability Discrimination Act 1992 (as amended).	Refer to the McLaren Traffic Engineers report which confirms compliance with Australian Standards	Yes
	(e) The development must provide at least one main pedestrian entrance with convenient barrier free access in all developments to at least the ground floor.	Complies at the ground floor level.	Yes
	(f) Pedestrian access ways, entry paths and lobbies must use durable materials commensurate with the standard of the adjoining public domain (street) with appropriate slip resistant materials, tactile surfaces and contrasting colours.	Complies	Yes

Section 94 Contributions and VPA

50. Council adopted a Policy on Planning Agreements which became effective on 10 August 2016. Council will consider entering into a Planning Agreement when an Applicant;

- *proposes to, or has made a request for an Instrument change to facilitate the carrying out of development; or Planning Agreements Policy August 2016 Page 8 of 62*
- *proposes to, or has made, a development application; or*
- *has entered into an agreement with, or is otherwise associated with, a person to whom (a) or (b) applies.*

51. In strictly applying the Planning Agreement Policy this proposal would not fall within the requirement of the providing a VPA due to the fact the development complies with the maximum floor space control and is not obtaining any additional floor space than legitimately allowed. Section 5.9 of the Policy (calculation of contributions for a

development application that exceeds the standards) states that “*Where development proposed in a development application does not comply with development standards and controls and it will, if approved, result in an increase in value of the land or the development, Council will determine appropriate contributions by applying either land value capture as set out in paragraphs 5.11 - 5.17 or use an alternative mechanism which Council considered appropriate.*” The proposal is not seeking any additional gross floor area than is legally allowed and therefore the Applicant is not increasing the land value of the Site. The Site is small, narrow and constrained and can’t achieve the permissible GFA within the existing height control.

52. This particular situation is unique in that a valid consent with a similar degree of non-compliance is still active for this site and this DA was approved in 2015 prior to the adoption of the Policy and as such no Planning Agreement was negotiated and Section 94 Contributions were imposed at that time. Given this situation it is considered unreasonable to request the provision of a Planning Agreement in this instance and the exemption is in line with Part 2, subsection 2.9 of the Policy which states “*In addition to the Acceptability Test, the Council must consider if there are any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement.*”
53. The proposed development requires payment of \$230,348.99 of Section 94 contributions based on the provisions of an additional dwelling on the subject site. The contribution amount is based on the following:

Contribution Type	Contribution Amount
Open Space	\$226,684.11
Community facilities	\$32,060.01
Credit for existing commercial floor space	\$28,395.14
Total Contributions:	\$230,348.99

IMPACTS

Natural Environment

54. The proposed development is unlikely to result in adverse impacts to the natural environment. The site currently contains no trees or areas of deep soil or landscaped area. The proposal will substantially improve the current natural environment by providing a series of courtyards, landscaped areas and roof top landscaped areas which will be functional and useable green spaces.

Built Environment

55. The proposed development is unlikely to result in adverse impacts to the built environment. The proposed development complies with the relevant planning controls and general requirements except in the maximum height of the development. This variation has been discussed in the report and is primarily attributed to the development fitting into the context of the site and also complying with the maximum permissible FSR.

Social Impact

56. The proposed development has no apparent adverse social impact.

Economic Impact

57. The proposed development has no apparent adverse economic impact. The short term benefits of the development are that it will offer employment through the construction process and in the longer term will provide for additional housing as well as increase the

amount of commercial accommodation in the centre which will satisfy some ongoing demand.

Suitability of the site

58. It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size, shape, isolated nature and its relationship to adjoining developments.

Resident

59. The application was notified/advertised to neighbouring residents/owners in accordance with Council's requirements on two (2) occasions, the originally submitted proposal and when it was amended in July 2018. No submissions were received in respect to the amended scheme whilst two (2) submissions were received in relation to the original proposal.
60. The issues raised in the submissions are summarised below.

Lack of landscaping and green space

Comment: The current site offers no landscaped area or deep soil area. The proposal substantially improves this current situation and will improve the overall visual appearance of the streetscape. The design has incorporated a number of roof top areas of open space and include planters and green areas on balconies to soften the appearance of the building.

More units that will be empty

Comment: If there is no demand for housing developments will not be built. The development complies with the most of the key planning provisions and the apartment design and layout is of a high quality and should satisfy the demand for housing in this area which is highly accessible.

Increased traffic generation

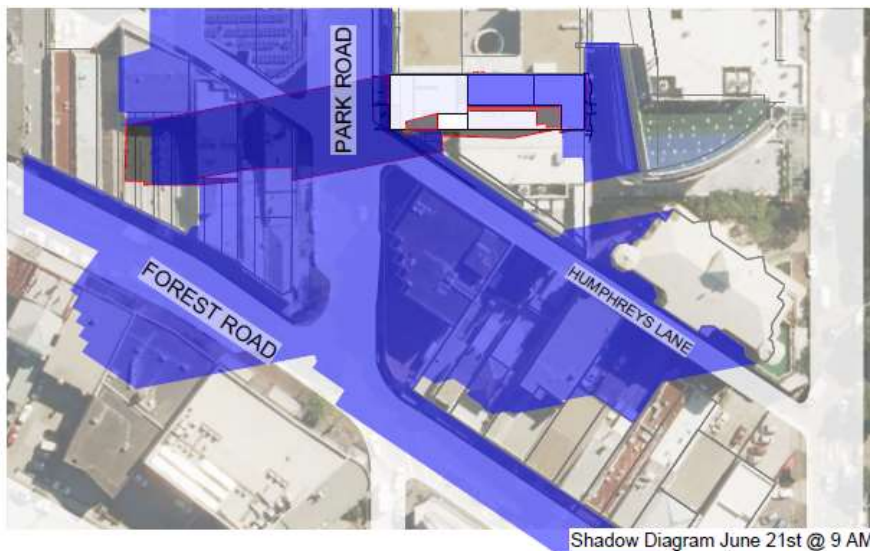
Comment: This development will not generate an unacceptable amount of traffic to and from the site given the density of the proposal.

Restriction of solar access to the solar panels at 1 Park Road

Comment: 1 Park Road is located across the road from the subject Site. This property is a two storey commercial building with a flat roof. The owner of the property has notified Council about the potential shadowing impact of the development onto his property in particular affecting his panels. Given that there is an active consent that permits a 9 storey building to be built at the Site, the shadowing impacts of the development would have also been considered at this stage.

The shadowing impacts are shown below and the proposal does not affect 1 Park Road at 9am however the other immediately adjoining developments cast a shadow onto this property. By 12 noon the proposal will directly affect the property but by 1pm 1 Park Road should be unaffected so it would obtain a minimum of 3hours of sunlight during the day in midwinter which would satisfy the general provisions of the ADG.

Figure 9: Shadow Diagrams for the proposed development



Shadow Diagram June 21st @ 9 AM



Shadow Diagram June 21st @ 12 PM

Courtesy: Olsson associates architects

REFERRALS

Council Referrals

Traffic Engineer

61. Council's Traffic Engineer has examined the application and has raised concerns regarding the lack of a loading dock within the development. This issue has been addressed by McLaren Traffic Engineers who maintain that the constraints of the site restrict the provision of a loading dock. The currently active DA consent (DA2014/1157) does not include a loading dock so precedence has been established via this approval.
62. Council's Traffic Engineer also raised concern that the development did not comply with the numerical requirements for parking in accordance with the DCP. The proposal has been amended to provide for 18 off street car parking spaces as opposed to the originally proposed 17 spaces. The number of off street car parking spaces satisfies the parking provisions of the ADG which is considered acceptable.
63. The parking provided satisfies the numerical requirements of the ADG which are based on the RMS Traffic Generating Guidelines. A condition will ensure the dedication that is required for the car parking.

Building Comments

64. The application was referred to Council's Building Section for comment. No objection was raised in respect to the proposal subject to the imposition of conditions if consent is to be granted.

Environmental Health Officer

65. Council's Environmental Health Officer has examined the application and raised no objection subject to conditions of consent being attached to any consent granted.

External Referrals

Design Review Panel

66. The comments of the DRP have been discussed in the report above.

CONCLUSION

67. The application has been assessed having regard to the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The application seeks approval for the demolition of the existing structures and construction of a mixed development containing a first floor commercial area, 19 apartments, and basement car parking area with access off Park Road on the subject site.
68. The development has been assessed against the requirements of the relevant planning instruments and development control plans and seeks a variation to the height of the development which is considered acceptable, as discussed in the report. The submissions received to the application have been addressed in the report and through amended plans. Following detailed assessment it is considered that Development Application No DA2017/0660 should be approved subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

69. Statement of Reasons

- The proposed development is considered to be an appropriate scale and form for the site and the character of the locality.
 - The proposed development, subject to the recommended conditions, will have no unacceptable adverse impacts upon the natural or built environments.
 - In consideration of the aforementioned reasons, the proposed development is a suitable and planned use of the site and its approval is in the public interest.
70. THAT the Clause 4.6 Statement be accepted.
71. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Council, grants deferred commencement development consent to Development Application DA2017/0660 for the demolition of the existing structures and construction of a mixed development containing first floor retail/commercial area, 19 apartments, and basement car parking area for 18 vehicles at Lot A DP 349166 and known as 8 Park Road, Hurstville, subject to the following conditions of consent:

SPECIFIC DEVELOPMENT CONDITIONS

Section A Deferred commencement

A. **Easement for Access and Design** - Pursuant to the [Environmental Planning and Assessment Act 1979](#), this consent will not operate until such time as the following requirements are satisfied:

- (a) The applicant must acquire an Easement for Access at the rear off The Avenue laneway (7-11 The Avenue laneway). Evidence of registration of the easement benefitting the subject site is to be provided to the satisfaction of Council.
- (b) If an easement over the rear laneway cannot be negotiated amended plans are to be submitted to Council's satisfaction to ensure that access to the rear commercial tenancy can be achieved from Park Road and the commercial lobby area be redesigned accordingly.
- (c) The following design changes to the roof level are to be implemented and amended plans are to be provided to the satisfaction of Council;
 - a) The staircase structure providing access to the roof shall be deleted and replaced with an access hatch located at Level 8 to provide access for maintenance purposes.
 - b) The lift overrun shall be reduced in height and reach a maximum height of RL93.30.
 - c) The balustrade around the front portion of the roof shall be setback a minimum of 3.2m from the front of the building (parapet) and 3m from the south eastern side to be generally aligned with the lift.
 - d) The height of the balustrade shall reach a maximum of RL92.80.

Documentary evidence as requested or the above information must be submitted within five (5) years of the granting of this deferred commencement consent. Commencement of the Consent cannot commence until written approval of the submitted information has been given by Council.

Subject to A. above being satisfied a development consent be issued, subject to the following conditions:

Section B Development Details

1. **Approved Plans** - The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Revision	Prepared by
Cover Page	A-000	9/7/2018	E	Olsson & associates architects
Project summary and Basix commitments	A-001	29/11/2017	C	Olsson & associates architects
Site Plan	A-103	9/7/2018	E	Olsson & associates architects
Basement Plan	A-200	9/7/2018	E	Olsson & associates architects
Ground Floor Plan	A-201	9/7/2018	E	Olsson & associates architects

Level 1 Floor Plan	A-202	9/7/2018	E	Olsson & associates architects
Level 2 Floor Plan	A-203	9/7/2018	E	Olsson & associates architects
Level 3 Floor Plan	A-204	9/7/2018	E	Olsson & associates architects
Level 4 Floor Plan	A-205	9/7/2018	E	Olsson & associates architects
Level 5 Floor Plan	A-206	9/7/2018	E	Olsson & associates architects
Level 6 Floor Plan	A-207	9/7/2018	E	Olsson & associates architects
Level 7 Floor Plan	A-208	9/7/2018	E	Olsson & associates architects
Level 8 Floor Plan	A-209	9/7/2018	E	Olsson & associates architects
Roof Plan	A-210	9/7/2018	E	Olsson & associates architects
Adaptable and Livable Apartments	A-211	12/12/2017	D	Olsson & associates architects
Elevations	A-301	9/7/2017	E	Olsson & associates architects
Gross Floor area and Communal Open Space calculations	A-600	8/1/2018	B	Olsson & associates architects
Photomontage Perspective I	A-501	8/11/2017	B	Olsson & associates architects
Photomontage Perspective II	A-502	8/11/2017	B	Olsson & associates architects
Schedule of Colours, Materials and Finishes	A-600	29/11/2017	C	Olsson & associates architects
Section I	A-400	9/7/2018	B	Olsson & associates architects
Section II	A-401	9/7/2018	D	Olsson & associates architects
Section III	A-402	9/7/2018	D	Olsson & associates architects
Cross Ventilation Calculations	A-601	4/10/2017	A	Olsson & associates architects
Shadow Diagrams midwinter	A-602	29/11/2017	A	Olsson & associates architects
Shadow Diagrams midsummer				Olsson & associates architects
Solar Access I	A-604	4/10/2017	A	Olsson & associates architects
Solar Access II	A-605	4/10/2017	A	Olsson & associates architects
Solar Access III	A-606	4/10/2017	A	Olsson & associates architects
Landscape Plan	LDA-01	July 2018	I	360 Landscape Architects

Landscape Plan	LDA-02	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-03	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-04	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-05	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-06	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-07	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-08	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-09	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-10	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-11	July 2018	I	360 Landscape Architects
Landscape Plan	LDA-12	July 2018	I	360 Landscape Architects
Stormwater Concept Plan	C00.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C01.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C02.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C03.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C04.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C05.01	November 2017	B	ABC Consultants
Stormwater Concept Plan	C06.01	November 2017	B	ABC Consultants
Amended Traffic and Parking Impact Letter	N/A	July 2018	N/A	McLaren Traffic Engineers
Amended Access Compliance Report	N/A	July 2018	N/A	Vista Access Architects
BASIX Certificate				
BCA Report	N/A	15 December 2017	N/A	Design Right Consulting
Fire Engineering Strategy	N/A	13 December 2017	N/A	MCD Fire Engineering
Design Verification Statement	N/A	21 December 2017	N/A	Olsson & Associates Architects
SEPP 65 Report and	N/A	December	N/A	Olsson & Associates

Compliance Statement Report		2017		Architects
Statement of Environmental Effects	N/A	21 December 2017	N/A	Daintry Associates
Survey Plan	10278	28 July 2017	N/A	Ballenden Surveyors
Waste Management Plan	N/A	December 2017	N/A	Dickens Solutions

Any and all documentation submitted and approved by Council as part of the deferred commencement condition requirements.

2. **Fit-out of retail premises** - No approval is granted for the use or fit-out of the retail premises. Separate Development Consent for the use and fit-out is required prior to the occupation of the retail component of the development.

Section C Separate Approvals Required Under Other Legislation

3. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** - Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

Separate approval is required under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below.

An application is required to be lodged and approved prior to the commencement of any of the following works or activities;

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work
- (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (e) Pumping concrete from a public road;
- (f) Pumping water from the site into the public road;
- (g) Constructing a vehicular crossing or footpath;
- (h) Establishing a “works zone”;
- (i) Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers);
- (j) Stormwater & ancillary works in the road reserve; and
- (k) Stormwater & ancillary to public infrastructure on private land
- (l) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council’s roadways/footways.

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

The relevant Application Forms for these activities can be downloaded from Council’s website www.georgesriver.nsw.gov.au. For further information, please contact Council’s Customer Service Centre on (02) 9330 6400.

4. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
- (a) Construct a metre wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.
 - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.
 - (e) Relocation of the existing power pole is to be approved by the relevant authority.

Constructing a vehicular crossing and/or footpath requires separate approval under Section 138 of the Roads Act 1993, prior to the commencement of those works.

5. **Road Opening Permit** - A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.
6. **Building - Hoarding Application** - Prior to demolition of the buildings on the site or the commencement of work above ground level a separate application for the erection of an A class (fence type) or a B class hoarding or C type scaffold, in accordance with the requirements of Work Cover Authority of NSW, must be erected along that portion of the footway/road reserve, where the building is within 3.0 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under s68 of the Local Government Act and s138 of the Roads Act 1993:

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and

- (d) A Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party; and
- (e) The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 88492076. Or email hans.pilly.mootanah@rms.nsw.gov.au to obtain concurrence for the hoarding structure.

7. **Below ground anchors - Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993** - In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works. The following details must be submitted.

- (a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
- (b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
- (c) Documentary evidence of such insurance cover to the value of \$20 million.
- (d) The applicant must register a non-terminating bank guarantee in favour of Council. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- (e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

Section D Requirements of Concurrence, Integrated & Other Government Authorities

8. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

Following application, a 'Notice of Requirements' will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, as it can take some time to build water/sewer pipes and this may impact on other services and building, driveway or landscape design.

The Notice of requirements must be submitted prior to the commencement of work. A Section 73 Compliance Certificate will be required at the completion of development in accordance with further conditions.

9. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation Certificate.
10. **Trade Waste Agreements** - A Trade Waste Agreement with Sydney Water may be required. Details of any work required to comply with the agreement must be detailed on the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.

Section E Prior to the Issue of a Construction Certificate

11. **Required design changes** - Prior to the issue of any Construction Certificate, amended plans are to be submitted to the satisfaction of the Certifying Authority addressing the following:
 - a) All entry doors with access off Park Road and the rear laneway shall be designed as automatic sliding doors or in a way that they open inwards. No doors are to open out onto the public roadway.
 - b) The development shall be amended to include six (6) designated bicycle parking spaces in the basement levels.
 - c) Certification that all car parking, manoeuvrability, pedestrian and vehicle access complies with AS2892 Parking Facilities.
 - d) A minimum of eight (8) solar panels shall be installed on the roof and they are to be orientated to the north. They should be centrally located and setback a minimum of 6m from the front parapet.
 - e) The car parking spaces shall be allocated and appropriately sign posted in the following way;
 - 14 spaces are to be designated to residential apartments
 - Car space 1V (an accessible space) and the car wash bay shall be designated as a visitor space and shall be made available at all times for this purpose and signposted accordingly.
 - Car spaces 1C and 2C on the ground floor shall be designated for the commercial uses.
 - The car wash bay which doubles as a visitor car space shall be signposted accordingly and this space will operate solely as a car wash bay between 8am until 11am on Sundays and will need to be accessible for this purpose. The space will also be signposted to reflect this condition.
 - f) The following design changes are to be shown on the Construction Certificate Plans in relation to the OSD;
 - In respect to Drawing C05.01 (Stormwater Concept Plan) the slope of the OSD base shall be set to at least 1%.
 - The orifice size shall be shown on the drawing.

- The 150mm non-return flap valve shall be located inside the HED chamber.

12. **Acoustic Requirements** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

An Acoustic Report shall be prepared by a suitably qualified acoustic consultant demonstrating that the operation of the premises and plant equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise sources under consideration by more than 5dB. The source noise level shall be assessed as an LAeq, 15 min in accordance with the NSW Environment Protection Authority's [NSW Industrial Noise Policy](#).

13. **Car Wash Bays** - Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate.
14. **Car Wash Bays** - All car washing bays shall be contained within a roofed and bunded car wash bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.
15. **Car Wash Bays** - If alternative water management and disposal options are proposed (i.e. where water is recycled, minimised or reused on the site), detailed plans and specifications of the water recycling system must be submitted with the application for the Construction Certificate for approval.
16. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans drawn by – 360 Degrees, Reference numbers, L –DA – 02 through to L – DA - 11. The landscaping shall be maintained in accordance with the approved plans in perpetuity.
17. **Fees to be paid** - The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at www.georgesriver.nsw.gov.au).

Payments must be made prior to the issue of the Construction Certificate or prior to the commencement of work (if there is no associated Construction Certificate).

Please contact council prior to the payment of S94 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

Council will only accept Bank Cheque or Electronic Funds Transfer (EFT) for transaction values of \$500,000 or over. Council must be contacted prior to payment to determine correct total amount to be paid and bank account details (if applicable).

A summary of the fees to be paid are listed below:

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of	

Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$14,584.80
Inspection Fee for Refund of Damage Deposit	\$155.00
Driveway and Restoration Works Design Inspection Fee (Multi-unit Development)	\$796.00
DEVELOPMENT CONTRIBUTIONS	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	\$32,060.01
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$226,684.11
Credit for the existing commercial area	- \$28,395.14
Total S94 Contribution to be paid	\$230,348.99

General Fees

The fees and charges above are subject to change and are as set out in the version of Council's Schedule of Fees and Charges or as required by other Government Authorities, applicable at the time of payment.

Development Contributions

The Section 94 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

A Section 94A contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan.

Indexation

The above contributions will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Section 94 Development Contributions Plan.

Timing of Payment

The contribution must be paid and receipted by Council prior to the release of the Construction Certificate.

Further Information

A copy of the all current Development Contributions Plans may be inspected or a copy purchased at Council's offices (Georges River Civic Centre, MacMahon Street, Hurstville and Kogarah Library and Service Centre, Kogarah Town Square, Belgrave Street, Kogarah) or viewed on Council's website www.georgesriver.nsw.gov.au.

18. **Damage Deposit – Major Works** - In order to insure against damage to Council property the following is required:
 - (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$14,584.80**

(b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required:
\$155.00

(c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will review the dilapidation report and the Works-As-Executed Drawings (if applicable) and inspect the public works.

The damage deposit will be refunded in full upon completion of work where no damage occurs and where Council is satisfied with the completion of works. Alternatively, the damage deposit will be forfeited or partly refunded based on the damage incurred.

19. **Fire Safety Measures** - Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
20. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the PCA.
21. **Access for Persons with a Disability** - Access for persons with disabilities must be provided throughout the site, including to all common rooms, lobby areas, commercial premises and sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application.

In regards to the above, pedestrian access throughout basement levels shall be highlighted/line marked and sign posted to safeguard egress.

22. **Geotechnical report** - Geotechnical Reports: The applicant must submit a Geotechnical Report, prepared by a suitably qualified Geotechnical Engineer who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted **before the issue of the Construction Certificate** and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
- (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the Certifying Authority and the adjoining residents as part of the

application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.

- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

23. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

Alternatively where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) a report from a qualified geotechnical engineer detailing the maximum size of hammer to be used is to be obtained and the recommendations in that report implemented during work on the site. **The report shall be submitted with the Construction Certificate application.**

24. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.

25. **Building** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation, 2000 to seek written comment from FR NSW about the location of water storage tanks, construction of hydrant/booster pump and valve rooms, and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

The applicant is also advised to seek written advice from FR NSW on the location and construction of the proposed Fire Control Centre Facility and location and installation of the sites Fire Indicator / mimic Panels.

26. **Pre-construction Dilapidation Report** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises that shall be affected by the excavation as determined by the consulting engineer.

The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the

commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the PCA.

Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.

27. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
28. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- (a) Compliance with the approved Erosion & Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - (c) All clean water runoff is diverted around cleared or exposed areas
 - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
 - (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
 - (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
 - (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

These measures are to be implemented prior to the commencement of work (including demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

29. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
- (a) All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
 - (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who

specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

- (c) All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (d) The underground basement car park must pump to and all other stormwater must drain by gravity to the OSD system.
- (e) The construction of the building and driveway shall be designed to protect the underground basement from possible inundation by surface waters. The crest of the driveway shall be set least 150 mm above the top of the kerb levels.
- (f) The sub soil drainage for the below ground structures including basement car parks shall be designed in accordance with the findings and recommendations in the geotechnical report. The geotechnical report should assess any possible impact of the proposed development upon existing ground water table and surrounding land and buildings. Should the results of the report indicate that the site is likely to experience issues associated with groundwater management, a fully-tanked dry basement with no sub soil drainage collection or disposal and an allowance made for any hydrostatic pressures.
- (g) All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015.
- (h) All overflows of roof waters from any rainwater tank shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (i) All other impervious surface water runoff such as driveways and footpaths shall drain by gravity to Council's kerb and gutter directly in front of the development site.
- (j) All roof waters and all overflows from any rainwater tank shall drain to Council's kerb and gutter directly in front of the development site by a suitably designed charged system.

All outlets from any charged system must be constructed at 45 degrees to the direction of flow in the street gutter.

The design of this proposed drainage system must be prepared by a professional engineer who specialises in hydraulic engineering and be submitted for approval with the Construction Certificate application.

- (k) Where the approved concept plan provides an absorption system, the final plan must be accompanied by a report and results of a recognised Falling Head Test or a Constant Head Test. The testing is to be conducted at the proposed location of the absorption system. The On-Site Stormwater Absorption System is to be designed using the hydraulic conductivity of the site and in accordance with Council's Water Management Policy. Note: The factor of safety(s) for the soil infiltration rate may be reduced to one not five as quoted in the Water Management Policy.

- (l) All surface water runoff such as driveway/footpath shall drain to a suitably designed absorption trench in the rear yard. Such trenches must be located at least 3m from any property boundary and be constructed across the contour of the land.

The design of this proposed drainage system must be prepared by a professional engineer who specialises in Hydraulic Engineering. Certification of the adequacy of the absorption trench system for the surface area being drained shall also be provided by the hydraulics engineer.

Design details and certification shall be submitted for approval with the Construction Certificate application.

- (m) All stormwater shall drain to Council's kerb and gutter directly in front of the development site by a suitably designed sump and pump system.

All outlets from any pump system must be constructed at 45 degrees to the direction of flow in the street gutter.

The design of this proposed drainage system must be prepared by a professional engineer who specialises in hydraulic engineering and be submitted for approval with the Construction Certificate application.

- (n) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

30. **Stormwater Systems within Basement** – The underground basement car park must pump to and all other stormwater must drain by gravity to:

- i. the street gutter.
- ii. the existing drainage system.
- iii. the easement to drain water.
- iv. the upper level of the new kerb inlet pit required to be constructed directly in front of the development site.
- v. any other

The design of the proposed drainage system must be prepared by a professional engineer who specialises in hydraulic engineering and be submitted for approval with the Construction Certificate application.

31. **On Site Detention** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

An on-site detention (OSD) facility designed by a professional engineer who specialises in Hydraulic Engineering must be designed, approved and installed. The design must include the computations of the inlet and outlet hydrographs and stage/storage relationships of the proposed OSD using the following design parameters:

- (a) Maximum Site Discharge to be provided in accordance with the Stormwater Concept Plan and associated Design Assessment Report. The overflow is to be directed to the site drainage system.
- (b) Peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden,
- (c) At Annual Recurrence Intervals of 2 years and 100 years.

Refer to Flow Controls in Council's Draft/Adopted Stormwater Drainage Policy.

The OSD facility shall be designed to meet all legislated safety requirements and childproof safety fencing around the facility must be provided where the OSD facility is open or above ground when the design peak storage depth is greater than 300mm. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

"BEWARE: This is an on-site detention basin/tank for rainwater which could overflow during heavy storms."

Full details shall accompany the application for the Construction Certificate.

- 32. **Detailed Stormwater Drainage Design** - The submitted stormwater plan has been assessed as a concept plan only. A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis) must be submitted with the Construction Certificate application.
- 33. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the PCA.
- 34. **Site Management Plan** - A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:
 - (a) location of protective site fencing;
 - (b) location of site storage areas/sheds/equipment;
 - (c) location of building materials for construction, e.g. stockpiles
 - (d) provisions for public safety;
 - (e) dust control measures;
 - (f) method used to provide site access location and materials used;
 - (g) details of methods of disposal of demolition materials;
 - (h) method used to provide protective measures for tree preservation;
 - (i) provisions for temporary sanitary facilities;
 - (j) location and size of waste containers/skip bins;
 - (k) details of proposed sediment and erosion control measures;
 - (l) method used to provide construction noise and vibration management;
 - (m) construction and demolition traffic management details.

The site management measures are to be implemented prior to the commencement of any works including demolition and excavation. The site management measures are to

be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity. A copy of the Site Management Plan must be kept on site and is to be made available upon request.

35. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
36. **Site Investigation Requirements - Detailed Site Investigation** - A detailed site contamination investigation must be carried out by an appropriately qualified contamination consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA Guidelines for Consultants Reporting on contaminated sites and shall certify the suitability of the site for the proposed development. If investigation finds that contamination makes the land unsuitable for the proposed development and remediation is required, a Remedial Action Plan (RAP) must be submitted to Council prior to Council making a determination. Council reserves the right to require a site audit of the RAP.

Site contamination – Additional information

Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

Remedial Action Plan (RAP)

The Remedial Action Plan (RAP) must be prepared by an suitably qualified consultant in accordance with NSW Department of Environment and Conservation (DEC) and NSW Environmental Protection Authority (EPA) Guidelines and shall document all the remedial works to be undertaken at the site and also contain an environmental management plan and occupational health and safety plan for the remedial works.

Remediation Works

All remediation work must be carried out in accordance with: -

- The Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land; and
- The EPA Guidelines made under the Contaminated Land Management Act 1997.
- And in accordance with the proposed Remedial Action Plan.

Validation Report

After completion of all Remediation works, a copy of the Validation and Monitoring Report prepared by suitably qualified contaminated land consultant shall be submitted to Council. The Construction Certificate shall not be issued until Council approves this Report. The validation report shall be prepared in accordance with the Office Environment and Heritage Guidelines, *Consultants Reporting on Contaminated Sites*, and shall certify the suitability of the site for the proposed development.

- describe and document all works performed;
- include results of validation testing and monitoring;
- include validation results of any fill imported on to the site;
- show how the objectives of the Remedial Action Plan have been met;

- show how all agreed clean-up criteria and relevant regulations have been complied with; and
- include clear justification as to the suitability of the site for the proposed development and the potential for off-site migration of any residual contaminants.

37. **Waste Management Plan** – The development shall be implemented in accordance with the Waste Management Plan prepared by Dickens Solutions dated December 2017 which outlines all the requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

38. **Waste Storage - Residential and Mixed Use Developments** - The plans shall include details of the waste storage area. The waste storage area shall not be visible from the street. The waste storage area shall be located within the lot/building in accordance with the approved plans.

The waste storage area shall be large enough to accommodate the required number of bins for the development and located in an area to suitably facilitate servicing on waste collection day.

The path to the bin room is to be at least 1.0m wide and kept clear and unobstructed at all times.

Residential Waste

The property will require 9 x 240L garbage bins and 6 x 240L recycling bins collected once a week, and 1 x 240L green waste bin. The bins must be taken to the kerbside for collection.

The waste room will contain the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

- waste room floor to be sealed;
- waste room walls and floor surface is flat and even;
- all walls painted with light colour and washable paint;
- equipment electric outlets to be installed 1700mm above floor levels;
- The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- light switch installed at height of 1.6m;
- waste rooms must be well lit (sensor lighting recommended);
- optional automatic odour and pest control system installed to eliminate all pest types and assist with odour reduction - this process generally takes place at building handover - building management make the decision to install;
- all personnel doors are hinged and self-closing;
- waste collection area must hold all bins - bin movements should be with ease of access;
- conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
- Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

39. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans referenced in the table above. The landscaping shall be maintained in accordance with the approved plans in perpetuity.
40. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No.884854M, dated 15 December 2017 must be implemented on the plans lodged with the application for the Construction Certificate.
41. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by Russell Olsson Architect, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development.
42. **Design Quality Excellence (Major Development)** -
(a) In order to ensure the design quality excellence of the development is retained:
- i. The design architect, Russell Olsson is to have direct involvement in the design documentation, contract documentation and construct stages of the project;
 - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of the design issues throughout the life of the project;
 - iii. Evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.
- (b) The design architect of the project is not to be changed without prior notice and approval of the Council.
43. **Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street addresses for the subject development must be allocated as advised by Georges River Council.

Details indicating compliance with this condition must be shown on the plans lodged with any Construction Certificate for approval.

44. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:

(a) All neighbouring buildings with a common boundary to the subject site

The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the PCA.

Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.

Section F Prior to the Commencement of Work (Including Demolition & Excavation)

45. **Demolition & Asbestos** - The demolition work shall comply with the provisions of Australian Standard AS2601:2001 - Demolition of Structures, NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011. The work plans required by AS2601:2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the PCA prior to the commencement of works.

For demolition work which involves the removal of asbestos, the asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the work in accordance with the NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011 unless specified in the Act and/or Regulation that a license is not required.

All demolition work including the removal of asbestos, shall be undertaken in accordance with the Demolition Code of Practice (NSW Work Cover July 2015)

Note: Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the SafeWork NSW website: www.SafeWork.nsw.gov.au.

46. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Council's Engineers for their records.
47. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- (a) Set out before commencing excavation.
 - (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
 - (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
 - (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
 - (e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - (f) Completion of all Work - Detailing the location of the structure (including

eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

Work must not proceed beyond each stage until the PCA is satisfied that the height and location of the building is proceeding in accordance with the approved plans.

48. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.
49. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
 - (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
50. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.
51. **Structural Engineers Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation must be submitted.
52. **Stormwater drainage works – Works As Executed** - Prior to the issue of the Occupation Certificate, stormwater drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:
 - (a) Compliance with conditions of development consent relating to stormwater;
 - (b) The structural adequacy of the On-Site Detention system (OSD);
 - (c) That the works have been constructed in accordance with the approved design and

will provide the detention storage volume and attenuation in accordance with the submitted calculations; and

(d) Pipe invert levels and surface levels to Australian Height Datum.

53. **Dilapidation Report on Public Land - Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,
- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (f) The full name and signature of the structural engineer.
- (g) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the PCA and a copy provided to the Council.

The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

Note: Council will use this report to determine whether to refund the damage deposit after the completion of works.

Section G During Construction

54. **Hazardous Waste** - Hazardous or intractable waste arising from the demolition or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:

- Work Health and Safety Act 2011 (NSW) (as amended);
- Work Health and Safety Regulation 2011 (as amended);
- Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
- Protection of the Environment Operations (Waste) Regulation 2014 (as amended)

55. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath

and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.

56. **Physical connection to Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's kerb and gutter system at Park Road.
57. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
58. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.
59. **Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.
Note: A penalty infringement notice may be issued for any offence.
60. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the PCA and Council, where Council is not the Principal Certifying Authority.

61. **Building - Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.
62. **Physical connection of Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's in.

Section H Prior to the issue of the Occupation Certificate

63. **Restriction to User and Positive Covenant for an Easement to access the rear laneway** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which provides unfettered pedestrian access to the Site from the rear laneway. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Positive Covenants

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*

- a) *comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*

2. *Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:*

- a) *in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*

- b) *the Council may recover from the registered proprietor in a Court of competent jurisdiction:*

- i. *any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*

- ii. *legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.*

64. **Restriction to User and Positive Covenant for On-Site Detention Facility** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Restrictions on Use of Land

The registered proprietor shall not make or permit or suffer the making of any alterations to any on-site stormwater management system which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Georges River Council. The expression "on-site stormwater management system" shall include all ancillary gutters,

pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to manage stormwater quantity or quality including the temporary detention or permanent retention of stormwater storages. Any on-site stormwater management system constructed on the lot(s) burdened is hereafter referred to as “the system”.

Name of Authority having the power to release, vary or modify the Restriction referred to is Georges River Council.

Positive Covenants

1. The registered proprietor of the lot(s) hereby burdened will in respect of the system:

- b) keep the system clean and free from silt, rubbish and debris*
- c) maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
- d) permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*
- e) comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*

2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:

- c) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
- d) the Council may recover from the registered proprietor in a Court of competent jurisdiction:

 - i. any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
 - ii. legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.**

65. **Maintenance Schedule - On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.

66. **Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the PCA.

The works-as-executed drainage plan must be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details (as applicable):

- (a) The location of any detention basin/s with finished surface levels;
- (b) Finished site contours at 0.2 metre intervals (if applicable)
- (c) Volume of storage available in any detention areas;
- (d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (e) The orifice size/s (if applicable);
- (f) Details of any infiltration/absorption systems; and (if applicable);
- (g) Details of any pumping systems installed (including wet well volumes) (if applicable).

67. **Vehicular crossing & Frontage work - Major development** - The following road frontage works shall be constructed in accordance with Council's Specification for Vehicular Crossings and Associated Works together with the Vehicular Crossing Approval issued by Council's Engineering Services Division:

- (a) Construct a footpath for the full length of the frontage of the site in Park Road as required by Council in accordance with Council's Specifications for footpaths.
- (b) Construct the vehicular crossing in accordance with Council's Specifications for vehicular crossings.
- (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

A private contractor shall carry out the above work, at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

The driveway and road frontage works are to be completed before the issue of the

Occupation Certificate.

68. **Stormwater drainage works - Works As Executed** – Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the PCA.

The works-as-executed drainage plan must be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details:

- The location of any detention basin/s with finished surface levels;
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- The orifice size/s.

69. **Requirements prior to the issue of the Occupation Certificate** - The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

70. **Dilapidation Report on Public Land for Major Development Only** - Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the development site including:

The dilapidation report must be prepared by a professional engineer specialising in structural engineering, and include:

- (a) Photographs showing the condition of the road pavement fronting the site
- (b) Photographs showing the condition of the kerb and gutter fronting the site
- (c) Photographs showing the condition of the footway including footpath pavement fronting the site
- (d) Photographs showing the condition of retaining walls within the footway or road
- (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (f) The full name and signature of the professional engineer.

The report must be provided to the PCA and a copy provided to the Council. The reports are to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

NOTE: Council will use this report to determine whether or not to refund the damage deposit.

Council's Engineering Services Division must advise in writing that the works have been completed to their satisfaction prior to the issue of an Occupation Certificate.

71. **Post Construction Dilapidation report - Private Land** - At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the following adjoining premises:

The report is to be prepared at the expense of the applicant and submitted to the PCA prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damage has occurred to the adjoining premises, the PCA, must compare the post-construction dilapidation report with the pre-construction dilapidation report required by conditions in this consent.

Evidence confirming that a copy of the post-construction dilapidation report was delivered to the adjoining properties subject of the dilapidation report must be provided to the PCA prior to the issue of any Occupation Certificate.

72. **Address** – Letterboxes shall be located within the lobby area for the residential apartments and the letterboxes for the commercial suits shall also be located within the lobby of the commercial area.

73. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000, on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

- (a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.
- (b) That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the attached Schedule.

A copy of the certificate is to be given by the applicant to the Commissioner of Fire & Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.

74. **Building - Structural Certificates** - The proposed structure must be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building

works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority prior issue of the Occupation Certificate.

75. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
76. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
77. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate. All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with landscape Plans drawn by – 360 Degrees, Reference numbers, L –DA – 02 through to L – DA – 11.
78. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
79. **SEPP 65 Design Verification Statement** - The PCA must not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification from Peter Israel, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development.
80. **Acoustic Compliance - General Operation of Premises** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 (as amended) and Regulations.

A suitably qualified person shall certify that the operation of the plant equipment shall not give rise to sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise sources under consideration by more than 5dB. The source noise level shall be assessed as an LAeq, 15 min in accordance with the NSW Environment Protection Authority's "NSW industrial Noise Policy.

Certification must be submitted to the PCA prior to the issue of any Occupation Certificate.

81. **Certification - Air handling systems (including water-cooling system, hot-water systems and warm-water systems)** - Certification by a suitably qualified person engineer '2012 must be submitted to the PCA prior to the issue of any occupation

certificate verifying that the air handling system has been installed in accordance with:

- (a) Public Health Act 2010 (as amended)
- (b) Public Health Regulation 2012 (as amended)
- (c) AS/NZS 3666.1:2011 Air-handling and water systems of buildings -Microbial control - Design, installation and commissioning

Section I Operational Conditions (Ongoing)

- 82. The hours of operation of the commercial tenancies shall be restricted to 7am to 10pm Monday to Friday and 7am to 8pm Saturday and Sunday.
- 83. That the retailers and/or tenant of 8 Park Road Hurstville cannot apply for loading and unloading privilege on any owned public road.
- 84. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the [Protection of the Environment Operations Act 1997](#) (as amended).
- 85. **Lighting – General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.
- 86. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
- 87. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
- 88. **Smoking** - The premises must comply with the Smoke Free Environment Act 2000 (as amended).
- 89. **Operation of Air Handling Systems** - The occupier must operate air handling systems in compliance with Part 2 of the Public Health Regulation 2012 (as amended).

Where there is any change in the air handling system the occupier must register the changes in the regulated systems with Council.

Water cooling systems must be certified annually by a competent person as being an effective process of disinfection under the range of operating conditions that could ordinarily be expected.

- 90. **Plant and equipment** - Air conditioning systems shall not be located on balconies and shall be located out of view and plant and equipment shall not visible from the public domain.
- 91. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorist on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of

the obtrusive effects of outdoor lighting.

92. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas. The maintenance schedule shown on the approved landscape plan is to be undertaken in accordance with the details of that schedule. On the completion of the 12 month maintenance period, the landscape works shall be inspected and at the satisfaction of the landscape architect (360 Degrees), the responsibility will be signed over to the client.
93. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
- (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

Section J Operational Requirements Under the Environmental Planning and Assessment Act 1979

94. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

An application form for a **Construction Certificate** is attached for your convenience.

95. **Appointment of a Principal Certifying Authority** - The erection of a building must not commence until the beneficiary of the development consent has:
- (a) appointed a Principal Certifying Authority (PCA) for the building work; and
 - (b) if relevant, advised the PCA that the work will be undertaken as an Owner-Builder.

If the work is not going to be undertaken by an Owner-Builder, then the beneficiary of the consent must:

- (a) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the Home Building Act 1989) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (b) notify the PCA of the details of any such appointment; and
- (c) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

An **Information Pack** is attached for your convenience should you wish to appoint Georges River Council as the Principal Certifying Authority for your development.

96. **Notification of Critical Stage Inspections** - No later than two (2) days before the building work commences, the PCA must notify:
- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
 - (b) the beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.
97. **Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days notice to the Council and the PCA of their intention to commence the erection of a building.

A **Notice of Commencement Form** is attached for your convenience.

98. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.
99. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.

Where Georges River Council has been appointed PCA, forty eight (48) hours notice in writing, or alternatively twenty four (24) hours notice by facsimile or telephone, must be given to when specified work requiring inspection has been completed.

100. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

Only the Principal Certifying Authority appointed for the building work can issue the Occupation Certificate.

An **Occupation Certificate** Application Form is attached for your convenience.

Section K Prescribed Conditions

101. **Clause 98 – Building Code of Australia & Home Building Act 1989** - Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.
102. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifying Authority and the Principal Contractor.
103. **Clause 98B – Home Building Act 1989** - If the development involves residential building work under the Home Building Act 1989, no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is

insured under Part 6 of the Home Building Act 1989.

104. **Clause 98E – Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

END CONDITIONS

NOTES/ADVICES

105. **Review of Determination** - Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

106. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
107. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended
108. **Noise related conditions** - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).

- (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
- (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
- (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).

109. **Acoustical Engineer Contacts & Reference Material.** Further information including lists of Acoustic Engineers can be obtained from:

- (a) Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au)
- (b) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au)
- (c) NSW Industrial Noise Policy – Office of Environment & Heritage (www.environment.nsw.gov.au)

110. **Council as PCA - Compliance with the BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

111. **Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifying Authority, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifying Authority.

112. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

113. **Council as PCA - Total Conformity with BCA** - Should the Council be appointed as the Principal Certifying Authority, the Construction Certificate Application must be accompanied by the following details, with plans prepared and certified by an appropriately qualified person demonstrating compliance with the BCA:

- Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.

- Provision of natural light to all habitable areas.
- Fire-fighting services and equipment including hydrant and booster assembly systems, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems and sound & warning systems.
- Emergency lighting and exit signs throughout, including terrace areas, lobby and basement areas.
- Construction of all fire (smoke) doors including warning and operational signage to required exit and exit door areas.
- Egress, travel distance and the discharge from an exit including the swing of exit doors.
- The protection of openings including spandrel separation.
- Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
- Protection of openings including paths of travel from fire isolated exists
- Re-entry facilities from fire isolated exit stairways.
- Sound transmission and insulation details.
- Window schedule is to include the protection of openable windows.
- The location of sanitary facilities for employees in accordance with Table F2.1

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA must be submitted to the Principal Certifying Authority with the Construction Certificate Application. Should there be any non-compliance, an alternative method of fire protection and structural capacity must be submitted, with all supporting documents prepared by a suitably qualified person.

In the event that full compliance with the BCA cannot be achieved and the services of a fire engineer are obtained to determine an alternative method of compliance with the BCA, such report must be submitted to and endorsed by the Principal Certifying Authority prior to issue of the Construction Certificate.

114. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

115. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.

116. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
117. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
118. **Development Engineering** - Conditions relating to future Strata Subdivision of Buildings

No approval is expressed or implied for the subdivision of the subject building(s). For any future Strata subdivision, a separate Complying Development Certificate shall be approved by Council or an Accredited Certifier.

Prior to the issue of any Strata Certificate of the subject building(s) the following conditions shall be satisfied:

(a) Unit Numbering

Apartment type numbers shall be installed adjacent or to the front door of each unit.

The unit number shall coincide with the strata plan lot numbering.

(b) Car Parking Space Marking and Numbering

Each car space shall be line marked with paint and numbered in accordance with the strata plan lot numbering.

"Visitor Parking" signs shall be installed adjacent to any and all visitor car spaces prior to the issue of any Strata Certificate.

(c) Designation of Visitor Car Spaces on any Strata Plan

Any Visitor car spaces shall be designated on the final strata plan as "Visitor Parking - Common Property".

(d) Allocation of Car Parking Spaces, Storage Areas and Common Property on any Strata Plan

i. All car parking spaces shall be created as a part lot of the individual strata's unit lot in any Strata Plan of the subject building.

ii. All storage areas shall be created as a part lot of the individual strata's unit lot or a separate Utility Lot (if practical) in any Strata Plan of the subject building.

iii. The minimum number of parking spaces required to be allocated as a part lot to each individual strata's unit lot shall be in accordance with the car parking requirements of Council's Development Control Plan and as required by the relative development consent for the building construction.

- iv. No parking spaces shall be created as an individual strata allotment on any Strata Plan of the subject building unless these spaces are surplus to the minimum number of parking spaces required.

If preferred the surplus car spaces shall be permitted to be created as separate Utility Lots, (instead as a part lot of the individual strata's unit lot), in accordance with section 39 of the Strata schemes (freehold development Act 1973).

The above requirements regarding car parking spaces and storage areas may only be varied with the conditions of a separate Development Application Approval for Strata Subdivision of the Building(s).

(e) On Site Detention Requirements

The location any on-site detention facility shall be shown on the strata plan and suitably denoted.

(f) Creation of Positive Covenant

A Positive Covenant shall be created over any on-site detention facility by an Instrument pursuant to Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

"It is the responsibility of the Owner's Corporation to keep the on-site detention facilities, together with any ancillary pumps, pipes, pits etc, clean at all times and maintained in an efficient working condition. The on-site detention facilities shall not be modified in any way without the prior approval of Georges River Council."

Georges River Council is to be nominated as the Authority to release, vary or modify this Covenant.

119. **Security deposit administration & compliance fee** - Under Section 97 (5) of the Local Government Act 1993, a security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

Council must cover administration and other costs incurred in the investment of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.

The interest rate applied to bonds is set at Council's business banking facility rate as at 1 July each year. Council will accept a bank guarantee in lieu of a deposit.

All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

120. **Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** - To apply for approval under Section 138 of the Roads Act 1993:

- (a) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at www.georgesriver.nsw.gov.au.

- (b) In the Application Form, quote the Development Consent No. (eg. DA2017/0491) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

The preparation of all engineering drawings (site layout plans, cross sections, longitudinal sections, elevation views together with a hydraulic grade analysis) and specifications for the new stormwater drainage system to be arranged by the applicant. The design plans must be lodged and approved by Council prior to the issue of a Construction Certificate.

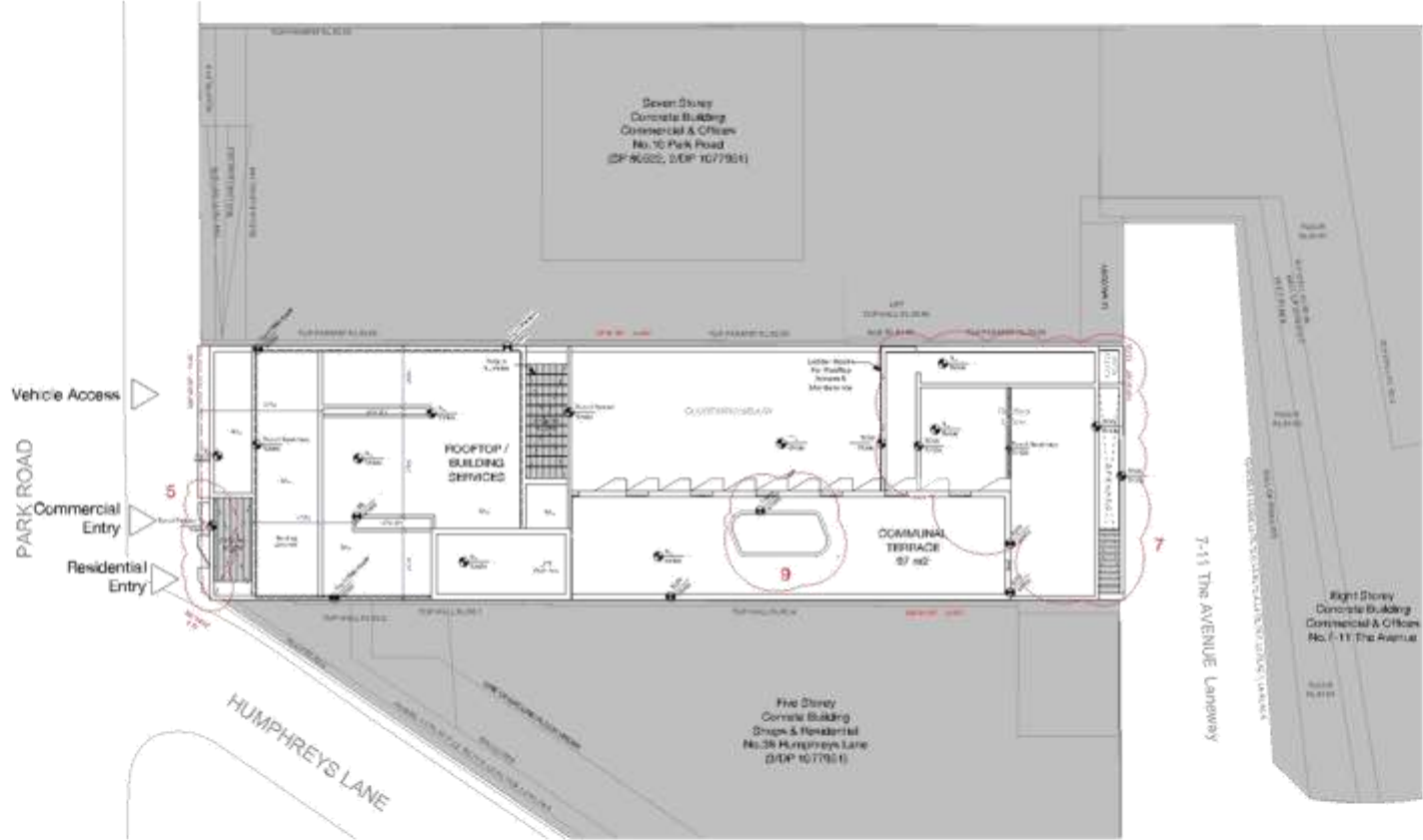
NOTE: A minimum of four weeks should be allowed for assessment.

If you need more information, please contact the Senior Development Assessment Planner, below on Monday to Wednesday between 9.00am -11.00am business days.

ATTACHMENTS

Attachment [1](#) Site Plan - 8 Park Road HURSTVILLE

Attachment [2](#) Elevations - 8 Park Road HURSTVILLE



DA Amended Plans (in red)

- 5 - Facade proportions adjusted
- 7 - Level 2 Rooftop re-designed
- 9 - Assembly added to Communal Terrace i accessible tables, wheelchair, GPO to picnic area as per Design Excellence Review Panel comments



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REV
1
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DATE
4/10/17
8/11/17
28/11/17
12/12/17
9/1/18

DESCRIPTION
Preliminary Plans For Review
For Information Only
For Information Only
For Development Application
DA-Amended Plans

PROJECT
8 PARK ROAD, MIXED-USE
ADDRESS:
8 PARK ROAD, HURSTVILLE 2220
LOT A/DPS 40185

DRAWING TITLE
Site Plan
PROJECT NO.
1718
SCALE
1:500 (NAD)
DATE
28/01/2018
DESIGNER
E
CLIENT NO.
A-103



DA Amended Plans (in red)

- 1 - Park Road Facade (DFA Level 0) adjusted.
- 4 - Rear Lane Facade adjusted.
- 5 - Facade proportions adjusted.
- 5 - Privacy screens added to balcony planters.
- 9 - Amenity added to Commercial Terrace: accessible balconies, kitchenette, GPC to provide area as per Design Excellence Review Panel comments.

 Olsson & Associates Architects Level 6 100 Pitt Street West Sydney NSW 2000 P: 02 9250 1000 F: 02 9250 1001 E: info@olssonandassociates.com.au www.olssonandassociates.com.au	 C&K DEVELOPMENT (AUSTRALIA) PTY LTD 40 Jervis Avenue Cyster Bay NSW 2225	<table><tr><th>LEGEND</th><th>REV</th><th>DATE</th><th>DESCRIPTION</th></tr><tr><td>AKC AKC</td></tr></table>	LEGEND	REV	DATE	DESCRIPTION	AKC AKC
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